

RESOLUTION NO. 2826

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA, DECLARING ITS INTENTION TO CREATE AN IMPROVEMENT DISTRICT TO INSTALL AND MAINTAIN LANDSCAPING, IRRIGATION SYSTEMS, COMMON AREA WALLS AND OTHER IMPROVEMENTS INCLUDED WITHIN, NEAR, AND ADJACENT TO A PARKWAY AS SHOWN ON THE PLANS, FOR MAINTENANCE WITHIN AN AREA IN THE TOWN OF GILBERT AS DESCRIBED HEREIN; ADOPTING PLANS FOR TOWN OF GILBERT PARKWAY IMPROVEMENT DISTRICT NO. **07-3 (PARK VILLAGE)** AS MORE PARTICULARLY DESCRIBED HEREIN, AND DECLARING THE WORK OR IMPROVEMENT TO BE OF MORE THAN LOCAL OR ORDINARY PUBLIC BENEFIT, AND THAT THE COST OF SAID WORK OR IMPROVEMENT SHALL BE ASSESSED UPON A CERTAIN DISTRICT, AND PROVIDING THAT THE PROPOSED WORK OR IMPROVEMENT SHALL BE PERFORMED UNDER ARIZONA REVISED STATUTES TITLE 48, CHAPTER 4, ARTICLE 2, AND AMENDMENTS THERETO.

WHEREAS, the Town Council declares that the installation and maintenance of the landscaping, irrigation systems, common walls and other improvements included within, near, and adjacent to a parkway in the District to be of more than local or ordinary public benefit, and further that the cost of said maintenance shall be assessed on a certain District; and

WHEREAS, the Town Council declares that the installation and maintenance of landscaping, irrigation systems, common walls and other improvements included within, near and adjacent to a parkway in the District is incidental to the maintenance and preservation of the parkway, has aesthetic value, and maintains and increases the value of property within the District; and

WHEREAS, the Town Council declares that the installation and maintenance of landscaping, irrigation systems, common walls and other improvements included within and adjacent to a parkway preserves and promotes the health, safety, and welfare of those citizens of the Town of Gilbert living within the District as well as preservation of the streets and parkways which may be adversely impacted by drainage and other water formations; and

WHEREAS, the Town Council declares that the installation and maintenance of a landscaped buffer between a parkway and the adjacent developments reduces the visual and other impact of light, air and noise pollution and tends to increase personal and vehicular safety on the parkway and decreases the likelihood vehicular accidents will harm adjacent developments in furtherance of the health, safety and welfare of those citizens of the Town living within the District; and

WHEREAS, the Town Council declares that installation and maintenance of landscaped drainage and other water control facilities and features within, near and adjacent to a parkway and related facilities tends to preserve the structural integrity of the parkway and mitigates flooding of adjacent areas and the parkway by draining water to and from the parkway in furtherance of the health, safety and welfare of those citizens of the Town of Gilbert living within the District; and

WHEREAS, the Town Council has determined the type of landscaping, irrigation systems, common walls and other improvements to be installed and maintained; and

WHEREAS, the Town Council has determined that each lot in the District receives an equal benefit from the installation and maintenance of the landscaping, irrigation systems, common walls and other improvements within the District and therefore it is appropriate to assess the total sum of the expenses of the District equally on each lot subject to assessment in the District, to the extent permitted by law, except the expenses of maintaining certain common walls identified in the Plans and Specifications shall be assessed in proportion to the benefits to be received by each lot, as described in this Resolution Section 8.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT AS FOLLOWS:

Section 1. Definitions.

In this Resolution, the following terms shall have the following meanings:

“Alternative Plans and Specifications” shall mean the plans and specifications and contract documents for the Parkway Improvement District No. 07-3 or “PK 07-3” approved by the Council.

“Assessment Diagrams” shall mean those duplicate diagrams of the property contained in the Assessment District as to be filed with the Clerk and approved by the Mayor and Council.

“Assessment District” shall mean the lots, pieces or parcels of land lying within the boundaries described in **Exhibit 1** attached hereto and as is shown on the map on file with the Town Engineer.

“Clerk” shall mean the Town Clerk.

“Improvements” shall mean all landscaping, irrigation systems, common walls and other improvements including but not limited to play structures, sidewalks, ramadas, lighting facilities, drinking fountains, and benches identified in the Plans and Specifications on file with the Clerk or subsequent Alternative Plans and Specifications approved by the Council.

“Lots” shall mean all lots, pieces or parcels of land lying within the Assessment District.

