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ORDINANCE NO. M-3533

AN ORDINANCE approving a street assessment reimbursement agreement for improvements to a portion of West Corbett Avenue north of West Fourth Plain; providing for an effective date.

WHEREAS, Ronald T. and Ginnia Brown and Kenneth and Kathy Hertz (the "Applicants"), as owners of property on West Corbett Avenue, have made certain necessary improvements to that street; and

WHEREAS, an application has been made for the establishment of an assessment reimbursement area to provide reimbursement for a portion of construction costs of that project by other property owners who will benefit from these improvements; and

WHEREAS, the City has formulated an assessment reimbursement area based on a selection of parcels adjacent to West Corbett Avenue that would have required similar street improvements upon development, and;

WHEREAS, affected property owners have been notified by certified mail of the proposed assessment area, the assessment share, and the owners' rights and options;

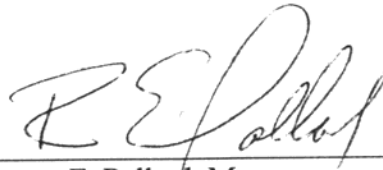
NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

ORDINANCE - 1

MAY 07 2001

Signed this 16th day of January, 2001.



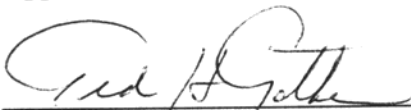
Royce E. Pollard, Mayor

Attest:



Tim Viles, City Clerk

Approved as to form:



Ted H. Gathe, City Attorney

H:\council\ord\Brown Latecomers

Section 1. The City hereby adopts an assessment reimbursement area as shown in Exhibit "A", which is hereby incorporated by this reference.

Section 2. The pro rata shares of reimbursable costs for the improvements made to West Corbett Avenue by the Applicants for a street assessment reimbursement agreement, as set forth in Exhibit "B", which is hereby incorporated by this reference, are hereby approved.

Section 3. The City Manager is hereby authorized to enter into a street assessment reimbursement agreement with the Applicants as set forth in Exhibit "C".

Section 4. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder or the application of the provision to other persons or circumstances is not affected.

Section 5. Effective Date.

This ordinance shall take effect on February 15, 2001.

Read first time:

January 2, 2001

PASSED BY THE FOLLOWING VOTE:

Ayes: Councilmembers

Jollota, Mueller, Burkman, Harris,
Lipton, and Mayor Pollard

Nays: Councilmembers

None

Absent: Councilmembers

Tonkovich

Read second time:

January 16, 2001

PASSED BY THE FOLLOWING VOTE:

