







Location Sketch



SR-7 / US 441

Project Location  
Sussman - AGR

Half Mile Road

W Atlantic Avenue

Lyons Road

Florida Turnpike



Location Sketch

Project Control Number: 2000-032

Impact Fee Zone: 5

## PROPORTIONATE SHARE AGREEMENT

This Proportionate Share Agreement (hereinafter "Agreement") is made and entered into this 19<sup>th</sup> day of July, 2016, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and 7T's Enterprises, Inc. and Westside Farms, Inc. (hereinafter, collectively "Developer").

### WITNESSETH

**WHEREAS**, the Board of County Commissioners has implemented the Proportionate Share Program as required by and in a manner consistent with section 163.3180(5)(h), Florida Statutes; and

**WHEREAS**, the Proportionate Share Program allows developers to proceed with development notwithstanding a failure of transportation concurrency, by contributing their proportionate share to one or more regionally significant transportation facilities; and

**WHEREAS**, in order to conform to the requirements of this Program, the County and the Developer agree to the conditions, rights and obligations established in this Agreement; and

**WHEREAS**, To the extent that any of the conditions of this Agreement constitute monetary or property exactions that are subject to *Nollan v. California Coastal Comm'n*, 483 U. S. 825 (1987), and *Dolan v. City of Tigard*, 512 U. S. 374 (1994), the Developer, and its successors and assigns, (a) agrees that there is a nexus and rough proportionality between such conditions and the impacts of this project/development, and that such conditions are necessary to ensure compliance with the criteria of the Palm Beach County Unified Land Development Code and Comprehensive Plan that are applicable to this approval, and (b) waives any claims based on such conditions; and

**WHEREAS**, the Board of County Commissioners of Palm Beach County has delegated to the County Administrator or his or her designee the authority to enter into this Agreement on behalf of the County; and

**NOW, THEREFORE**, in consideration of the promises, mutual covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

#### **Section 1. Recitals**

The above recitals are true and correct and form a part of this Agreement.

#### **Section 2. Project Identification**

The proposed Project is located generally at the intersection of U.S. Highway 441/State Road 7 and Clint Moore Road with Property Control Numbers 00424327050701130 and 00424327050701160

### **Section 3. Proportionate Share Payment**

The total amount of proportionate share payment for the required road improvement(s) shall be one-hundred sixty-eight thousand, eight-hundred six and 22/100 Dollars (\$168,806.22). This amount was calculated in accordance with the methodology provided for in section 163.3180(5)(h), Florida Statutes, and based on the Developer's Traffic Study (hereinafter "the Study"), prepared by Kimley-Horn & Associates dated April 25, 2016, and approved by the Palm Beach County Traffic Division on June 1, 2016. While the proportionate share payment(s) set forth in the Study are based on the proportionate costs of specific road improvements, the parties hereto understand and agree that the Palm Beach County, in its sole discretion, may apply such payment(s) to one or more mobility improvements to regionally significant transportation facilities.

### **Section 4. Payment Adjustment Calculation**

The proportionate share payment set forth in Section 3 above is due at the time of first building permit for the Project. Pursuant s.163.3180(5)(h)2., F.S., proportionate share payments shall be based on the improvement cost at the time of payment. The parties hereto agree that the payment amounts set forth in this Agreement shall be subject to the following calculation to account for changes in road development costs that may occur between the effective date of this Agreement and the date the proportionate share payment is due.

Adjusted Payment = Original Payment Amount x (BONS Payment Month / BONS Month of Prop Share Execution)

- Original Payment Amount = Proportionate Share Payment amount specified
- BONS payment = Latest Published Value (including preliminary values) at Time of Payment
- BONS Month of Prop Share Execution = Published Value

The cost adjustment for the total and amount of each payment shall be based on the Bureau of Labor Statistics Producer Price Index (PPI) for Other Non-Residential Construction ((BONS) (Series ID: WPUIP23122301).

