

ASSIGNMENT AND RELEASE OF REIMBURSEMENT DISTRICT FEES

THIS RELEASE AND ASSIGNMENT OF REIMBURSEMENT DISTRICT FEES (herein the "**Agreement**") is made and entered into by **Brush College Credits, LLC**, an Oregon Limited Liability Company ("**Brush College**"), and the **City of Salem**, an Oregon municipal corporation (the "**City**"). Brush College and the City are sometimes referred to collectively as the "**Parties**" or singularly as a "**Party**."

RECITALS:

- A. **WHEREAS**, Decal Oregon Inc., an Oregon corporation, (the "**Developer**"), was required to construct a twenty one inch (21") trunk sanitary sewer main (the "**Sewer Main**") identified in the Salem Wastewater Management Master Plan as a condition of development for the Brush College subdivision (the "**Development**") as set forth in that certain Improvement Agreement executed by and between the Developer and the City, effective March 6, 2006, and recorded in the Marion County Real Property Records on March 8, 2006, as Document No. 2006-003684, a copy of which is attached hereto as **Exhibit "A,"** and incorporated herein by this reference.
- B. **WHEREAS**, at the time of construction the Sewer Main was located inside the City's corporate limits, was constructed as a condition of development, was a new public improvement that provides a public benefit, was a master-planned facility that was on the Systems Development Charge ("**SDC**") eligible list, was of a size greater than that needed to serve Developer's property, and was available to serve property within the City's corporate limits and within the boundaries of the reimbursement district described in Resolution No. 2008-78;
- C. **WHEREAS**, Developer financed the entire construction cost of the upsized of the Sewer Main in the amount of One Million Two Hundred Fifty Thousand Two Hundred Forty Five and 04/100 Dollars (\$1,250,245.04), and received partial reimbursement in the form of "pass-through credits" from SDCs collected from its development leaving an unreimbursed portion of the development cost of the Sewer Main in the amount of Seven Hundred Seventy One Thousand Eight Hundred Seventy One and 32/100 Dollars (\$771,871.32) at an interest rate of three and one half percent (3.5%) per annum, simple interest, and;
- D. **WHEREAS**, Brush College is the successor to the Developer, and to date, has received a total of Thirteen Thousand Seven Hundred Twelve and 81/100 Dollars (\$13,712.81) in reimbursement fees.

NOW THEREFORE, IT IS HEREBY AGREED by and amongst the Parties that:

1. **Acknowledgment of Certified Costs.** The Parties agree that as of this date, Brush College has incurred One Hundred Percent (100%) of the certified costs that are associated with the Sewer Main and are eligible for reimbursement through the reimbursement district. In 2008, the City

certified costs associated with the Sewer Main at One Million Two Hundred Sixty Thousand Forty Five and 04/100 Dollars (\$1,260,045.04). As of the effective date of this Agreement as defined in Section 11.6 below, Brush College has been reimbursed for the sum of Four Hundred Fifty Nine Thousand Seven Hundred Sixty Three and 33/100 Dollars (\$459,763.33). The remaining balance collectable at this date is Seven Hundred Ninety Four Thousand One Hundred Eight and 48/100 Dollars (\$794,108.48). (the "**Reimbursables**").

2. **Assignment of Reimbursables.** Brush College hereby grants, bargains, sells, conveys, assigns, transfers, sets over and delivers to the City all its rights, title and interest in and to the fees established, but not yet collected, by Resolution No. 2008-78, which is attached hereto and incorporated herein as **Exhibit "B,"** (the "**Resolution**"), and any amendments or restatements thereof. This Agreement shall bind the Parties, their heirs, successors, and assigns.
3. **Consideration for the Assignment.** The City hereby covenants to pay to Brush College on or around February 1, 2018, a total of Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) as consideration for the assignment of Reimbursables and Mutual Release set forth below.
4. **Mutual Release of Claims.** This Mutual Release and the Assignment of Reimbursables as set forth in Section 3 is contingent upon approval of this Agreement by the Salem City Council. In consideration of the mutual covenants and conditions contained herein, the Parties for themselves, and for their beneficiaries, directors, officers, employees, owners, successors, assigns, heirs, personal representatives and agents, do hereby release and forever discharge each other from any and all claims, demands, damages, costs, expenses, actions, and causes of action arising from any act or occurrence up to the present time on account of all loss or damage of any kind, whether known or unknown, sustained or that the Parties may hereafter sustain, except that unless and until the requirements as set forth in Section 3 above occur, the Parties shall retain all rights and remedies under this Agreement, and in law or equity, for enforcement of such conditions subsequent and breach of this Agreement.

To procure the mutual covenants and conditions contained herein, the Parties hereby declare that no representations about the nature and extent of any damages made by any attorney or any agent of any Party hereby released, nor any representations regarding the nature and extent of legal liability or financial responsibility of any of the Parties hereby released have induced the Parties to make this settlement; that in determining the consideration for this settlement there has been taken into consideration not only the ascertained damages, but also the possibility that the damages may continue so that consequences not now anticipated may result from the said occurrence.

The Parties fully intend that the aforementioned releases shall be valid, effective, binding, and enforceable, in accordance with their terms and with the other terms of this Agreement, notwithstanding the possibility that the Parties may hereafter discover facts which, if they had been known at the time of the execution of this Agreement, may have materially affected the decision to enter into this Agreement, and the Parties intentionally waive the benefits of any state or federal statute, law, order, or rule that would provide to the contrary. The Parties affirm that they have not transferred or assigned, and will not transfer or assign, any of their claims to any other person or entity, and that any such transfer or assignment shall be null and void.

It is the intent of the undersigned that the terms of this Mutual Release be construed in the

broadest possible form for the benefit of the Party or Parties released.