“Parkways” shall mean all those streets and rights-of way which are designated on Exhibit 1 as “Parkways.”

“Plans and Specifications” shall mean the plans and specifications and contract documents for the Parkway Improvement District No. 07-3 filed with the Clerk prior to the adoption of this Resolution.

“Superintendent of Streets” shall mean the Town Public Works Director, or any successor to such person.

“Town” shall mean the Town of Gilbert, Arizona.

“Town Council” or “Council” shall mean the Mayor and Common Council of the Town.

“Town Engineer” shall mean the Town Engineering Manager or any successor to such person.

Section 2. Declaration of Intention to Order an Improvement.

The public interest or convenience require, and it is the intention of the Mayor and Council of the Town of Gilbert, Arizona, to order the following work, hereinafter “Work,” to be performed, to wit:

The installation and maintenance of all landscaping, irrigation systems, common walls and other improvements, and the ongoing maintenance of the same, including replacement, as identified in the Plans and Specifications on file with the Clerk or subsequent Alternative Plans and Specifications approved by the Council, in the area generally described as follows:

Park Village: Those areas included within or adjacent to the Assessment District all as shown on the maps attached hereto as Exhibit 1, together with all appurtenances and adjustments necessary, as set forth in the Plans, Specifications, and Estimate.

The Town Council hereby designates as parkways, those areas set forth on Exhibit 1 which are labeled “Parkway.” The public interest and convenience require, and it is the intention of the Town Council to order the Work adjacent to the designated parkways to be performed as stated herein. All items of the Work hereby approved and adopted by the Council and on file in the Office of the Town Engineer and no assessment for any lot shall exceed its proportion of the estimate.

The estimate of the cost and expenses of the work or improvements on file in the offices of the Superintendent of Streets and the Clerk of the Town are hereby approved to the requirements of law, the procedures set forth in Title 48, Chapter 4, Article 2 and amendments thereto will be followed regarding acceptance of bids and setting tax levies.

For purposes of this Resolution and of all resolutions, ordinances and notices pertaining to this Resolution, the improvement as herein described is hereby designated Town of Gilbert Parkway Improvement District No. 07-3 or "PK 07-3".

The Town in its discretion will determine whether to include bid options in landscape maintenance contracts for such items such as planting seasonal flowers in designated areas, winter over-seeding of grass in turf areas, aeration of turf, weed control chemical applications, pesticide applications, and irrigation; such bid options are deemed to be part of the original Plans and Specifications for the District.

The Town in its discretion may immediately remove, replace or modify Improvements when necessary for the protection of public health, safety or welfare.

Section 3. Alternative Plans and Specifications.

In order to ensure flexibility in the operations of the District over time, the Town Engineer is authorized to provide for Alternative Plans and Specifications to be thereafter determined and approved by the Town Council as set forth in A.R.S. § 48-576(C) and or A.R.S. § 48-584 (C), as may be amended from time to time. The Alternative Plans and Specifications may be implemented for purposes of cost reduction, expressed preferences of District property owners, water conservation, flood control, or other public health, safety and welfare reasons.

Prior to Council approval, the proposed Alternative Plans and Specifications shall be filed with the Superintendent of the Streets and the Town Clerk, along with an estimate of the cost and expenses of the work or improvements. The Town will notify by mail the owners of property within the District, as listed in the assessment rolls of the Maricopa County Recorder, of any proposed Alternative Plans and Specifications, any proposed increase in the amount of the assessment and levy and the right to protest said increase. The Town also will publish a notice of the same once in a newspaper of general circulation in the Town. Within fifteen (15) days of the date of publication of said notice any person having an interest in a lot liable to assessment within the District can file with the Town Clerk a written protest to the Alternative Plans and Specifications and/or the increase.

If more than 50% of the owners of lots liable to assessment protest the Alternative Plans and Specifications and/or the increase within fifteen (15) days of the publication of the notice described above, the Town, at its option is authorized to:

- a. Modify the Alternative Plans and Specifications, prepare a new estimate, mail the owners of property within the District a new notice, and publish a new notice of the same; or
- b. Reject the Alternative Plans and Specifications and utilize the original Plans and Specifications; or
- c. Invalidate the District.

If fewer than 50% of the owners of lots liable to assessment protest the Alternative Plans and Specifications and/or the increase within fifteen (15) days of the

publication of the notice described, the Town has the authority to approve the Alternative Plans and Specifications by formal resolution, and to levy an amount not to exceed to proposed increase as published.

Section 4. Determination of Need.