Ayes: Councilmembers

Tonkovich, Jollota, Mueller, Harris,
Burkman, Lipton, and Mayor Pollard

Nays: Councilmembers

None

Absent: Councilmembers

None

LEGAL

** SITUS FILE INFORMATION **

Parcel Number: 000133-0000
Legal Description

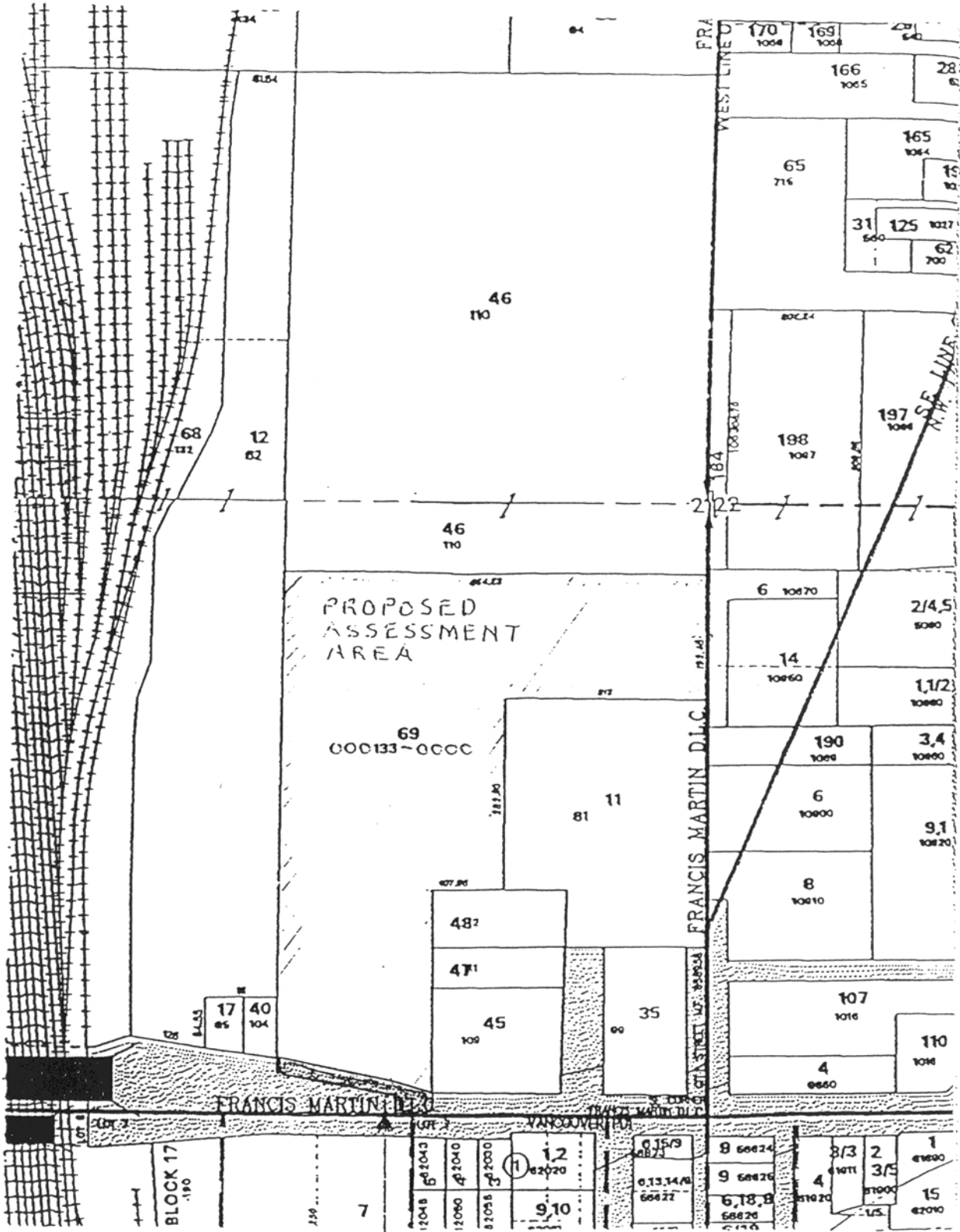
Line	Seq#	Legal Description Text
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2	0002	A PRCL OF PROP IN GOVT LOT 7 SEQ SEC 21-2-1EWM DAF: BEG AT
3	0003	SE COR OF N 106 FT OF SD GOVT LOT 7 TH S 00DG 17MIN 12SEC W
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Street Improvement.

EXHIBIT **B**
DEVELOPER REIMBURSEMENT AGREEMENT, ENG1999-00004
West Corbett Avenue

DEVELOPER REIMBURSEMENT ASSESSMENT DETAILED COSTS

Construction and Materials (not including services)	74,986.44
Survey and Staking	3,485.50
Design Engineering	44,337.01
Construction Engineering	1,840.00
City Administration Costs (1% of total project cost)	
Total Cost	\$124,648.95

The developer reimbursement fee for West Corbett Avenue will be based on the number of lots in the benefited area (2). Distributing the costs equally between the above results in a developer reimbursement fee of \$62,324.48 per lot. Administration costs in accordance with the ordinance will be added at the time of payment.

All parcels in the latecomer area will be assessed accordingly upon application for development.



**DEVELOPER REIMBURSEMENT
ASSESSMENT AGREEMENT
ENG1999-00004**

THIS AGREEMENT is entered into this ____ day of _____, 200__, by and between the **CITY OF VANCOUVER**, a municipal corporation, hereinafter called the "CITY" and Ronald T. and Ginnia Lee Brown and Kenneth and Kathy Hertz, their heirs, successors, and assigns, hereinafter called "OWNER".