### **Section 5. Term of concurrency approval**

In consideration for entering into this binding Proportionate Share Agreement with Palm Beach County, the Developer shall be deemed to have satisfied traffic concurrency requirements. In the event the County denies the development order application that gave rise to this Agreement, or if the Developer for any reason withdraws the development order application, then this Agreement, and the certificate of concurrency approval will be void and of no further force and effect.

### **Section 6. Increase in Project Trips**

Any change to the Project could result in an increase in trips that impact one or more of Palm Beach County's Major Thoroughfares, as defined by Unified Land Development

Code, Section 1.I.2.M.6. The Developer understands and agrees that it is precluded from asserting that those additional trips are vested or otherwise permitted under this Agreement. In addition, Developer understands and agrees that any such changes resulting in an increase in trips may cause his Agreement to be null and void, or may require the application for and execution of an additional Proportionate Share Agreement, along with any other traffic study or additional documentation.

**Section 7. Road Impact Fee Credit**

Proportionate share payments shall be applied as a credit against road impact fees regardless of how the County ultimately uses the proportionate share payments. The Developer understands and agrees that in no event shall the Developer be entitled to road impact fee credits in excess of the proportionate share contribution and in the event the contribution exceeds the amount of road impact fees owed by the Project through buildout, Developer shall not be entitled to a refund for the proportionate share contribution in excess of such road impact fees.

**Section 8. No refund**

Proportionate share contributions are non-refundable.

**Section 9. Governing Law**

The Agreement and the rights and obligations created hereunder shall be interpreted, construed and enforced in accordance with the laws of the United States and the State of Florida. If any litigation should be brought in connection with this Agreement, venue shall lie in Palm Beach County, Florida.

**Section 10. Attorneys' Fees and Costs**

The parties hereto agree that in the event it becomes necessary for either party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms and provisions of this Agreement, each party in such litigation shall bear its own costs and expenses incurred and expended in connection therewith including, but not limited to, reasonable attorneys' fees and court costs through all trial and appellate levels.

**Section 11. Severability**

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Section 12. Agreement**

This Agreement contains the entire agreement between the parties. No rights, duties or obligations of the parties shall be created unless specifically set forth in this Agreement.

**Section 13. Amendment**

No modification or amendment of this Agreement shall be of any legal force or effect unless it is in writing and executed by both parties.

**Section 14. Binding Agreement**

This Agreement shall inure to the benefit of and shall bind the parties, their heirs, successors and assigns.

**Section 15. Assignment**

This Agreement may not be assigned without the prior written consent of the other party, and all the terms and conditions set forth herein shall inure to the benefit of and shall bind all future assignees.

**Section 16. Waiver**

Failure to enforce any provision of this Agreement by either party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

**Section 17. Notices**

Any notice, request, demand, instruction or other communication to be given to either party under this Agreement shall be in writing and shall be hand delivered, sent by Federal Express or a comparable overnight mail service, or by U.S. Registered or Certified Mail, return receipt requested, postage prepaid, to County and to Developer at their respective addresses below:

*As to County:*

Tayna McConnell  
Governmental Center  
301 N Olive Ave.  
West Palm Beach, FL 33401

*With a copy to County's Legal Representative:*

Leonard Berger, Esq.  
Chief Assistant County Attorney  
Governmental Center  
301 N Olive Ave.  
West Palm Beach, FL 33401

*As to Developer:*

Stephen Thomas  
4070 Live Oak Blvd.  
Delray Beach, FL. 33445



*With a copy to Developer's Legal Representative:*

Brian M. Seymour, Esq.  
Gunster  
777 South Flagler Drive, Suite 500 East  
West Palm Beach, Florida 33401

**Section 18. Effective Date**

The effective date of this Agreement shall be July 19, 2016.

**Section 19. Counterparts**

This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to be one and the same Agreement.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date and year first above written.

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY ITS COUNTY ADMINISTRATOR

Meresa Laurina  
Witness

By: Verdenia C. Baker  
County Administrator

ATTEST:

DEVELOPER

Tom LaSalle Sr  
Witness Thomas LaSalle Sr

7T's Enterprises, Inc.  
By: Stephen M. Thomas  
Its: President

Debra L. Smith  
Witness Debra L. Smith

Westside Farms, Inc.  
By: Stephen M. Thomas  
Its: Secretary

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Scott B.  
County Attorney

In witness whereof, the foregoing instrument was acknowledged before me this 14<sup>th</sup> day of June, 2016 by Stephen M Thomas, on behalf of 77's Enterprises, Inc. and Westside Farms Inc., who is personally known to me and who did not take an oath.