In the opinion of the Town Council, the Work is of more than local or ordinary public benefit. The Town Council hereby orders that all amounts due or to become due with respect to the Work shall be chargeable upon the respective lots, pieces and parcels of land within the Assessment District.

Section 5. Preparation of Assessment Diagrams.

The Town Engineer is hereby authorized and directed to prepare duplicate diagrams (Assessment Diagrams) of the property contained within the assessment district. The diagrams shall show each separate lot, numbered consecutively, the approximate area in square feet of each lot, and the location of the lot in relation to the work proposed to be done.

Section 6. Exclusion of Certain Property.

Any public street or alley within the boundaries of the Assessment District is hereby omitted from the assessment hereafter to be made. Any lot belonging to the United States, the State, a county, city, school district or any political subdivision or institution of the State or county, which is included within the Assessment District shall be omitted from the assessment hereafter made.

Section 7. Officers Not Liable.

In no event will the Town of Gilbert or any officer thereof be liable for any portion of the cost of said Improvement District nor for any delinquency of persons or property assessed.

Section 8. Annual Statement.

The Town Council shall make annual statements and estimates of the expenses of the District which shall be provided for by assessment of the total sum upon the several lots, each respectively in proportion to the benefits to be received by each lot in the District as provided in A.R. S. § 48-574, A.R.S. § 48-575 and amendments thereto. Because each lot receives an equal benefit from the maintenance of the landscaping, facilities and structures within the District, the Town Council shall assess the total sum of the expenses of the District equally on each lot subject to assessment in the District, to the extent permitted by law, subject to the following exception:

The expenses of maintaining certain common walls identified in the Plans and Specifications shall be assessed in proportion to the benefits to be received by each lot, as follows:

- a. The expenses of maintaining the finish of the exterior side of the common walls shall be assessed equally on each lot subject to assessment in the District;
- b. The interior side of a common wall (facing the interior of a lot) shall be maintained by the adjacent individual lot owner.
- c. If the Superintendent of Streets (the Public Works Director) determines a common wall requires structural repairs due to ordinary wear and tear or natural causes, the District may make such repairs; provided, however, each adjacent individual lot shall be assessed up to fifty-percent (50%) of the expenses for repair of the wall adjoining said lot, measured on a linear foot cost basis average, and the remainder of the expenses shall be assessed equally on each lot subject to assessment in the District.

The expenses of the District may include incidental expenses as provided for in A.R.S. § 48-589, and amendments thereto.

Section 9. Statutory Authority.

The Work and all proceedings pertaining thereto shall be performed under the provisions of Title 48, Chapter 4, Article 2, specifically A.R.S. § 48-574, and all amendments thereto.

Section 10. Delegation of Authority.

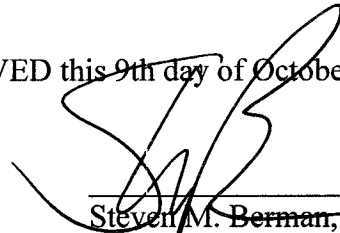
The Town Engineer is hereby authorized to fill in any blanks and to make any minor corrections necessary to complete the Plans and Specifications, Alternative Plans and Specifications, and the Contract Documents.

Section 11. Public Bidding and Contract Award.

The Work shall be publicly bid and a contract awarded to the lowest responsible bidder pursuant to A.R.S. § 48-584, and amendments thereto. The Town may award a one (1) year contract with an option to renew for up to five (5) additional one-year terms, and the price for any renewal term will be adjusted by the percent net change in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average or similar publication from the prior year.

The Town may perform any portion of the Work separately bid as a bid option, or order that a proposed contract not be made and perform all the Work as provided for in A.R.S. § 48-585 and amendments thereto.

PASSED, ADOPTED AND APPROVED this 9th day of October, 2007.

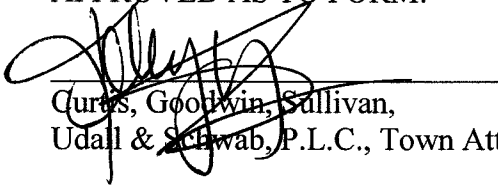


Steven M. Berman, Mayor

ATTEST:


Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:


Gurns, Goodwin, Sullivan,
Udall & Schwab, P.L.C., Town Attorneys

I hereby certify that I have read the description set out under the definition "Assessment District" and approve the same. I further certify that I have read the description set out under the definition "Work" and approve the same.


Rick Allred, Town Engineer

I hereby certify that the above and foregoing Resolution No. 2826 was duly passed by the Mayor and Council of the Town of Gilbert, Arizona at a regular meeting held on October 9, 2007 and that a quorum was present thereat and that the vote therein was 5 ayes and 0 nays. 2 were no vote or absent.


