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| **THIS INSTRUMENT PREPARED BY**  **AND SHOULD BE RETURNED TO:**  Heather M. Ramos  **GRAY ROBINSON, P.A.**  301 East Pine Street, Suite 1400  Post Office Box 3068  Orlando, FL 32802-3068  (407) 843-8880 | For Recording Purposes Only |

**RETAIL WASTEWATER SERVICE AGREEMENT**

***for the***

**BISHOPS GATE PROPERTY**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2019, by and between the **Town of Howey-in-the-Hills**, a Florida municipal corporation (hereafter “TOWN”), and **Bishops Gate Property Company, LLC**, a Florida limited liability corporation (hereafter “DEVELOPER”).

**RECITALS**

**WHEREAS**, the Central Lakes Community Development District leases and operates a wastewater system located in Lake County, Florida and sells, on a wholesale basis, wastewater service capacity to the TOWN for developments located within the TOWN’s utility service area.

**WHEREAS**, the TOWN owns and operates a retail wastewater system located within the TOWN limits and certain adjacent unincorporated land in Lake County, Florida (hereafter the “TOWN’s Wastewater System”) and is willing to sell, on a retail basis, Wastewater Service Capacity to DEVELOPER for the development described herein and known as the Bishops Gate Property (the “Development”).

**WHEREAS,** the Bishops Gate Property is described in **Exhibit “A”** attached to and incorporated into this Agreement.

**WHEREAS**, DEVELOPER is interested in obtaining central retail wastewater service because the Development is not suitable for septic systems.

**WHEREAS**, the TOWN wishes to connect the Development to the TOWN’s Wastewater System and to purchase Wastewater Service Capacity on a wholesale basis from the CDD in order to serve the Development.

**WHEREAS**, the parties covenant and agree that they have the power and authority to enter this Agreement and bind their respective entities to the provisions of this Agreement.

**WHEREAS**, this Agreement shall govern the wastewater utility service to be provided by the TOWN, on a retail basis, for the Development only.

**ACCORDINGLY,** for and in consideration of the Recitals, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties, the DEVELOPER and the TOWN hereby covenant and agree as follows:

**SECTION 1. RECITALS.** The above Recitals are true and correct, and form a material part of this Agreement.

**SECTION 2. DEFINITIONS.** The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

(1) “ERU” means Equivalent Residential Unit and represents 250 GPD of wastewater flow.

(2) “Agreement” means this Retail Wastewater Service Agreement as it may from time to time be modified.

(3) “Development” means the lands being developed as residential and commercial land use projects known as Bishops Gate Property, the legal description of which is attached as **Exhibit “A”**.

(4) “Service” means the readiness and ability on the part of the TOWN to furnish wastewater service to the Development.

(5) “Point of Delivery or Distribution” means the point where the pipes of utility are connected with the pipes of the customer(s). In this Agreement, the point of delivery shall be at the lift station.

(6) “Contribution-in-aid-of-Construction” means the sum of money, and/or property, represented by the value of the wastewater collection systems constructed by DEVELOPER, which DEVELOPER covenants and agrees to pay and/or transfer to the TOWN, as a contribution-in-aid-of-construction, to induce the TOWN to continuously provide wastewater service to the Development.

**SECTION 3. EASEMENT AND RIGHT OF ACCESS.** Upon completion of construction of the wastewater lift station and force main described in **Exhibit “B”** attached to and incorporated into this Agreement, the DEVELOPER shall grant and convey to the TOWN the exclusive right or privilege to construct, own, maintain, and operate the wastewater lift station and force main (hereafter “Transmission Facilities”) in, under, over and across the property described in **Exhibit “C”** attached to and incorporated into this Agreement. The **Exhibit “C”** property shall hereafter be referred to as the “Transmission Easement Property”. DEVELOPER hereby further agrees that the foregoing grant shall include the necessary right of ingress and egress to any part of the Property and Transmission Easement Property, and that the foregoing grants shall be perpetual. DEVELOPER shall convey to the TOWN, by bill of sale, or other appropriate documents, in form reasonably satisfactory to the TOWN’s counsel, the complete on‑site and off‑site wastewater collection facilities as constructed by DEVELOPER and approved by the TOWN. The TOWN agrees that the acceptance of the said facilities installed by DEVELOPER, for service, or by acceptance of the bill of sale, shall constitute that assumption of responsibility by the TOWN for the continuous operation and maintenance of such systems from that date forward. The TOWN hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the wastewater industry with respect to the installation, operation, maintenance, and replacement of all its wastewater facilities in any of the easement areas; and the DEVELOPER in granting easement herein, or pursuant to the terms of this instrument, shall have the right to grant exclusive or non‑exclusive rights, privileges and easement to other entities to provide to the Development and Transmission Easement Property any utility services other than wastewater service.