APPROVED AS TO TERMS AND CONDITIONS:

By: M. McConnell  
6/27/16

My Commission expires: 7/31/18  
Notary Public Marty R.A. Minor  
MARTY R.A. MINOR



## PROPORTIONATE SHARE AGREEMENT

This Proportionate Share Agreement (hereinafter "Agreement") is made and entered into this 10<sup>th</sup> day of August, 2016, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and 441 Acquisition, LLC, a Florida limited liability company, (hereinafter "Developer").

### WITNESSETH

**WHEREAS**, the Board of County Commissioners has implemented the Proportionate Share Program as required by and in a manner consistent with section 163.3180(5)(h), Florida Statutes; and

**WHEREAS**, the Proportionate Share Program allows developers to proceed with development notwithstanding a failure of transportation concurrency, by contributing their proportionate share to one or more regionally significant transportation facilities; and

**WHEREAS**, in order to conform to the requirements of this Program, the County and the Developer agree to the conditions, rights and obligations established in this Agreement; and

**WHEREAS**, To the extent that any of the conditions of this Agreement constitute monetary or property exactions that are subject to *Nollan v. California Coastal Comm'n*, 483 U. S. 825 (1987), and *Dolan v. City of Tigard*, 512 U. S. 374 (1994), the applicant/owner, and successors and assigns (a) agrees that there is a nexus and rough proportionality between such conditions and the impacts of this project/development, and that such conditions are necessary to ensure compliance with the criteria of the Palm Beach County Unified Land Development Code and Comprehensive Plan that are applicable to this approval, and (b) waives any claims based on such conditions; and

**WHEREAS**, the Board of County Commissioners of Palm Beach County has delegated to the County Administrator or his or her designee the authority to enter into this Agreement on behalf of the County; and

**NOW, THEREFORE**, in consideration of the promises, mutual covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

#### **Section 1. Recitals**

The above recitals are true and correct and form a part of this Agreement.

#### **Section 2. Project Identification**

The proposed Project is known as Sussman AGR-PUD and is located on State Road 7, south of Atlantic Avenue.

**Section 3. Proportionate Share Payment**

The total amount of proportionate share payment for the required road improvement(s) shall be One Million Six Hundred Thirty Six Thousand Two Hundred Forty Four and no/100 Dollars (\$1,636,244). This amount was calculated in accordance with the methodology provided for in section 163.3180(5)(h), Florida Statutes, and based on the Developer’s Traffic Study (hereinafter “the Study”), prepared by Simmons and White, Inc. dated March 25, 2016, and approved by the Palm Beach County Traffic Division on July 20, 2016. While the proportionate share payment(s) set forth in the Study are based on the proportionate costs of specific road improvements, the parties hereto understand and agree that the Palm Beach County, in its sole discretion, may apply such payment(s) to one or more mobility improvements to regionally significant transportation facilities.

A payment of \$1,503,249.00 shall be submitted to Palm Beach County prior to the issuance of the 70<sup>th</sup> Building Permit.

A payment of \$132,995.00 shall be submitted to Palm Beach County prior to the issuance of the 315<sup>th</sup> Building Permit.

**Section 4. Payment Adjustment Calculation**

Pursuant s.163.3180(5)(h)2., F.S., proportionate share payments shall be based on the improvement cost at the time of payment. The parties hereto agree that the payment amounts set forth in this Agreement shall be subject to the following calculation to account for changes in road development costs that may occur between the effective date of this Agreement and the date each proportionate share payment is due.