Catherine A. Templeton, Town Clerk

PK07-3 Legal Description

That portion of the East half of Section 5, Township 1 South, Range 6 East of the Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the South quarter corner of said Section 5;

thence North 00°30'00" West 2622.24 feet along the North-South Mid Section line;

thence South 89°06'40" East 1645.45 feet;

thence South 00°53'20" West 535.43 feet;

thence South 26°42'40" West 202.54 feet to the Monument line of Raleigh Bay Drive;

thence South 63°17'20" East 150.00 feet along said Monument line to the point of curvature of a circular curve to the left having a radius of 500.00 feet;

thence 239.32 feet along said curve through a central angle of 27°25'27" along said Monument line to the point of tangency;

thence North 89°17'13" East 215.00 feet along said Monument line;

thence South 00°42'47" East 946.52 feet;

thence South 46°27'30" West 501.15 feet;

thence North 88°32'30" West 324.58 feet;

thence South 73°59'22" West 33.00 feet to the point of a non-tangent circular curve to the right having a radius of 500.00 feet;

thence from a local tangent bearing of South 16°00'38" East along said curve a distance of 152.44 feet through a central angle of 17°28'08" to the point of tangency;

thence South 01°27'30" West 355.00 feet to a point on the South line of said Section 5;

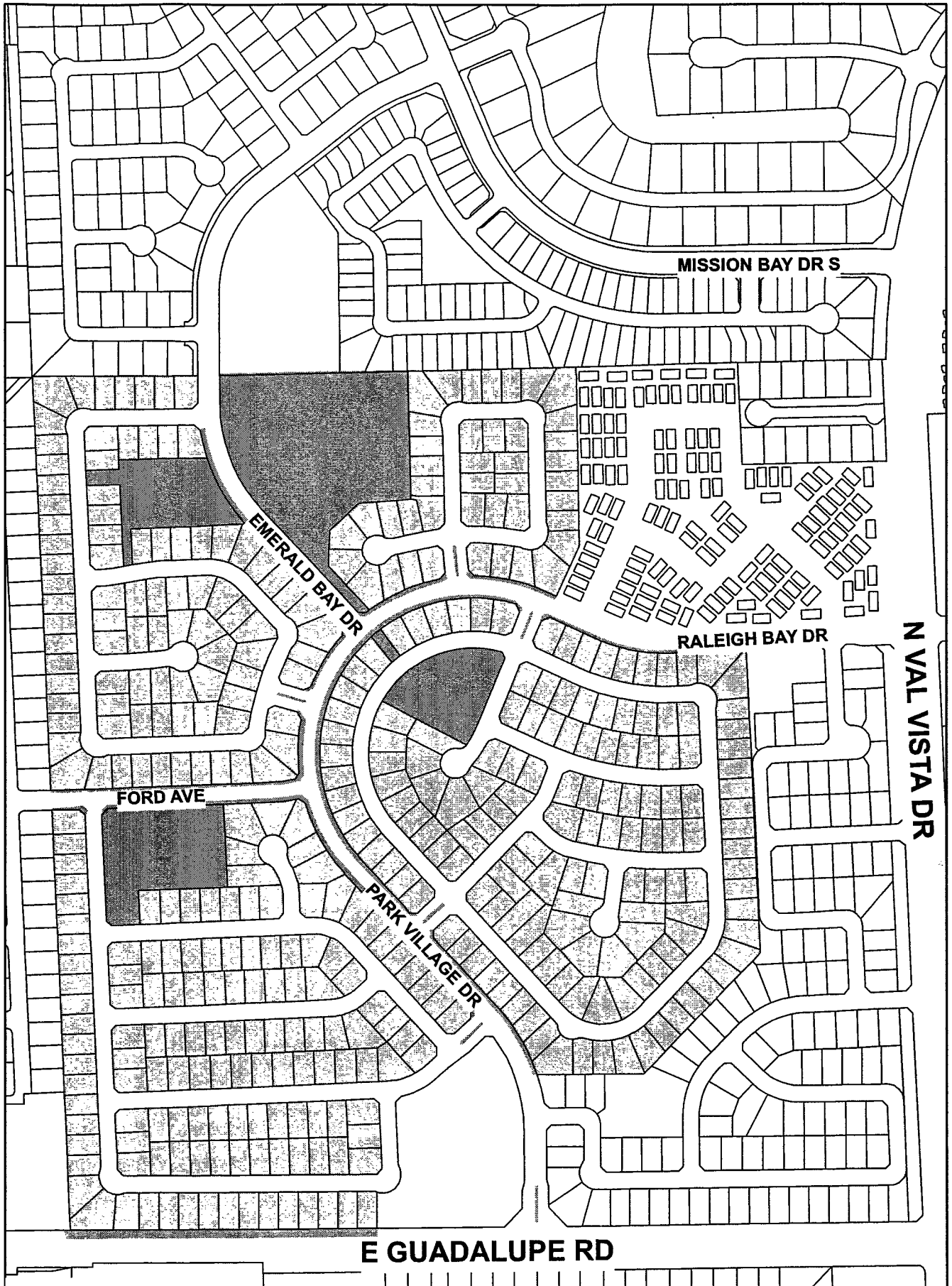
thence North 88°32'30" West 1405.93 feet along said South line to the **POINT OF BEGINNING**.

