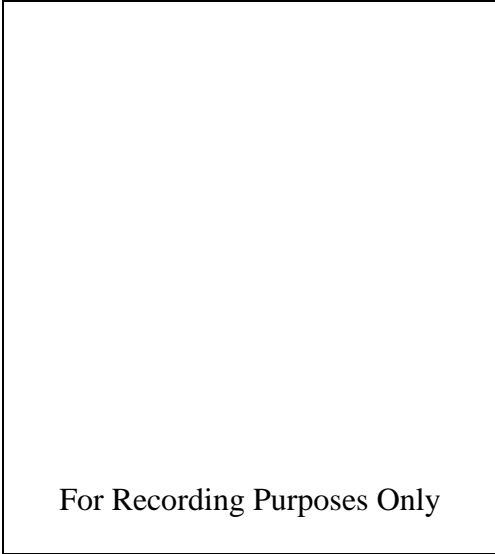


**THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:**

Heather M. Ramos  
**GRAY ROBINSON, P.A.**  
301 East Pine Street, Suite 1400  
Post Office Box 3068  
Orlando, FL 32802-3068  
(407) 843-8880



**RETAIL WASTEWATER SERVICE AGREEMENT**  
*for the*  
**BISHOPS GATE PROPERTY**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, (the “Effective Date”) by and between the **Town of Howey-in-the-Hills**, a Florida municipal corporation (hereafter “TOWN”), and **Bishops Gate Homeowners’ Association, Inc.**, a Florida not-for-profit corporation (hereafter “COMMUNITY”).

**RECITALS**

**WHEREAS**, the Central Lakes Community Development District (the “CDD”) 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 COMMUNITY for the development described herein and known as the Bishops Gate Property (the “Development”) as further described in **Exhibit “A”** attached to and incorporated into this Agreement.

**WHEREAS**, COMMUNITY is interested in obtaining central retail wastewater service for the residents of the COMMUNITY because the Development is no longer 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 COMMUNITY 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) "Agreement" means this Retail Wastewater Service Agreement as it may from time to time be modified.

(2) "Collection and Transmission Facilities" includes the pipelines, conduits, force mains, lift stations and all other facilities used for collection and transmission of wastewater from the COMMUNITY to the Point of Connection.

(3) "Contribution-in-aid-of-Construction" means the sum of money, and/or property, represented by the value of the Collection and Transmission Facilities constructed by COMMUNITY, which COMMUNITY 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.

(4) "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".

~~(5) "ERU" means Equivalent Residential Unit and represents 250 GPD of wastewater flow.~~

(5) ~~(6)~~ "Point of Connection" means the point where the Collection and Transmission Facilities are connected to the TOWN's Wastewater System. In this Agreement, the Point of Connection shall be the pipe junction located at the south end of the Development, where the 4" main line reduces to the 2" main line.

**SECTION 3. CONVEYANCE OF FACILITIES; EASEMENT.**

**3.1.** Upon completion of construction of the Collection and Transmission Facilities described in **Exhibit “B”** attached to and incorporated into this Agreement, the COMMUNITY shall convey to the TOWN, by bill of sale, or other appropriate documents, in a form reasonably satisfactory to the TOWN’s counsel, the complete off-site Collection and Transmission Facilities as constructed by COMMUNITY and approved by the TOWN. Specifically, the COMMUNITY shall convey to the TOWN the Collection and Transmission Facilities which are not located within the Development and which begin at the Point of Connection. The COMMUNITY shall own and maintain, at the cost of the COMMUNITY and in compliance with all local and state regulations and industry standards, all of the Collection and Transmission Facilities located within the Development and up to the Point of Connection. The TOWN agrees that the acceptance of the ~~said~~ facilities installed by the COMMUNITY by acceptance of the bill of sale, shall constitute that assumption of responsibility by the TOWN for the continuous operation and maintenance of the Collection and Transmission Facilities, excluding the portion of the Collection and Transmission Facilities located within the Development to the Point of Connection, from that date forward.