5. The terms of this Mutual Release are contractual and not mere recitals.
6. **Representations and Warranties.** The Parties jointly and severally make the following representations and warranties, to the best of their knowledge, and covenant to each other as follows:
 - 6.1. The Improvement Agreement and the Resolution, and any amendments or restatements thereof, are in full force and effect, and the Parties have the full and legal right to receive the Reimbursables. The Parties have each performed all their respective duties and obligations under the terms of the Improvement Agreement and the Resolution, and any amendments or restatements thereof, as required to receive the Reimbursables, with the exception that there are some costs that may need certification. To the best of the knowledge of the Parties, there has been no default of the obligations of any of the Parties to said agreements, nor the occurrence or any act or failure to act that would, after the passage of time, constitute a default of the terms of said agreements or the right to receive the Reimbursables, and none of the Parties have received any notice of any default of the terms of said agreements or the right to receive the Reimbursables.
 - 6.2. None of the Parties have transferred, conveyed, or assigned any of their rights, title, or interest under the Improvement Agreement and the Resolution, and any amendments or restatements thereof, other than pursuant to the terms of this Agreement.
 - 6.3. The Parties are entering into this Agreement voluntarily, in good faith, without duress or undue influence and have not perpetrated any fraud or made any misrepresentation in order to induce one another to accept the conveyance transfers and assignments provided for in this Agreement.
 - 6.4. All consents or approvals necessary for the Parties to execute and deliver this Agreement have been obtained, and the execution, delivery and performance of this Agreement will not result in default by the Parties under any other agreement or undertaking or result in the violation of any statute, regulation, ordinance or other rule of law.
 - 6.5. The representations and warranties contained in this Agreement shall survive the conveyances, transfers and assignments contemplated hereby.
7. **Remedies.** If a Party discovers that any representations and warranties of another Party are not true or correct, a Party may, in addition to any other remedy available to it in any other agreement by and between the Parties, shall be able to exercise one or more of the remedies that may be available by law or in equity.
8. **Further Assurances.** The Parties agree: (a) to execute and deliver such other agreement or amendment hereto and (b) to do and perform such other acts and things, as any Party may reasonably request, in order to carry out the intent and accomplish the purposes of this Agreement within ten (10) days of any written request by a Party.

9. **Notifications.** All notifications shall be delivered or sent to the following address, or at such other place as the City may hereafter designate in writing:

Peter Fernandez, P.E., Public Works Director
Public Works Department
City of Salem
555 Liberty St. SE, Room 325
Salem, OR 97301

All notifications to Brush College shall be delivered or sent to the following address, or at such other place as Brush College may hereafter designate in writing:

Mark Shipman, Attorney
Saalfeld Griggs PC
Park Place, Suite 200
250 Church Street SE
Salem, Oregon 97301

Notifications made pursuant to this Section 8 shall be deemed delivered three days after mailing by first class or certified to the above identified addresses or upon actual receipt, whichever occurs first.

10. **Appurtenant.** The Agreement, and including but not limited to all Exhibits attached hereto, shall be appurtenant to the Properties, shall run with the land, and the terms and conditions hereof shall be binding on and inure to the benefit of the Parties' heirs, successors and assigns.
11. **Attorneys' Fees and Costs of Arbitration.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing Party reasonable attorneys' fees, together with all expenses, which may reasonably be incurred in taking such action, including, but not limited to costs incurred in searching records, the costs of title reports and expert witness fees, and anticipated post-judgment collection costs. If any appeal is taken from any judgment or decree of the trial or bankruptcy court, the losing Party shall pay the prevailing Party in the appeal its reasonable attorneys' fees and costs in such appeal. Said sums shall be in addition to all other sums provided by law.
12. **Miscellaneous Provisions.** The following terms shall apply to this Agreement and all Exhibits attached hereto.
- 12.1. **Construction.** It is understood that the rule of construction that a written agreement is construed against the Party preparing or drafting such agreement shall specifically not be applicable to the interpretation of this Agreement. It is further agreed that the captions used in this Agreement are intended for convenience only and shall not in any way affect the meaning or construction of any provision of the Agreement.
- 12.2. **Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, the validity of the remaining provisions hereof shall not be affected hereby; and such illegal or unenforceable provision shall be deemed modified to the

minimum extent necessary to make it consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

- 12.3. **Choice of Law.** The laws of the State of Oregon shall govern the rights, liabilities, duties, and responsibilities of the Parties.
- 12.4. **Counterparts Electronic Transmission and Electronic Signatures.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile, email transmission or other means of electronic transmission of any signed original document, and retransmission shall be the same as delivery of an original. The Parties agree that this transaction may be conducted and closed by electronic means in accordance with the provisions of the Uniform Electronic Transactions Act ("***UETA***") as codified in ORS Chapter 84. At the request of either Party, the Parties shall confirm electronically transmitted original signatures or electronic signatures by signing an original document and providing the signed original to the requesting Party.
- 12.5. **Execution Authority.** Any Party hereto signing on behalf of a corporation, limited liability company, trust, or other entity warrants and represents that they have full authority and permission to sign on behalf of the corporation, trust or other entity and that this Agreement shall be binding upon and is authorized by the board of directors, members, beneficiaries, or other similar authority for purpose of execution and authorization.
- 12.6. **Effective Date.** The Effective Date of this Agreement shall be the date last written below by the Parties.

I/WE THE UNDERSIGNED have read and agree to the terms contained in this Agreement.

[SIGNATURE PAGES TO FOLLOW]

CITY OF SALEM

By: _____
Steve Powers, City Manager

Date: _____

DEPARTMENT APPROVAL:

By: _____
Peter Fernandez, P.E., Public Works Director

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 2018, personally appeared Steve Powers, as City Manager of the City of Salem, an Oregon municipal corporation, and acknowledged the foregoing instrument to be its voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission Expires: _____

BRUSH COLLEGE CREDITS, LLC

By: _____
Cathy Schleining, as Trustee of the
Cathy P. Schleining Trust, dated
June 17, 2016, Sole Member

Date: _____

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 2018, personally appeared Cathy Schleining, as Trustee of the Cathy P. Schleining Trust, dated June 17, 2016, Sole Member of Brush College Credits, LLC, an Oregon limited liability company, who being duly sworn, did acknowledge the foregoing instrument to be its voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission Expires: _____

EXHIBIT A
COPY OF IMPROVEMENT AGREEMENT

RECORDED IN POLK COUNTY
Valerie Unger, County Clerk

2006-003684



\$56.00

00152082200600038840070077

03/08/2006 10:08:44 AM

REC-AGM Cnt=1 Stn=1 K. WILLIAMS
\$35.00 \$10.00 \$11.00

IMPROVEMENT AGREEMENT

After recording, return to:
City of Salem Public Works Dept.
555 Liberty Street SE, Room 325
Salem OR 97301-3503

Agreement between the City of Salem, Oregon, an Oregon municipal corporation ("City"),
and Decal Oregon, Inc. ("Developer"):

RECITALS:

1. Developer wishes to plat and develop Brush College Heights No. 2, the boundary of which is shown on Attachment "A" location map and described as follows:

Beginning at the Southwest Corner of Lot 14, Cherry Blossom Estates Phase 2 as recorded in the Polk County Book of Town Plats in Volume 10, Page 22; thence S00°04'30"E a distance of 685.21 feet to a point; thence N89°55'06"E a distance of 671.82 feet to a point; thence S01°29'33"W a distance of 820.00 feet to a point; thence S82°35'35"E a distance of 419.20 feet to a point on the west line of Brush College Estates No. 3 as said subdivision is recorded in the Polk County Book of Town Plats in Volume 12, Page 35; thence S02°07'10"W, along said west line, a distance of 562.56 feet to a point at the Southwest Corner of Lot 100, Brush College Estates No. 3, thence S02°07'10"W, along the southerly extension of the west line of said subdivision, a distance of 6.44 feet to a point on the northerly right-of-way line of Brush College Road NW; thence Northwesterly, along the arc of a 984.95 feet radius curve left (the chord of which bears N75°47'10"W 318.56 feet), an arc distance of 319.97 feet to a point; thence N85°05'33"W a distance of 290.98 feet to a point; thence Northwesterly, along the arc of a 925.05 feet radius curve right (the chord of which bears N79°01'26"W 195.95 feet), an arc distance of 195.95 feet to a point; thence leaving said northerly right-of-way line of Brush College Road NW, N00°13'12"W a distance of 549.87 feet to a point; thence S89°48'56"W a distance of 346.90 feet to a point; thence N00°03'34"W a distance of 214.95 feet to a point; thence S89°48'56"W a distance of 155.00 feet to a point on the west line of that tract of land conveyed to Burton O. Ahlstrom et ux., by deed recorded in Book 208, Page 371, Polk County Deed Records; thence N00°03'34"W a distance of 1412.37 feet to a point; thence N89°56'25"E a distance of 95.00 feet to a point; thence N82°34'50"E a distance of 60.50 feet to a point; thence N89°56'25"E a distance of 95.08 feet to a point on the west line of said Cherry Blossom Estates Phase 2; thence S00°05'55"E a distance of 197.30 feet to the point of beginning.

The above-described tract containing 30.40 acres of land is located in Section 8, Township 7 South, Range 3 West, Willamette Meridian, City of Salem, Polk County, Oregon.

2. On September 22, 2003 and Amended on July 20, 2004, the Planning Administrator issued a Preliminary Declaration for Urban Grown Area (UGA) Development Permit No. 03-11, which set forth certain Required Public Improvements, which must be constructed in order for development of the Property to occur.
3. On September 24, 2004, the Planning Administrator granted conditional approval to Subdivision Plat File No. 04-13, Brush College Subdivision, which set forth additional Required Public Improvements, which must be constructed in order for development of the Property to occur.
4. As a condition of the UGA Development Permit, Developer is required to construct:

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- a. The 12-inch diameter G-0 water line (Master Plan ID number 44595) in Brush College Road NW, and ;
 - b. The 12-inch diameter W-1 water line (Master Plan ID number 44628) in Christina Street NW to the north or west line of the property.
5. Since these water mains are required as a condition of development approval; identified in the City of Salem Water System Master Plan; and required to be constructed larger than the minimum size required to serve this particular development, Developer is eligible for water SDC credits in accordance with SRC Chapter 41.
 6. As a condition of the UGA Development Permit, Developer is required to construct an 18-inch diameter master plan sewer line in Brush College Road NW, from Doaks Ferry Road NW to the west line of the subject property.
 7. The current City of Salem Sewer Master Plan identifies this sewer (ID number BC25) to be 24-inch diameter, however, it was determined during plan review that a 21-inch diameter main is acceptable to the Public Works Director.
 8. This 21-inch sewer is shown on the approved construction plans (Permit File No. 7405716) and identified as Brush College Heights No. 2 Offsite Sewer.
 9. Since this 21-inch sewer main is required as a condition of development approval; identified in the City of Salem Wastewater Management Master Plan; and required to be constructed larger than the minimum size required to serve this particular development, Developer is eligible for sewer SDC credits in accordance with SRC Chapter 41.
 10. Developer has not completed construction of the Required Public Improvements.
 11. Developer is required pursuant to Salem Revised Code 77.090 to obtain permit(s) from the City for the improvements.
 12. Developer is required pursuant to Salem Revised Code 63.052 to obtain Final Plat approval, by either constructing all Required Public Improvements, or by entering into an Improvement Agreement to provide for the construction therefor.

NOW THEREFORE, as consideration for final plat approval prior to the completion of construction of all Required Public Improvements required as a condition of development, Developer agrees to the following:

1. Developer shall cause Developer's engineer(s) to provide construction plans for the Required Public Improvements acceptable to the City.
2. Developer shall complete or cause to be completed the Required Public Improvements as detailed on the approved construction plans (Permit File Nos. 705782 and 705716) and according to the specifications and standards on file in the office of the City of Salem Public Works Director.
3. Developer shall cause Developer's engineer(s) to provide all surveying services necessary for the Required Public Improvements prior to and during construction and to prepare and furnish acceptable as-built drawings to the City when the Required Public Improvements are

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complete, all in conformance with City Standards.

4. Within 30 days following City acceptance of the Required Public Improvements for both the onsite and offsite work, Developer's engineer shall certify costs for the master plan water and sewer lines in accordance with Salem Revised Code (SRC) Chapter 66.
5. Upon City approval of certified cost, the City shall provide Developer with SDC credits pursuant to SRC 41.160(a).
6. Developer shall complete those Required Public Improvements in Brush College Heights No. 2 within 18 months of the date of final plat approval. Upon written request of Developer, however, this Agreement may be extended for an additional period of time, not to exceed an additional 18 months, by mutual written agreement of Developer and City.
7. Should it be determined, during preparation of plans or during construction, that additional easements are necessary to construct any of the Required Public Improvements, Developer shall cause the City to be furnished said easements, at Developer's expense, within the time covered under this Agreement.
8. Pursuant to City of Salem Design Standards, the final lift of asphalt paving on internal streets within new subdivisions shall be constructed between July 1st and September 30th of the calendar year following that calendar year during which the initial street construction paving was completed, provided, however, that this final lift requirement shall not extend the time for completion as provided in paragraph 4.
9. Developer has provided the following performance guarantee to assure performance of these conditions:

It is agreed between City and Developer that no building permits for any structures within the development will be issued until all required improvements have been constructed, a maintenance bond is provided, and all conditions of approval have been met by Developer and accepted by the City.

A "Construction and Maintenance Bond" from a surety company licensed to do business in the state of Oregon, in the amount of \$437,810, which is equal to 100 percent of the value of the Brush College Heights No. 2 Offsite Sewer.