Containing 108.933 Acres, more or less.

*Professional Land
Surveyor AZ No. 19817*

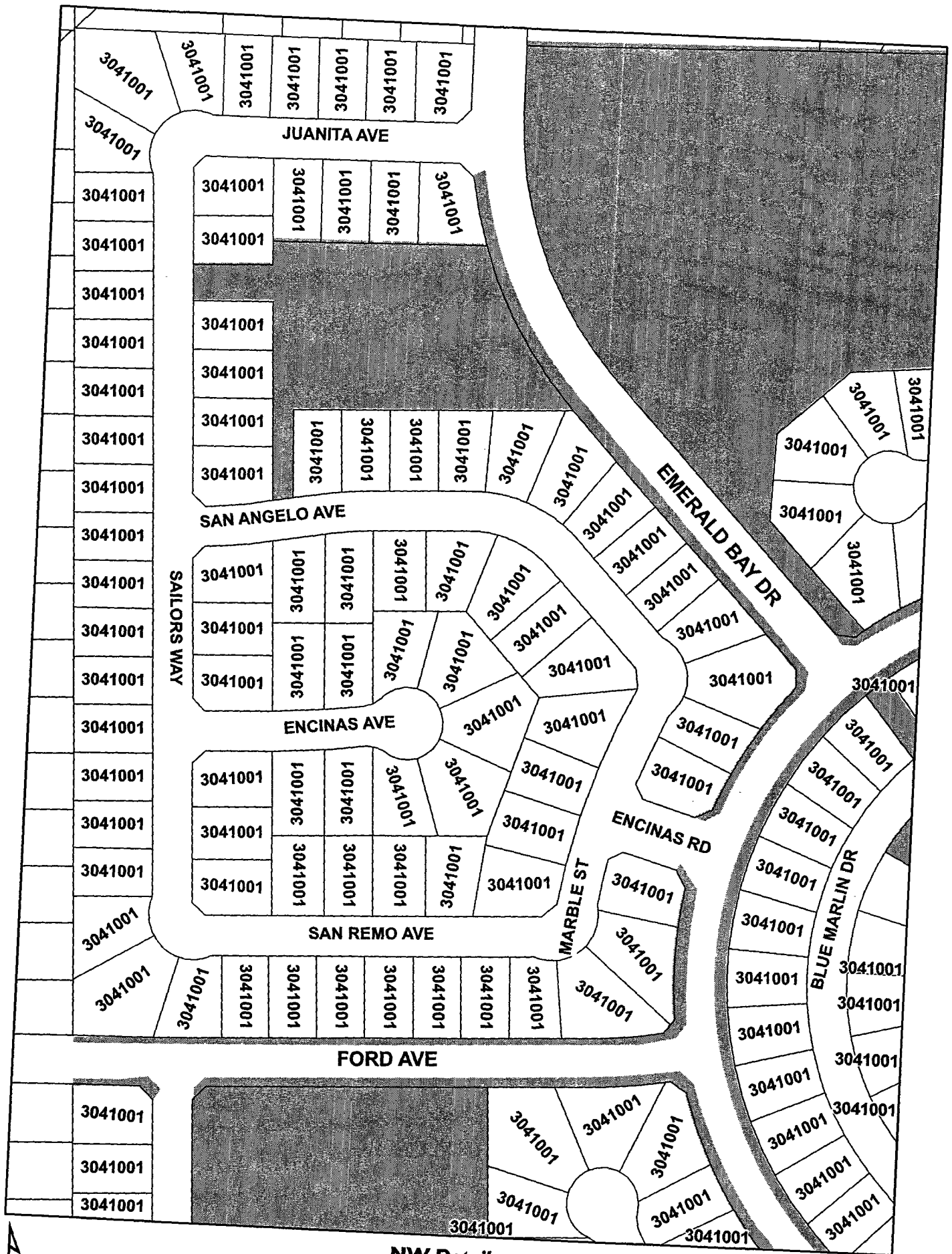
(Expires 6-30-08)
ELECTRONIC SEAL
*"Digitally signed per
ASBTR Substantive
Statement dated 6-17-02"*

