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<p>Name of Document For Recording: Covenant to Construct and Connect to City Sewer Line                  Grantor: Hail Capital LLC., i/o David Nelsen, 3115 Wembley Park Road Lake Oswego OR 97034                  Grantee: City of Lake Oswego, P.O. Box 369, Lake Oswego, OR 97034                  Consideration: \$0.00.                  Tax Statement to be mailed to: No Change                  Recordation Authority: ORS 205.130(2)(a).                  After Recording, Return To: City of Lake Oswego, Attn: City Recorder, P.O. Box 369, Lake Oswego, OR 97034</p>	<p>(For County Recording Use Only)  <b>Clackamas County Official Records</b>  <b>Sherry Hall, County Clerk</b> <span style="float: right;"><b>2022-011231</b></span></p> <div style="text-align: center;">                   02543743202200112310080089             </div> <p style="text-align: right;"><b>\$128.00</b></p> <p style="text-align: right;"><b>02/23/2022 02:20:40 PM</b></p> <p>D-OD                      Cnt=1 Stn=9 COUNTER1                  \$40.00 \$16.00 \$62.00 \$10.00</p>
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**Covenant to Construct and Connect to City Sewer Line**

WHEREAS, the undersigned Hail Capital LLC ("Owner") warrant(s) to the City of Lake Oswego (City) that Owner is the fee title or contract purchaser of real property in Clackamas County, Oregon, outside the corporate limits of the City of Lake Oswego, but inside the City's Urban Service Boundary, described as follows ("Subject Property" or "Subject Properties"):

Legal Description:

A tract of land located within the southwest quarter of Section 7, Township 2 South, Range 1 East of the Willamette Meridian, City of Lake Oswego, County of Clackamas, Oregon, said tract of land being all of that property conveyed to Hail Capital LLC, an Oregon limited liability company, by Statutory Warranty Deed recorded July 7, 2021 in the Official Records of Clackamas County as Recording No. 2021-065158; said tract of land more particularly described as follows:

Lots 1, 2, 69, and 70 of Block 1, Plat of Lake Forest (Plat No. 509), plat records of Clackamas County.

**Together with** a tract of land located within the southwest quarter of Section 7, Township 2 South, Range 1 East of the Willamette Meridian, City of Lake Oswego, County of Clackamas, Oregon, said tract of land being all of that property conveyed to Hail Capital LLC, an Oregon limited liability company, by Statutory Warranty Deed recorded June 30, 2021 in the Official Records of Clackamas County as Recording No. 2021-063293; said tract of land more particularly described as follows:

Parcel 2, Partition Plat No. 2007-142, plat records of Clackamas County.

Street Address: No Situs address, Lake Oswego

Assessor Map/Lot References: Tax Lots 0100, 3000 and 02902, Map 21E07CA

WHEREAS, the undersigned Owner applied for annexation of the subject property to the City of Lake Oswego (Planning Dept. Case No. AN 21-0003).

WHEREAS, the City's Public Facilities Plan, which is consistent with Statewide Planning Goal 11 (Public Facilities) and the Community Health and Public Safety Chapter of the Comprehensive Plan, requires the

development of master plans for the orderly development of streets, sanitary sewer, water, and stormwater facilities, and the basis for long-range planning for both the incorporated and unincorporated lands within Lake Oswego's Urban Services Boundary.

WHEREAS, the Lake Oswego Comprehensive Plan Urbanization Policy C-4: "requires that urban services commensurate with the scale of the proposed development are available and are adequate to serve the property or can be made available in a timely manner prior to the annexation of non-island properties."

WHEREAS, to comply with the above Policy and with other related policies that are criteria for annexation of the Subject Properties, the Owner represented to the City that it would proceed with construction of public sanitary sewer lines to serve future development on the Subject Properties consistent with the City's Sewer Master Plan and guarantee sewer availability.

WHEREAS, following a public hearing, the City Council tentatively approved Ordinance 2874 ("Annexation Ordinance") and directed City staff to return with findings and ordinance for enactment upon recordation of this *Covenant to Construct and Connect to City Sewer Line* (Exhibit E-3) in the official records of Clackamas County, Oregon.

NOW THEREFORE, Owner does hereby covenant to City as follows:

1. Owner shall construct a sewer main, in conformance with the City Engineering Dept.'s standards and specifications from the Point of Connection of the existing City Sewer Main to the upstream boundary of each property for one connection or one home, or in the case of a partition of the Subject Property, then to the upstream boundary of that Subject Property (parent parcel of the partition), to serve each of the respective Subject Properties, as shown on the attached map, Attachment 1. The sewer main shall be installed to the respective Subject Property and accepted by the City prior to issuance of a development permit (including a building permit) for the respective Subject Property. (This obligation to construct does not preclude Owner from seeking a Zone of Benefit under LOC Art. 40.04.)
2. Owner acknowledges that neither the City's condition upon the annexation nor the City's acceptance of this covenant constitutes consent for Owner to install the sewer main in any property owned by or under the jurisdiction of the City. The Owner will need to obtain such City consent in the manner required for such, and the annexation does not obligate the City to so consent. The Owner's obligations under this Covenant shall arise only after the Subject Property has been fully annexed into the City. The completion of the annexation process shall be an express condition precedent to Owner's obligations under this Covenant.
3. Owner acknowledges the risk that events, circumstances, or unknown conditions could arise that would make it more difficult or preclude the extension of the sewer main as intended. Nevertheless, the Owner waives any and all claims or causes of action, legal or equitable, for the issuance of a development permit (including a building permit) absent compliance with the requirement that any development on the respective Subject Property be served by connection to a City sewer main. Specifically, the Owner waives any right to seek approval of an alternative sewage disposal system, including the right to seek exemption from the requirement to connect to the City sewer system.

4. This Covenant may be enforced by the City of Lake Oswego by a proceeding in the Clackamas County Circuit Court under any applicable legal or equity basis, including specific performance and injunction. The City shall be entitled to its reasonable attorney fees if it is the prevailing party, at trial or on appeal. If the City is represented by "in-house" counsel, the City shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon area for the type of legal services performed.
5. Following construction of the sewer main to the upstream boundary of the property a respective Subject Property (as provided in Paragraph 1, above), at the Owner's request and expense, the City shall execute a Notice of Termination of Covenant suitable for recording with the County Clerk, so that upon recordation, the obligation to construct the sewer main to the respective Subject Property, and the agreement that no development permit (including building permit) be issued for the respective Subject Property will be shown as an obligation against the respective Subject Property.
6. This Covenant shall run with the land and shall be recorded in the deed records of the County of Clackamas, to give notice to all successors-in-interest in the Subject Properties and shall be binding on all successors in interest.

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