10. Developer shall submit a maintenance bond or other written evidence in a form approved by the City Attorney and Public Works Director guaranteeing the completed project construction for a period of one year after the date of final acceptance. The bond or other written evidence shall be valued at a minimum amount of 40 percent of the estimated construction cost.
11. Developer agrees to comply with all other conditions of development.
12. Upon **substantial completion**, as hereinafter defined, of the Required Public Improvements, Developer may deposit with the City either a Cashier Check or a Construction Performance surety bond in the amount \$5 per square yard of pavement in which the final lift is delayed in accordance with City Design Standards, plus a cash deposit equal to 200% of the City-approved estimated cost of incomplete work as security for the remaining required improvements. Upon receipt of this deposit and the acceptance of the security and maintenance bond, the City will allow building permits and water and sewer

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connections to be processed. Except for the delayed final lift of asphalt paving (if applicable), Developer shall complete all remaining items of work in accordance with the following table:

If Substantially Complete & Security Accepted In:	Complete All Remaining Items by:
January through March	July 31 (same year)
April through June	August 31 (same year)
July through August	October 31 (same year)
September through December	July 31 (following year)

Substantial completion, as used herein is defined as completion, testing, and acceptance of all water, sewer, and storm water systems and that these utilities are fully functioning; completion of all public improvements fronting existing houses within the subdivision and properties outside the subdivision; completion of all conditions of an Urban Growth Area Development Permit (if applicable); final paving of all required street improvements except as required to be delayed by City Design Standards; clean-up around adjacent properties; placement of street name signs; provision of a maintenance bond; City approval of preliminary as-built drawings showing the length, depth, and station of all service connections; satisfactory completion of any other items that would, in the opinion of the City Engineer, represent unacceptable safety or inconvenience to the public; and City approval of all required easements or warranty deeds.

Should any condition of this Agreement not be completed within the time frame specified, the City shall estimate the cost of completing the condition, call upon the performance guarantee for funds necessary to cover the cost, and complete the condition with funds collected under the performance guarantee. If the funds collected under the performance guarantee are insufficient to complete the condition, the City may either hold the collected funds until additional funds are authorized to complete the condition or expend the collected funds to complete revised condition or on a portion of the condition as determined reasonable by the Public Works Director.

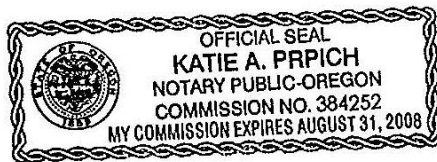
13. In the event Developer includes more than one person or entity, all such persons or entities shall be jointly and severally liable for all conditions herein.
14. Developer's obligations as set forth herein shall be binding upon Developers and the Developer's heirs, successors, and assigns.

DECAL OREGON, INC.

By: Auby Howard, president
Auby Howard, President

STATE OF OREGON)
County of Columbia) ss.

This instrument was acknowledged before me on February 14, 2006,
by Auby Howard as President of Decal Oregon, Inc..



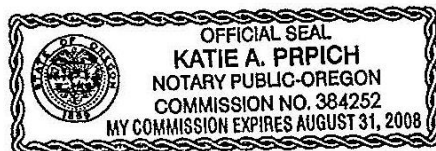
Katie A. Prpich
Notary Public—State of Oregon
My commission expires: 8/31/2008

DECAL OREGON, INC.

By: Carolyn Baty
Carolyn Baty, Secretary

STATE OF OREGON)
County of Columbia) ss.

This instrument was acknowledged before me on February 14th, 2006,
by Carolyn Baty as Secretary of Decal Oregon, Inc..



Katie A. Prpich
Notary Public—State of Oregon
My commission expires: 8/31/08

CITY OF SALEM

Linda Norris
Assistant City Manager

STATE OF OREGON)
County of Marion) ss.

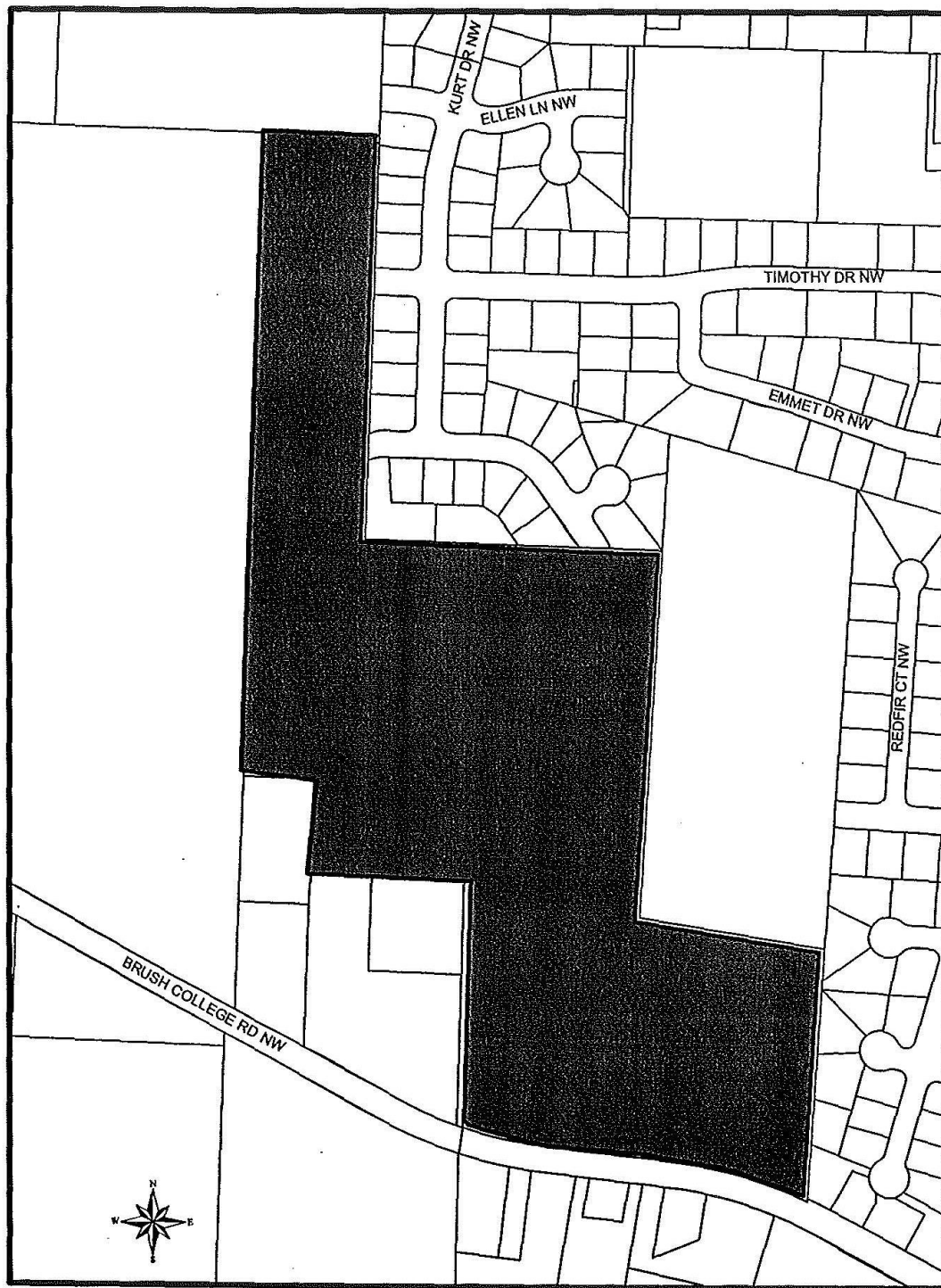
This instrument was acknowledged before me on March 6, 2006,
by Linda Norris as Assistant City Manager of the City of Salem, Oregon.



