

ORDINANCE NO. 693

**AN ORDINANCE ESTABLISHING A RESERVE FUND FOR
CONSTRUCTION OF IMPROVEMENTS TO THE INTERSECTION AND RAIL
CROSSING AT SW HAVLIK ROAD AND HIGHWAY 30 IN THE CITY OF
SCAPPOOSE.**

THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1. Pursuant to ORS 294.525, a Reserve Fund is hereby created for the accrual of revenue, and the expenditure appropriations for construction of improvements to the intersection of SW Havlik Drive and Highway 30 and related rail crossing. The Reserve Fund is to be funded pursuant to the agreements between the City and Havlik Estates Joint Venture and the City and Scharf Properties, copies of which are attached to the original on file in the City Recorder Office and incorporated as Exhibit A.

Section 2. The Fund's purpose is to foster construction of the proposed Havlik Drive/Highway 30 connection as identified in the Scappoose Transportation System Plan by providing funding specifically for railroad crossing and intersection improvements necessary at the SW Havlik Drive/Highway 30 intersection.

Section 3. The City shall collect the payments from Havlik Estates Joint Venture or its assigns at the rate of \$2,000 per residential lot in the Havlik Estates Subdivision preliminary plat attached as Exhibit B and hereby incorporated and from Sharf Properties or its assigns at the rate of \$2,000 per residential lot in the Springlake Meadows Subdivision preliminary plat attached as Exhibit C and hereby incorporated.

Section 4. A municipal lien at the above rate of \$2,000 per residential lot shall be filed with the recording of the final plat of each such subdivision and prior to the closing of escrow on any individual lot in each of the above subdivisions. A notation regarding this requirement and the Exhibit A Agreement shall be included on the final plat.

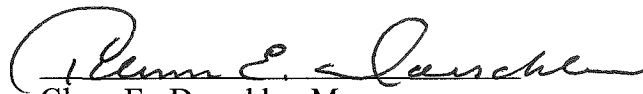
Section 5. The funds described in Section 1 shall be reserved only for construction of improvements to the Havlik Drive/Highway 30 intersection and related railroad crossing improvements. The City may, at its discretion, apply these funds as local matching funds in order to obtain funding from state and/or federal funding sources requiring a local match. Seven years from the date of the first contribution to be collected by the City, the City Council may, at its discretion, reallocate part or all of the funds to construct additional street improvements within the High School Way right of way.

Section 6. The payments described in Section 3 of this Resolution are in lieu of any assessments for construction of the Havlik Road or Highway 30 intersection, and the lots subject to the payment requirement will not be subject to future Local Improvement District assessment for the construction of any part of SW Havlik Drive, the intersection of SW Havlik Drive and Highway 30 or signalization, railroad regrading, or railroad crossing improvements for the SW Havlik Drive rail crossing..

Section 7. During the fiscal year 2019/2020, the City Council shall review the Reserve Fund to determine whether the fund will be continued or abolished. The Reserve Fund shall not be abolished until the improvement has been constructed or the project has been removed from the Scappoose Transportation System Plan. If the fund is abolished, any remaining balance that has not been obligated shall revert to and become a part of the Street Fund.

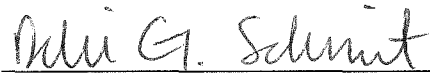
PASSED AND ADOPTED by the City Council this 6TH day of December, 1999, and signed by the Mayor, and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON


Glenn E. Dorschler, Mayor

First Reading: November 15, 1999

Second Reading: December 6, 1999

Attest: 
Debi G. Schmit,
City Recorder

A:\ORD.693.wpd

After recording, return to:
City of Scappoose
P.O. Box P
Scappoose, OR 97056

AGREEMENT

This agreement is entered into this 5th day of Nov, 1999, by and between **HAVLIK ESTATES JOINT VENTURE**, hereinafter called "Developer" and the **CITY OF SCAPPOOSE**, a municipal corporation of the State of Oregon, hereinafter called "City".