WHEREAS, OWNER has constructed at its own cost and expense certain municipal water, sewer, storm sewer, and/or street system improvements; and

WHEREAS, OWNER has made application for the CITY to establish an assessment reimbursement area within which owners of property are required to reimburse OWNER for the pro rata cost of said improvements whenever such property is developed in a manner that said improvements would be required pursuant to City ordinances; and

WHEREAS, as provided by VMC 11.97 for the establishment of an assessment reimbursement area that allows developers to recover a portion of those improvement costs incurred as a condition of development approval if the improvement benefits other property developers; and

WHEREAS, the subject transportation improvements were required based upon LOS warrants and in the interest of public safety; and

WHEREAS, OWNER was required as a condition of development approval for the West Corbett Avenue project, AU971648, to install transportation improvements at the location of West Corbett Avenue; and

WHEREAS, the City Council established a Developer Assessment Reimbursement Area on _____, of 200__, that is intended to reimburse OWNER for a portion of the costs incurred in designing and installing referenced transportation improvements; and

WHEREAS, OWNER has offered and the CITY has accepted said improvements in accordance with the provisions of VMC 11.97 and the terms of this Agreement; now, therefore,

In consideration of the above representations and the following covenants and agreements, the parties hereby agree as follows:

Section 1. This Agreement and the City's Developer Street Assessment Reimbursement Ordinance, VMC 11.97, a copy of which is attached hereto as Exhibit C, shall establish the rights and duties of the parties with regard to reimbursing the OWNER for those improvements, the cost and description of which is set forth in the attached Exhibit D.

Section 2. This Agreement shall be in effect for a period of fifteen years from the date of its recording with the Clark County Auditor; provided that, if the developer is reimbursed for the cost of the improvements prior to the expiration of the fifteen-year period, then further developer reimbursement assessments and payments shall not be made.

Section 3. The assessments that are subject to this Agreement shall be levied against the property within the assessment reimbursement area identified in the attached Exhibit E, in the amount calculated and set forth in the attached Exhibit F.

Section 4. OWNER agrees that the CITY shall not be responsible for the collection of any developer reimbursement assessments other than in the manner provided by the Developer Street Assessment Reimbursement Ordinance.

Section 5. OWNER shall give notice to property owners who are subject to the developer reimbursement assessment in accordance with the procedures of VMC 11.97 using the Notice form attached hereto as Exhibit A.

Section 6. The CITY shall, within sixty (60) days of receipt, transmit developer reimbursement payments, less the CITY administrative fee and cost of defective work, if any, to the OWNER.

Section 7. OWNER represents and covenants that the necessary easements pertaining to these facilities have been submitted to and approved by the CITY and recorded concurrently with this Agreement and that such easements conform exactly to the as-built construction drawings. Upon the execution of this Agreement by both parties hereto, OWNER shall convey free and clear of all encumbrances to the CITY the aforementioned facilities with rights-of-way and/or easements, including maintenance easements, for all such facilities.

Section 8. OWNER shall supply the CITY with a maintenance guarantee bond or equivalent acceptable to the CITY in the amount of ten (10) percent of the value of the improvements conveyed by the OWNER to the CITY to be in effect for a period of one year from the date of final acceptance of the improvements by the CITY. Said bond shall be executed by a surety company authorized to do business within the State of Washington and shall be subject to the approval of the CITY.

Section 9. If prior to the expiration of one year after the date of acceptance of the improvements, any work is found to be defective, the OWNER shall promptly, without cost to the CITY, and in accordance with written instructions issued by the Manager of Transportation Services, either correct such defective work, or, if it has been rejected by the Manager of Transportation Services, remove and replace it with non-defective work. If the OWNER does not promptly comply with the terms of such instructions, the CITY may have the defective work corrected or the rejected work removed and replaced and may enforce its rights under the maintenance guarantee bond. All direct and indirect costs of such removal and replacement not reimbursed pursuant to said bond, including compensation for professional services, shall at the City's option either be paid by the OWNER to the City and/or withheld from the developer reimbursement assessment transmittals to the OWNER.

Section 10. This Agreement shall become effective upon satisfactory completion by the OWNER and acceptance by the CITY of the construction of the facilities conveyed by the OWNER to the CITY and upon execution of the Agreement by the parties and recording with the Clark County Auditor. The OWNER shall test all portions and elements of the facilities as specified by the CITY in order to demonstrate the satisfactory construction of the facilities.

Section 11. OWNER agrees that the CITY will not be liable under any contracts to which OWNER is a party pertaining to the construction of the facilities. OWNER agrees to hold harmless, defend and indemnify the CITY from any obligations pertaining to such contracts or construction.

Section 12. OWNER warrants that it has furnished the City with accurate bills of sale for all facilities pertaining to this Agreement.

Section 13. OWNER acknowledges and agrees that the referenced developer reimbursement assessments calculated in Exhibit F are estimates. OWNER further acknowledges and agrees that there is no guarantee that said assessments will be paid or accrued during the period of this Agreement.