Margaret Blaine
Notary Public - State of Oregon
My commission expires: 9-27-08

DEPARTMENT APPROVAL:

A. L. Seeling
Public Works Director



7/7

ATTACHMENT "A"

EXHIBIT B

July 28, 2008

7 (a)

August 4, 2008

7 (a)

RESOLUTION NO. 2008-78

**A RESOLUTION FORMING THE BRUSH COLLEGE REIMBURSEMENT DISTRICT
AND MAKING PROVISIONS THEREFOR**

Whereas, reimbursement districts under SRC 66.500-66.585 may be formed if the public improvement required to be constructed as a condition of development approval can or will provide direct service to property other than the property being developed by a developer; and

Whereas, under SRC 66.505(b), to be eligible for inclusion as a public improvement within a reimbursement district, the public improvement must provide a public benefit by constructing a new public improvement or by enhancing or increasing the capacity of an existing public improvement, must be of a size greater than that ordinarily needed to serve a developer's property, and must be available to serve other lots or parcels within the proposed reimbursement district; and

Whereas, reimbursement districts may be used to provide a fair and proportional reimbursement to the developer for the cost of improvements that will be used to serve such benefitted properties; and

Whereas, under SRC 66.505(c), a reimbursement district shall provide for the deposit of funds with the City from persons developing property within the reimbursement district, to be used for the reimbursement to a developer who funds the construction, reconstruction or upgrade of public improvements within the reimbursement district; and

Whereas, Decal Oregon, Inc. (Developer), was required to construct a 21-inch trunk sanitary sewer main identified in the *Salem Wastewater Management Master Plan* as a condition of development; and

Whereas, Developer has requested the formation of a reimbursement district to collect \$771,871.32 of unreimbursed costs for construction of the 21-inch sewer main; and

Whereas, the 21-inch sewer main is located inside City of Salem corporate limits, was constructed as a condition of development, is a new public improvement that provides a public benefit, is a master-planned facility that is on the Systems Development Charge (SDC) eligible list, is of a size greater than that needed to serve Developer's property, and is available to serve property within City of Salem corporate limits and within the boundaries of the proposed reimbursement district; and

Whereas, Developer has financed the entire construction cost of the 21-inch sewer main, and received partial reimbursement in the form of "pass-through credits" from SDCs collected from its development; and

Whereas, the application for a reimbursement district was submitted within 180 days of the City's acceptance of the 21-inch sewer main; and

RESOLUTION - 1

Whereas, the Director of Public Works has evaluated whether the proposed reimbursement districts should be formed, and prepared a report dated August 4, 2008, which is attached hereto as "Exhibit 1" and incorporated herein by reference, exclusive of Attachment B; and

Whereas, not less than ten days prior to the public hearing, Developer and all persons owning property within the proposed district were notified by first class mail of the public hearing and the purpose thereof, mailed July 11, 2008; and

Whereas, the public hearing was held on July 28, 2008, and continued to August 4, 2008, at which time any person was given the opportunity to comment on the formation of the proposed reimbursement districts; and

Whereas, the City Council hereby approves the recommendations contained in the Director of Public Works report;

NOW, THEREFORE, THE CITY OF SALEM RESOLVES AS FOLLOWS:

Section 1. Reimbursement District Formed. To provide reimbursement for the construction of the 21-inch sewer main, the Brush College Reimbursement District (Reimbursement District) is hereby formed, the boundaries of which are shown on "Exhibit 2," and is more specifically described on "Exhibit 3," both of which are attached hereto and incorporated herein by reference.

Section 2. Reimbursement Fee Methodology. The total development cost for the 21-inch sewer main is \$1,250,245.04. Developer received SDC "pass-through credits," leaving an unreimbursed portion of the development cost of the 21-inch sewer main in the amount of \$771,871.32. The sum of \$771,871.32 is a reasonable and fair apportionment of the total construction cost for the 21-inch sewer main for all properties that comprise the Reimbursement District.

The methodology to establish the Reimbursement Fee is based on the impact each development will have on the sewer system. The Reimbursement Fee to be paid by single-family residential lots is based on dividing the total reimbursement amount by the 600 total single-family residential lots within the district anticipated to connect to the sewer main within the next twenty years. The reimbursement fee for uses other than single-family residential development ("other uses") is based on the same methodology multiplied by the increased impacts the other uses have on the sewer system based on the size of the water meter(s) needed for each development, as set forth below:

Meter Size	Ratio of Impact
3/4 inch	1
1 inch	1.7
1.5 inch	3.3
2 inch	5.3
3 inch	10.7
4 inch	16.7
6 inch	33.3

RESOLUTION - 2

Section 3. Interest Rate. Interest on amounts due under the Reimbursement District shall be 3.5% per annum, simple interest.

Section 4. Administration Cost. The reasonable costs to adequately reimburse the City for administration of the Reimbursement District are 1% of the total reimbursement sum rounded to the nearest, which shall be an additional charge.

Section 5. Payment of Reimbursement Fee Precondition of Permits. Payment of the reimbursement fee, as designated for all real property located in the Reimbursement District is a precondition of receiving any City permits applicable to development on such real property.

Section 6. Infrastructure Agreement. The City Manager shall enter into an infrastructure agreement with Developer pertaining to the Reimbursement District as provided in SRC 66.525(d), the performance of which shall be contingent upon the improvements being accepted by the City.

Section 7. Recording of Resolution. The City Recorder shall record this Resolution No. 2008-78 with the Clerk of Polk County.

Section 8. Appeal of Formation of Reimbursement District. No legal action intended to contest the formation of the Reimbursement District or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed after sixty (60) days following the adoption of this resolution. Any challenge or appeal to the formation of the Reimbursement District shall be solely by writ of review pursuant to ORS 34.010-ORS 34.102, and not otherwise.

Section 9. Reimbursement District Fee Not a Tax or a Lien. Formation of the Reimbursement District shall not result in an assessment upon or lien against real property, and reimbursement fees collected by the City on behalf of Developer are not taxes subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.