F:\578\47\Legals\Legal Description 07-3.doc



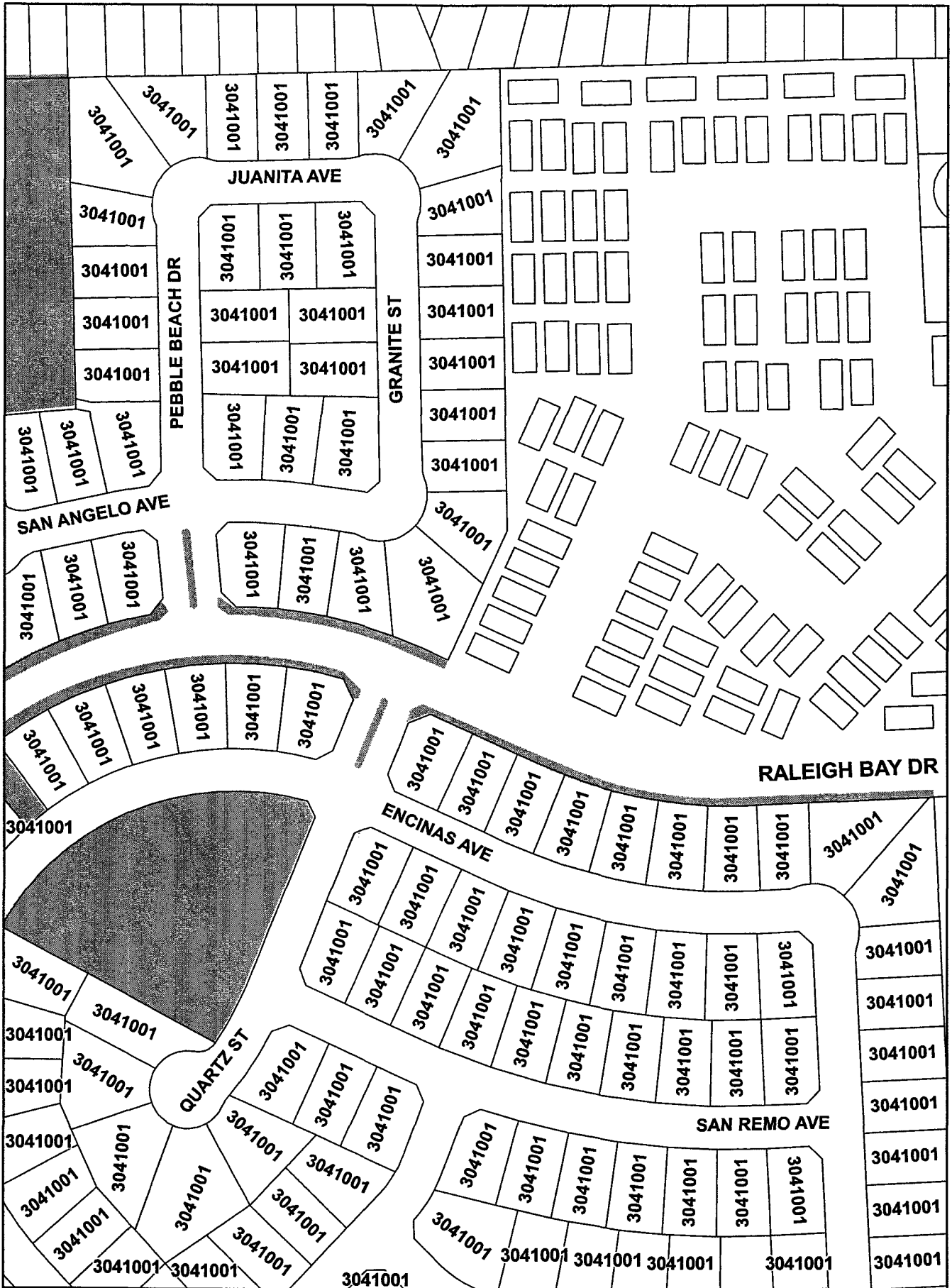
**PARKWAY IMPROVEMENT DISTRICT 07-3
MAINTAINED BY TOWN**