Section 14. Property owners that are developing their properties and are to be assessed a proportionate cost share will not be issued final occupancy or building permit approvals until all latecomer cost share payment that were conditioned and assessed to a project at the time of site plan or preliminary plat approval, has been received by the City.

Section 15. CITY will reimburse OWNER for all monies, with the exception of one percent of each reimbursement in City Administrative costs shown in Exhibit F of this Agreement, collected pursuant to this Agreement. The City will not be liable for failure to collect latecomer fees due to OWNER. The total amount to be reimbursed to OWNER will not exceed \$62, 324.48 after deduction of the OWNER'S original share. It is likely that one or more properties may not develop within the 15-year period and those associated fees may never be collected.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF VANCOUVER

OWNER

MANAGER OF TRANSPORTATION SERVICES

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

STATE OF WASHINGTON)
) ss.
County of Clark)

On this date, before me the undersigned Notary Public in and for the State of Washington, personally appeared _____, to me known to be the individuals who executed the foregoing Developer Reimbursement Agreement and acknowledged to me that they signed the same for the uses and contents therein mentioned.

DATED this ____ day of _____, 200____.

NOTARY PUBLIC for Washington,
Residing at _____
My commission expires: _____

Exhibit A - Notice of Developer Reimbursement Agreement and Assessment
Exhibit B - Developer Reimbursement Agreement
Exhibit C - Developer Street Assessment Reimbursement Ordinance
Exhibit D - Description and Cost of Improvements
Exhibit E - Assessment Reimbursement Area
Exhibit F - Calculation of Developer Reimbursement Assessment

Exhibit A
NOTICE OF DEVELOPER REIMBURSEMENT
AGREEMENT AND ASSESSMENT
ENG1999-00004

City of Vancouver, Washington

NOTICE IS HEREBY GIVEN pursuant to the Developer Street Assessment Reimbursement Ordinance, Chapter 11.97 of the City of Vancouver Municipal Code (a copy of which is attached hereto as Exhibit C) that the City of Vancouver, Washington, is levying an assessment on property which is located within the assessment reimbursement area identified in the attached Exhibit E. The property is served by the transportation and associated stormwater improvements constructed and paid for by a private developer, the description and cost of which improvements are set forth in the attached Exhibit D.

This assessment is for the purpose of reimbursing the developer who constructed the improvements and shall be in force and effect for up to fifteen years from the date of recording said Developer Reimbursement Agreement with the Clark County Auditor; provided that, if the developer is fully reimbursed for the cost of the improvements prior to the expiration of the fifteen-year period, then further developer reimbursement assessments and payments shall not be made. The amount of the assessment, \$62,324.48, is based on the fair pro-rata share of the cost for each eligible parcel served by the improvements and is calculated and set forth, with administration costs, in the attached Exhibit F.

This assessment shall be paid to the City prior to any development of property within the assessment reimbursement area identified in Exhibit E, which development requires connection to, or use of, said improvements pursuant to City ordinances

Prior to execution of any contract with the city establishing an assessment reimbursement area, the city manager or designee shall mail, via certified mail, a notice to all record property owners within the assessment reimbursement area as determined by the city on the basis of information and materials supplied by the applicant, stating the preliminary boundaries of such area and assessments along with substantially the following statement:

As a property owner within the Assessment Reimbursement Area whose preliminary boundaries are enclosed with this notice, you or your heirs and assigns will be obligated to pay under certain circumstances a pro rata share of construction and contract administration costs of a certain street project that has been preliminarily determined to benefit your property. The proposed amount of such pro rata share or assessment is also enclosed with this notice. You, or your heirs and assigns, will have to pay such share, if any development permits are issued for development on your property within fifteen (15) years of the date a contract establishing such area is recorded with Clark County provided such development would have required similar street improvements for approval.

You have a right to request a hearing before the city council within twenty (20) days of the date of this notice. All such requests must be made in writing and filed with the city clerk. After such contract is recorded it shall be binding on all owners of record within the assessment area who are not a party to the contract.

Upon final approval of the developer reimbursement agreement and assessment and the assessment reimbursement area, the final version of this notice will be filed for record, together with the developer reimbursement agreement attached hereto as Exhibit B, in accordance with the provisions of Chapters 35.72, 35.91 and 65.08 of the Revised Code of Washington.

