

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

DEVELOPMENT AGREEMENT
(Candela South)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (the "County"), a body politic acting herein by and through its Commissioners Court, and JDS Nursery Tract South, LLC, owner of property subject to this Agreement, its successors and assigns, (the "Owner"). The County and the Owner may be individually referred to as a "Party" or collectively as the "Parties."

WHEREAS, the Owner owns and is currently preparing to develop approximate 15.52-acre tract of land as described in Exhibit A attached hereto and incorporated herein for all purposes, (the "Property"); and

WHEREAS, Winner Foster Road is a public roadway maintained by the County and adjacent to the Property; and

WHEREAS, the Parties desire to enter into a Development Agreement to memorialize the terms in which the Owner will submit subdivision plats to the County for approval of its Commissioners Court, dedicate land for use as a public right of way, and contribute to the improvements to Winner Foster Road.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the County and the Owner agree as follows:

1. Owner's Responsibilities. The Owner agrees to perform the following at its sole cost and at no cost to the County:

(a) pay to the County a total amount of \$850,000.00 as its contribution for the future improvements to Winner Foster Road, (hereinafter called "Owner Contribution"). The Owner Contribution will be available to the County for the construction costs associated with the improvements to Winner Foster Road, and the County shall, in its sole discretion, be entitled to use at any time, all or a portion of the Owner Contribution in connection with the improvements to Winner Foster Road; and

(b) dedicate to the public, by subdivision plat, land within Section 3 and Section 4 of the Property necessary to provide sufficient right of way for the proposed ultimate right of limits of Winner Foster Road, as depicted in Exhibit A.

2. County's Responsibilities. In exchange for the Owner's commitments made in accordance with Section 1 above and satisfaction of all other requirements for subdivision plat approval, the County agrees to present the proposed subdivision plats for consideration by the County's Commissioners Court for approval.

3. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/OWNER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

(a) OWNER ACKNOWLEDGES AND AGREES THAT THE COMMITMENT MADE BY THE OWNER TO THE COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:

- (I) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
- (II) VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED;
- (III) NUISANCE; AND/OR
- (IV) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

(b) OWNER RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(c) OWNER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(d) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

4. Limitations of Agreement. The Parties hereto acknowledge this Agreement is limited to the development of the Property only. Further, this Agreement does not waive or limit any of the obligations of Owner to County under any other order whether now existing or in the future arising.

5. Default. In the event Owner fails to comply with any of the provisions of this Agreement within sixty (60) business days after Owner's receipt of written notice thereof from County, County shall have any rights and remedies available at law or in equity. In the event of County's default under this Agreement, Owner will be entitled to seek any remedy available to them at law or in equity.

6. Miscellaneous.

(a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

If to County, to:

Fort Bend County Engineering
Attention: County Engineer
301 Jackson Street
Richmond, Texas 77469

With a copy to:

Fort Bend County
Attention: County Judge
401 Jackson Street
Richmond, Texas 77469

If to Owner, to:

JDS Nursery Tract South, LLC
5005 Riverway, Suite 500
Houston, Texas 77056

(b) Binding Effect. This Agreement, and the benefits and obligations hereof, shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, executors, administrators, legal representatives, successors and assigns, as the case may be. Upon conveyance of any portion of the Property subject to this Agreement, there must be executed by the Owner and successor in interest, and delivered to the County within ten (10) days after the occurrence of such conveyance, an agreement of assignment and assumption in a form reasonably acceptable to the County, pursuant to which the assignee assumes all obligations of the Owner under this Agreement.

(c) Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

(d) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

(e) Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(f) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(g) Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other Parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(h) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(i) Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its counsel.

(j) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

(k) Sovereign Immunity. The Parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(l) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing Party may recover its reasonable and necessary attorneys' fees from the non-prevailing Party as permitted by law.

(m) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby

incorporated into the body of this Agreement and adopted as findings of County and the Owner and/or its authorized representatives.

(n) Owner's Warranties/Representations. All warranties, representations and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County or on County's behalf.

(o) Waiver and Release of Claims. The Parties agree that the Waiver and Release of Claims provisions set forth in Paragraph 3 herein are conspicuous, and the Parties have read and understood the same.

(p) Waiver. Waiver by either Party of any breach of this Agreement, or the failure of either Party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance.

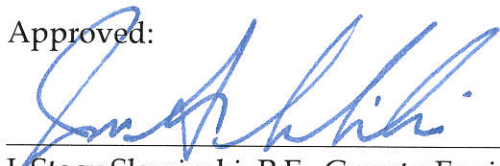
IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

FORT BEND COUNTY:

KP George, County Judge

Date

Approved:



J. Stacy Slawinski, P.E., County Engineer

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This instrument was acknowledged before me on this ____ day of _____, 2023 by KP George, County Judge of Fort Bend County, Texas, on behalf of said County.

(NOTARY SEAL)

Notary Public, State of Texas

OWNER:

JDS Nursery Tract South, LLC

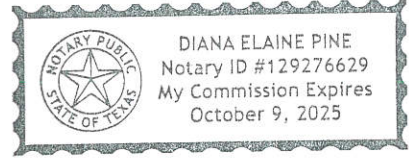
[Handwritten Signature]
By: **L. Michael Cox**
President

3/31/23
Date

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This instrument was acknowledged before me on this 31st day of March, 2023 by L. Michael Cox President of JDS Nursery Tract South on behalf of such limited liability company.

(NOTARY SEAL)



Diana Elaine Pine
Notary Public, State of Texas

EXHIBIT A