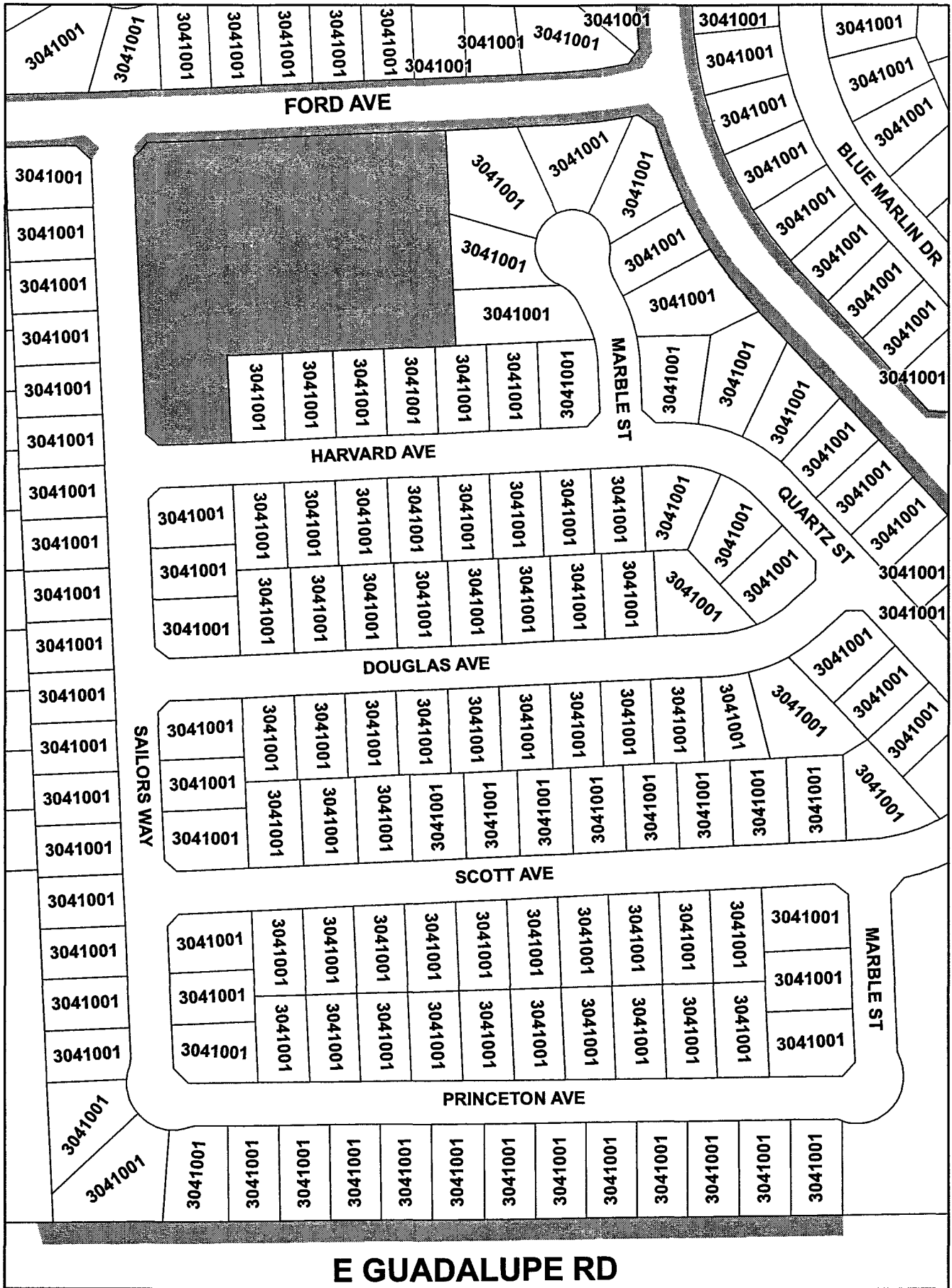
**NW Detail
 PARKWAY IMPROVEMENT DISTRICT 07-3
 MAINTAINED BY TOWN**





