

RESOLUTION NO. 1801

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS, APPROVING THE DECLARATION AND BYLAWS FOR KELLER TOWN CENTER PROPERTY OWNERS ASSOCIATION, BETWEEN THE CITY OF KELLER AND KELLER TOWN CENTER, L.L.C., AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATING THERETO ON BEHALF OF THE CITY OF KELLER, TEXAS.

WHEREAS, the City of Keller and Keller Town Center, L.L.C., are developing Keller Town Center as a public/private partnership; and

WHEREAS, the Master Development Agreement between the City of Keller and Keller Town Center, L.L.C., require the formation of the Keller Town Center Property Owners Association to maintain the landscaping and amenities in Keller Town Center; and

WHEREAS, it is deemed to be in the best interest of the citizens of Keller to maintain Keller Town Center landscaping and amenities in a consistent manner in accordance with the terms and conditions set forth in the Declaration and Bylaws for Keller Town Center Property Owners Association, between the City of Keller and Keller Town Center, L.L.C., as attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS:

Section 1: THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

Section 2: THAT, the City Council of the City of Keller, Texas, hereby approves the Declaration and Bylaws for Keller Town Center Property Owners Association for Keller Town Center, between the City of Keller and Keller Town Center, L.L.C., in accordance with the terms and conditions set forth in said Declaration and Bylaws as attached hereto as Exhibit "A", and further authorizes the City Manager to execute all documents relating thereto.

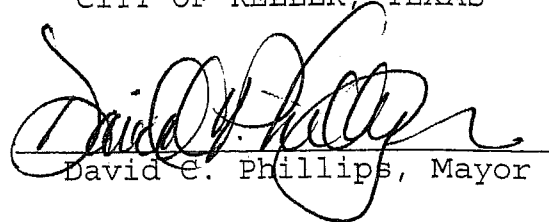
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AND IT IS SO RESOLVED.

Passed by a vote of 5 to 0 on this the 5th day of March, 2002.

CITY OF KELLER, TEXAS

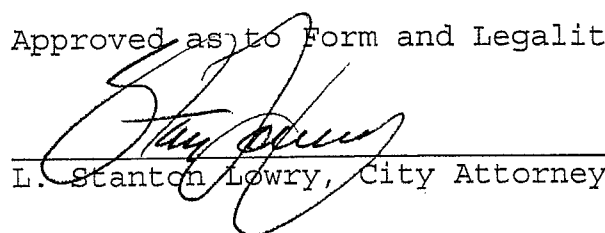
BY:


David E. Phillips, Mayor

ATTEST:


Sheila Stephens, City Secretary

Approved as to Form and Legality:


L. Stanton Lowry, City Attorney

DECLARATION AND BYLAWS
FOR
KELLER TOWN CENTER
PROPERTY OWNERS' ASSOCIATION

This is the Keller Town Center Property Association (Association) Declaration and By Laws for the maintenance of landscaping and other amenities in Keller Town Center.

A. Keller TC, L.L.C., a Texas limited liability company and the City of Keller, a home rule municipality, (the "Declarants") are developing a portion of Keller Town Center identified as Keller Town Center Property in this document and shown as Exhibit A.

B. Declarants desire to create a property owners association to maintain the landscaping and other amenities in the Keller Town Center, a development of individually owned Parcels, and commonly owned areas and facilities. The Association shall maintain all amenities described in this document as required in the Master Development Agreement between Keller TC, L.L.C., and the City of Keller approved by Resolution # 1079 on October 20, 1998.

Definitions

The terms used in this document shall have these meanings, unless the context requires otherwise:

1. "Additional Property" means land, and improvements thereon, that may, at a subsequent time at the approval of the Association and the City of Keller, be added to Keller Town Center Property Owners Association. Additional property encompasses all property established as Town Center Tax Increment Reinvestment Zone No. 1 in the City of Keller as shown on Exhibit B.
2. "Articles" and "Articles of Incorporation" mean the articles, filed with the Secretary of State of Texas, incorporating Keller Town Center Property Owners Association as a non-profit corporation under the provisions of the Texas Non-Profit Corporation Act.
3. "Association" and "Keller Town Center Property Owners Association, Inc." mean the non-profit corporation created by the filing of the Articles.
4. "Board" or "Board of Directors" means those persons who, as a group, serve as the board of directors of the Association.
5. "Bylaws" mean the bylaws of the Association.
6. "Areas of Maintenance" means all areas to be maintained by the Association as shown on Exhibit C.

