



Interoffice Memorandum

September 27, 2023

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Joseph C. Kunkel, P.E., Director, Public Works Department

Handwritten signature of Joseph C. Kunkel in black ink.

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

Handwritten signature of Jon V. Weiss in black ink.

PHONE NUMBER: (407) 836-5393

SUBJECT: **October 24, 2023 – Consent Item**
Proportionate Share Agreement for Chipotle at Adanson Marketplace
Lee Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Chipotle at Adanson Marketplace Lee Road ("Agreement") by and between Lee Road Partners LP and Orange County for a proportionate share payment in the amount of \$149,910. 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 five deficient trips on the road segment of Lee Road from Wymore Road to Orlando Avenue in the amount of \$29,982 per trip.

The Roadway Agreement Committee recommended approval on September 27, 2023. 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 407-836-5393.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Chipotle at Adanson Marketplace Lee Road by and between Lee Road Partners LP and Orange County for a proportionate share payment in the amount of \$149,910. District 5.

JCK/JVW/nc

Attachments

BCC Mtg. Date: October 24, 2023

This instrument prepared by
and after recording return to:

Mohammed Abdallah, PE, PTOE
Traffic & Mobility Consultants LLC
3101 Maguire Blvd, Ste 265
Orlando, Florida 32803

Parcel ID Number:

03-22-29-0000-00-001

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

**PROPORTIONATE SHARE AGREEMENT FOR
CHIPOTLE AT ADANSON MARKETPLACE**

LEE 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 LEE ROAD PARTNERS LP, a Delaware limited partnership (“**Owner**”), with a principal place of business at 1025 Nautilus Lane, Mamaroneck, New York, 10543, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), with its principal address at P.O. Box 1393, Orlando, Florida 32802-1393. Owner and County may sometimes be referred to herein individually as “**Party**” and collectively as “**Parties**”.

WHEREAS, Owner holds 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 5, and the proceeds of the PS Payment, as defined herein, will be allocated to Lee Road; and

WHEREAS, Owner intends to develop the Property as a 2,440 square foot Fast Food Restaurant with Drive-Thru, referred to and known as Chipotle at Adanson Marketplace (the “**Project**”); and

WHEREAS, Owner received a letter from County dated July 26, 2023, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-23-05-045 for the Project was denied; and

WHEREAS, the Project will generate five (5) deficient PM Peak Hour trips (the “**Excess Trips**”) for the deficient roadway segment on Lee Road from Wymore Road to Orlando Avenue (the “**Deficient Segment**”), and zero (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 Trips 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, Owner has offered to provide 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 Segment through the current anticipated Project buildout is One Hundred Forty-Nine Thousand Nine Hundred Ten and 00/100 Dollars (\$149,910.00) (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 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 One Hundred Forty-Nine Thousand Nine Hundred Ten and 00/100 Dollars (\$149,910.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes, as may be amended. Owner and County agree that the Excess Trips will constitute the Project’s impact on the aforementioned Deficient Segment based upon (i) Owner’s Traffic Study titled Chipotle – Lee Road prepared by Traffic & Mobility Consultants LLC, dated April 2023 for Cutwater Capital LLC (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 July 21, 2023, and is on file and available for inspection with that division (CMS #2023045). 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 County’s jurisdiction, notwithstanding any subsequent variance in

the actual cost of any improvement(s) to the Deficient Segment or actual traffic /travel impacts created by the Project; provided, however, that if Owner modifies the Project's development program and/or 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 Subsection 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.* Not later than ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of One Hundred Forty-Nine Thousand Nine Hundred Ten and 00/100 Dollars (\$149,910.00) 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 Segment. Within the time frame provided in the CEL, 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 after the Effective Date, one extension of ninety (90) additional 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 and/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 or modification to the Project that 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 or modification to the Project as set forth in Subsection 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 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. Additionally, nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws, rules, regulations, and/or Orange County Code provisions or from making the required payment of transportation and other impact fees applicable to the Project, subject to any credits as set forth in Section 3 below. For avoidance of doubt, nothing herein is intended to, nor shall, constitute prepayment of any densities and/or intensities of development or of any development program.

