


P2022-050: Lots 1 & 2, Block A, Boys and Girls Club of Rockwall Addition

Case Location Map = 



City of Rockwall

Planning & Zoning Department
 385 S. Goliad Street
 Rockwall, Texas 75032
 (P): (972) 771-7745
 (W): www.rockwall.com

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CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (hereinafter referred to as the *Agreement*) is entered into by and between the **CITY OF ROCKWALL, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the *City*) and **SARO PARTNERS, LLC** [a Texas limited liability company], (hereinafter referred to as the *Developer*). The *City* and *Developer* are collectively referred to in this *Agreement* as the *Parties*.

WHEREAS, the *City* owns approximately 4.18-acre tract of land (*i.e. Tract 9 of the M. B. Jones Survey, Abstract No. 122*) -- depicted in Exhibit 'A' attached hereto and incorporated herein for all purposes (the *City's Property*), which is part of a larger portion of a 5.702-acre tract of land in the City of Rockwall located at the southwest corner of John King Boulevard and FM-1141; and

WHEREAS, the *Developer* owns approximately 5.07-acre tract of land (*i.e. Tract 2-06 of the D. Harr Survey, Abstract No. 102*) -- depicted in Exhibit 'B' attached hereto and incorporated herein for all purposes (the *Developer's Property*), which is in the City of Rockwall at the southeast corner of Airport Road and John King Boulevard; and

WHEREAS, the *Developer's Property* is located in the Airport Runway Protection Zone of the Ralph Hall Municipal Airport, which limits the type of development that can be developed on the *Developer's Property*, including the development of an assembly type land use (*i.e. the Boys and Girls Club*); and

WHEREAS, the *Developer* has offered to exchange the *Developer's Property* for the *City's Property* in order to allow for the development of a Boys and Girls Club facility (the *Project*) based on the agreed to terms of an executed **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** between the *City* and the *Developer*; and

WHEREAS, the *City* has determined that the development of the *Project* will be a benefit to the *City* and will promote economic development in the area; and

WHEREAS, in accordance with Section 52-a, *Programs and Loans or Grants of Public Money for Economic Development*, of Article 3, *Legislative Department*, of the Texas Constitution and Section 380.001 of the Texas Local Government Code, the *City* has established a program to provide for the administration of programs to promote state or local economic development and to stimulate business and commercial activity in the *City*; and

WHEREAS, to ensure that the benefits the *City* provides under this *Agreement* are utilized in a manner consistent with Section 52-a, *Programs and Loans or Grants of Public Money for Economic Development*, of Article 3, *Legislative Department*, of the Texas Constitution and Chapter 380, *Miscellaneous Provisions Relating to Municipal Planning and Development*, of the Texas Local Government Code, the *Developer* has agreed, to receive such benefits, to cooperate with the *City* in the design and construction of certain public improvements; and

WHEREAS, the *City* acknowledges that the provisions of this *Agreement* substantially advance a legitimate interest of the *City* by providing public infrastructure, expanding the tax base of the *City* and promoting economic development.

NOW, THEREFORE, for and in consideration of the above recitals and the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the *City* and the *Developer* hereby agree as follows:

(1) PROJECT.

(A) Jurisdiction. The design, specifications and ordinances for the *Project* applicable in the City of Rockwall shall apply to the *Project*, except where the City of Rockwall City Council concurs in writing the application of differing requirements and specifications.

(B) Property for the Project. The *City Property* for the *Project* consists of a 4.18-acre acre tract of land (*i.e. Tract 9 of the M. B. Jones Survey, Abstract No. 122*) -- depicted in Exhibit A attached hereto and incorporated herein for all purposes,

which is part of a larger portion of a 5.702-acre tract of land in the City of Rockwall located at the southwest corner of John King Boulevard and FM-1141.