7. "Declarant(s) " means whoever is designated in the recitals of this Declaration as developing Keller Town Center and the Declarant's successors and assigns, provided the rights specifically reserved to Declarant under the Keller Town Center Organizational Documents will accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of the reserved rights.
8. "Declaration" means this instrument, by which the Keller Town Center Property is maintained.
9. "Director" or "Directors" mean that person or those persons serving, at the time pertinent, as a director or directors of the Association.
10. "Eligible Mortgagees" means the holders of valid first mortgage liens on Parcels who have given written notice to the Association stating their names, addresses and Parcels subject to their mortgages.
11. "Keller Town Center" means all property established as Town Center Tax Increment Reinvestment Zone No.1 in the City of Keller as shown on Exhibit B.
13. "Keller Town Center Instruments" means the Declaration, the Articles, the Bylaws, the Plan, and all other documents, contracts, or instruments establishing Ownership of or exerting control over Keller Town Center Property.
14. "Keller Town Center Organizational Documents" means the Articles, the Bylaws, and this Declaration.
15. "Keller Town Center Property" means the mixed use development of office, retail, assisted/retirement living, multi-family residential, single family residential public uses owned by the City of Keller and/or the Keller Independent School District and any other use allowed in the Town Center zoning district located in City of Keller, Tarrant County, Texas as shown on Exhibit A and hereinafter described as being all buildings, structures and improvements situated thereon, and all easements, rights of ways and appurtenances belonging thereto.
16. Managing Agent means the person or entity appointed by the Board to manage the day-to-day affairs of the Association and maintenance of Keller Town Center Property.
17. "Owner" and "Owners" mean that person or those persons owning an interest in a Parcel or Parcels, each of whom is also a "member" of the Association.
18. "Parcel" or "Parcels" means that portion or portions of Keller Town Center Property owned by an Owner or Owners and described in one or more dimensional drawings recordable in the Real Property Records in Tarrant County, Texas.

19. "Person" means a natural individual, corporation, partnership, director, or other legal entity capable of holding title to real property.
20. "Tributary Park" means the park and lake amenity located between FM 1709 and Bear Creek Parkway as shown on Exhibit D.
21. "Tributary Park drainage area" means those areas included in the lake, stream, concrete drainage pilot channel, and gabions related to the drainage system in Tributary Park.

ARTICLE I

THE LAND

The property constituting a part of the Keller Town Center, located in the City of Keller, Tarrant County, Texas and referenced in this document as Keller Town Center Property and attached hereto as Exhibit "A."

ARTICLE II

NAME

The name of the Association is "Keller Town Center Property Owners Association, Inc."

ARTICLE III

PURPOSES

This Declaration is being made to maintain, promote and preserve the landscaping and other amenities of Parcels and the Common areas in Keller Town Center Property, and to raise funds through assessments to accomplish these purposes.

ARTICLE IV

PARCELS, COMMON AREAS AND CATEGORIES OF PROPERTY TO BE MAINTAINED

A. Parcels and Common Areas Designations. The location and designation of the Parcels and Common Areas are shown in Exhibit "C" and Exhibit "D".

B. Categories of Property to be Maintained. There are two categories of Keller Town Center Property to be maintained:

- (1) City Maintained Property: The City of Keller ("City") shall maintain all Town Center public street(s) paving (excluding parkway and median landscaping) perimeter sidewalks and utilities. City shall also maintain public park/trails south of Bear Creek Parkway, the Town Hall Plaza fountain and its mechanical system, and all public drainage structures upon their completion and dedication to the City.

- (2) Association Maintained Property: The Association shall maintain the Tributary Park amenities including pedestrian walkways, trails in and around Tributary park and extending east from Tributary Park to Country Brook Lane, landscaping, irrigation, water well and pump equipment and geysar(s) in Tributary Park as shown on Exhibit D. The Association shall also maintain all Town Center entry features, identification signage, lighting, irrigation systems and landscaping within the parkways and medians of streets and within the landscape easements as well as the Town Hall Plaza landscaping and its irrigation system as shown on Exhibit C. Such improvements include, but are not limited to, special identification signage including town center entry signs and entry features, landscaping including lawns, shrubs, trees seasonal plantings, planter boxes, irrigation, and decorative lighting.
- 3) Property Owners Maintained Property: The individual property owner(s) shall maintain all property that is not located in the above referenced areas. This includes all parking lot paving, landscaping, irrigation and lighting. The private property shall be kept in excellent maintenance condition as to not impact Keller Town Center in an adverse manner.

ARTICLE V

COST AND MAINTENANCE OF PROPERTY MAINTAINED BY ASSOCIATION.

- A. Maintenance. Association shall maintain or cause to be maintained all areas as shown on Exhibit D so as to keep such areas at all times in a well maintained, good and functional condition in a manner deemed appropriate by the Association.
- B. Owner to Bear pro Rata Share of Assessments. Each Owner of a Parcel shall pay the Owner's pro rata share of the maintenance costs in the form of assessments, which assessments shall include all the ordinary operating and maintenance expenditures incurred in connection therewith. The pro rata share is determined annually based on a competitively bid maintenance contract. As used herein, the term "share" shall mean a fraction, the numerator of which shall be the number of acres in such owner's Parcel and the denominator of which shall be the total acreage in Keller Town Center Property as shown in Exhibit A.
- C. Billing. Association shall use reasonable and good faith efforts to minimize the costs of maintenance consistent with the intention of this Declaration and with the maintenance of Keller Town Center property as a first-class public use, retail, office, assisted care living, multi-family, and single family residential development. All rebates and discounts received by the Association shall be deducted from the costs of the maintenance. Owner(s) shall pay such assessment annually due and payable on or before the fifteenth day of October of each year. The assessments shall include all expenses in connection with such costs and all other common expenses incidental to the conduct of the business of the Association which have been approved by the Board of Directors of the Association (including office expenses and management fee, if any), until the end of the year in which the closing took place. Any additional unplanned expenses, approved by the board of directors, will be reconciled and billed to each owner at the end of the fiscal year based on the pre-determined pro rata share.