Section 3. *Transportation Impact Fee Credits.* County and Owner agree that Owner shall be entitled to receive transportation impact fee credits, applicable only toward development of the Project on the Property, 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, as may be amended, 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. For avoidance of doubt, nothing herein is intended to, nor shall, constitute prepayment of any densities and/or intensities of development or of any development program.

Section 4. *No Refund.* The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable and cannot be transferred or applied to another project or property.

Section 5. *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: LEE ROAD PARTNERS LP
1025 Nautilus Lane
Mamaroneck, New York, 10543

With copy to: LEE ROAD PARTNERS CORP
1025 Nautilus Lane
Mamaroneck, New York, 10543

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, 2nd Floor
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 upon 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 Owner and upon any person, firm, corporation, or entity who may become a successor in interest to the Property.

Section 7. Recordation of Agreement. Owner shall record an original of this Agreement in the Public Records of Orange County, Florida, at no expense to County, not later than thirty (30) 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. 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, in accordance with Section 5, 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.

Section 10. *Attorney Fees.* In the event either Party 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. *Termination.* In the event either (i) Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, as contemplated in Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been constructed on the Property and completed, pursuant to a County building permit, this Agreement shall automatically terminate and thereafter be null and void for all purposes.

Section 14. *Counterparts.* This Agreement may be executed in up to two (2) counterparts, each of which shall be deemed to be an original and both 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: *Bryan W. Brooks*

JLD
Jerry L. Demings
Orange County Mayor

Date: *24 October 2023*

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

By: *[Signature]*
Deputy Clerk

Print Name: *DAVID ROONEY*

Proportionate Share Agreement, Chipotle at Adanson Marketplace
Lee Road Partners LP for Lee Road, 2023

WITNESSES:

Emily Cappel

Print Name: Emily Cappel

Jason Cappel

Print Name: Jason Cappel

“OWNER”

LEE ROAD PARTNERS LP, a Delaware limited partnership

By: LEE ROAD PARTNERS CORP., a Delaware corporation, Its General Partner

By: Jonathan Cappel

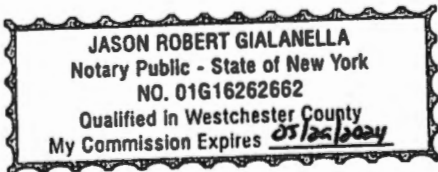
Print Name: Jonathan Cappel

Title: President, Secretary, Treasurer, Director

STATE OF: New York
COUNTY OF: Westchester

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 14 day of September, 2023, by Jonathan Cappel, as President, Secretary, Treasurer, Director of LEE ROAD PARTNERS CORP., a Delaware corporation, as General Partner of LEE ROAD PARTNERS LP, a Delaware limited partnership, on behalf of the limited partnership, who is personally known to me or has produced _____ as identification.

(Notary Stamp)



[Signature]
Signature of Notary Public
Print Name: Jason Robert Gialanella
Notary Public, State of: New York
Commission Expires: 05/22/2024
(mm/dd/yyyy)

Exhibit "A"

"CHIPOTLE AT ADANSON MARKETPLACE"

Project Location Map



Exhibit "B"

"CHIPOTLE AT ADANSON MARKETPLACE"

Parcel ID: 03-22-29-0000-00-001

Legal Description:

A portion of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 22 South, Range 29 East, Orange County, Florida being more particularly described as follows: Commence at the intersection of the West line of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the aforementioned Section 3, Township 22 South, Range 29 East, with the Southerly right-of-way line of Lee Road (100 feet wide); thence run South $88^{\circ}36'41''$ East along said right-of-way line for a distance of 430.00 feet to the Point of Beginning of the tract about to be described; thence continue South $88^{\circ}36'41''$ East along said right-of-way line for a distance of 59.63 feet to the point of curvature of a curve concave Northwesterly; thence continue along said Southerly right-of-way line and along the aforementioned curve, having for its elements a radius of 1,004.93 feet and a central angle of $29^{\circ}25'42''$ for an arc distance of 516.15 feet; thence run South $01^{\circ}23'16''$ West for a distance of 41.46 feet; thence run South $88^{\circ}35'44''$ East for a distance of 305.00 feet to the Westerly right-of-way line of Adanson Street (60 feet wide); thence run South $05^{\circ}52'16''$ West along said right of way line for a distance of 483.70 feet to the point of curvature of a curve concave to the Easterly; thence continue along said Westerly right-of-way line and along the aforementioned curve having for its elements a radius of 653.87 feet, a central angle of $15^{\circ}31'00''$ for an arc distance of 177.08 feet to a point of reverse curvature of a curve concave Westerly; thence continue along said Westerly right-of-way line and along the aforementioned curve having for its elements a radius of 688.55 feet and a central angle of $40^{\circ}46'50''$ for an arc distance of 57.45 feet to the Northerly right-of-way line of Frieda Street; thence run North $88^{\circ}36'44''$ West along said right-of-way line for a distance of 996.31 feet to the East line of the West 300.0 feet of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 3; thence run North $03^{\circ}51'19''$ East along the East line of the West 300.00 feet of the said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ for a distance of 477.53 feet; thence run South $88^{\circ}36'41''$ East for a distance of 136.46 feet; thence run North $01^{\circ}13'19''$ East for a distance of 150.00 feet to the Point of Beginning.

Together with and easement for use as an underground sanitary sewer easement as granted by the Easement Deed filed in Official Record Book 2393, page 319, over and across the Westerly 15 feet of the following described property:

A portion of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 3, Township 22 South, Range 29 East, Orange County, Florida, being more particularly described as follows: Commence at the intersection of the West line of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the aforementioned Section 3, Township 22 South, Range 29 East, with the Southerly right of way of Lee Road (100 feet wide), thence run South $88^{\circ}36'41''$ East along said right of way line for a distance of 300.00 feet to the NW corner and the Point of Beginning of the tract about to be described: Thence continue South $88^{\circ}36'41''$ East along said right of way line for a distance of 130.00 feet; thence run South $1^{\circ}13'19''$ West for a distance of 150.0 feet; thence run North $88^{\circ}36'41''$ West for a distance of 136.46 feet to the East line of the West 300.00 feet of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 3; thence run North $3^{\circ}51'19''$ East for a distance of 150.14 feet to the Point of Beginning.

ALSO TOGETHER WITH a 35 foot easement for Ingress and Egress described as follows:

Commence at the intersection of the West line of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 22 South, Range 29 East, with the Southerly right of way line of Lee Road (100 feet wide); thence run S $88^{\circ}36'41''$ E, along the said right of way line for a distance of 489.63 feet to the point of curvature of a curve concave Northwesterly; thence continue along said Southerly right of way line and along the aforementioned curve, having for its elements a radius of 1,004.93 feet and a central angle of $29^{\circ}25'42''$, for an arc distance of 516.15 feet; thence run S $01^{\circ}23'16''$ W, for a distance of 41.45 feet; thence run S $88^{\circ}36'44''$ E for a distance of 30.0 feet for a Point of Beginning; run thence N $01^{\circ}23'16''$ E a distance of 60.2 feet, more or less, to the Southerly right of way line of said Lee Road; thence run Easterly along said right of way line a distance of 42.3 feet more or less; thence S $01^{\circ}23'16''$ W, a distance of 83.5 feet more or less; thence N $88^{\circ}36'44''$ W, a distance of 35.00 feet to the Point of Beginning.

Exhibit "C"

"CHIPOTLE AT ADANSON MARKETPLACE"

DEFICIENT SEGMENT

Log of Project Contributions

Lee Road (from Wymore Road to Orlando Avenue)

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
Lee Rd	Wymore Rd - Orlando Ave	1.21	E	2000	Widen from 4 to 6 lanes	3020	1020	\$30,561,334	\$29,962

County Share of Improvement							
Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Lee Rd	Wymore Rd - Orlando Ave	1.21	E	2000	3020	1020	\$149,909

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	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Lee Rd	Wymore Rd - Orlando Ave	1.21	E	2000	3020	1020	1015	\$30,431,428	\$29,962

Updated: 8/8/23

Log of Project Contributions				
Date	Project	Project Trips	Prop Share	
Existing Aug-23	Existing plus Committed	5	\$149,910	
Backlogged Totals:			5	\$149,910
Proposed Aug-23	Chipotle Lee Rd	5	\$149,910	
Totals:			10	\$299,820