
**Town of Howey-in-the-Hills
and
Central Lake Community Development District**

**AMENDED AND RESTATED
WHOLESALE WASTEWATER TREATMENT AGREEMENT**

THIS AMENDED AND RESTATED WHOLESALE WASTEWATER TREATMENT AGREEMENT (“Agreement”) is made and entered into as of _____, 2024, by and between the **Town of Howey-in-the-Hills**, a Florida municipal corporation (“Howey”), and the **Central Lake Community Development District**, a Florida special district created pursuant to Chapter 190 of the Florida Statutes, (“CDD”), and amends and restates in their entirety:

- i. that certain Wholesale Wastewater Service Agreement between Howey and the CDD dated August 7, 2007 (“2007 Wholesale Agreement”) and
- ii. that certain Wholesale Wastewater Service Agreement between Howey and the CDD dated February 27, 2012 (“2012 Wholesale Agreement” and, together with the 2007 Wholesale Agreement, the “Prior Wholesale Agreements”).

RECITALS

WHEREAS, the CDD leases and operates a wastewater treatment system located in Lake County, Florida (“CDD’s Wastewater System”) and pursuant to the 2007 Wholesale Agreement sold Wastewater Treatment Capacity (defined below) to Howey on a wholesale basis for the three developments described therein and known as Mission Rise, The Reserve, and Venezia North and South (collectively, the “2007 Developments”).

WHEREAS, by Agreements and Commitments for Utility Service (“CDD Service Agreements”), the 2007 Developments reserved capacity, and the CDD set aside and encumbered capacity, in the CDD’s Wastewater System for the treatment and disposal of wastewater to be generated by the land development contemplated to occur within the 2007 Developments.

WHEREAS, subsequent to entry into the 2007 Wholesale Agreement, one of the 2007 Developments, Mission Rise, defaulted in its obligations under its respective CDD Service Agreement and forfeited its reserved capacity to the CDD; the CDD Service Agreements with The Reserve (n/k/a Hillside Groves) and with Venezia North (n/k/a Talichet) and Venezia South (“Remaining 2007 Developments”) remain in good standing.

WHEREAS, pursuant to the 2012 Wholesale Agreement, the CDD sold Wastewater Treatment Capacity to Howey on a wholesale basis for the development described therein and known as the Bouis Property (n/k/a Lake Hills PUD (“2012 Development”)).

WHEREAS, the 2012 Development has not previously reserved capacity, and the CDD has not previously set aside and encumbered capacity, in the CDD’s Wastewater System for the development contemplated to occur within the 2012 Development, nor was any specific capacity reserved in the 2012 Wholesale Agreement.

WHEREAS, in addition to the Prior Wholesale Agreements, Howey, the CDD, and The School Board of Lake County entered into an Interlocal Agreement for Wastewater Service for the ESE Center dated February 25, 2008 (“School Board Agreement”).

WHEREAS, Howey enacted Ordinance 2003-307 on August 11, 2003, under which Howey created a water and wastewater service area as authorized by Chapter 180, Florida Statutes (“180 Service Area”).

WHEREAS, Howey’s 180 Service Area includes the entire town as well as unincorporated areas of Lake County in the general vicinity of Howey as depicted in the Utility Service Area Map attached as Exhibit “A” to this Agreement.

WHEREAS, the 2007 Wholesale Agreement, the 2012 Wholesale Agreement, and the School Board Agreement take different approaches to the provision of wholesale wastewater service with regard to issues such as billing and capacity, and there is no agreement that addresses development within the remainder of Howey’s 180 Service Area.

WHEREAS, the parties desire to amend and restate in their entirety the Prior Wholesale Agreements so that the provisions of this Agreement will apply to all areas subject to the Prior Wholesale Agreements, together with all areas within the remainder of Howey’s 180 Service Area, but will not apply to the area subject to the School Board Agreement.

WHEREAS, the CDD has determined its treatment facilities have 413,000 GPD in unused, unreserved, and available capacity it is willing to provide to Howey for use as provided in this Agreement, in addition to that capacity which was previously agreed upon.

NOW THEREFORE, in consideration of the Recitals, covenants, agreement and promises herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct, and form a material part of this Agreement upon which the parties have relied.

SECTION 2. DEFINITIONS. The Parties agree that in construing this Agreement, the following words, phrases, and terms shall have the following meanings unless the context indicates otherwise:

2.1. “Agreement” means this Amended and Restated Wholesale Wastewater Treatment Agreement as it may from time to time be modified.

2.2. “Capacity Request Notice” means the written request and notification for additional Wastewater Treatment Capacity provided by Howey to the CDD in the manner set forth in Section 3.4 of this Agreement.