Association shall establish and maintain, in accordance with sound accounting practices applied on a consistent basis, adequate books and records of the receipts and disbursements arising in connection with the maintenance of such property. The Board of Directors of the Association shall regularly review such books and records.

The fiscal year of the Association shall be October 1st through September 30th commencing with the October immediately following the approval of the agreement by all parties.

D. Failure of Performance. Any property owner who defaults on payment of the maintenance assessments shall pay a \$500 late fee to be added to the bill for each month that any portion of the assessment remain unpaid. In addition, Association has the right to be reimbursed by Owner for the cost thereof, together with interest thereon at such rate as the Board, from time to time, establishes, not to exceed the maximum rate of interest allowed by law. The Association also has the right to require Owner to pay reasonable collection fees and expenses, including but not limited to attorneys' fees and other out-of-pocket expenses.

E. Creation of Lien. The Association shall have the right to impose a lien upon the property of an Owner who fails to pay its share of the assessments or any other maintenance costs incurred by the Association and payable by such Owner and provisions of this Declaration and the expenses incurred in connection with the enforcement thereof, including, without limitation, interest at the maximum rate permitted by law, costs and reasonable attorneys' fees. The process of creation of lien and collection procedures shall be in accordance with the existing procedures in the City of Keller and the Texas Local Government Code. Such lien may be enforced by appropriate judicial proceedings, and the amounts secured thereby shall be the obligation of and chargeable to owner. Such lien shall be and is subordinate and inferior only to the following: (a) assessments, liens and charges in favor of the State of Texas and any political subdivision thereof for taxes past due and unpaid on the Parcel; and (b) any deed of trust, lien or other encumbrance duly recorded prior to the recordation of any lien imposed by the association pursuant to this Declaration.

F. Non-Waiver. No delay or omission by the Association in the exercise of any right accruing upon any default shall impair any such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by the Association of a default in any of the terms and conditions of this Declaration shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of the Declaration.

ARTICLE VI

OWNERS ASSOCIATION AND BYLAWS

A. Action in Writing Without Meeting. Any action that could be taken by Owners at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of Owners having not less than seventy-five percent (75%) of the voting power of Owners, or such greater proportion of the voting power as may be required by the Town Center Organizational Documents, or by law.

B. Annual Meetings. Regular annual meetings of the Owners will be held on a date and at an hour established from time to time by the Board, provided, that, in any event, there may be no more than fourteen (14) months between annual meetings of the members.

C. Appointment of Managing Agent Contracts. The Managing Agent for the Town Center Property Owners Association shall be the City of Keller.

D. Audits. The Board shall cause the preparation and furnishing of an audited financial statement for the immediately preceding fiscal year, within a reasonable time following a request (provided that no such statement need be furnished earlier than one hundred twenty (120) days following the end of a fiscal year), in the following circumstances:

1. To each requesting Owner, at the expense of the Association, upon the affirmative vote of Owners exercising a majority of the voting power of Owners; and
2. To each holder, insurer, or guarantor of a first mortgage or deed of trust lien upon a Parcel who requests the statement, in writing, provided, if an audited statement is not already available, the audit will be prepared at the expense of the requesting party.

E. Authority. The Board will have sole authority to maintain, repair, replace, alter and improve the landscaping and amenities in Keller Town Center Property as shown on Exhibit D; to assess and collect funds for the payment thereof, and do all things, and exercise all rights provided by this declaration.

F. Board of Directors. The Board initially will be those who currently own land in the Keller Town Center Property as of the date of this declaration. Following the completion of the first fiscal year, a seven (7) member Board of Directors shall be elected annually by a majority vote of all members of the Association at a duly called and noticed meeting. A representative from the City of Keller shall be a permanent member of the Board of Directors. A representative from the Keller TC LLC shall be a member of the Board of Directors as long as Keller TC LLC owns property in the Keller Town Center.

G. Books and Records. The books, records and financial statements of the Association, including annual audited financial statements when they are prepared, will be available at the office of the managing agent during normal business hours or under other reasonable circumstances, upon request to the Association, for inspection by Owners and the holders, insurers and guarantors of first mortgage or deed of trust liens on Parcels.

H. Compensation. Unless otherwise determined by the Owners at a meeting duly called and noticed for that purpose, no Director will receive compensation for any service rendered to the Association as a Director

I. Composition. Each Owner, as defined in the Declaration, is a member of the Association.

IJ. Establishment of Association. The Association has been formed to be and to serve as the Property Owners' Association of Keller Town Center.