**SECTION 4. PROVISION OF SERVICE; PAYMENT OF RATES.**

**4.1.** Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the DEVELOPER, the TOWN covenants and agrees that it will allow the connection of the wastewater collection facilities installed by DEVELOPER to the TOWN’S central wastewater facilities in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules and regulations of the Department of Health and Rehabilitative Services and the Florida Department of Environmental Protection. Except as otherwise provided in this Agreement, the TOWN agrees that once it provides wastewater service to the Development and DEVELOPER or others have connected customer installations to its system, that thereafter, the TOWN will continuously provide, in accordance with the other provisions of this Agreement, and of applicable laws, including rules and regulations and rate schedules, wastewater service to the Development in a manner to conform with all requirements of all governmental agencies having jurisdiction over the wastewater systems of the TOWN. The DEVELOPER, its successors and assigns, and any others using the TOWN’S Wastewater System by virtue of this Agreement agree to timely and fully pay all applicable monthly rates, fees, and charges to the TOWN and otherwise fully comply with the TOWN’s rules, regulations, and ordinances applicable to the provision of wastewater service.

**4.2.** The DEVELOPER, its successors and assigns, and any others obtaining service hereunder, agrees to pay to the TOWN for monthly service within thirty (30) days after statement is rendered by the TOWN all sums due and payable as set forth in such statement. Upon failure or refusal to pay the amounts due on statements as rendered, the TOWN may, in its sole discretion, terminate service.

**SECTION 5. DESIGN, REVIEW, CONSTRUCTION, INSPECTION, AND CONVEYANCE OF FACILITIES.**

**5.1.** To induce the TOWN to provide wastewater service, and to continuously provide customers located in the Development with wastewater services, DEVELOPER hereby covenants and agrees to pay for the construction and to transfer ownership and control to the TOWN as a contribution‑in‑aid‑of‑construction, the Transmission Facilities referred to herein (i.e., the lift station and force main). All design and construction shall be in accordance with TOWN rules, regulations, and utility standards.

**5.2.** DEVELOPER shall pay a reasonable fee not to exceed THREE THOUSAND DOLLARS ($3,000.00) to the TOWN for the actual costs it incurs to review engineering plans and specifications of the type and in the form as prescribed by the TOWN, showing the Transmission Facilities proposed to be installed to provide service to the subject Development. The TOWN will advise DEVELOPER’s engineer of any sizing requirements as mandated by the TOWN’s system extension policy and utility standards for the preparation of plans and specifications for facilities within the Development. All such plans and specifications shall be submitted to the TOWN and no construction shall commence until TOWN has approved such plans and specifications in writing. After approval, DEVELOPER shall cause to be constructed, at DEVELOPER's expense, the Transmission facilities as shown on all plans and specifications.

**5.3.** During the construction of the Transmission facilities by DEVELOPER, the TOWN shall have the right to inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, filtration, line and grade, and all other normal engineering tests required by specifications and/or good engineering practices. Complete as‑built plans shall be submitted to the TOWN upon completion of construction. TOWN inspections of the off‑site facilities will not delay the construction schedule.

**5.4.** All installations by DEVELOPER or its contractors shall be warranted for one (1) year from the date of acceptance by the TOWN. Mortgagee(s), if any, holding prior liens on such properties shall be required to release such liens, subordinate their position and join in the grant or dedication of the easements or rights‑of‑way. TOWN will allow DEVELOPER to assign warranty to TOWN with written approval from DEVELOPER’s contractors that such assignment meets their approval and they will fulfill the terms and conditions of the warranty.