2.3. “CDD Service Agreements” means those certain Agreements and Commitments for Utility Service originally entered between the CDD, as wastewater service provider and backup potable water service provider, and the owners of the lands subject to the 2007 Wholesale Agreement.

Note: Councilor Miles asks ... Is this in the “Agreements and Commitments” between the CDD and individual developers? Where does this come from?

2.4. “County” means Lake County, a political subdivision of the State of Florida.

2.5. “County Interlocal Agreement” means that certain Interlocal Agreement between the County and the CDD dated May 10, 2001, as amended by that certain First Amendment date November 16, 2006, that certain Second Amendment dated June 26, 2007, and that certain Third Amendment dated September 2, 2015, and authorizing the CDD to provide water and wastewater utility services in certain portions of the County.

2.6. “Developments” means the Remaining 2007 Developments and the Future Development, including the 2012 Development, but does not include the area subject to the School Board Agreement.

2.7. “ERU” means Equivalent Residential Unit and represents 250 GPD of wastewater flow.

2.8. Reserved.

2.9. “Future Development” means future customers of Howey’s Collection Facilities located in areas within Howey’s 180 Service Area other than (i) the Remaining 2007 Developments, (ii) the 2012 Development, (ii) the property subject to the School Board Agreement, and (iii) the CDD’s boundaries as of the effective date.

2.10. “Howey’s Collection Facilities” means the lines, pipes, meters, and appurtenant equipment owned and operated by Howey to collect Wastewater within the Developments and the area subject to the School Board Agreement and to transmit the same to the Point of Connection with the CDD’s Interconnect Facilities.

2.11. “Interconnect Facilities” means the wastewater meters and other facilities owned and operated by the CDD at the points of connection between Howey’s Collection Facilities and the Treatment Facilities.

2.12. “GPD” means gallons per day, on an average annual basis.

2.13. “GPM” means gallons per minute actual flow rate.

2.14. “MGD” means million gallons per day on an annual average basis.

2.15. “Point of Connection” means the location where Howey’s Collection Facilities connect to the CDD’s Interconnect Facilities. At that point, appropriate metering may be installed by the CDD to measure the flow of wastewater from Howey’s Collection Facilities.

2.16. “Prior Wholesale Agreements” means the 2007 Wholesale Agreement and the 2012 Wholesale Agreement.

2.17. “PSI” means pounds per square inch of fluid pressure.

2.18. “Remaining 2007 Developments” means the 2007 Developments known as The Reserve (n/k/a Hillside Grove) and Venezia North (n/k/a Talichet) and Venezia South, for which the CDD Service Agreements remain in good standing, and the legal descriptions of which are set forth on the attached Exhibit “B.”

2.19. “Residential Wastewater Strength” means residential and commercial wastewater discharges exhibiting the following characteristics: biochemical oxygen demand of 200 mg/1 or less, suspended solids of 200 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 Regulation or its successor. Prohibited discharges include, but are not limited to, constituents that could cause a fire or explosion, solid or viscous substances that could obstruct flow or interfere with the system, and discharges containing toxic pollutants.

Note: Councilor Miles says ... “The Town needs to understand the basis for these changes from the original agreement.”

2.20. “CDD’s Wastewater System” means the CDD’s wastewater collection, transmission and treatment facilities (including the Treatment Facilities) in which Wastewater is treated and disposed of, and which are operated and maintained by the CDD.

[Drafting note: this definition is out of alphabetical order]

2.21. “School Board Agreement” means that certain Interlocal Agreement for Wastewater Service for the ESE Center among Howey, the CDD, and the School Board of Lake County dated February 25, 2008.

2.22. “Treatment Facilities” means those treatment and disposal facilities and rights used by the CDD to treat wastewater and detain, transmit, and dispose of said treated wastewater in accordance with applicable governmental and regulatory requirements.

2.23. “Wastewater” means water-carried wastes from residences, business-buildings, institutions, industrial establishments, and other customers, but does not mean or include hazardous or toxic wastes.

2.24. “Wastewater Treatment Capacity” means the volume of wastewater flow measured in GPD, the capacity for treatment of which Howey wishes to buy from the CDD and which the CDD agrees to accept on a continuous basis into the CDD’s Wastewater System in accordance with the terms of this Agreement.

2.25. “180 Service Area” means the water and wastewater service area created by Howey when it enacted Ordinance 2003-307 on August 11, 2003, as authorized by Chapter 180, Florida Statutes, and which is depicted on the attached Exhibit “A.”

2.26. “2007 Developments” means the residential and commercial land use projects known as Mission Rise, The Reserve (n/k/a Hillside Groves), and Venezia North (n/k/a Talichet) and Venezia South, and originally subject to the 2007 Wholesale Agreement.

2.27. “2007 Wholesale Agreement” means that certain Wholesale Wastewater Service Agreement between Howey and the CDD dated August 7, 2007.