**3.2.** Upon completion of construction of the Collection and Transmission Facilities, the COMMUNITY shall grant to the TOWN a perpetual easement in, under, over and across the Development for the limited purposes described in this section 3.2. In the event the TOWN is made aware of an emergency or time-sensitive issue regarding the Collection and Transmission Facilities located within the Development, the Mayor of the TOWN shall notify the COMMUNITY of such emergency and request that the COMMUNITY immediately commence emergency repairs or replacements as necessary to resolve the emergency. If the COMMUNITY fails to commence any necessary emergency repairs within forty-eight (48) hours of receiving notice from the TOWN, then the Mayor of the TOWN may choose, in his or her sole discretion, ~~for the TOWN to~~ access the Development and replace or repair any portion of the Collection and Transmission Facilities located within the Development as necessary to resolve the emergency. All such work shall be at the sole cost of the COMMUNITY. The TOWN’s election to replace or repair any such portion of the Transmission Facilities located within the Development under this Section 3.2 does not constitute an assumption by the TOWN for the responsibility or maintenance of any portion of the Collection and Transmission Facilities located within the Development. The standard notice provisions in Section 12 of this Agreement shall not apply to notifications made pursuant to this Section 3.2. Instead, the TOWN shall in the case of an emergency or time-sensitive situation, notify Ben Pauluhn by electronic mail [benp@bgss.com](mailto:benp@bgss.com); telephone 314-503-1230; and to the extent possible, other reasonable means to ensure the COMMUNITY is notified as soon as practicable.

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

**4.1.** Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the COMMUNITY, the TOWN covenants and agrees that it will allow the connection of the Collection and Transmission Facilities installed by COMMUNITY to the TOWN’S Wastewater System 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 COMMUNITY that the TOWN will continuously provide, in accordance with the other provisions of this Agreement, and applicable laws, including ordinances, 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 COMMUNITY and its successors and assigns agrees to timely and fully pay all applicable monthly rates, fees, and charges to the TOWN; and the COMMUNITY, its successors and assigns, and any others using the TOWN's Wastewater System by virtue of this Agreement agree to otherwise fully comply with the TOWN's rules, regulations, and ordinances applicable to the provision of wastewater service.

**4.2.** The parties hereto agree to the installation of one (1) wastewater service meter associated with the Development and the TOWN shall establish only one (1) service and billing account for all retail wastewater services provided in connection with this Agreement. [Need confirmation this is acceptable with the CDD]. The said account shall be established in the name of the Community and shall be invoiced or billed directly to the COMMUNITY at the COMMUNITY's address for notices set forth in paragraph 12 hereof. The COMMUNITY and its successors and assigns, ~~agrees~~ shall levy and collect sufficient and adequate fees and charges 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. If any fees and charges are not paid within \_\_\_\_\_ days, then the TOWN may charge a late charge in the amount of \_\_\_\_\_. Upon failure or refusal to pay the amounts due on statements as rendered, the TOWN may, in its sole discretion, terminate service.

**4.3.** On or before the date that the TOWN begins to provide wastewater service to the Development, the COMMUNITY shall deposit with the TOWN and will keep on deposit at all times during the term of this Agreement, a deposit as security for the performance of the COMMUNITY's obligations under this Agreement. The deposit will always equal \$4,000.00. The deposit shall not bear interest. If, at any time, the COMMUNITY fails to perform any of its obligations under this Agreement, then TOWN may, at its option, apply the deposit, or any portion thereof required in payment for the services provided hereunder, in payment of any damages incurred by the TOWN by reason of such failure, or to cure a default; provided, however, if prior to the termination of this Agreement, the TOWN depletes the deposit, in whole or in part, then immediately following such depletion and upon notice by the TOWN, the COMMUNITY shall restore the amount so used by the TOWN. Unless the TOWN uses the deposit to cure a default of the COMMUNITY or to pay damages for the COMMUNITY's breach of this Agreement, within thirty calendar days after the termination of this Agreement the TOWN shall refund to the COMMUNITY any funds remaining in the deposit, without interest. If claims of the TOWN exceed the amount of the deposit, the COMMUNITY shall remain liable for the balance.