**5.5.** Payment of the Contributions-in-aid-of-Construction does not and will not result in the TOWN waiving any of its rates, rate schedules or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by DEVELOPER making the contribution. The TOWN shall not be obligated for any reason whatsoever nor shall the TOWN pay any interest or rate of interest upon the contribution. Neither DEVELOPER nor any person or other entity holding any of the Development by, through or under DEVELOPER, or otherwise, shall have any present or future right, title, claim or interest in and to the contributions or to any of the wastewater facilities and properties of the TOWN, and all prohibitions applicable to DEVELOPER with respect to no refund of contributions, no interest payment on said contributions and otherwise, are applicable to all persons or entities. No user or customer of wastewater service shall be entitled to offset any bill or bills rendered by the TOWN for such service or services against the contributions. DEVELOPER shall not be entitled to offset the contributions against any claim or claims of the TOWN.

**SECTION 6. EVIDENCE OF TITLE.** At least thirty (30) days prior to the TOWN’s acceptance of the wastewater collection and Transmission Facilities, at the expense of the DEVELOPER, DEVELOPER agrees to either deliver to the TOWN an Abstract of Title, brought up to date, which abstract shall be retained by the TOWN, and remain the property of the TOWN, or to furnish the TOWN with respect to the Development, an opinion of title from a qualified attorney at law or a title commitment from a qualified title insurance company, which opinion or commitment shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens, and covenants. The provisions of this Section are for the exclusive rights of service contained in this Agreement. Any mortgage or lien holder having an interest in the Development shall be required to join in the grant of exclusive service rights set forth in this Agreement. Title standards shall be the same as those applicable to real estate generally adopted by the Florida Bar and in accordance with Florida law.

**SECTION 7. OWNERSHIP OF FACILITIES.** DEVELOPER agrees with the TOWN that the wastewater collection and Transmission Facilities conveyed to the TOWN for use in connection with providing wastewater services to the Development, shall at all times remain in the complete and exclusive ownership of the TOWN, and any entity owning any part of the Development or any residence or building constructed of located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose, including the furnishing of wastewater services to other persons or entities located within or beyond the limits of the Development.

**SECTION 8. APPLICATION OF RULES, REGULATIONS, AND RATES.** The TOWN may establish, revise, modify and enforce rules, regulations and rates covering the provision of wastewater service to the property owners in the Development. Such rules, regulations and rates are subject to the approval of the Town Council of the Town of Howey-in-the-Hills, Florida. Such rules and regulations shall at all times be reasonable and subject to regulation as may be provided by law or under contract. Rates charged to DEVELOPER or customers located in the Development shall be identical to rates charged for the same classification of service. All rules, regulations, and rates in effect, or placed into effect in accordance with the preceding, shall be binding upon DEVELOPER, upon any other entity holding by, through or under DEVELOPER; and upon any customer of the wastewater service provided to the Development by the TOWN.

**SECTION 9. PERMISSION TO CONNECT REQUIRED.**  DEVELOPER, or any owner of any parcel of property within the Development, or any occupant of any residences or buildings located thereon, or any other person, firm, or entity seeking to obtain wastewater service via this agreement or other agreement from other properties shall not have the right to and shall not connect to any customer installation to the wastewater facilities of the TOWN until payment of wastewater capital charges is received for such connection and approval for such connection has been granted by the TOWN, such approval not to be unreasonably withheld.