RECITALS

- A. The Developer is the owner and developer of property identified as the Havlik Estates Subdivision preliminary plat, a copy of which is attached and incorporated as Exhibit A.
- B. The City is responsible for overseeing the development of property within the City boundaries; and
- C. In order to accommodate the transportation impacts which will be created by the development of the subdivision, the City will establish a reserve fund to accumulate funds for improvement of Havlik Drive/Highway 30 intersection and related rail cross, and the Developer has agreed to pay into the reserve fund to provide for such improvements as provided in this agreement.

Now therefore, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals:**

The recitals set forth above are true and correct and are incorporated herein by this reference.

2. **Duration:**

The terms of this Agreement shall commence upon approval and execution by the City and Developer, and, except as otherwise provided herein, shall continue until all payments are made to the City as provided in Section 3a.

3. **Responsibilities of the Developer:**

a) Developer shall pay the City a sum equal to \$2,000 times the number of residential lots included in the final plat, as approved by the City, of the Havlik Estates Subdivision in Scappoose. Such payment shall be made at the rate of \$2,000 per lot sold by the Developer and each \$2,000 payment shall be made by the escrow agent from the closing proceeds of sale of each lot. The Developer agrees to include the above requirement in all applicable escrow instructions, or at City's election, this agreement shall constitute such instructions. No building permits shall be issued until the payment is received by the City.

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Scappoose, OR 97056

b) The developer hereby agrees to the filing of a municipal lien at the above rate of \$2,000 per residential lot on all lots in the Havlik Estates Subdivision at the time of recording of the final plat and prior to the closing of escrow on any individual lot and a notation regarding this requirement and this agreement shall be included on the final plat.

4. Responsibilities of the City:

a) The City shall establish a Reserve Fund for the accrual of revenue and the expenditure appropriations for construction of improvements to the intersection of SW Havlik Drive and Highway 30 and related rail crossing. The Fund's purpose is to foster construction of the proposed Havlik Drive/Highway 30 connection as identified in the Scappoose Transportation System Plan by providing funding specifically for railroad crossing and intersection improvements necessary at the SW Havlik Drive/Highway 30 intersection.

b) The City shall collect the payments described in Section 3 (a) and these funds shall be reserved and earmarked for use only for construction of improvements to the Havlik Drive/Highway 30 intersection and associated railroad crossing improvements. The City may, at its discretion, apply these funds as local matching funds in order to obtain funding from state and/or federal funding sources requiring a local match. Seven years from the date of the first contribution to be collected by the City, the City Council may, at its discretion, reallocate part or all of the funds to construct additional street improvements within the High School Way right of way.

c) The City agrees the payments described in Section 3 (a) are in lieu of any assessments for construction of the Havlik Road or Highway 30 intersection, and the lots subject to the payment requirement will not be subject to future Local Improvement District assessment for the construction of any part of SW Havlik Drive, the intersection of SW Havlik Drive and Highway 30 or signalization, railroad regrading, or railroad crossing improvements for the SW Havlik Drive rail crossing..

d) During the fiscal year 2019/2020, the City Council shall review the Reserve Fund to determine whether the fund will be continued or abolished. The Reserve Fund shall not be abolished until the improvement has been constructed or the project has been removed from the Scappoose Transportation System Plan. If the fund is abolished, any remaining balance that has not been obligated shall revert to and become a part of the Street Fund.

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Scappoose, OR 97056

5. Remedies:

In the event of a breach of any term of this Agreement by any party, a non-defaulting party may seek from the defaulting party any legal remedy available for breach of contract, including the cost of completing the defaulting party's responsibilities.

6. Hold Harmless:

To the extent possible under the limits of the Oregon Tort Claims Act, City and Developer shall hold each other harmless, indemnify and defend each other's officers, agents and employees from any and all liability, actions, claims, losses, damages or other costs including attorney fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place), that may be asserted by any third person or entity arising from, during or in connection with the performance of the work described in this agreement, except for liability arising out of the sole negligence of a party or its employees. Such indemnification shall also cover claims brought against any of the parties under State or Federal workers compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or validity shall not affect the validity of the remainder of this indemnification.