- (C) Conditions Precedent. This *Agreement* and the *Developer's* obligation to execute the *Project* are subject to the following conditions:
- (I) The *City* will initiate zoning procedures to rezone the *City's Property* from an Agricultural (AG) District to a Commercial (C) District. This zoning change would be in accordance with the *City's Future Land Use Map* contained in the *OURHometown Vision 2040 Comprehensive Plan*, and would allow the requested land uses (*i.e. a Daycare with Seven [7] or More Children/Office*) needed for the *Project*.
 - (II) Upon the zoning being approved on the *City's Property*, the *City* and *Developer* will legally document the exchange of the *City's Property* for the *Developer's Property*. This exchange of property will secure a portion of the Airport Runway Protection Zone of the Ralph Hall Municipal Airport.
 - (III) Once the *Developer* is in possession and has acquired ownership of the *City's Property*, the Boys and Girls Club will have 36-months from the date of the exchange of property to begin developing the *City's Property* with the *Project*. Once the *Project* has commenced, *Developer* shall have 24-months to complete the *Project*.
- (D) Return of City Property. Should the *Project* fail to commence within 36-months from the date the exchange of the property or if the *Parties* do not extend the term to commence the *Project*, the *Developer* will reconvey the *City's Property* back to the City of Rockwall at no cost to the *City* and the *City* will reconvey the *Developer's Property* back to the *City* at no cost to the *Developer*. If the *City* returns the *Property* to *Developer*, *Developer* must comply with the regulations of the Airport Runway Protection Zone on any future development of the returned *Developer's Property*.
- (E) Plans and Approvals. The *Developer* shall be responsible for pursuing and obtaining the necessary plats, site plan approvals and all other approvals and permits required from the *City* which are necessary for construction of the improvements for the development for the *Project* as well as all occupancy and use permits required to allow the development and occupancy of the *Project*.
- (F) Construction. If sufficient funds are raised to proceed with the *Project*, the *Developer* shall require its construction contractor(s) to construct the *Project* in a good and workmanlike manner and in substantial accordance with the approved plans and specifications and shall diligently pursue the construction of the *Project* until it is completed. The *City* shall have the right to inspect the *Project* to confirm compliance with the approved plans and specifications and applicable *City* codes.

(2) DEFAULT.

- (A) Notice and Opportunity to Cure. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of 30-days after receipt by such party of notice of default from the other party. Upon the passage of 30-days without cure of the default, such party shall be deemed to have defaulted for purposes of this *Agreement*, unless such party has commenced to cure such default and is prosecuting the same with reasonable diligence. Notwithstanding the foregoing, commencement of cure, with reasonable diligence, shall only prevent a party from being in default for 60-days after notice was received and a cure had not been achieved unless the non-defaulting party agrees to allow the defaulting party additional time to cure the default.
- (B) Remedies. In the event of a default not cured within the time period set forth herein, the non-defaulting party may, as its sole and exclusive remedy, terminate this *Agreement* or seek injunctive relief of other equitable relief, including, without limitation, specific performance, to enforce the terms of this *Agreement*. Notwithstanding the foregoing, if injunctive or other equitable relief is barred by governmental immunity, then the *Developer* may pursue all other legal and equitable remedies that are not barred by governmental immunity; however, in no event shall a non-defaulting party be entitled to an award of damages or any other monetary relief. The foregoing remedies shall not be applicable to the facts set forth in Section (1)(D) above and the remedy set forth in such Section shall be the exclusive remedy of the *City* and the *Developer* for the facts set forth in that Section.

- (C) Attorney's Fees. In the event that the *Developer* and the *City* fail to resolve a dispute and become involved in litigation with regard to breach of or dispute arising out of this *Agreement*, the prevailing *Party* shall be entitled to be paid its reasonable attorneys' fees and court costs.

(3) DISPUTE RESOLUTION.

- (A) If a dispute arises out of or relates to this *Agreement* or the breach thereof, the *Parties* shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective *Party*. If such dispute cannot be settled through negotiation, the *Parties* agree to try in good faith to settle the dispute by mediation under the *Commercial Mediation Rules of the American Arbitration Association*, Dallas, Texas, before resorting to litigation, or some other dispute resolution procedure; provided that a *Party* may not invoke mediation unless it has provided the other *Party* with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. Notwithstanding the foregoing, any *Party* may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such *Party* is entitled to equitable relief by law, the terms of the *Agreement*, or otherwise. All costs of negotiation, mediation, and arbitration collectively known as Alternate Dispute Resolution (ADR) shall be assessed equally between the *City* and *Developer* with each party bearing their own costs for attorneys' fees, experts, and other costs of ADR and any ensuing litigation.

(4) GENERAL PROVISIONS.