**SECTION 10. CONSISTENCY OF WASTEWATER.** The purpose of this provision is to comply with any sewer user/industrial pretreatment standards which apply to the Central Lake Community Development District publicly owned treatment works. DEVELOPER acknowledges and recognizes that in the operation and maintenance of the TOWN’s Wastewater System, the TOWN has certain obligations to the bulk provider (i.e., Central Lake Community Development District) to protect the health, safety and welfare of the public and to prevent undue burden to the bulk provider’s customers resulting from extraordinary discharges attributable to DEVELOPER or TOWN. DEVELOPER agrees that all Sewage collected by DEVELOPER and transmitted to the TOWN shall conform to the TOWN’s and/or the bulk provider’s published standards prior to introduction into the Transmission Facilities. No substance other than Residential Wastewater Strength, including but not limited to hazardous, flammable, toxic, and/or industrial constituents, regardless of the concentrations of such constituents, will be placed into the Transmission Facilities or the bulk provider’s or TOWN’s Wastewater System. Non-domestic wastes from commercial establishments may be introduced into the said wastewater systems only upon prior written approval from the TOWN and the bulk provider based on the TOWN’s determination and bulk provider’s determination that such non-domestic waste will not harm the said wastewater systems. Should any non-domestic wastes, grease or oils, including but not limited to, floor wax, paint, chlorides, or salt water be delivered through the Collection Facilities to the Transmission Facilities, DEVELOPER will be responsible for payment of the cost and expense required in correcting or repairing any resulting damage to the Transmission Facilities or property of third parties, including the bulk provider’s wastewater system and property. The TOWN and bulk provider shall have the right to sample DEVELOPER’S sewage to verify compliance with this Agreement. In the event the TOWN or the bulk provider determine that the Development poses a threat of introducing chlorides, salt water, or similar constituents into the either the TOWN’s Wastewater System or the bulk provider’s wastewater system at levels determined by the TOWN or bulk provider, in accordance with current industry standards, to be harmful to said systems, including but not limited to, the said systems’ ability to provide effluent meeting reuse standards, and its acceptability as an irrigation supply source for vegetation, the TOWN or the bulk provider has the right to decline or discontinue service, or charge a higher rate due to increased treatment costs if applicable, to such property or customer and to require such pretreatment or other measures as are necessary to protect the integrity of the said systems. “Residential Wastewater Strength” means residential and commercial wastewater discharges exhibiting the following characteristics: biochemical oxygen demand of 300 mg/l or less, suspended solids of 300 mg/1 or less, and pH between 6.0 and 9.0 or such other restrictions as established for residential wastewater strength by the Florida Department of Environmental Protection. Prohibited discharges include, but are not limited to, constituents that could cause a fire or explosion; solid or viscous substances which could obstruct flow or interfere with the system; or discharges containing any toxic pollutants.

**SECTION 11. BINDING AGREEMENT; ASSIGNMENTS BY DEVELOPER.** This Agreement shall be binding upon and shall inure to the benefit of DEVELOPER, the TOWN and their respective assigns and successors by merger, consolidation or conveyance. This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by DEVELOPER without the written consent of the TOWN first having been obtained. The TOWN agrees not to unreasonably withhold such consent.

**SECTION 12. NOTICES; PROPER FORM.** Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, or by mail to:

TOWN: The Honorable David Nebel

Mayor, Howey-in-the-Hills

(101 North Palm Ave. 34737)

P. 0. Box 128

Howey-in-the-Hills, Florida 34737

with a copy to: Heather M. Ramos

GrayRobinson, P.A.

(301 E. Pine Street, Suite 1400 32801)

P.O. Box 3068

Orlando, Florida 32802

DEVELOPER:

With a copy to:

**SECTION 13. SURVIVAL OF COVENANTS.** The rights, privileges, obligations and covenants of DEVELOPER and the TOWN shall survive the completion of the work of DEVELOPER with respect to completing the wastewater facilities and services to any phase area and to the Development as a whole.

**SECTION 14. ENTIRE AGREEMENT; AMENDMENTS; APPLICABLE LAW; ATTORNEY’S FEES.** This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between DEVELOPER and the TOWN, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between DEVELOPER and the TOWN. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed. This Agreement shall be governed by the laws of the State of Florida, as well as all applicable local ordinances of the TOWN and it shall be and become effective immediately upon execution by both parties hereto. In the event that the TOWN or DEVELOPER is required to enforce this Agreement by court proceedings or otherwise, by instituting suit or otherwise, then the TOWN or DEVELOPER shall be entitled to recover all costs incurred, including reasonable attorney’s fees.