K. Membership. During the term of this Declaration, membership in the Owners' Association is limited to the Owners, and every person or entity that is or becomes a record owner of a fee or undivided fee simple interest in a Parcel is an Owner and is a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership is appurtenant to, runs with the land, and may not be separated from ownership of any parcel. Transfer of a parcel will automatically transfer membership to the transferee. Each owner in writing shall designate a contact person to attend all meetings and be responsible for all correspondence and matters related to the Association.

L. Notice of Meetings. Written notice of each meeting of the Owners will be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of the notice, postage prepaid, at least five (5) days before the meeting, to each Owner entitled to vote at the meeting, addressed to the Owner's address last appearing on the books of the Association, or supplied by the Owner to the Association for the purpose of the notice, or by delivering a copy of that notice at such address at least five (5) days before the meeting. The notice must specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

M. Proxies. At any meeting of Owners, an Owner may vote in person or by proxy. All proxies must be in writing and filed with the secretary before the meeting. A telegram or cablegram appearing to have been transmitted by an Owner, or a photographic, photostatic, or equivalent reproduction of writing, appointing a proxy, is a sufficient writing. Proxies received by email shall not be acceptable. Every proxy will be revocable and will automatically cease upon conveyance by an Owner of his parcel, and in any event, will not be valid after the expiration of eleven months after it is made unless it specifies the date on which it is to expire or the length of time it is to continue in force.

N. Quorum; Adjournment. The Owners present, in person or by proxy, at any duly called and noticed meeting of Owners are entitled to exercise a majority of the voting power of all Owners, will constitute a quorum for the meeting. Owners entitled to exercise a majority of the voting power of Owners represented at a meeting may, at any time, adjourn the meeting.

O. Special Meetings. Special meetings of the Owners may be called at any time by the Board, or upon written request of Owners comprising of fifty-one percent (51%) or more of the voting power of Owners.

P. Voting Power. Except as otherwise provided by law, a majority of the voting power of Owners voting on any matter that may be determined by the Owners at a duly called and noticed meeting will be sufficient to determine that matter, except as otherwise specifically provided herein or by law.

Q. Voting Rights. All members shall have an equitable voting right based on the amount of property owned in Keller Town Center. Each member/entity is entitled to one (1) vote per acre of land (rounded to a whole number) owned in the Keller Town Center. Owners of less than one (1) acre in Keller Town Center shall be entitled to one (1) vote.

ARTICLE VII

AGENT FOR SERVICE

The street address of the initial registered office of the Association is _____, and the initial registered agent at that address is _____.

If the initial registered agent for any reason ceases to be registered with the Secretary of State of Texas as the registered agent for the Association, the new registered agent will be the person to receive service of process for the Association.

ARTICLE VIII

EXPANSIONS

A. Reservation of Expansion Option. The Association shall have the option to expand the property maintained by the Association by adding additional Property that is within the Keller Town Center Tax Increment Reinvestment Zone No. 1 as shown in Exhibit B. Any such expansion shall require approval by not less than a two-thirds majority vote by the members of the Association.

B. Composition of Portions Added. There are no limitations regulating the order in which Additional Property is added to the Association.

C. Time for Adding Portions. Portions of the Additional Property may be added to the Association from time to time, and at different times.

D. Improvements Location Limitations. There are no established or defined limitations as to the location of any improvements that may be made on any portion of the Additional Property added to the Association except such limitations as may then be in effect by reason of the laws and lawful rules and regulations of the appropriate governmental bodies and authorities having jurisdiction.

E. Supplemental or Amended Declaration. Improvements to any of the Additional Property is to be added to the area subject to this Declaration, the Board will record in the real property records of Tarrant County Texas, a supplemental or amended Declaration and Exhibits with respect to the portion of the Additional Property added to the control of the Association.

F. Effects of Expansion. Except as hereinafter specifically provided otherwise, upon the recording with the appropriate county recorder of a supplement or amendment to the Declaration adding all or any portion of the Additional Property to the Association:

- (1) The Additional property will thereafter be subject to and benefited by all of the terms and provisions of this Declaration, to the same extent and with the same effect as if that added had been provided herein as constituting part of the Association, that is, the rights, easements, covenants, restrictions, and assessment plan set forth herein will run with, bind, and benefit the added portion in the same manner, to the same extent, and with the same force and effect as the terms of this Declaration apply to all the Keller Town Center Property; and
- (2) The owner or owners of a parcel or parcels in the Additional Property will thereupon become members, to the same extent, with the same effect, subject to the same obligations, and imbued with the same rights, as all other members, including, without limiting the generality of the foregoing one vote for each acre owned by that Owner or Owners.
- (3) Any change in assessments/fees resulting from said expansions shall be made at the subsequent October 1, including assessments incurred between the date of approval of the expansion and October 1.

ARTICLE IX

AMENDMENTS

G. Power to Amend or Terminate. Except as otherwise specifically provided in this Declaration, additions to, changes in, amendment or termination of this Declaration will require the consent of Owners exercising not less than seventy-five percent (75%) of the voting power of Owners.