- (A) INDEMNIFICATION. THE *DEVELOPER* AGREES TO DEFEND, INDEMNIFY AND HOLD THE *CITY* AND ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE *CITY*) HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, DEMANDS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE *CITY* DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO *DEVELOPER'S* ACTIVITIES UNDER THIS *AGREEMENT*, INCLUDING ANY ACTS OR OMISSIONS OF *DEVELOPER'S* AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR CONTRACTOR OF THE *DEVELOPER*, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS *AGREEMENT*. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE *CITY*, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE IS THE SOLE CAUSE OF PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE.
- (B) THE PROVISIONS OF THE ABOVE SECTIONS ARE SOLELY FOR THE BENEFIT OF THE *PARTIES* HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT BEING THE INTENTION OF THE *PARTIES* THAT THE *DEVELOPER* SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY AMOUNTS PAID TO THE *DEVELOPER* HEREIN THAT INCLUDES *CITY* SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE *CITY*.
- (C) Mutual Assistance. The *City* and the *Developer* will do all things and execute all documents reasonably necessary or appropriate to carry out the terms and provisions of this *Agreement* and to aid and assist each other in carrying out such terms and provisions.
- (D) Inconsistencies. Where any inconsistency exists between this *Agreement* and other provisions of subsequent collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this *Agreement* shall control.
- (E) Rule of Construction. The *Parties* hereto acknowledge that each party and its legal counsel have reviewed and revised this *Agreement*, and the *Parties* hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this *Agreement* or any amendments hereto.

(F) Independent Contractors and Immunity.

- (I) It is expressly understood and agreed by all *Parties* hereto that in performing their services hereunder, the *Developer* at no time will be acting as an agent of the *City* and that all consultants or contractors engaged by the *Developer* respectively will be independent contractors of the *Developer*; and nothing contained in this *Agreement* is intended by the *Parties* to create a partnership or joint venture between the *Parties* and any implication to the contrary is hereby expressly disavowed. The *Parties* hereto understand and agree that the *City* will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the *Developer* respectively under this *Agreement*, unless any such claims are due to the fault of the *City*.
- (II) By entering into this *Agreement*, the *Parties* do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the *City* with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
- (III) No employee of the *City*, or any councilmember or agent of the *City*, shall be personally responsible for any liability arising under or growing out of this *Agreement*.

(G) Invalidity. If any provision of this *Agreement* is held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. The *Parties* shall use their best efforts to replace the respective provision or provisions of this *Agreement* with legal terms and conditions approximating the original intent of the *Parties*.

(H) Written Notice. All notices from one party to the other must be in writing and are effective upon receipt when mailed to or hand delivered as follows:

CITY: City of Rockwall
Attention: Mary Smith, *City Manager*
385 S Goliad Street
Rockwall, Texas 75087

CITY CC: Davidson Troilo Ream & Garza
Attention: Frank Garza, *City Attorney*
601 NW Loop 410 Suite 100
San Antonio, Texas 78216

DEVELOPER: Saro Partners, LLC
Attention: Shawn Valk
1450 T. L. Townsend Drive, Suite 100
Rockwall, Texas 75087

DEVELOPER CC: Holmes Firm PC
Attention: Ronald L. Holmes
14241 Dallas Parkway, Suite 800
Dallas, Texas 75254

NOTE: Either party may change its business address by providing at least 30 calendar days written notice to the other party of such change.

(I) Entire Agreement. It is understood that this *Agreement* and the *Exhibits* contain the entire agreement between the *Parties* and supersedes any and all prior agreements, arrangements, statements, promises, inducements, or understandings, whether oral or written, between the *Parties* relating to the subject matter. This *Agreement* cannot be

changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this *Agreement*, shall affect or modify any of the terms or obligations hereunder.