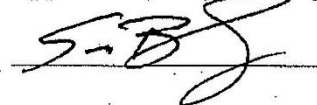
Section 10. Effective Date. This Resolution is effective upon adoption, and the date of formation of the Reimbursement District shall be the effective date of this Resolution.

ADOPTED by the City Council this _____ day of _____, 2008.

ATTEST:

City Recorder

Approved by City Attorney:



Checked by: T. Martin

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RESOLUTION - 3


FOR COUNCIL MEETING OF:
AGENDA ITEM NO.:
PUBLIC WORKS FILE NO.:

August 4, 2008

7 (a):

TO: MAYOR AND CITY COUNCIL

THROUGH:  LINDA NORRIS, CITY MANAGER

FROM: PETER FERNANDEZ, P.E., INTERIM PUBLIC WORKS DIRECTOR 

SUBJECT: FORMATION OF A REIMBURSEMENT DISTRICT
FOR SANITARY SEWER CONSTRUCTION
BY BRUSH COLLEGE HEIGHTS SUBDIVISIONS
REVISED AS DIRECTED BY COUNCIL DURING PUBLIC HEARING

ISSUE:

Shall Council adopt Resolution No. 2008-78 approving the formation of a reimbursement district to collect funds for construction of sanitary sewer mains by the developer of Brush College Heights Subdivisions that benefit neighboring properties?

RECOMMENDATION:

Staff recommends City Council adopt Resolution No. 2008-78, creating a reimbursement district for the construction of the 21-inch trunk sanitary sewer main that is available to serve properties other than the Brush College Heights subdivisions and establishing an interest rate to be applied to the reimbursement fee as a return on investment.

BACKGROUND:

Decal Oregon, Inc., was required to construct a 21-inch trunk sanitary sewer main identified in the *Salem Wastewater Management Master Plan* as a condition of development. The 21-inch pipe was constructed along the boundary of the subdivision in Brush College Road NW and terminates at their western boundary of the site.

When a developer constructs improvements that benefit neighboring properties but are not eligible for full reimbursement from other sources, reimbursement districts are a mechanism to identify the benefitted area and provide a fair and proportional reimbursement to the developer for the cost of improvements that will be used and are necessary to serve those neighboring properties.

Because the 21-inch sewer line is a qualified public improvement per SRC 41.100(h), the developer will receive a partial reimbursement for the construction in the form of pass-through credits from System Development Charges collected within the Brush College Heights subdivisions in the amount of \$478,373.72.

EXHIBIT 1

The developer has requested the formation of the Reimbursement District shown in Attachment B to collect the unreimbursed costs of the 21-inch trunk sanitary sewer line from the neighboring properties that will ultimately be benefitted from its construction. The estimated unreimbursed costs total \$771,871.32. Attachment B provides an estimated cost-per-benefitted property for the proposed reimbursement district.

A public hearing was held on July 28, 2008, to consider formation of the reimbursement district. During the hearing, a property owner within the district requested clarification regarding the connection of existing homes prior to development on a property. Council directed staff to revise the fee methodology to address existing homes transferring from septic systems to public sewer within the district.

FACTS AND FINDINGS:

1. The 21-inch trunk sanitary sewer line was constructed along the boundary of the Brush College Heights subdivision as a condition of UGA Development Permit 02-05 and Subdivision 04-13. The trunk sanitary sewer line is available to provide service to future development within the reimbursement district boundary.
2. The 21-inch trunk sanitary sewer main is a new public improvement that provides a public benefit, is identified in the *Salem Wastewater Management Master Plan*, is of a size greater than that needed to serve the developer's property, and is available to serve the property within the district.
3. The application was submitted on April 16, 2008, which is within 180 days after acceptance of the sanitary sewer main by the City, as required in SRC 66.510(c).
4. All persons owning property within the proposed district were notified by first class mail of the public hearing and purpose thereof, mailed July 11, 2008.
5. SRC 66.515(b) specifies the Public Works Director shall prepare a report with the following information:
 - A. Developer Financing: The developer has financed the entire construction cost of the sewer main.
 - B. District Boundary: The proposed district boundary is approximately 139 acres located both north and south of Brush College Road NW as shown in Attachment B.
 - C. Apportionment of Construction Cost: As shown in the application submitted, the total development costs for the sewer mains are \$1,250,245.04. Because the 21-inch trunk sewer main is a facility shown in the *Salem Wastewater Management Master Plan*, the developer is eligible for pass-through credits.

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However, the credits generated from the Brush College Heights subdivisions do not provide full reimbursement to the developer. The unreimbursed portion of the 21-inch trunk sewer main is \$771,871.32, which the developer has requested to be reimbursed through the district fee.

Apportionment of the reimbursement fee is based upon the impact of each development on the sewer system. Because the zoning within the district is predominately for single family residential use, the methodology to establish total reimbursement amount is based on total single family residential lots within the district anticipated to be connected to the sewer main within the next twenty years. The approximate density will be 4.3 lots per acre (or 600 lots for the 139-acre district) based on topographic considerations, natural features, and preliminary subdivision layouts already submitted to the City. The reimbursement fee for each single family residential lot will then be \$1,287.00 based on the 600-lot total and \$771,871.32 in reimbursement due to the developer.

The reimbursement fee for uses other than single family residential development (other uses) is based on the same methodology multiplied by the impacts the other uses have on the sewer system. The impacts other uses have on the sewer system vary based on the size of water meter(s) needed for each development. Therefore, the reimbursement fee for other uses is the single family residential fee multiplied by the ratio of impact as determined by the size of the water meter(s) needed for each is set forth as follows:

Meter Size	Ratio of Impact
3/4 inch	1
1 inch	1.7
1.5 inch	3.3
2 inch	5.3
3 inch	10.7
4 inch	16.7
6 inch	33.3

This methodology is similar to Exhibit D of the Methodology Report for Water and Wastewater Systems Development Charges adopted by Council on June 9, 2008.