H. Methods to Amend. An amendment to this Declaration, adopted with the consents of Owners will be executed with the same formalities as to execution as this Declaration by two officers of the Association and will contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment duly adopted and executed in accordance with the foregoing provisions will be effective upon the filing of the same with the County Clerk of the county in which the Keller Town Center Property is located.

ARTICLE X

TERMINATION

Term of Declaration. The covenants and obligations set forth herein shall continue and be binding upon all Owners, for a period of twenty five (25) years from the effective date hereof, unless earlier terminated or amended. At the expiration of such twenty-five (25) year term, this Declaration shall automatically be extended for an additional term (10) period, and shall thereafter on each successive termination date be again extended for a term of ten (10) years until amended or terminated as provided herein.

ARTICLE XI

GENERAL PROVISIONS

- A. Covenants Running With the Land. The covenants and charges created under or by this Declaration, including the obligation to maintain the landscaping of Keller Town Center Property, will run with and bind the land, and each part thereof, and will be binding upon and inure to the benefit of all parties having any right, title or latest in or to all or any part of the Keller Town Center Property, and the Association, and their respective heirs, executors, administrators, successors and assigns, for the term of this Declaration.
- B. Severability. Invalidation or unenforceability of a portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.
- C. Gender and Grammar. The singular whoever used in this Declaration will be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply to corporations, partnerships, men or women, will be assumed as if they were expressed.
- D. Captions. The captions of the various provisions of this Declaration are not part of the context of this Declaration, but are merely labels to assist in locating the various provisions.

IN WITNESS WHEREOF, the undersigned has executed this Declaration to be effective as of the 5th day of March 2002.

KELLER TC, L.L.C., a Texas
limited liability company

By:

Name:

Title:

THE STATE OF TEXAS

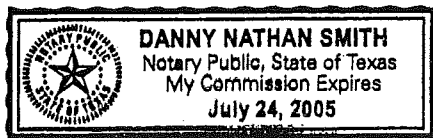
COUNTY OF TARRANT

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Before me, the undersigned, a notary public in and for said county and state, on this date personally appeared Douglas Gilliland of Keller TC, L.L.C., a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the

same as the act of such company for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 27th day of March 2002.



Danny Nathan Smith
Notary Public, State of Texas
My Commission Expires: July 24, 2005

IN TESTIMONY WHEREOF, the City of Keller has caused this instrument to be executed in duplicate in its name and on its behalf of its City Manager, attested by its City Secretary, with the corporate seal of the City affixed, and said Developer has executed this instrument in duplicate, at Keller, Texas this the 27th day of March, 2002.

City of Keller, Texas

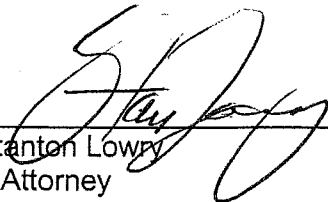
[Signature]
Lyle H. Drescher
City Manager

ATTEST:

[Signature]
Sheila Stephens
City Secretary

3-27-02
Date

APPROVED AS TO FORM AND LEGALITY:



L. Stanton Lowry
City Attorney

4-2-08
Date

Distribution of Originals

City of Keller
Keller TC LLC.

Distribution of Copies:

After Recording Return to:

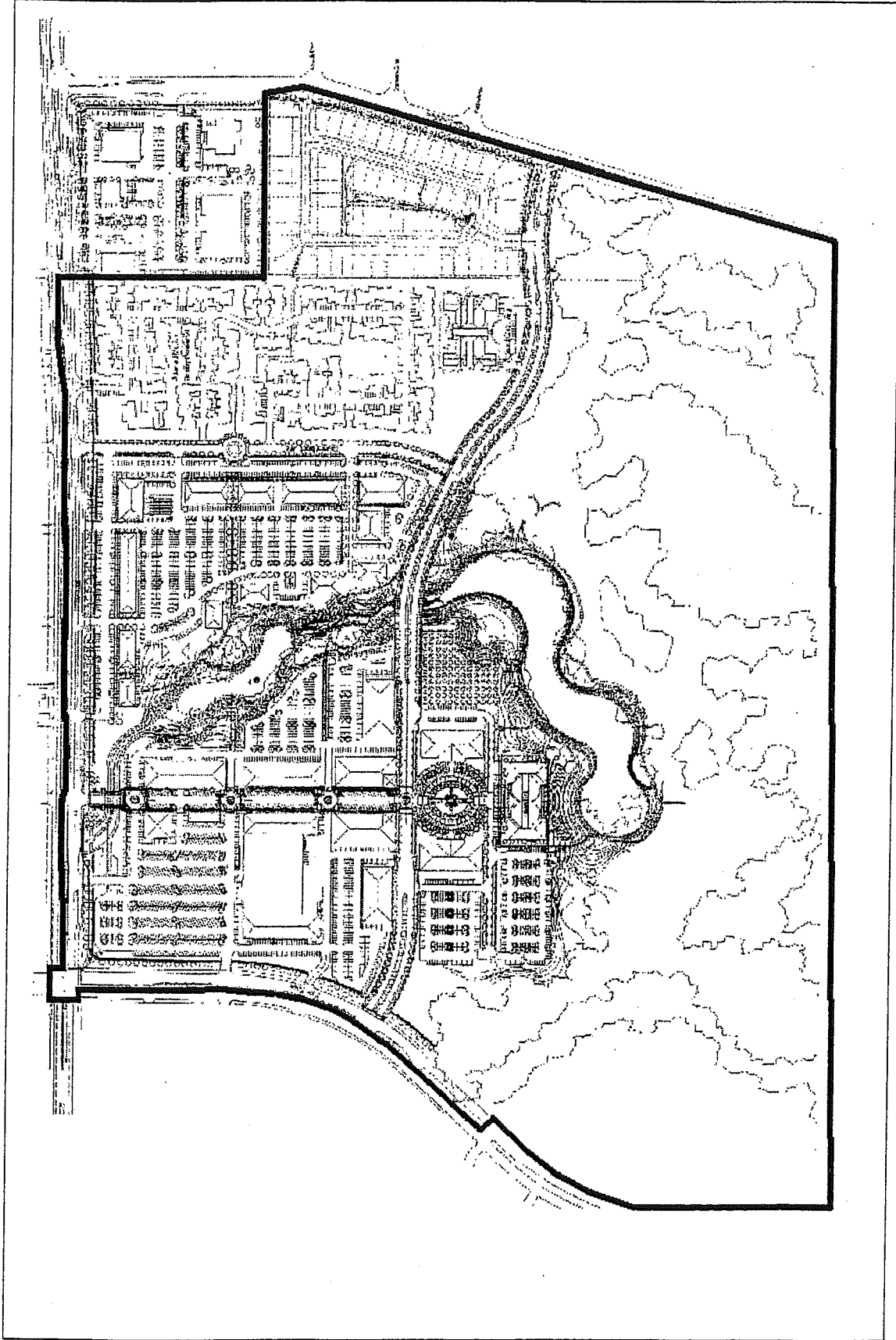
Mr. Doug Gilliland
Tri West Enterprises
9285 Huntington Square, Suite 100
North Richland Hills, TX 76180

Vernon E. Rew, Jr.
Law, Snakard & Gambill, P.C.
500 Throckmorton, Suite 3200
Fort Worth, Texas 76102

City of Keller
Community Development Department
P.O. Box 770
Keller, Texas 76244

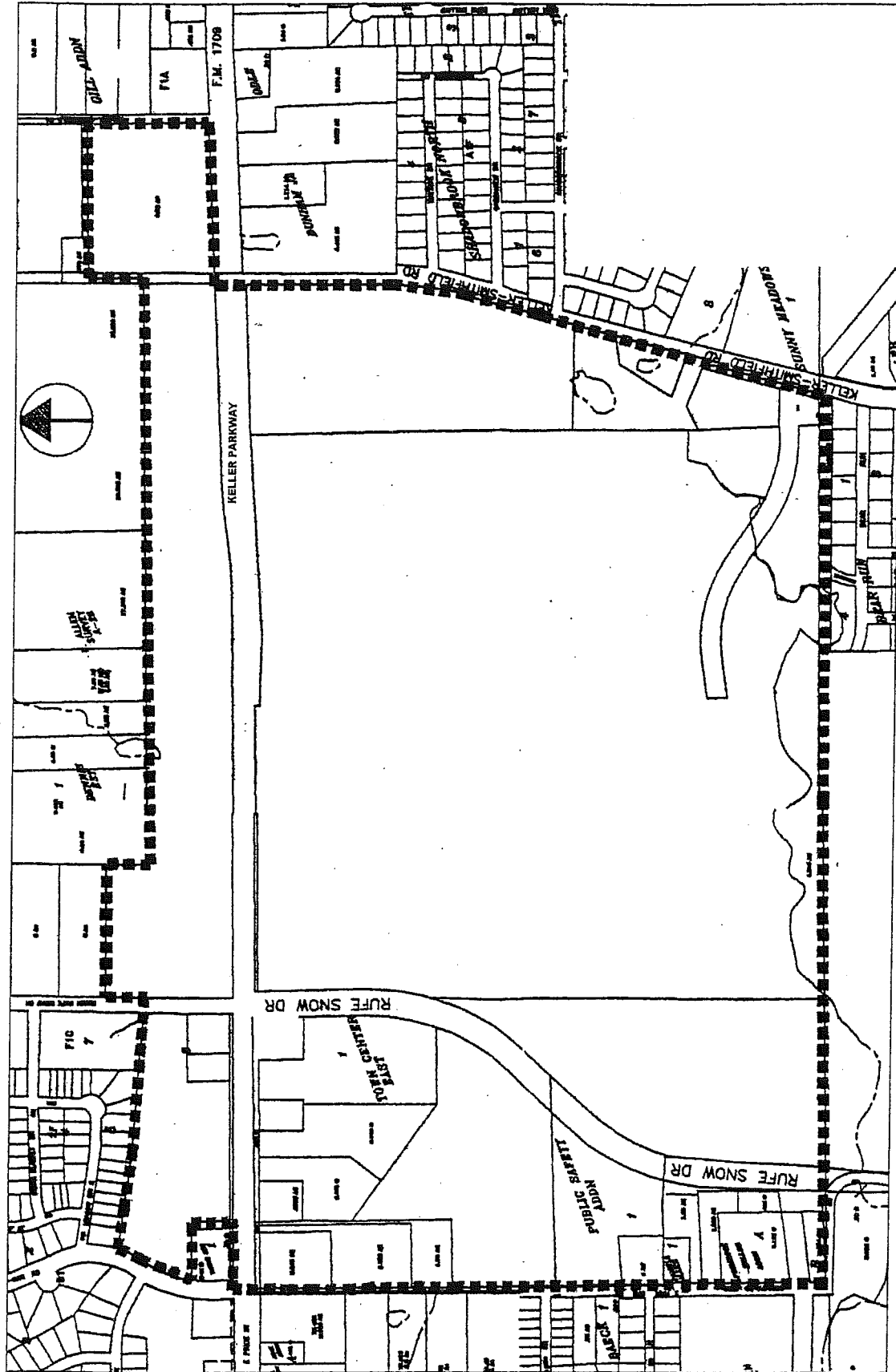
**KELLER TOWN CENTER PROPERTY
174.57 TOTAL ACREAGE**