**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, COMMUNITY hereby

covenants and agrees to pay for the construction of the Transmission and Collection Facilities and to transfer ownership and control of the portion of the Transmission and Collection Facilities located outside of the Development beginning at the Point of Connection and to the CDD. All design and construction shall be in accordance with TOWN ordinances, rules, regulations, and utility standards.

**5.2.** On or before the date that the off-site portion of the Collection and Transmission Facilities are conveyed to the TOWN, the COMMUNITY 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 Collection and Transmission Facilities proposed to be installed from the Point of Connection to the CDD to provide service to the subject Development for the off-site portion only. No construction on the off-site portion of the Collection and Transmission Facilities shall commence until TOWN has approved such plans and specifications in writing. After approval, COMMUNITY shall cause to be constructed, at COMMUNITY's expense, the off-site portion of the Collection and Transmission Facilities as shown on all plans and specifications.

**5.3.** During the construction and installation of the Collection and Transmission Facilities by COMMUNITY, the TOWN shall have the right to inspect such construction and 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.

**5.4.** All installations by COMMUNITY 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 COMMUNITY to assign warranties to TOWN with written approval from COMMUNITY's contractors that such assignment meets their approval and that 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 COMMUNITY 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 COMMUNITY nor any person or other entity holding any of the Development by, through or under COMMUNITY, or otherwise, shall have any present or future right, title, claim or interest in and to the contributions or to any of the Collection and Transmission Facilities and properties of the TOWN, and all prohibitions applicable to COMMUNITY 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. COMMUNITY shall not be entitled to offset the contributions against any claim or claims of the TOWN.

**SECTION 6.** Reserved.

**SECTION 7. OWNERSHIP OF FACILITIES.** The off-site portion of the 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 or 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. The portion of the Collection and Transmission Facilities located in the Development, shall at all times remain in the complete and exclusive ownership of the COMMUNITY.

**SECTION 8. APPLICATION OF RULES, REGULATIONS, AND RATES.** The TOWN may establish, revise, modify and enforce ordinances, rules, regulations and rates covering the provision of wastewater service to the property owners in the Development. Such ordinances, rules, regulations and rates are subject to the approval of the Town Council of the Town of Howey-in-the-Hills, Florida. Rates charged to COMMUNITY or customers located in the Development shall be subject to a surcharge in accordance with Section 180.191 of the Florida Statutes. All ordinances, rules, regulations, and rates in effect, or placed into effect in accordance with the preceding, shall be binding upon COMMUNITY, upon any other entity holding by, through or under COMMUNITY; and upon any customer of the wastewater service provided to the Development by the TOWN.

**SECTION 9. PERMISSION TO CONNECT REQUIRED.** COMMUNITY shall not have the right to and shall not connect to the TOWN's Wastewater System 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 CDD's publicly owned treatment works. COMMUNITY acknowledges and recognizes that in the operation and maintenance of the TOWN's Wastewater System, the TOWN has certain obligations to the CDD 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 COMMUNITY or TOWN. COMMUNITY agrees that all wastewater collected by COMMUNITY 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 wastewater collection facilities to the Transmission Facilities, COMMUNITY 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 the CDD shall have the right to sample COMMUNITY'S wastewater to verify compliance with this Agreement. In the event the TOWN or the CDD 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 CDD's wastewater system at levels determined by the TOWN or the CDD, 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 CDD 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/l 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 COMMUNITY, 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 COMMUNITY 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~~

a. ~~For a notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, or by mail to: or other communication under this Agreement to be valid, it must be in writing, and signed by the sending party, and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered or certified mail, in each case return receipt requested and postage prepaid; or (3) nationally recognized overnight carrier, with all fees prepaid. Delivery via facsimile or e-mail is also permitted provided it is followed by delivery via one of the methods (1)-(3) above and any such delivery via facsimile or e-mail shall not be deemed to have been received pursuant to subsection 12.c. until such delivery pursuant to methods (1)-(3) above shall be deemed to have been received pursuant to subsection 12.c.~~

b. ~~For a notice or other communication under this Agreement to be valid, it must be addressed to the receiving party at the addresses listed below for the receiving party or to any other addresses designated by the receiving party in a notice in accordance with this section 12.~~