2.28. “2012 Development” means the Future Development known as the Bouis Property (n/k/a Lake Hills), the legal description of which is set forth on the attached Exhibit “C.”

2.29. “2012 Wholesale Agreement” means that certain Wholesale Wastewater Service Agreement between Howey and the CDD dated February 27, 2012.

SECTION 3. PROVISION AND ALLOCATION OF WASTEWATER TREATMENT CAPACITY. On and after the effective date of this Agreement, as set forth in Section 22, Wastewater Treatment Capacity shall be provided by the CDD to Howey to serve the Developments in the following manner and subject to the following terms and conditions:

3.1. Capacity Reservation by the Remaining 2007 Developments. The CDD represents and warrants to Howey that, pursuant to the CDD Service Agreements that remain in good standing, the Remaining 2007 Developments have reserved treatment capacity, and the CDD has set aside and encumbered capacity in the CDD's Wastewater System for the residential and nonresidential land development contemplated by the CDD Service Agreements to occur in the future at the Remaining 2007 Developments in the amounts set forth in Exhibit “D” to this Agreement.

3.2 Certificate of Wastewater Treatment Availability. To ensure that required 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 Howey within the Developments does not exceed the treatment and disposal capacity of the CDD’s Wastewater Facilities, Howey shall require, as a condition to the issuance of a building permit for the construction of a residential or nonresidential building within the Developments, that the landowner or other developer seeking

such building permit secure from the CDD the issuance of a certificate assuring Howey 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. The foregoing does not apply if and when Howey elects to issue a permit or permits for construction within the Future Development either (i) with a septic or other on-site system for wastewater treatment or (ii) with wastewater treatment to be provided by a utility other than the CDD.

3.3. Capacity Needs of the Remaining 2007 Developments. On and after the effective date of this Agreement, the CDD shall continue to accept, treat, and dispose of Wastewater from the Remaining 2007 Developments as required by the CDD Service Agreements. Howey shall have no liability for unpaid charges, if any, for the capital costs of capacity at the Treatment Facilities or other capital costs, if any, associated with expanding the CDD's Wastewater System to serve the Remaining 2007 Developments.

3.4. Purchase of Capacity for Future Development. After analysis of its wastewater-treatment system in 2023 the CDD notified Howey that it then had 413,000 GPD, or 1,652 ERU's, of available, unreserved capacity ("Excess Capacity") that may be assigned by Howey to Future Development as Howey may choose. Howey may assign this Excess Capacity to Future Development as solely selected by Howey. The parties expressly agree that the first assignments of the Excess Capacity shall include the following:

- Howey Market – one ERU, and
- four lots adjacent to (but not part of) Venezia South and currently served by the Howey Wastewater Utility – one ERU for each lot, a total of four ERU's.

Drafting note: address Town Hall, Police Station, and Boondocks??

The remaining Excess Capacity may be assigned by Howey to such residential and nonresidential Future Development as Howey and its governing body decide. Notwithstanding subsection 3.2, Howey may not allow another utility to provide wastewater treatment to Future Development until either all Excess Capacity is assigned or the then-remaining amount of Excess Capacity is insufficient to serve the particular Future Development.

As it assigns the Excess Capacity Howey shall confirm each such assignment no later than 60 days prior to hook-up by tendering a capacity payment to the CDD in the amount of the then-prevailing rate per ERU.

After assignment of all Excess Capacity, when Howey elects to purchase capacity in the CDD's Wastewater System for Future Development, the purchase shall occur as follows:

a. *Request for Capacity.* On each occasion that Wastewater Treatment Capacity is to be requested, Howey shall submit a written Capacity Request Notice to the CDD specifying the capacity being requested and the proposed date of delivery of such capacity. Within 30 days of receipt of the Capacity Request Notice the CDD shall notify Howey in writing whether such capacity is then available.

b. *Capacity available.* If the CDD notifies Howey that Wastewater Service Capacity in the amount specified in the Capacity Request Notice is currently available, Howey shall confirm its intention to purchase such capacity by tendering a capacity payment to the CDD at the then prevailing rate per ERU.

c. *Capacity not available.* If the CDD notifies Howey that Wastewater Service Capacity in the amount specified in the Capacity Request Notice is not currently available:

(i) Howey may amend its request (A) to specify a capacity amount that is in increments not less than 435,000 GPD, or a multiple thereof, without the express written consent of the CDD, (B) to specify a proposed capacity delivery date that is not less than 24 full calendar months after the date of delivery of such notice, and (C) to estimate the anticipated increase in the maximum wastewater flow rate in GPM.