7. Notice:

All notices shall be made in writing and may be given by personal delivery or by mail. Notices sent by mail shall be addressed as follows:

CITY:

City of Scappoose
ATTN: City Manager
P. O. Box "P" Scappoose, OR 97056
Telephone: (503) 543-7146

DEVELOPER:

Havlik Estates Joint Venture
ATTN: Ray Paul
6141 SW Orchard Drive
Portland, OR 97219

When so addressed, a notice shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery.

After recording, return to:
City of Scappoose
P.O. Box P
Scappoose, OR 97056

Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

8. Assignment:

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other parties, and no assignment shall be of any force or effect whatsoever unless and until the other parties have so consented.

9. Merger:

This writing is intended both as the final expression of the agreement between the parties with respect to the included terms and as a complete exclusive statement of the terms of this Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by all parties. By virtue of this Agreement, each party waives and supercedes any other agreements, understandings, negotiations or representations of the parties, whether verbal or in writing.

10. Attorney Fees:

If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs and disbursements, such further sum as the Court may adjudge reasonable as attorney fees, or in the event of appeal, as allowed by the appellant court.

11. Partnership:

None of the parties to this Agreement are partners or joint venturers with any other party to this Agreement and, therefore, no party shall have any obligation with respect to any other party's debts or liabilities.

12. Successors Obligated:

All rights, remedies and liabilities herein given to or imposed upon any of the parties hereto shall extend and inure to the benefit of and bind, as the circumstances may require, the heirs, executors, administrators, personal representatives, permissible successors and permissible assigns of such parties, subject to the limitations previously set forth in this Agreement.

After recording, return to:
City of Scappoose
P.O. Box P
Scappoose, OR 97056

13. **Execution of Documents:**

The parties agree to execute all documents necessary to carry out the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in two (2) duplicate originals, either as individuals, or by their officers, thereunto duly authorized the day and year first hereinabove written.

CITY OF SCAPPOOSE

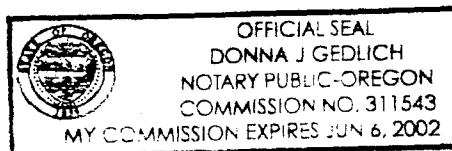
By: Glenn E. Dorschler
Glenn E. Dorschler, Mayor

Acknowledged before me this 5th day of November, 99

Donna J Gedlich
Notary Public for Oregon

County of Columbia

My Commission expires: 6.6.02



HAVLIK ESTATES JOINT VENTURE

By: Ray Paul
Ray Paul

Acknowledged before me this 2nd day of November, 1999

Bernice C Mount
Notary Public for Oregon

County of CLACKAMAS

My Commission expires: 3/3/02



After Recording, return to:
City of Scappoose
P.O. Box P
Scappoose, Oregon 97056

AGREEMENT

This agreement is entered into this 5th day of Nov., 1999, by and between **SCHARF PROPERTIES, Ltd.**, hereinafter called "Developer" and the **CITY OF SCAPPOOSE**, a municipal corporation of the State of Oregon, hereinafter called "City".

RECITALS

- A. The Developer is the owner and developer of property identified as the Springlake Meadows Subdivision preliminary plat, a copy of which is attached and incorporated as Exhibit A.
- B. The City is responsible for overseeing the development of property within the City boundaries; and
- C. In order to accommodate the transportation impacts which will be created by the development of the subdivision, the City will establish a reserve fund to accumulate funds for improvement of Havlik Drive/Highway 30 intersection and related rail cross, and the Developer has agreed to pay into the reserve fund to provide for such improvements as provided in this agreement.

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3. **Responsibilities of the Developer:**

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b) The developer hereby agrees to the filing of a municipal lien at the above rate of \$2,000 per residential lot on all lots in the Springlake Meadows Subdivision at the time of recording of the final plat and prior to the closing of escrow on any individual lot and a notation regarding this requirement and this agreement shall be included on the final plat.