TOWN: The Honorable ~~David Nebel~~ Martha MacFarlane  
Interim Mayor, Howey-in-the-Hills  
(101 North Palm Ave. 34737)  
P. O. Box 128  
Howey-in-the-Hills, Florida 34737

for flushing: John Ernest  
Public Services Director  
316 W. Central Avenue  
Howey-in-the-Hills, Florida 34737  
352-324-2290  
[email?]

with a copy to: Heather M. Ramos  
GrayRobinson, P.A.  
(301 E. Pine Street, Suite 1400 32801)  
P.O. Box 3068  
Orlando, Florida 32802

COMMUNITY: Bishops Gate HOA  
C/O Ben Pauluhn  
26945 Bella Vista Dr.  
Howey in the Hills, FL 34737

With a copy to: Scott A. Gerken  
Stone & Gerken, P.A.  
4850 N. Highway 19A  
Mount Dora, Florida 32757

CDD (for flushing):

c. A valid notice or other communication under this Agreement is effective when received by the receiving party.

d. A party desiring to change its address or contact person for notices must notify the other party at least ten days in advance, in accordance with the notice requirements of this Section.

**SECTION 13. SURVIVAL OF COVENANTS.** The rights, privileges, obligations and covenants of COMMUNITY and the TOWN shall survive the completion of the work of COMMUNITY with respect to completing the Collection and Transmission Facilities and the provision of wastewater services to any area of 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 COMMUNITY and the TOWN, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between COMMUNITY 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 COMMUNITY is required to enforce this Agreement by court proceedings or otherwise, by instituting suit or otherwise, then the TOWN or COMMUNITY 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 the off-site Collection and Transmission Facilities, COMMUNITY 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 COMMUNITY's termination of operation of its wastewater treatment, that the TOWN has caused the termination of service to any other person, firm, or entity from the TOWN's Wastewater System, and/or that negligence on the part of the COMMUNITY 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 COMMUNITY to perform or comply with any covenant required to be performed or complied with, including maintaining the lift stations, against the TOWN by reason of any such occurrences, COMMUNITY will, at COMMUNITY's expense, resist or defend any such action or proceeding. Provided further, however, COMMUNITY 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.

**15.3. INDEMNIFICATION FOR ON-SITE FACILITIES.** With respect to the Collection and Transmission Facilities maintained and owned by the COMMUNITY, the COMMUNITY shall indemnify and hold harmless the TOWN, its Officers, Council Members, board members, employees and agents to the fullest extent permitted by law from and against all claims, damages, losses, liens, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) to the extent caused by (i) breach of the terms of this Agreement by the COMMUNITY or any person or organization directly, or indirectly, employed by the COMMUNITY in connection with such portions of the Collection and Transmission Facilities; (ii) violations of applicable law by any person or organization directly or indirectly employed by COMMUNITY or any person or organization directly, or indirectly, employed by the COMMUNITY in connection with such

portions of the Collection and Transmission Facilities; (iii) injury or death of any third parties or damage to property to the extent attributable to the negligence or misconduct of the COMMUNITY or any person or organization directly, or indirectly, employed by the COMMUNITY in connection with such portions of the Collection and Transmission Facilities; or (iv) the negligence, recklessness, or intentional wrongful misconduct of the COMMUNITY and persons employed by the COMMUNITY in connection with such portions of the Collection and Transmission Facilities.

**15.4. SOVEREIGN IMMUNITY.** The liability and immunity of the TOWN is governed by the provisions of §768.28, Florida Statutes, and this Agreement does not 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.

**15.5. FORCE MAJEURE.** The TOWN shall not be liable or responsible to the COMMUNITY 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 COMMUNITY or by those claiming by or through the COMMUNITY, 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.

**15.6. 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.

**15.7. DISCLAIMER OF SECURITY.** Notwithstanding any other provision of this Agreement, the COMMUNITY 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 Wastewater 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 COMMUNITY, 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 Development is located within the TOWN’s utility service area, 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.** This Agreement shall be recorded in the Public Records of Lake County, Florida at the expense of the COMMUNITY.