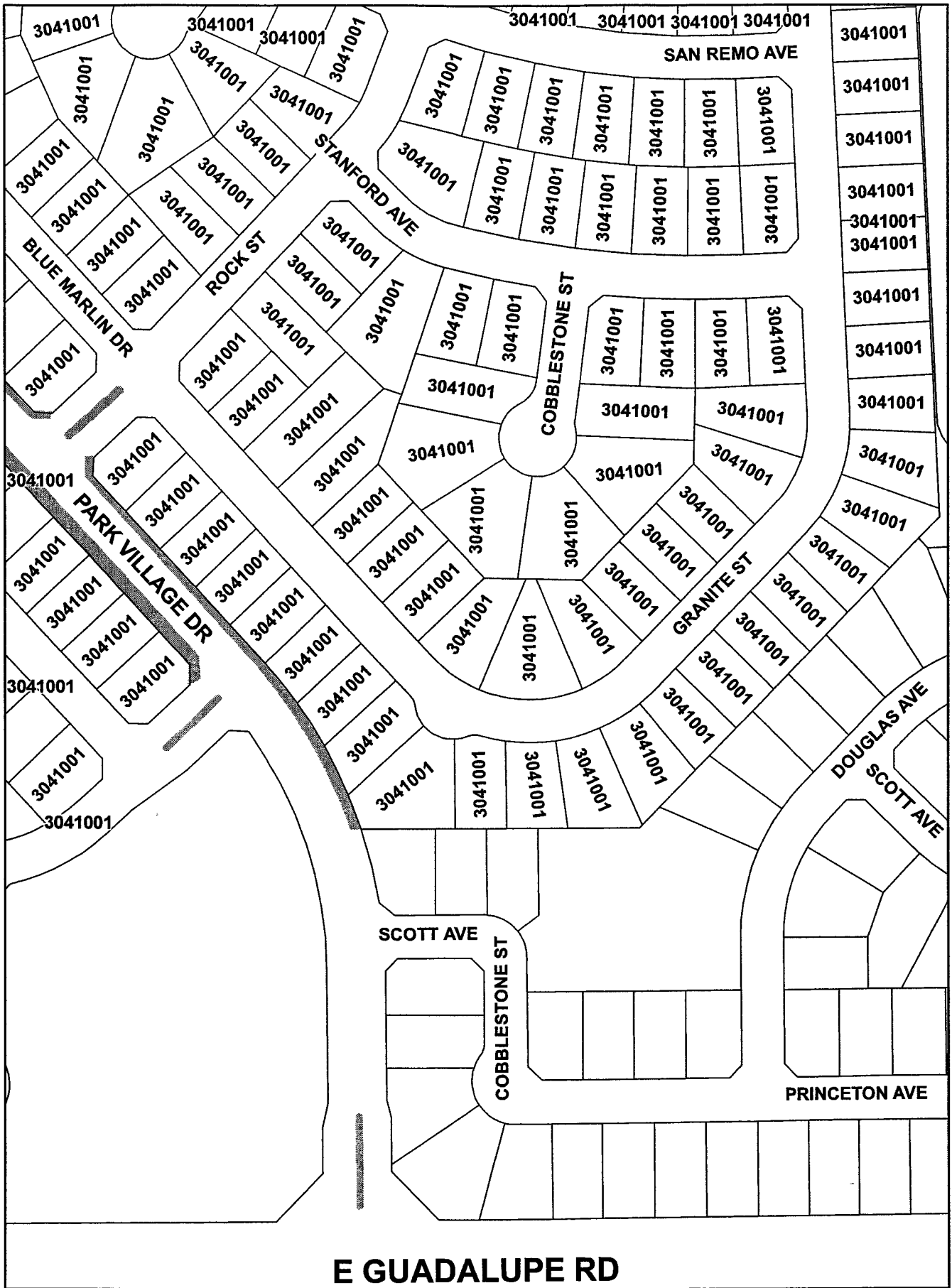
NE Detail
PARKWAY IMPROVEMENT DISTRICT 07-3
MAINTAINED BY TOWN





SW Detail
PARKWAY IMPROVEMENT DISTRICT 07-3
MAINTAINED BY TOWN

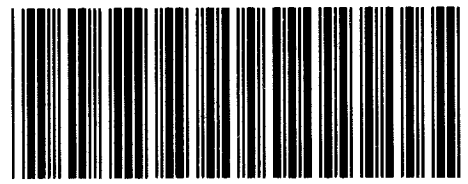




E GUADALUPE RD

**SE Detail
 PARKWAY IMPROVEMENT DISTRICT 07-3
 MAINTAINED BY TOWN**





OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2007-1124989 10/16/07 10:26 AM
1 OF 4

PALUMBOA

When recorded mail to:

Town of Gilbert

Town Clerk

50 East Civic Center Drive

Gilbert AZ 85296

This area reserved for County Recorder

CAPTION HEADING
Resolution 2826, PKID 07-3

DO NOT REMOVE

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