- D. Administration Cost: Public Works staff recommends that a 1 percent administration fee be collected with each payment of the reimbursement district fee, rounded to the nearest dollar. The total reimbursement district fee will be collected as follows:

Use	Meter Size	Reimbursement	Administration	Total
Single Family:	N/A	\$1,287	\$13	\$1,300
Other:	¾-inch	\$1,287	\$13	\$1,300
	1-inch	\$2,188	\$22	\$2,210
	1.5-inch	\$4,247	\$42	\$4,289
	2-inch	\$6,821	\$68	\$6,889
	3-inch	\$13,771	\$138	\$13,909
	4-inch	\$21,493	\$215	\$21,708
	6-inch	\$42,857	\$429	\$43,286

- E. SRC 66.515(b)(5) specifies that the Public Works Director make a recommendation on whether the creation of the district is in the public interest based upon specific criteria as follows:
- (1) No public sewer mains were available to serve these properties. Consistent with the *Salem Wastewater Management Master Plan*, the 21-inch trunk sanitary sewer main was constructed within the district and will provide sewer service for future development within the district.
 - (2) The reimbursement district provides a mechanism to fairly distribute the costs of the sewer main construction among the 22 properties within the district. No other funding sources are currently available for the construction of this facility. The Urban Service Area (USA) Amendment process described in SRC 66.035 could potentially provide reimbursement for the developer's unreimbursed sewer costs. However, the area surrounding Brush College Heights subdivision does not have required facilities in place or fully committed to the public facilities to be brought within the USA. Required facilities needed in the area include: improvements to Brush College Road west of Doaks Ferry, including a traffic signal; extension of Christina Avenue; and large sewer and water main extensions in unserved areas.
 - (3) The trunk sewer main provides a direct benefit to the properties within the district. Properties outside the district may be benefitted in the future, but will require a large number of annexations.
6. Public Works staff recommends the interest rate to be applied to the reimbursement fee as a return on investment be 3.5 percent.
 7. Reimbursement district fees are eligible to be reimbursed to property owners within the district from sewer SDCI payments collected within their property per SRC Chapter 66.

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Formation of a Reimbursement District for Sanitary Sewer
Construction by Brush College Heights Subdivisions
Council Meeting of August 4, 2008
Page 5

District fees paid by a developer prior to land division are reimbursed through pass-through credits; district fees paid by property owners in association with individual building connections to the sewer system are reimbursed as a true credit.

8. The reimbursement district fee will be due when a person applies and is approved for:
 - A. A building permit for a new building;
 - B. A building permit for modifications, repairs or alterations of a building which exceed twenty-five percent of the value of the building, except for repairs made necessary by fire or other natural disaster;
 - C. Other development approvals under the code; or
 - D. Connection to the public improvement constructed by the developer.
9. Public Works staff supports the formation of the reimbursement district to include the benefitted properties around Brush College Road NW.

TCM:REIMBURSE DIST BRUSH COLLEGE REVISED 2.DOC

Attachments:

- A - Application for Reimbursement District
- B - Reimbursement District Boundary

Ward 5
8/1/2008 11:20 AM

Prepared by: Tony C. Martin, P.E., Senior Development Services Engineer

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APPLICATION TO ESTABLISH A REIMBURSEMENT DISTRICT

Pursuant to Salem City Code Section 66.510, Decal Oregon, Inc., Decal, Inc., and Tyrell B. Vance, LLC, assignee of Decal Oregon, Inc. (collectively "Decal"), hereby submits the following application to establish a reimbursement district arising from Decal's installation of the trunk sewer line at the Brush College subdivision.

1. A map showing the boundaries of the proposed reimbursement district and each tax lot within the proposed district is attached hereto as Exhibit 1 and incorporated herein by reference.

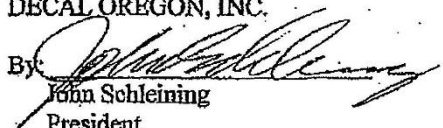
2. The zoning designations for all property located within the proposed reimbursement district, the mailing address of each owner of property within the proposed district, the tax account number for each parcel of property within the proposed district and the parcel size of each parcel of property within the proposed district are included on Exhibit 1. The width of the frontage, if any, can be calculated using the scale on Exhibit 1. Decal previously owned and developed the Brush College and Brush College Heights subdivisions, although it does not presently hold title to any property related to this public improvement.

3. The location, type and size of the public improvement which is the subject of this application is the 21 inch trunk sanitary sewer line shown on Exhibit 1. The total project cost previously certified by the City in connection with Decal's application for SDC credits is \$1,250,245.04. After subtracting the SDC credits paid or to be paid, the costs in excess of credits total \$771,871.32. A projected cost per benefited district and a proposed reimbursement share is included on Exhibit 1.

4. This application is being submitted on or before April 16, 2008, which is 180 days after the acceptance of the sanitary sewer by the City of Salem.

DATED this 15th day of April, 2008.

DECAL OREGON, INC.