- (J) *Amendment*. No amendment to this *Agreement* shall be effective and binding unless and until it is reduced to writing, approved by the City Council, and signed by duly authorized representatives of both *Parties*.
- (K) *Choice of Law and Forum Selection*. This *Agreement* shall be governed, enforced and construed in accordance with laws of the State of Texas. Any and all contested matters arising out of this *Agreement* in any way shall be brought in the courts of Rockwall County, Texas, United States of America.
- (L) *Authority*. The *Developer* hereby certifies, represents, and warrants that the execution of this *Agreement* is duly authorized and adopted in conformity with its governing documents. The *City* hereby certifies, represents, and warrants that the execution of this *Agreement* is duly authorized and adopted in conformity with the *City* charter and ordinances. The *City's* execution of this *Agreement* is authorized by Chapter 380, *Miscellaneous Provisions Relating to Municipal Planning and Development*, of the Texas Local Government Code and constitutes a valid and binding obligation of the *City*. The *City* acknowledges that the *Developer* is acting in reliance upon the *City's* performance of its obligations under this *Agreement* in making the decision to commit substantial resources and money to the construction of the *Project*.
- (M) *Assignment*. The *Developer's* rights and obligations under this *Agreement* may be assigned by the *Developer* provided such assignment receives prior written approval of the City Council of the City of Rockwall, not to be unreasonably withheld, conditioned, delayed, or denied. Notwithstanding the foregoing, the *Developer* may, without the *City's* approval, assign any credits accruing to the *Developer* under this *Agreement*.
- (N) *Waiver*. Failure of either party, at any time, to enforce a provision of this *Agreement* shall in no way constitute a waiver of that provision nor in any way affect the validity of this *Agreement*, any part hereof, or the right of the *City* or the *Developer* thereafter to enforce each and every provision hereof. No term of this *Agreement* shall be deemed waived unless the waiver is in writing and signed by the party claimed to have waived such term. Furthermore, any consent to or waiver of a breach will not constitute consent to, waiver of, or excuse of any other different or subsequent breach.
- (O) *Force Majeure*. If performance of this *Agreement* or any obligation under this *Agreement* is prevented, restricted, or interfered with by causes beyond either party's reasonable control (*Force Majeure*), then the obligations of the party invoking this provision will be suspended to the extent necessary by such event. Events constituting *Force Majeure* include without limitation: acts of God, fire, explosion, vandalism, storm, casualty, illness, injury, general unavailability of materials or similar occurrence, orders or acts of military or civil authority, national emergencies, insurrections, riots, wars, strikes, lock-outs, or work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents or affiliates.
- (P) *Agreement Acknowledged*. The *Parties* acknowledge that they have read, understand and intend to be bound by the terms and conditions of this *Agreement*.
- (Q) *Multiple Originals*. This *Agreement* may be executed in multiple originals.
- (R) *Construction*. This *Agreement* shall be construed without the aid of any canon or rule of law requiring interpretation against the party drafting or causing the drafting of this *Agreement* or the portions of this *Agreement* in question.
- (S) *Incorporation of Recitals*. Any recitals in this *Agreement* are represented by the *Parties* to be accurate and constitute a part of the *Agreement*.
- (T) *Effective Date*. The effective date of this *Agreement* is the last signature date below (the *Effective Date*).

[SIGNATURE PAGES TO FOLLOW]

EXECUTED as of the dates indicated below in multiple originals:

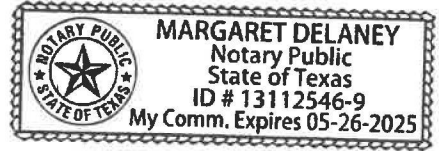
CITY:

CITY OF ROCKWALL, TEXAS,
a Texas home-rule municipality

By: Mary Smith
Name: Mary Smith
Title: City Manager
Date: 3/8/2022

ATTEST:

By: Kristy Cole
Name: Kristy Cole
Title: City Secretary
Date: 03/08/2022



STATE OF TEXAS
COUNTY OF ROCKWALL

This instrument was acknowledged before me on the 8th day of March, 2022, by Mary Smith, the City Manager of the City of Rockwall, a Texas municipal Corporation on behalf of such municipality.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 8th DAY OF March, 2022.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS: Margaret Delaney

MY COMMISSION EXPIRES: 05-26-2025

DEVELOPER:

SARO PARTNERS, LLC,
a Texas limited liability company
By: Shawn Valk
Name: Shawn Valk, Manager
Date: 2-2-2022

STATE OF TEXAS
COUNTY OF ROCKWALL

BEFORE ME, above signed authority, on this day personally appeared, *Shawn Valk*, the owner of the *Developer's Property*, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that he executed the foregoing *Agreement* for the purposes and consideration therein expressed, in the capacity stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 2 DAY OF March, 2022.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS: Annalyse Olson