**SECTION 15. DISCLAIMERS; LIMITATIONS ON LIABILITY.**

**15.1. STATUS.** THE PARTIES DEEM EACH OTHER TO BE INDEPENDENT CONTRACTORS, AND NOT AGENTS OF THE OTHER.

**15.2. INDEMNIFICATION.** UP UNTIL THE DATE OF CONVEYANCE TO THE TOWN OF ALL WASTEWATER COLLECTION AND TRANSMISSION FACILITIES, DEVELOPER WILL INDEMNIFY, SAVE AND HOLD HARMLESS THE TOWN AGAINST ALL LIABILITY, LOSSES, DAMAGE OR OTHER EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES WHICH MAY BE IMPOSED UPON, INCURRED BY OR ASSERTED AGAINST THE TOWN BY REASON OF ANY CLAIM THAT THE TOWN HAS TORTIOUSLY INTERFERED WITH A PREEXISTING CONTRACT RIGHT, THAT THE TOWN HAS CAUSED ANY DAMAGES TO THIRD PARTIES BY REASON OF THE DEVELOPER’S TERMINATION OF OPERATION OF ITS SEWAGE TREATMENT PLANT, THAT THE TOWN HAS CAUSED THE TERMINATION OF SERVICE TO ANY OTHER PERSON, FIRM, OR ENTITY FROM THE SEWAGE TREATMENT PLANT, AND/OR THAT NEGLIGENCE ON THE PART OF THE DEVELOPER OR ITS EMPLOYEES, AGENTS, CONTRACTORS, LICENSEES OR INVITEES; ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING ON OR ABOUT THE DEVELOPMENT OR ANY PART THEREOF; OR ANY FAILURE ON THE PART OF THE DEVELOPER TO PERFORM OR COMPLY WITH ANY COVENANT REQUIRED TO BE PERFORMED OR COMPLIED WITH AGAINST THE TOWN BY REASON OF ANY SUCH OCCURRENCES, DEVELOPER WILL, AT DEVELOPER’s EXPENSE, RESIST OR DEFEND ANY SUCH ACTION OR PROCEEDING. PROVIDED FURTHER, HOWEVER, DEVELOPER SHALL HAVE NO OBLIGATION WITH RESPECT TO CLAIMS ARISING OUT OF THE INTENTIONAL OR NEGLIGENT CONDUCT OF THE TOWN OR ITS EMPLOYEES, AGENTS, CONTRACTORS, LICENSEES OR INVITEES OR OF THIRD PARTIES NOT INCLUDED IN THE DEFINITIONS ABOVE. THE LIABILITY AND IMMUNITY OF THE TOWN IS GOVERNED BY THE PROVISIONS OF §768.28, FLORIDA STATUTES (2008), AND NOTHING IN THIS AGREEMENT IS INTENDED TO EXTEND THE LIABILITY OF TOWN OR TO WAIVE ANY IMMUNITY ENJOYED BY TOWN UNDER THAT STATUTE. ANY PROVISIONS OF THIS AGREEMENT DETERMINED TO BE CONTRARY TO §768.28 OR TO CREATE ANY LIABILITY OR WAIVE ANY IMMUNITY EXCEPT AS SPECIFICALLY PROVIDED IN §768.28 SHALL BE CONSIDERED VOID.