By: 
John Schleining
President

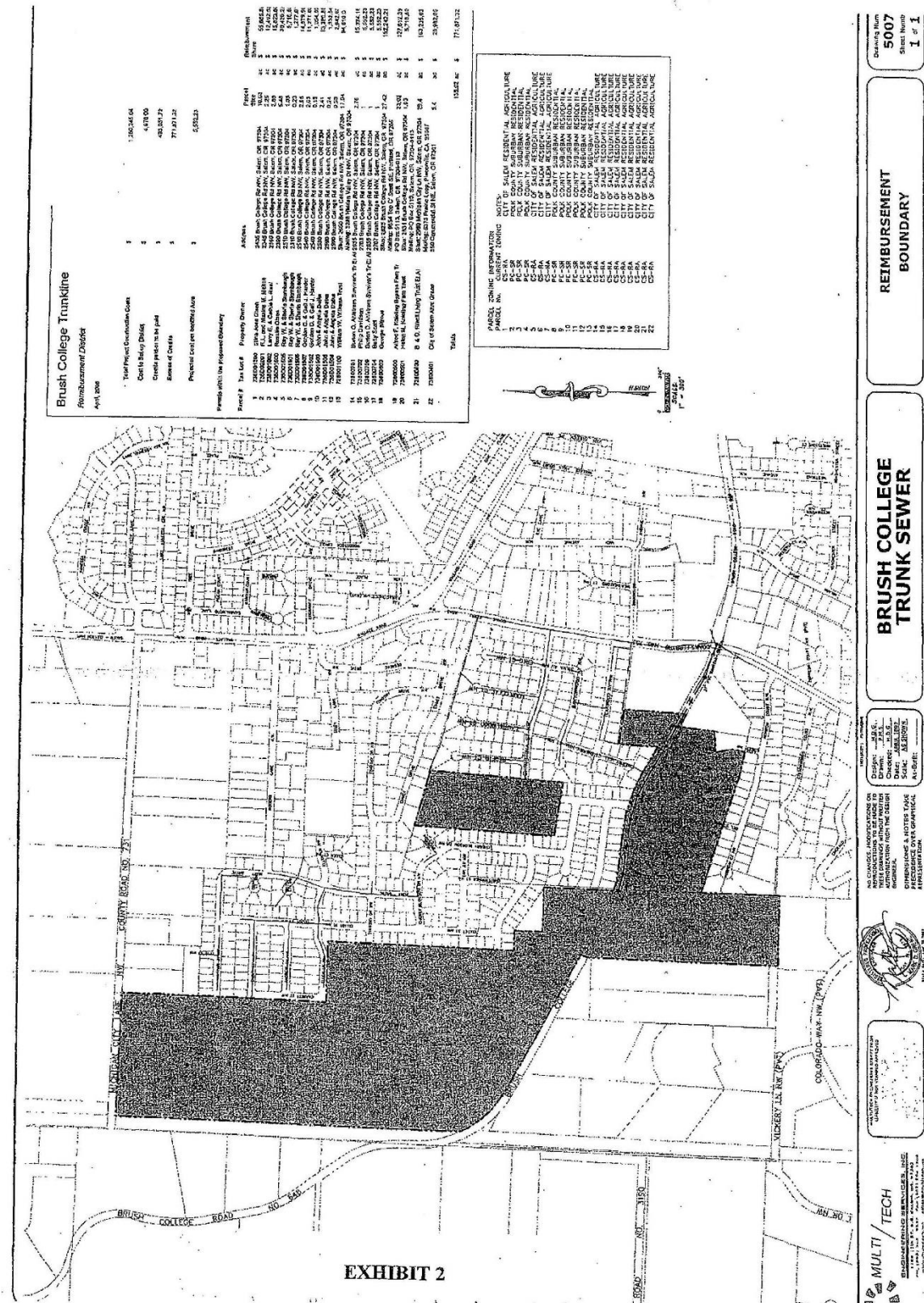
TYRELL B. VANCE, LLC

By: 
Tyrell B. Vance
Manager

DECAL, INC.

By: 
John Schleining
President

1-APPLICATION TO ESTABLISH REIMBURSEMENT DISTRICT
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Brush College Sewer Trunk
Reimbursement District

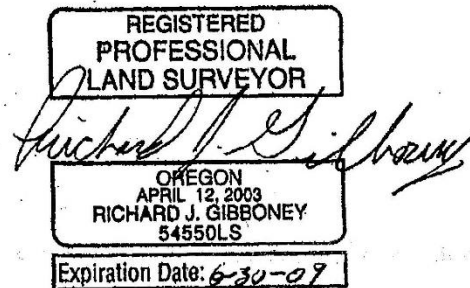
Boundary Description
July 25th, 2008

Commencing at the Northwest corner of Parcel 1, Partition Plat No. 2004-28, Polk County, Oregon Book of Partition Plats, thence N89°45'26"E, along the North line of said parcel, a distance of 104.62 feet, to the easterly Right-of-way line of the B.P.A. Transmission Easement, and the True Point of Beginning; thence N89°45'26"E, along the North line of said parcel, a distance of 957.46 feet, to the Northeast corner of said parcel; thence S00°25'34"E, along the east line of said parcel, a distance of 1576.38 feet, to the Southeast corner of Parcel 2, of said partition plat; thence N89°54'29"E, a distance of 470.33 feet, to a boundary point on Lot 71, Brush College Heights No. 1, a duly recorded subdivision in the City of Salem, Polk County, Oregon; thence S00°03'34"E, along the west line of said subdivision, a distance of 1435.76 feet, to the Southwest corner of Lot 134, Brush College Heights No. 3, a duly recorded subdivision in the City of Salem, Polk County, Oregon; thence N89°48'56"E, along the southerly line of said subdivision, a distance of 155.00 feet; thence S00°03'34"E, a distance of 214.95 feet, to the Southwest corner of Lot 141, of said subdivision; thence N89°48'56"E, along the south line of said lot, a distance of 346.90 feet; thence S00°13'12"E, a distance of 543.58 feet, to the Northerly Right-of-way line of Brush College Road NW, (C.R. 6408); thence Southeasterly along a curve to the left, with a Radius of 919.05 feet, (the chord of which bears S78°57'57"E, 196.17 feet); thence along the arc of said curve, a distance of 196.55 feet; thence S85°05'33"E, along said right-of-way, a distance of 290.98 feet; thence Southeasterly along a curve to the Right with a Radius of 990.95 feet, (the chord of which bears S75°51'14"E, 318.18 feet), thence along the arc of said curve, a distance of 319.56 feet, to the Southwest corner of Lot 100, Brush College Estates No. 3, a duly recorded subdivision in the City of Salem, Polk County, Oregon; thence Southeasterly along a curve to the Right with a Radius of 990.95 feet, (the chord of which bears S64°45'44"E, 64.09 feet), thence along the arc of said curve, a distance of 64.10 feet; thence S62°54'33"E, a distance of 305.63 feet to the Southeast corner of Lot 97, of said subdivision; thence N01°51'17"E, leaving said right-of-way, and along the most southerly east line of said subdivision, common with the west line of BOR. 173, Page 247, Polk County, Oregon Deed Records, a distance of 295.18 feet, to the Northwest corner of said deed; thence S84°34'59"E, along the North line of said deed, a distance of 273.77 feet, to the Northeast corner of said deed, common with the Northwest corner of the Brush College School Tract of Land; thence S02°29'00"W, along the east line of said deed, a distance of 475.00 feet, more or less to the Southerly Right-of-way of Brush College Road NW, (C.R. 6408); thence N63°11'00"W, along said right-of-way, a distance of 120.00 feet, to the east line of BOR. 268, Page 1314, Polk County, Oregon Deed Records; thence

EXHIBIT 3

35, said point also being the Northeast corner of Lot 192, Brush College Heights No. 3, as recorded in Polk County Book of Town Plats, Volume 14, Page 11; thence along the extended North line of Lot 192, Brush College Heights No. 3, N82°31'05"W, a distance of 419.35 feet to a point at the Northwest corner of Lot 166, said Brush College Heights No. 3, said point also being on the East line of Lot 164, said Brush College Heights No. 3; thence along the extended East line of said Lot 164, N01°33'59"E, a distance of 1080.15 feet more or less to the point of beginning.

Located in the Southeast quarter of Section 8, Township 7 South, Range 3 West, Willamette Meridian, City of Salem, Polk County, Oregon.



However, the credits generated from the Brush College Heights subdivisions do not provide full reimbursement to the developer. The unreimbursed portion of the 21-inch trunk sewer main is \$771,871.32, which the developer has requested to be reimbursed through the district fee.

Apportionment of the reimbursement fee is based upon the impact of each development on the sewer system. Because the zoning within the district is predominately for single family residential use, the methodology to establish total reimbursement amount is based on total single family residential lots within the district anticipated to be connected to the sewer main within the next twenty years. The approximate density will be 4.3 lots per acre (or 600 lots for the 139-acre district) based on topographic considerations, natural features, and preliminary subdivision layouts already submitted to the City. The reimbursement fee for each single family residential lot will then be \$1,287.00 based on the 600-lot total and \$771,871.32 in reimbursement due to the developer.

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