DATED this 8 day of DEC, 2000.


MANAGER OF TRANSPORTATION SERVICES

- Exhibit A - Notice of Developer Reimbursement Agreement and Assessment
- Exhibit B - Developer Reimbursement Agreement
- Exhibit C - Developer Reimbursement Assessment Ordinance
- Exhibit D - Description and Cost of Improvements
- Exhibit E - Assessment Reimbursement Area
- Exhibit F - Calculation of Developer Reimbursement Assessment

EXHIBIT C

Chapter 11.97

STREET ASSESSMENT REIMBURSEMENT AGREEMENTS

Sections:

11.97.010	Purpose.
11.97.020	Authorization.
11.97.030	Application—Contents.
11.97.040	Application requirements— Fee.
11.97.050	Eligibility of applicants.
11.97.060	Assessment methods.
11.97.070	Rights and non-liability of city.
11.97.080	Notice to property owners.
11.97.090	City council action.
11.97.100	Contract execution and recording.
11.97.110	City funding.

Section 11.97.010 Purpose.

This chapter implements and makes available to the public the provisions of RCW 35.72 as the same now exists or may hereafter be amended.

(M-3424, Added, 01/19/1999)

Section 11.97.020 Authorization.

Any developer utilizing private funds to acquire public right-of-way and install street improvements on public right-of-way may apply to the city to establish a "latecomer agreement" for recovery of a pro rata share of the cost of acquiring public right-of-way and constructing said public improvements from other parties that subsequently develop their property and that will later derive a benefit from said improvements. The city manager or designee is authorized to accept applications for the establishment by contract of an assessment reimbursement area as provided by state law, provided, such application substantially conforms to the requirements of this chapter. No latecomer agreement shall extend for a period longer than fifteen years from the date of final acceptance by the city. The city council shall have discretion to authorize or not to authorize latecomer agreements on a case-by-case basis.

(M-3424, Added, 01/19/1999)

Section 11.97.030 Application—Contents.

Applications for the establishment of an assessment reimbursement area shall be accompanied by the application fee as set by the city council by resolution and shall include the following items:

- A. Detailed construction plans and drawings of the entire street project to be borne by the assessment reimbursement area prepared and stamped by a licensed engineer.
- B. Itemization of all costs of the street project including, but not limited to, design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lights, engineering, construction, property acquisition and contract administration.
- C. A map and legal description identifying the proposed boundaries of the assessment reimbursement area and each separately owned parcel within such area. Such map shall identify the location of the street project in relation to the parcels of property in such area.
- D. A proposed assessment reimbursement roll stating the proposed assessment for each separate parcel of property with the proposed assessment reimbursement area as determined

by apportioning the total project cost on the basis of the benefit of the project to each such parcel of property within said area.

E. A complete list of record owners of property within the proposed assessment reimbursement area certified as complete and accurate by the applicant and which states names and mailing addresses for each such owner.

F. Envelopes addressed to each of the record owners of property within the assessment reimbursement area who have not contributed their pro rata share of such costs. Proper postage for certified mail shall be affixed or provided.

G. Copies of executed deeds and/or easements in which the applicant is the grantee for all property necessary for the installation of such street project.
(M-3424, Added, 01/19/1999)

Section 11.97.040 Application requirements-- Fee.

All applications for latecomer agreements shall be accompanied by a nonrefundable application fee of two hundred dollars plus twenty-five dollars for every separate parcel to be encumbered by the agreement, to cover the city's expenses in processing the application.
(M-3424, Added, 01/19/1999)

Section 11.97.050 Eligibility of applicants.

Applicants for latecomer agreements shall be in compliance with all city ordinances, rules and regulations to be eligible for processing of latecomer agreements.
(M-3424, Added, 01/19/1999)

Section 11.97.060 Assessment methods.

The city manager or designee shall use a method of assessment which is based on the benefit to the property owner from the project. The methods of assessment authorized in RCW Chapter 35.44 for local improvement districts may be used.
(M-3424, Added, 01/19/1999)

Section 11.97.070 Rights and non-liability of city.

The city reserves the right to refuse to enter into any latecomer agreement or to reject any application therefor. All applications for latecomer agreements shall be made on the basis that the applicant releases and waives any claims for any liability of the city in establishment and enforcement of latecomer agreements. The city shall not be responsible for locating any beneficiary or survivor entitled to benefits by or through latecomer agreements. Any collected funds unclaimed by developers after three years from the expiration of the agreement shall be returned to parties making payment to the city. Any remaining undeliverable funds shall inure to the benefit of the appropriate utility and/or fund approved by the city council.
(M-3424, Added, 01/19/1999)

Section 11.97.080 Notice to property owners.