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c) The City agrees the payments described in Section 3 (a) are in lieu of any assessments for construction of the Havlik Road or Highway 30 intersection, and the lots subject to the payment requirement will not be subject to future Local Improvement District assessment for the construction of any part of SW Havlik Drive, the intersection of SW Havlik Drive and Highway 30 or signalization, railroad regrading, or railroad crossing improvements for the SW Havlik Drive rail crossing..

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Scappoose, Oregon 97056

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6. Hold Harmless:

To the extent possible under the limits of the Oregon Tort Claims Act, City and Developer shall hold each other harmless, indemnify and defend each other's officers, agents and employees from any and all liability, actions, claims, losses, damages or other costs including attorney fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place), that may be asserted by any third person or entity arising from, during or in connection with the performance of the work described in this agreement, except for liability arising out of the sole negligence of a party or its employees. Such indemnification shall also cover claims brought against any of the parties under State or Federal workers compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or validity shall not affect the validity of the remainder of this indemnification.

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CITY:

City of Scappoose
ATTN: City Manager
P. O. Box "P" Scappoose, OR 97056
Telephone: (503) 543-7146

DEVELOPER:

Scharf Properties, Ltd.
ATTN: David Scharf
51590 Westlake Drive
Scappoose, OR 97056
Telephone: (503) 543-5205

When so addressed, a notice shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery.

After Recording, return to:
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Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

8. Assignment:

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other parties, and no assignment shall be of any force or effect whatsoever unless and until the other parties have so consented.

9. Merger:

This writing is intended both as the final expression of the agreement between the parties with respect to the included terms and as a complete exclusive statement of the terms of this Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by all parties. By virtue of this Agreement, each party waives and supercedes any other agreements, understandings, negotiations or representations of the parties, whether verbal or in writing.

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11. Partnership:

None of the parties to this Agreement are partners or joint venturers with any other party to this Agreement and, therefore, no party shall have any obligation with respect to any other party's debts or liabilities.

12. Successors Obligated:

All rights, remedies and liabilities herein given to or imposed upon any of the parties hereto shall extend and inure to the benefit of and bind, as the circumstances may require, the heirs, executors, administrators, personal representatives, permissible successors and permissible assigns of such parties, subject to the limitations previously set forth in this Agreement.

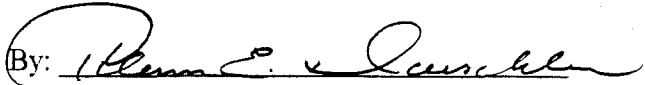
After Recording, return to:
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13. **Execution of Documents:**

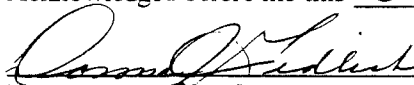
The parties agree to execute all documents necessary to carry out the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in two (2) duplicate originals, either as individuals, or by their officers, thereunto duly authorized the day and year first hereinabove written.

CITY OF SCAPPOOSE

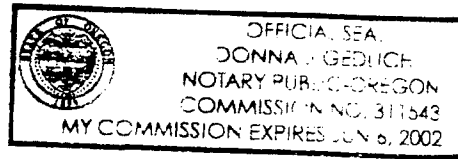
By: 
Glenn E. Dorschler, Mayor

Acknowledged before me this 5 day of November, 99

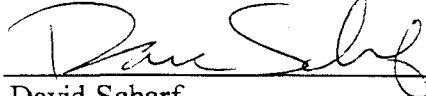

Notary Public for Oregon

County of Columbia

My Commission expires: 6.6.02



SCHARF PROPERTIES, LTD.