PROPERTY	ACRES	
City of Keller	92.18	52%
KISD Natatorium	8.00	5%
Regency Realty	14.70	8%
Phase V Retail (TC LLC)	3.30	2%
Office Park (TC LLC)	20.25 26.85	12%
Prime Residential	17.40	10%
Villas at Town Center	12.95	7%
Assisted Living Site (TC LLC)	3.30	2%
Frost Bank	1.24	1%
El Paseo Restaurant	1.25	1%
TOTALS	174.57 acres	100%

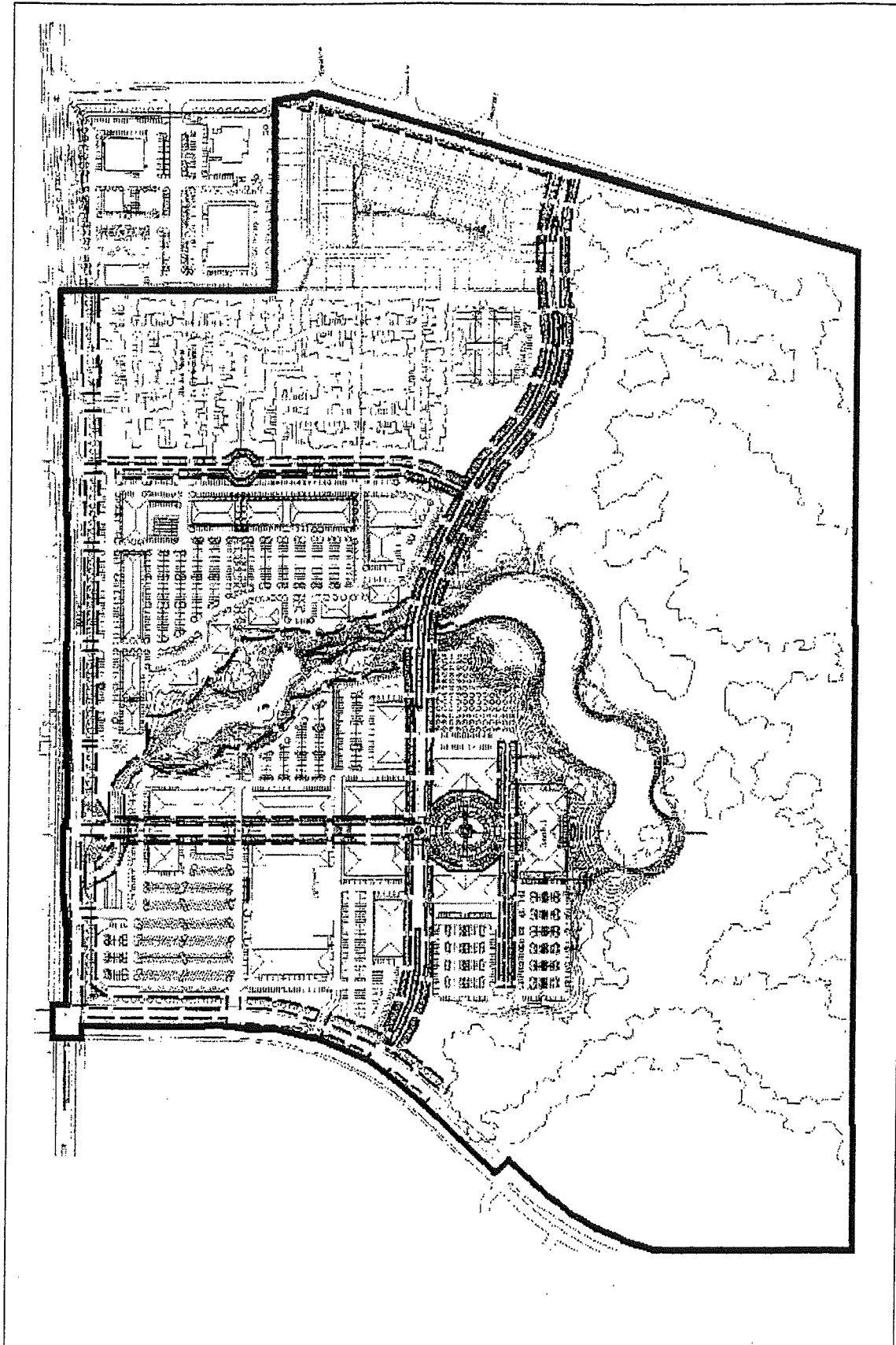


KELLER TOWN CENTER – Keller Town Center Property

Exhibit A

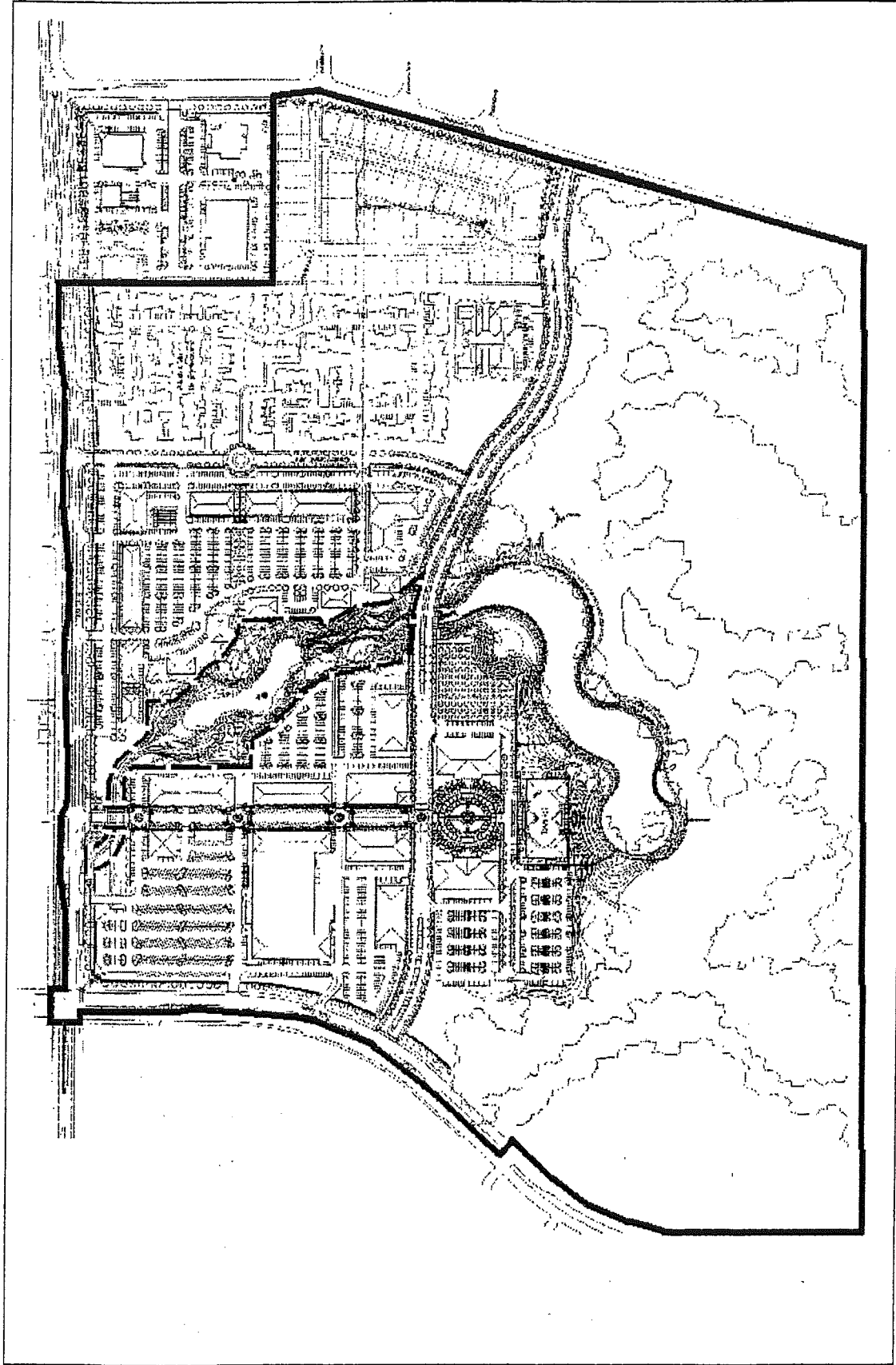


KELLER TOWN CENTER – Town Center Tax Increment Reinvestment Zone No. 1



KELLER TOWN CENTER -- Areas of Maintenance

Exhibit C



KELLER TOWN CENTER – Tributary Park

Exhibit D