**15.3. FORCE MAJEURE.** THE TOWN SHALL NOT BE LIABLE OR RESPONSIBLE TO THE DEVELOPER BY REASON OF THE FAILURE OR INABILITY OF THE TOWN TO TAKE ANY ACTION IT IS REQUIRED TO TAKE OR TO COMPLY WITH THE REQUIREMENTS IMPOSED HEREBY OR ANY INJURY TO THE DEVELOPER OR BY THOSE CLAIMING BY OR THROUGH THE DEVELOPER, WHICH FAILURE, INABILITY OR INJURY IS CAUSED DIRECTLY OR INDIRECTLY BY FORCE MAJEURE (AS HEREINAFTER SET FORTH). THE TERM “FORCE MAJEURE” AS EMPLOYED HEREIN SHALL MEAN ACTS OF GOD, STRIKES, LOCK‑OUTS, OR OTHER INDUSTRIAL DISTURBANCE; ACTS OF PUBLIC ENEMIES, WAR, BLOCKADES, RIOTS, ACTS OF ARMED FORCES, MILITIA, OR PUBLIC AUTHORITY, EPIDEMICS; BREAKDOWN OF OR DAMAGE TO MACHINERY, PUMPS, OR PIPE LINES; LANDSLIDES, EARTHQUAKES, FIRES, STORMS, FLOODS, OR WASHOUTS; ARRESTS, TITLE DISPUTES, OR OTHER LITIGATION; GOVERNMENTAL RESTRAINTS OF ANY NATURE WHETHER FEDERAL, STATE, TOWN, MUNICIPAL OR OTHERWISE, CIVIL OR MILITARY; CIVIL DISTURBANCES; EXPLOSIONS, FAILURE OR INABILITY TO OBTAIN NECESSARY MATERIALS, SUPPLIES, LABOR OR PERMITS OR GOVERNMENTAL APPROVALS WHETHER RESULTING FROM OR PURSUANT TO EXISTING OR FUTURE RULES, REGULATIONS, ORDERS, LAWS OR PROCLAMATIONS WHETHER FEDERAL, STATE, TOWN, MUNICIPAL OR OTHERWISE, CIVIL OR MILITARY; OR BY ANY OTHER CAUSES, WHETHER OR NOT OF THE SAME KIND AS ENUMERATED HEREIN, NOT WITHIN THE SOLE CONTROL OF THE TOWN AND WHICH BY EXERCISE OF DUE DILIGENCE THE TOWN IS UNABLE TO OVERCOME.

**15.4. DISCLAIMER OF THIRD PARTY BENEFICIARIES.** THIS AGREEMENT IS SOLELY FOR THE BENEFIT OF AND SHALL BE BINDING UPON THE FORMAL PARTIES HERETO AND THEIR RESPECTIVE AUTHORIZED SUCCESSORS AND ASSIGNS, AND NO RIGHT OR CAUSE OF ACTION SHALL ACCRUE UPON OR BY REASON HEREOF, TO OR FOR THE BENEFIT OF ANY THIRD PARTY NOT A PARTY TO THIS AGREEMENT OR AN AUTHORIZED SUCCESSOR OR ASSIGNEE THEREOF.

**15.5. DISCLAIMER OF SECURITY.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE DEVELOPER EXPRESSLY ACKNOWLEDGES (1) THAT IT HAS NO PLEDGE OF OR LIEN UPON ANY REAL PROPERTY (INCLUDING, SPECIFICALLY, THE TOWN’S SYSTEM), ANY PERSONAL PROPERTY, OR ANY EXISTING OR FUTURE REVENUE SOURCE OF THE TOWN (INCLUDING, SPECIFICALLY, ANY REVENUES OR RATES, FEES, OR CHARGES COLLECTED BY THE TOWN IN CONNECTION WITH THE TOWN’S SYSTEM) AS SECURITY FOR ANY AMOUNTS OF MONEY PAYABLE BY THE TOWN UNDER THIS AGREEMENT; AND (2) THAT ITS RIGHTS TO ANY PAYMENTS OR CREDITS UNDER THIS AGREEMENT ARE SUBORDINATE TO THE RIGHTS OF ALL HOLDERS OF ANY STOCKS, BONDS, OR NOTES OF THE TOWN, WHETHER CURRENTLY OUTSTANDING OR HEREAFTER ISSUED.

**SECTION 16. COVENANT NOT TO ENGAGE IN WASTEWATER SERVICE BUSINESS.** The DEVELOPER, as a further consideration for this Agreement, agrees that it shall not (the words “shall not” being used in a mandatory definition) engage in the business of providing wastewater service to the Development during the period of time the TOWN, its successors and assigns, provide wastewater service to the Development, it being the intention of the parties hereto that the foregoing provision shall be a covenant running with the land and under said provision and also under other provisions of this Agreement the TOWN shall have the sole and exclusive right and privilege to provide wastewater service to the Development and to the occupants of each residence, building or unit constructed thereon.