Adjusted Payment = Original Payment Amount x (BONS Payment Month / BONS Month of Prop Share Execution)

- Original Payment Amount = Proportionate Share Payment amount specified
- BONS payment = Latest Published Value (including preliminary values) at Time of Payment
- BONS Month of Prop Share Execution = Published Value

The cost adjustment for the total and amount of each payment shall be based on the Bureau of Labor Statistics Producer Price Index (PPI) for Other Non-Residential Construction ((BONS) (Series ID: WPUIP23122301).

**Section 5. Term of concurrency approval**

In consideration for entering into this binding Proportionate Share Agreement with Palm Beach County, the Developer shall be deemed to have satisfied traffic concurrency requirements; provided, however, if the Developer fails to apply for a development permit within twelve months of the date of this Agreement, then this Agreement and, the certificate of concurrency approval, shall be considered null and void, and the applicant shall be required to reapply to meet Palm Beach County Traffic Performance Standards. In the event the County

or municipality as applicable denies the development order application that gave rise to this Agreement, or if the Developer for any reason withdraws the development order application, then this Agreement, and the certificate of concurrency approval will be void and of no further force and effect.

**Section 6. Increase in Project Trips**

Any change to the Project could result in an increase in trips that impact one or more of Palm Beach County's Major Thoroughfares, as defined by Unified Land Development Code, Section 1.I.2.M.6. The Developer understands and agrees that it is precluded from asserting that those additional trips are vested or otherwise permitted under this Agreement. In addition, Developer understands and agrees that any such changes resulting in an increase in trips may cause his Agreement to be null and void, or may require the application for and execution of an additional Proportionate Share Agreement, along with any other traffic study or additional documentation.

**Section 7. Road Impact Fee Credit**

Proportionate share contributions shall be applied as a credit against road impact fees regardless of how the County ultimately uses the proportionate share payments. The Developer understands and agrees that in no event shall the Developer be entitled to road impact fee credits in excess of the proportionate share contribution and in the event the contribution exceeds the amount of road impact fees owed by the Project through buildout, Developer shall not be entitled to a refund for the proportionate share contribution in excess of such road impact fees.

**Section 8. No refund**

Proportionate share contributions are non-refundable.

**Section 9. Governing Law**

The Agreement and the rights and obligations created hereunder shall be interpreted, construed and enforced in accordance with the laws of the United States and the State of Florida. If any litigation should be brought in connection with this Agreement, venue shall lie in Palm Beach County, Florida.

**Section 10. Attorneys' Fees and Costs**

The parties hereto agree that in the event it becomes necessary for either party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms and provisions of this Agreement, each party in such litigation shall bear its own costs and expenses incurred and expended in connection therewith including, but not limited to, reasonable attorneys' fees and court costs through all trial and appellate levels.

**Section 11. Severability**

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement

and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Section 12. Agreement**

This Agreement contains the entire agreement between the parties. No rights, duties or obligations of the parties shall be created unless specifically set forth in this Agreement.

**Section 13. Amendment**

No modification or amendment of this Agreement shall be of any legal force or effect unless it is in writing and executed by both parties.

**Section 14. Binding Agreement**

This Agreement shall inure to the benefit of and shall bind the parties, their heirs, successors and assigns.

**Section 15. Assignment**

This Agreement may not be assigned without the prior written consent of the other party, and all the terms and conditions set forth herein shall inure to the benefit of and shall bind all future assignees.

**Section 16. Waiver**

Failure to enforce any provision of this Agreement by either party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

**Section 17. Notices**

Any notice, request, demand, instruction or other communication to be given to either party under this Agreement shall be in writing and shall be hand delivered, sent by Federal Express or a comparable overnight mail service, or by U.S. Registered or Certified Mail, return receipt requested, postage prepaid, to County and to Developer at their respective addresses below:

*As to County:*

Tanya N. McConnell, P.E.  
Deputy County Engineer  
Palm Beach County Engineering and Public Works Department  
2300 N. Jog Road  
West Palm Beach, FL 33411

*With a copy to County's Legal Representative:*

Leonard Berger  
Chief Assistant County Attorney  
Palm Beach County Attorney's Office  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401

*As to Developer:*

Alan Fant, Vice President  
441 Acquisition, LLC, a Florida limited liability company  
1600 Sawgrass Corporate Parkway  
Suite 400  
Sunrise, FL 33323

*With a copy to Developer's Legal Representative:*

Steve Helfman, General Counsel  
441 Acquisition, LLC, a Florida limited liability company  
1600 Sawgrass Corporate Parkway  
Suite 400  
Sunrise, FL 33323

**Section 18. Effective Date**

The effective date of this Agreement shall be August 10, 2016.