Prior to execution of any contract with the city establishing an assessment reimbursement area, the city manager or designee shall mail, via certified mail, a notice to all record property owners within the assessment reimbursement area as determined by the city on the basis of information and materials supplied by the applicant, stating the preliminary boundaries of such area and assessments along with substantially the following statement:

"As a property owner within the Assessment Reimbursement Area whose preliminary boundaries are enclosed with this notice, you or your heirs and assigns will be obligated to pay under certain circumstances a pro rata share of construction and contract administration costs of a certain street project that has been preliminarily determined to benefit your property. The proposed amount of such pro rata share or assessment is also enclosed with this notice. You, or your heirs and assigns,

will have to pay such share, if any development permits are issued for development on your property within _____ (_____) years of the date a contract establishing such area is recorded with Clark County provided such development would have required similar street improvements for approval.

You have a right to request a hearing before the city council within twenty (20) days of the date of this notice. All such requests must be made in writing and filed with the city clerk. After such contract is recorded it shall be binding on all owners of record within the assessment area who are not a party to the contract.”

(M-2424, Added, 01/19/1999)

Section 11.97.090 City council action.

If any owner of property within the proposed assessment reimbursement area requests a hearing in writing within twenty (20) days of the mailing of the preliminary determination, a hearing shall be held before the city council, notice of which shall be given to all affected property owners in addition to the regular notice requirements specified by this code, the cost of which shall be borne by the applicant. At a hearing the city council shall take testimony from affected property owners and make a final determination of the area boundaries, the amount of assessments, length of time for which reimbursement shall be required and shall authorize the execution of appropriate documents. The city council's ruling of these matters is determinative and final. If no hearing is requested, the city council may consider and take final action on these matters at any public meeting twenty (20) days after notice was mailed to the affected property owners.

(M-3424, Added, 01/19/1999)

Section 11.97.100 Contract execution and recording.

Within thirty (30) days of final city council approval of an assessment reimbursement agreement, the applicant shall execute and present such agreement for the signature of the appropriate city officials. The agreement must be recorded in the Clark County auditor's office within thirty (30) days of the final execution of the agreement. If the contract is so filed and recorded, it shall be binding on owners of record within the assessment area who are not party to the agreement.

(M-3424, Added, 01/19/1999)

Section 11.97.110 City funding.

As an alternative to financing projects under this chapter solely by owners of real estate, the city may join in the financing of improvement projects and may be reimbursed in the same manner as the owners of real estate who participate in the projects, if the city has specified the conditions of its participation in an ordinance. As another alternative, the city may create an assessment reimbursement area on its own initiative, without the participation of a private property owner, finance the costs of the road or street improvements, and become the sole beneficiary of the reimbursements that are contributed. The city may be reimbursed only for the costs of improvements that benefit that portion of the public who will use the developments within the assessment reimbursement area established pursuant to this chapter. No city costs for improvements that benefit the general public may be reimbursed.

(M-3424, Added, 01/19/1999)

EXHIBIT D
DEVELOPER REIMBURSEMENT AGREEMENT, ENG1999-00004
West Corbett Avenue
DESCRIPTION AND COST OF IMPROVEMENTS

DESCRIPTION OF IMPROVEMENTS

The improvements covered by this developer reimbursement agreement include the construction of West Corbett Avenue and appurtenant facilities to serve the area as outlined on Exhibit E. The improvements include construction of asphalt concrete street, sidewalks, curb and gutter, street drainage, street trees and associated improvements.

COST OF IMPROVEMENTS

Documentation supporting the final engineering, inspection and cost of improvements has been provided by a registered professional engineer and a legitimate contractor's bid on behalf of the developer. These costs have been reviewed and approved by the Manager of Transportation Services.

A summary of final costs follows:

1. <i>Design and Engineering</i>	\$44, 337.01
2. <i>Survey</i>	3, 485.50
3. <i>Construction</i>	74, 986.44
4. <i>Project Administration</i>	1, 840.00
<i>Total</i>	124, 648.95

The final costs for the developer reimbursement agreement are based on actual engineering, construction, and inspection costs.