MY COMMISSION EXPIRES: May 7, 2023

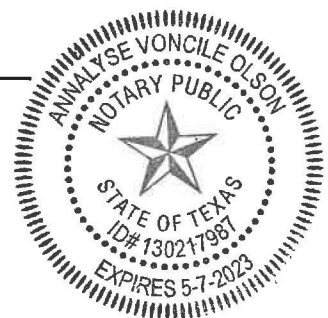
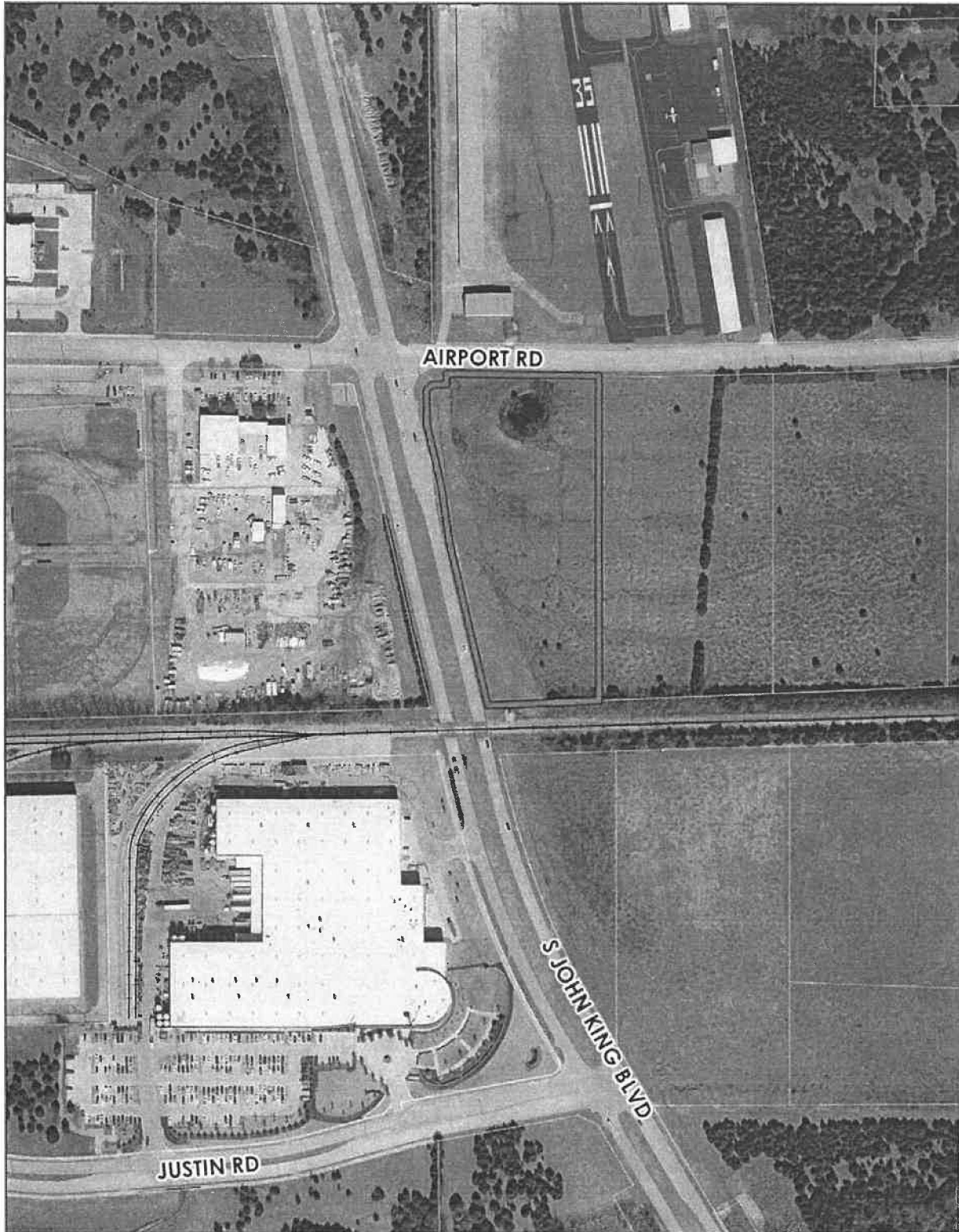


EXHIBIT 'A':
MAP OF THE CITY'S PROPERTY



EXHIBIT 'B':
MAP OF THE DEVELOPER'S PROPERTY



Filed and Recorded
Official Public Records
Jennifer Fogg, County Clerk
Rockwall County, Texas
03/08/2022 11:59:38 AM
\$58.00
2022000005160



Jennifer Fogg