

THE STATE OF TEXAS

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COUNTY OF FORT BEND

**RIGHT OF WAY DONATION AGREEMENT  
(HOLMES ROAD)**

THIS AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as the "County"), a body politic acting herein by and through its Commissioners' Court, and Dulles Property, LLC, a Texas limited liability company, formerly known as Dulles Property, Ltd., authorized to conduct business in the State of Texas (hereinafter referred to as "Owner")

WHEREAS, Owner owns an approximate 5.2 acre tract of land at the corner of FM 359 and Holmes Road (the Owner Property"); and

WHEREAS, Holmes Road is a public road classified as a major thoroughfare maintained by the County that adjoins Owner Property; and

WHEREAS, County proposes to make certain improvements to Holmes Road, which will include expanding the current two lane road to a four-lane boulevard as appropriate for a major thoroughfare; and

WHEREAS, County and Owner agree that Owner Property will substantially benefit from the improvements to Holmes Road; and

WHEREAS, Owner agrees to dedicate a portion of Owner Property for right of way purposes to accommodate the improvements to Holmes Road; and

WHEREAS, County has investigated and determined that although it would be advantageous and beneficial to County and its citizens to make such improvements to Holmes Road, County and Owner recognize and agree that it is not in the best interest of the community to begin construction at this time.

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

1. Dedication of Right of Way. Within thirty (30) days of receipt of notice from County to acquire, Owner shall convey a portion of Owner Property adjacent to Holmes Road for right of way purposes by Donation Deed. Only property which is within the proposed 120 feet right of way as reflected on Exhibit "A" is subject to this Agreement. The exact amount of Owner Property necessary to accommodate the improvements will be determined. If, upon the expiration of twenty-five (25) years from the date of this Agreement, County has not provided Owner with such notice, Owner shall no longer be obligated to convey any portion of Owner Property to County under this Agreement. Should Owner elect to subdivide Owner Property, or

any portion thereof, requiring plat approval, dedication of the necessary right of way will be required as a condition of plat approval at that time. .

2. Access to Holmes Road. As consideration for Owner's commitment to dedicate a portion of Owner Property, County agrees to allow two (2) points of ingress and egress noted as "A" and "B" on the site plan attached as Exhibit "A" incorporated herein for all purposes, and sixty feet (60') median cut at "C" and "B" in the event County installs a median on the improved Holmes Road. Owner has the option to relocate driveway "A" to the proposed median opening at driveway "C". As additional consideration, County will issue a Development Permit to allow Owner to build an additional building on Owner Property, upon Owner submitting a proper application with plans meeting all County regulations appropriate for approval.

3. Disclaimer/Waiver of Damages/Liability. (a) Owner acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of Holmes Road, in whole or in part.

(b) Owner acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or Owner Property, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the Holmes Road by any certain date and/or as set forth in this Agreement.

**4. 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 CONTRIBUTION MADE BY OWNER TO 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.**

5. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the dedication of a portion of Owner 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.

6. Default. In the event Owner fails to comply with any of the provisions of this Agreement within thirty (30) business days after Owner's receipt of written notice thereof from County, County shall have the following remedies in addition to County's other rights and remedies, at law or in equity:

- (a) to file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against the Owner and/or the Property; and/or
- (b) to refuse to accept any portion of any public improvements on the Owner Property and/or associated with the development of the Owner Property; and/or
- (c) to refuse to finally accept the Owner Property and/or any portion thereof; and/or
- (d) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Owner will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

7. 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: Richard W. Stolleis, P.E., County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to:

Fort Bend County  
Attention: Robert E. Hebert, County Judge  
401 Jackson Street  
Richmond, Texas 77469

If to Owner, to:

Dulles Property, LLC  
Attention: Dr. Michael Moore  
4716 FM 359  
Richmond, Texas 77406

With a copy to:

Dean A. Hrbacek, Esquire  
130 Industrial Blvd, #110  
Sugar Land, Texas 77478

(b) Assignment. This Agreement is not assignable by Owner without the prior written consent of County, which consent shall not be unreasonably withheld.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) 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.

(e) 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.

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

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

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

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) 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 Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(o) 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.

(p) 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.

(q) 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.

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FORT BEND COUNTY:

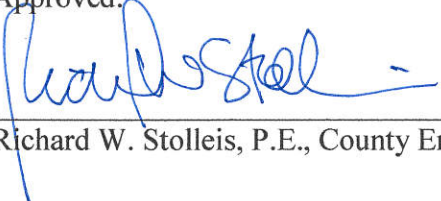
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Robert E. Hebert, County Judge

\_\_\_\_\_  
Date

Attest:


\_\_\_\_\_  
Laura Richard, County Clerk

Approved:

  
\_\_\_\_\_  
Richard W. Stolleis, P.E., County Engineer

OWNER:

DULLES PROPERTY, LLC

By:   
\_\_\_\_\_

Name: Michael Moore, Sr

Title: President

Date: 12-11-15

# EXHIBIT A



DRIVEWAY B

PROPOSED 120' ROW

APPROXIMATE 60' EXISTING ROW

DRIVEWAY A

HOLMES ROAD

APPROXIMATE 60' EXISTING ROW

PROPOSED 120' ROW

DRIVEWAY C



SCALE: 1" = 100'



FUTURE MEDIAN OPENINGS  
TO BE PLACED AT  
DRIVEWAYS B AND C.