**Section 19. Counterparts**

This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to be one and the same Agreement.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date and year first above written.

ATTEST:

Cathy Stewart  
Witness

PALM BEACH COUNTY, FLORIDA, BY ITS  
COUNTY ADMINISTRATOR

By: Verdenia C. Baker  
County Administrator

ATTEST:

Kurt Rattner  
Witness

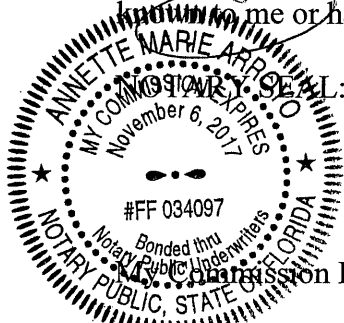
DEVELOPER  
441 Acquisition, LLC, a Florida limited liability  
company

By: Alan Fant, V.P.  
Alan Fant, Vice President

Maay DiGudman  
Witness

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 12 day of July, 2016, by Alan Fant, the Vice President of 441 Acquisition, LLC, a Florida limited liability company, for and on behalf of said company. He/she is personally known to me or has produced \_\_\_\_\_ as identification



Annette Arroyo  
Notary Public  
Annette Arroyo  
Print Notary Name

My Commission Expires: 11/6/17

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

Leon By  
County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS:

By: Paul Cornell 712616

[Agreement shall be executed in a manner and form consistent with PPM CW-F-049]



**RESOLUTION NO. R-2016-0125**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DELEGATING TO THE COUNTY ADMINISTRATOR THE AUTHORITY TO ENTER INTO CERTAIN PROPORTIONATE SHARE AGREEMENTS AS SET FORTH IN EXHIBIT A; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners has established by Ordinance the Proportionate Share Program as required by and in a manner consistent with Section 163.3180(5)(h), Florida Statutes, as may be amended; and

**WHEREAS**, the Proportionate Share Program allows developers under certain conditions to enter into Proportionate Share Agreements to conform to the requirements of State law and of the Proportionate Share Program; and

**WHEREAS**, the Board of County Commissioners of Palm Beach County desires to delegate to the County Administrator, or her designee, the authority to enter into Proportionate Share Agreements that are in substantially the same form as provided for in Exhibit A, which is attached hereto and made a part hereof; and

**WHEREAS**, the Board of County Commissioners finds that this delegation of authority will eliminate the delay caused by requiring such items to be brought before the Board for its approval; and

**WHEREAS**, the Board finds that delegation of this authority furthers the County Commission's objective of streamlining the agenda process and the development review process; and

**WHEREAS**, the Board of County Commissioners has determined that delegation of this authority is consistent with Florida Statutes and its Home Rule Charter.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

1. The recitals contained above are true and correct and incorporated herein by reference.

2. The County Administrator, or her designee, is hereby delegated the authority to enter into on behalf of the Board of County Commissioners Proportionate Share Agreements in substantially the same form as provided for in Exhibit A.

3. The terms of this Resolution shall take effect upon adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner Vana, who moved its adoption. The motion was seconded by Commissioner Burdick, and upon being put to a vote, the vote was as follows:

- Commissioner Mary Lou Berger, Mayor - Aye
- Commissioner Hal R. Valeche, Vice Mayor - Aye
- Commissioner Paulette Burdick - Aye
- Commissioner Shelley Vana - Aye
- Commissioner Steven L. Abrams - Aye
- Commissioner Melissa McKinlay - Aye
- Commissioner Priscilla A. Taylor - Aye

The Mayor thereupon declared the Resolution duly passed and adopted this 26th day of January, 2016.

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: [Signature]  
Deputy Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]  
Assistant County Attorney