**SECTION 17. RECORDATION.** The parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of Lake County, Florida at the expense of the DEVELOPER.

**SECTION 18. SEVERABILITY.** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

**SECTION 19. AUTHORITY TO EXECUTE AGREEMENT.** The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind the entity for which that person is signing.

**SECTION 20. ARMS LENGTH TRANSACTION.** Both parties have contributed to the preparation, drafting and negotiation of this document and neither has had undue influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement.

**SECTION 21. SPECIAL CONDITIONS.** Notwithstanding any other section in this Agreement, the following Special Conditions are mutually agreed between DEVELOPER and the TOWN. In the event of a conflict between this Section 21 and the rest of the Agreement, Section 21 shall control.

**21.1. Design and Construction of Facilities**. As a condition of receiving wastewater service from TOWN, DEVELOPER shall perform or cause to be performed the design, permitting and installation of a sewer force main line consisting of approximately \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) linear feet of 6 inch diameter pipe, a lift station, and associated facilities as more specifically shown in **Exhibit “B”** attached to and incorporated herein by reference (“Transmission Facilities”). The DEVELOPER shall also install a submerged magnetic flow meter capable of measuring Sewage flow to be conveyed to the Town at a point specified by the Town. The Transmission Facilities shall be designed, constructed and installed pursuant to utility standards identified in the TOWN’s rules, regulations, resolutions, ordinances, manuals of practice, land development code, and TOWN approved plans.

**21.2.** **Provision and Allocation of Wastewater Service Capacity.** DEVELOPER acknowledges and agrees that, to provide retail wastewater service Capacity, the TOWN is subject to certain requirements set forth in certain wholesale wastewater service agreements. On and after the effective date of this Agreement, wastewater service Capacity shall be provided by the TOWN to DEVELOPER for service in the Development in the following manner and subject to the DEVELOPER’S compliance with the following terms and conditions:

(1) Capacity Reservation by the Development**.** The bulk wastewater service provider has set aside and encumbered Capacity, in its Wastewater System for the residential and nonresidential land development contemplated by the Development in the amounts set forth in **Exhibit “D”** attached hereto. To ensure that contributions in aid of construction have been paid and that the wastewater-treatment demand of land development to be permitted from time to time by DEVELOPER within the Development does not exceed the treatment and disposal Capacity available to the TOWN pursuant to the terms of the certain wholesale wastewater service agreements, as a condition to the issuance of any building permit for the construction of a residence or commercial building within the Development, the DEVELOPER agrees to pay all applicable wastewater service capital, Capacity, and connection fees and charges so as to enable the issuance by the bulk wastewater provider of a certificate assuring TOWN that, as required by Section 163.3180 of Florida Statutes, wastewater service will be available concurrent with the new development and that appropriate Contributions in aid of Construction have been paid.

(2) Capacity Needs of the Development**.** On and after the effective date of this Agreement, the TOWN shall accept and dispose of the wastewater service Capacity as required to serve the Development via its wholesale wastewater service agreements in accordance with their terms so long as DEVELOPER pays all applicable rates, fees, and charges in a timely manner. The TOWN shall have no liability for any charges for the capital costs of Capacity or any other capital costs associated with expanding the bulk provider’s Wastewater System to serve the Development.

(3) Technical and Operation and Maintenance Requirements. The TOWN, subject to the ultimate approval of the bulk provider, shall determine the Point of Connection of the two systems to serve the Development. The bulk provider will provide to TOWN the required system pressures and elevations to connect, along with any other applicable technical requirements for connection. Should service to Development necessitate increasing the size of the wastewater main to connect to the Point of Connection, the DEVELOPER shall be responsible for the payment of all costs of such increase in size.

(4) Delivery Pressure; Peak Flows; Usage. DEVELOPER shall deliver Wastewater through the Transmission Facilities at a pressure not less than 26 PSI to enable receipt of Wastewater into the bulk provider’s Treatment Facilities without repumping.