By: 
David Scharf

Acknowledged before me this 5 day of November, 1999


Notary Public for Oregon

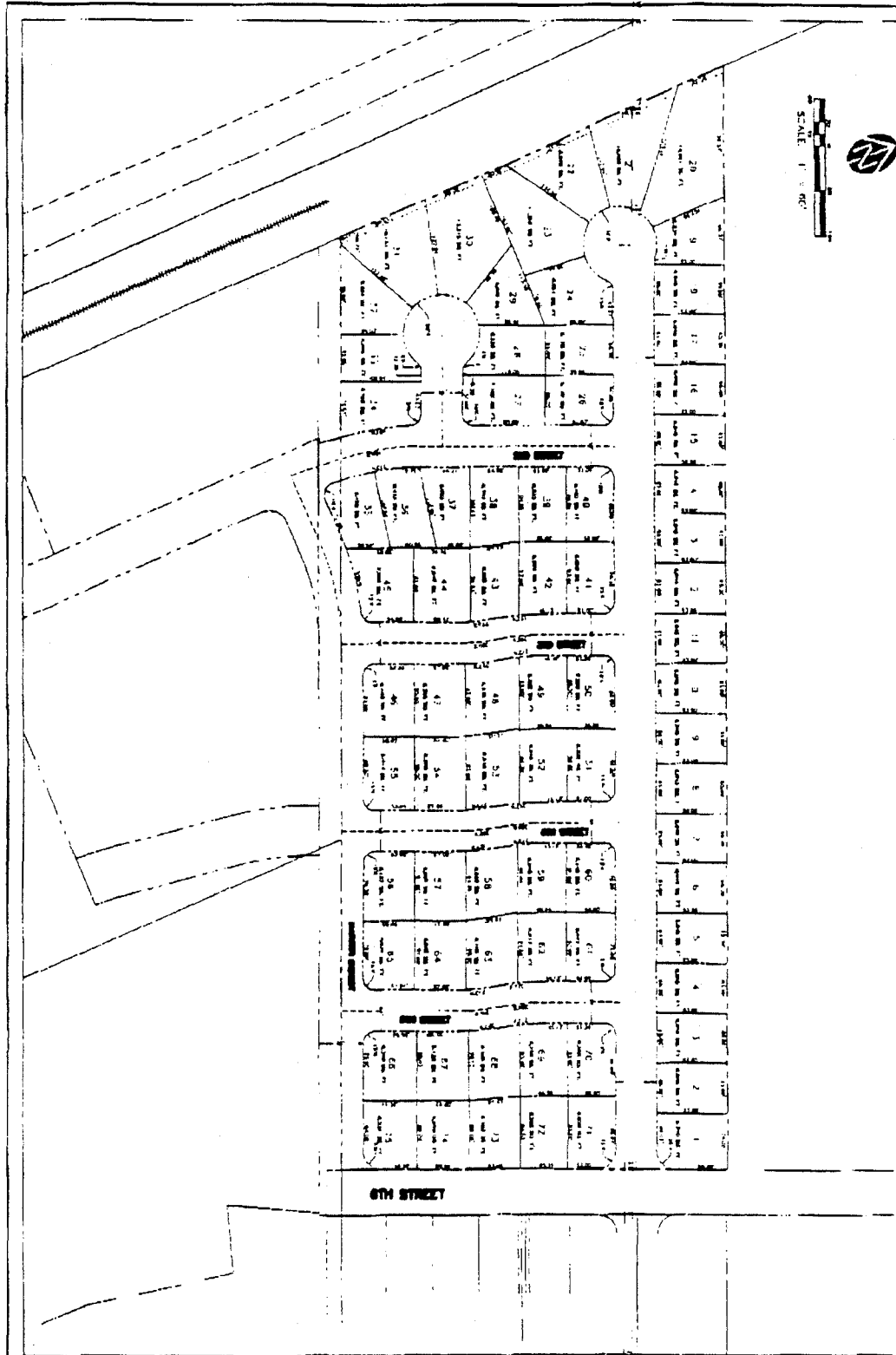
County of Columbia

My Commission expires: June 22, 2003



EXHIBIT B

HAVLIK ESTATES



Preliminary Plat