EXHIBIT D
DEVELOPER REIMBURSEMENT AGREEMENT, AU971648
West Corbett Avenue
DESCRIPTION AND COST OF IMPROVEMENTS

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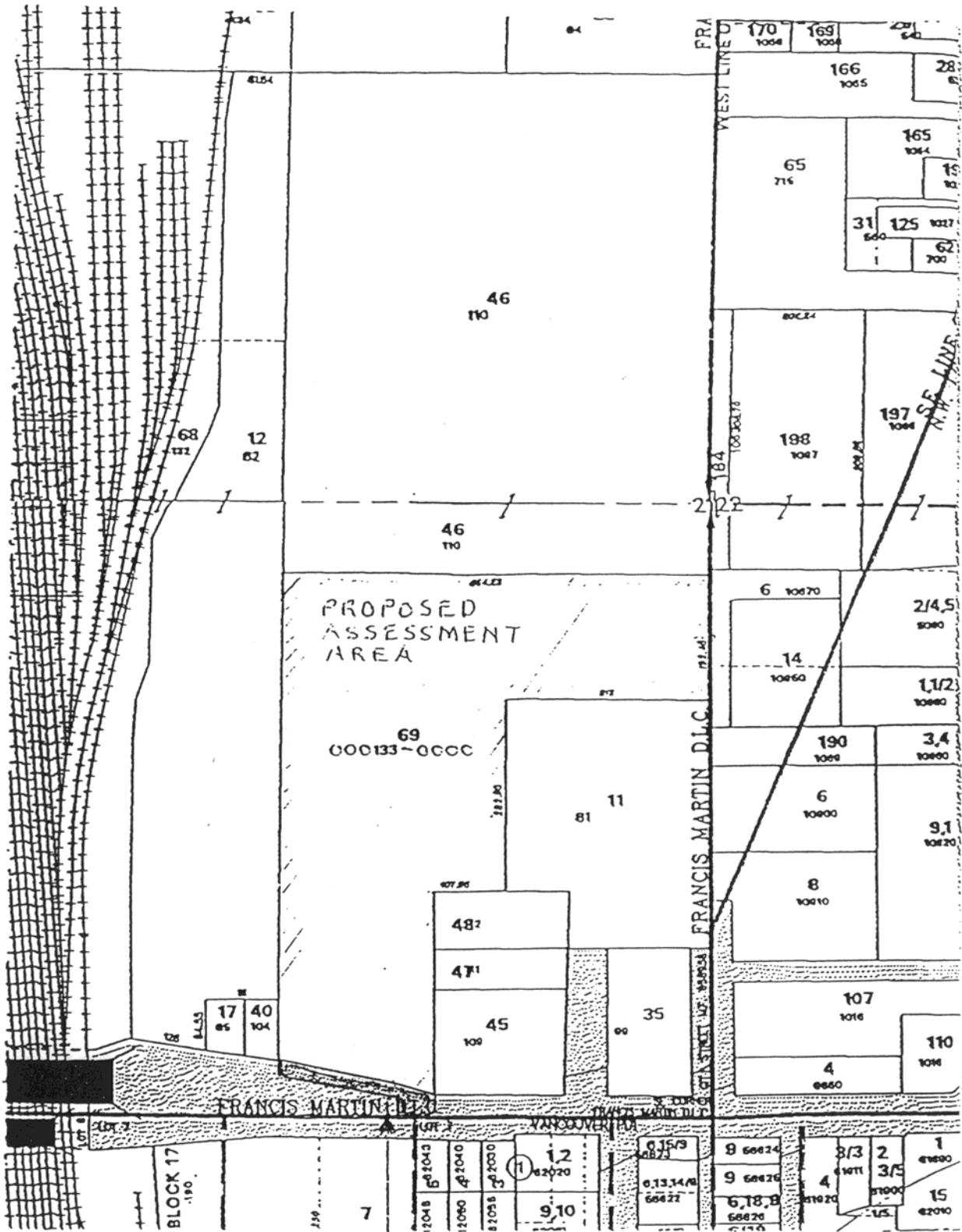
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Street Improvement.

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Total Cost	\$124,648.95

The developer reimbursement fee for West Corbett Avenue will be based on the number of lots in the benefited area (2). Distributing the costs equally between the above results in a developer reimbursement fee of \$62,324.48 per lot. Administration costs in accordance with the ordinance will be added at the time of payment.

All parcels in the latecomer area will be assessed accordingly upon application for development.