**21.3. TOWN Contribution; Developer Credits.** To induce the TOWN to provide Wastewater Service Capacity to the Development, DEVELOPER shall oversize the lift station and approximately \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) linear feet of wastewater pipeline as depicted on Exhibit “B” (the “Wastewater Force Main ERU Capture Area”) hereof, and the TOWN agrees, at its option, to pay a contribution in cash or provide a credit/reimbursement of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_). This amount represents the “oversizing incremental costs” which is the difference between (i) the DEVELOPER’s construction costs actually incurred by the DEVELOPER for the Transmission Facilities, and (ii) the DEVELOPER’s construction costs which would have been incurred for the Transmission Facilities if the same were designed and constructed in a diameter necessary and permittable under local codes to serve the Development. Upon the completion of the Transmission Facilities, clearance for service by applicable permitting agencies and dedication to the TOWN along with all necessary real property rights as required under this agreement to allow TOWN access for ownership, operation and maintenance thereof, the DEVELOPER, its successors and assigns, shall receive at TOWN’s option, either cash or credits/reimbursements from the transmission component of otherwise paid or payable wastewater capital charges. The cash or credits shall apply to the transmission components of Wastewater Capital Charges collected or to be collected from the Wastewater Force Main ERU Capture Area. ERU credits granted hereunder may, at any time within 10 years after the in-service date of the force main, be applied only for the development on the Property. If all or any portion of the ERU credits provided under this Section 21 are not applied within the applicable 10-year period, those ERU credits shall expire. The TOWN will use reasonable efforts to insure that all that connect to the Transmission Facilities constructed hereunder pay their respective fair shares for hydraulic capacity used in the Transmission Facilities.

**21.4. Transfer of Facilities**. The DEVELOPER shall convey free and clear of all liens and encumbrances the Transmission Facilities to the TOWN together with any necessary easements or interests in real property such that the TOWN can appropriately utilize, operate and maintain said facilities.

**21.5. Prior Notice.** The DEVELOPER agrees to notify the TOWN in writing not less than thirty (30) days prior to estimated date of completion of construction of the force main and the date on which the DEVELOPER will require initial connection to the TOWN facilities. Upon receipt by TOWN of all required governmental clearances on the DEVELOPER constructed facilities, the TOWN will permit connection of such facilities to the TOWN’s wastewater system.

**21.6. No Precedent.** The provisions of this Agreement shall not be construed as establishing a precedent as to the amount or basis of contributions to be made by the DEVELOPER or other utility system extensions that may hereafter be required by DEVELOPER and which are not presently conferred by this Agreement.

**IN WITNESS WHEREOF,** DEVELOPER and the TOWN have executed or have caused this Agreement, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST: **Bishops Gate Property Company, LLC**

By: By:

Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Its \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Town of Howey-In-The-Hills**

ATTEST By: Town Council

By: By:

Town Clerk Dairian Burke Mayor David Nebel

Approved as to form and correctness:

Heather Ramos, Town Attorney

STATE OF FLORIDA

COUNTY OF LAKE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2019, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_ as \_\_\_\_\_\_\_\_\_\_\_\_ of **Bishops Gate Property Company, LLC**. He is personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

NOTARY PUBLIC – STATE OF FLORIDA

Printed Name:

My Commission Expires:

STATE OF FLORIDA

COUNTY OF LAKE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2019, by **Mayor David Nebel,** as Mayor of **Town of Howey-in-the-Hills**. He is personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

NOTARY PUBLIC – STATE OF FLORIDA

Printed Name:

My Commission Expires:

**Exhibit “A”**

***to***

**RETAIL WASTEWATER SERVICE AGREEMENT**

***for***

**BISHOPS GATE**

***[Description of Bishop’s Gate Property]***

**Exhibit “B”**

***to***

**RETAIL WASTEWATER SERVICE AGREEMENT**

***for***

**BISHOPS GATE**

***[Description of Wastewater Lift Station and Force Main]***

**Exhibit “C”**

***to***

**RETAIL WASTEWATER SERVICE AGREEMENT**

***for***

**BISHOPS GATE**

***[Description of Transmission Easement Property]***

**Exhibit “D”**

***to***

**RETAIL WASTEWATER SERVICE AGREEMENT**

***for***

**BISHOPS GATE**

***[Capacity Reservation by the Development]***

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