**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 COMMUNITY 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, COMMUNITY shall perform or cause to be performed the design, permitting and installation of a sewer force main line consisting of approximately \_\_\_\_\_ ( ) linear feet of 4 inch diameter pipe, and the Collection and Transmission Facilities as more specifically shown in **Exhibit “B”** attached to and incorporated herein by reference. The COMMUNITY shall also install a single submerged magnetic flow meter capable of measuring wastewater flow to be conveyed to the Town at a point specified by the Town. The Collection and 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. Flushing the Collection and Transmission Facilities.** The COMMUNITY, not the TOWN, shall be responsible for ~~providing~~ periodic flushing of the

Collection and Transmission Facilities. Specifically, and as required from time-to-time in order to maintain the Collection and Transmission Facilities, the COMMUNITY shall (i) request and obtain permission, in writing, from the contacts in Section 12 for the CDD and the TOWN at least 24 hours prior to the scheduled flushing, (ii) provide the water in the amount required by the CDD for flushing the Collection and Transmission Facilities, and (iii) perform all requirements applicable to and necessary to complete the flushing at the sole cost of the COMMUNITY.

**21.21.3. Provision and Allocation of Wastewater Service Capacity.**

COMMUNITY 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 COMMUNITY for service in the Development in the following manner and subject to the COMMUNITY'S compliance with the following terms and conditions:

(1) **Capacity Reservation by the Development.** The CDD has set aside and encumbered capacity, in its Wastewater System for the Development in the amounts set forth in **Exhibit "C"** attached hereto. To ensure that ~~contributions in aid of construction have~~the Contribution-in-aid-of-Construction has been paid and that the wastewater-treatment demand of land development to be permitted from time to time by COMMUNITY 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 or in the amount set forth in Exhibit "C", as a condition to the issuance of any building permit for the construction of a residence or commercial building within the Development, the COMMUNITY 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~~CDD 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~~Contribution-in-aid-of-Construction has 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 COMMUNITY 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 CDD's Wastewater System to serve the Development.

(3) **Technical and Operation and Maintenance Requirements.** The CDD 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 COMMUNITY shall be responsible for the payment of all costs of such increase in size.

(4) **Delivery Pressure; Peak Flows; Usage.** COMMUNITY shall deliver Wastewater through the Transmission Facilities at a pressure to enable receipt of Wastewater into the bulk provider’s Treatment Facilities without repumping.

~~**21.3. Transfer of Facilities.** The COMMUNITY shall convey free and clear of all liens and encumbrances the off-site Collection and 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.~~

**21.4. Prior Notice.** The COMMUNITY 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 COMMUNITY will require initial connection to the TOWN’s Wastewater System. Upon receipt by TOWN of all required governmental clearances for the COMMUNITY’s Collection and Transmission Facilities, the TOWN will permit connection of such facilities to the TOWN’s Wastewater System.

**21.5. 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 COMMUNITY or other utility system extensions that may hereafter be required by COMMUNITY and which are not presently conferred by this Agreement.

**IN WITNESS WHEREOF,** COMMUNITY 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 Homeowners’ Association, Inc**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Mr. \_\_\_\_\_, Its \_\_\_\_\_

ATTEST

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

By: Town Council

By: \_\_\_\_\_  
Town Clerk Dairian Burke  
MacFarlane

By: \_\_\_\_\_  
Interim Mayor ~~David Nebel~~ Martha

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 Homeowners' Association, Inc.** 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~~ Martha MacFarlane**, as interim Mayor of **Town of Howey-in-the-Hills**. ~~He~~She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC – STATE OF FLORIDA  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Draft ~~August 27~~September 17, 2019

**Exhibit "A"**  
*to*  
**RETAIL WASTEWATER SERVICE AGREEMENT**  
*for*  
**BISHOPS GATE**

*[Description of Bishop's Gate Property]*

Draft ~~August 27~~September 17, 2019

**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

*[Capacity Reservation by the Development]*

**Summary report:**  
**Litéra® Change-Pro 7.5.0.185 Document comparison done on 9/17/2019**  
**1:18:33 PM**

<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
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<b>Modified DMS:</b> iw://FSDMS/ACTIVE/37739770/4	
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<u>Move To</u>	0
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<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>84</b>