(ii) Upon receipt of the amended Capacity Request Notice, the CDD shall have 120 days to verify in writing whether a plant expansion to accommodate the requested increase in treatment capacity, the proposed delivery date, and the maximum wastewater flow rate are technically and economically feasible, including determining whether any adjustment to the CDD's then-prevailing capacity rate per ERU is adequate to cover all design and construction costs of the proposed expansion. The written verification from the CDD to Howey shall advise whether the requested increase in treatment capacity is technically and economically feasible, and if feasible, shall further advise the estimated date by which the requested capacity should be available and the total capacity payment that will be due for the expansion.

(iii) If the CDD's verification advises that the requested increase in treatment capacity is technically and economically feasible, Howey shall have 60 days to confirm its request by tendering the capacity payment to the CDD. Upon receipt of the capacity payment in the amount specified in the CDD's verification to Howey, the CDD shall commence design and construction of an amount of Wastewater Service Capacity, in MGD, as also specified in such verification.

d. *Capacity payment.* The capacity payment shall be an amount equal to the amount of connection fees, impact fees, or contribution-in-aid-of construction (CIAC) fees that would be payable by a customer within the 180 Service Area to reserve the requested amount of treatment capacity in the CDD's Wastewater System at the time of the CDD's verification to Howey of existing capacity availability as provided in Section 3.4 or the cost of an increase in treatment capacity as provided in Section 3.4(b)(iii). Upon delivery of a capacity payment, and confirmation by the CDD that such payment is adequate to fund design and construction of the requested treatment capacity, Howey shall be deemed to own the right to the collection, transmission, treatment, and disposal of the purchased amount of capacity in the CDD's Wastewater System. The CDD may earmark, sell, assign, or convey a portion of the purchased capacity only at the direction of Howey or with Howey's consent, which may be granted or withheld at Howey's discretion.

e. *Delivery of treatment capacity.* The CDD shall deliver the Wastewater Service Capacity to Howey on a date as close as reasonably practicable to the date requested by

Howey in the capacity request notice. Upon such capacity becoming available for use by Howey, including completing construction of any required expansion of the Treatment Facilities, the CDD shall provide written notice to Howey of such availability.

f. *Limitation.* Notwithstanding any other provision of this Agreement, the CDD may, but shall not be required, to expand the Treatment Facilities beyond a total wastewater treatment capacity of 2.61 MGD.

Note: Councilor Miles asks ... "Four expansions of capacity by 435GPD increments gets to 2.61MGD, not 2.71 ... or is there a different math on this?"

g. *Reservation fees.* [*to be added ... reservation fees will be payable to the CDD for capacity reserved, but not used, by a particular Future Development customer*]

3.5. Technical and Operation and Maintenance Requirements. The CDD shall determine each Point of Connection of the two systems to serve the Developments.

(a) The CDD will provide to Howey the required system pressures and elevations to connect, along with any other applicable technical requirements for connections. Howey shall review the proposed Point of Connection based upon the CDD's technical requirements. Should service to a Development necessitate the CDD increasing the size of its wastewater main to connect to the Point of Connection, the CDD shall have no obligation to undertake and complete the upsizing unless and until the involved Development and/or Howey pays or otherwise makes arrangement, in a manner acceptable to the CDD, for payment of all costs of such increase in size.

(b) Both Howey and the CDD acknowledge that each party operates and maintains its own wastewater system on its respective side of the Point of Connection. At the Point of Connection, the CDD may provide appropriate metering and in such case, the maintenance and reading of the Point of Connection meters. If a meter is installed, the meter shall be calibrated as required by law and the results provided to Howey. In the event of meter failure, both Howey and the CDD will mutually develop a method to estimate flows until the meter is repaired.

3.6. Delivery Pressure; Peak Flows; Usage. Howey shall deliver Wastewater through Howey's Collection Facilities and to the Interconnect Facilities at a pressure not less than 26 PSI to enable receipt of Wastewater into the Treatment Facilities without repumping. The CDD shall receive Wastewater flows from Howey at a flow rate not exceeding 1,500 GPM unless increased in conjunction with a purchase of additional wastewater treatment capacity as provided in Section 3.3. If at any time sanitary Wastewater flow from Howey exceeds 1,500 GPM or other maximum accepted by the CDD in conjunction with a purchase of additional wastewater treatment capacity, Howey shall, at its expense, plan, construct, operate, and maintain a surge tank as a part of the Howey Collection Facilities, in order to reduce Wastewater flows to a rate that is at or below 1,500 GPM or other accepted maximum.

3.7. Treated Wastewater. Wastewater received by the CDD from Howey through the Interconnect Facilities shall be deemed to be the property of the CDD.

Drafting note: the CDD has indicated reclaimed water will be available from the Excess Capacity hookups – agreement provisions to be added accordingly, including reclaimed-water rates to be charged.

SECTION 4. PURCHASE OF EXCESS WASTEWATER CAPACITY. In the event that Howey’s wastewater usage exceeds its subscribed capacity for three (3) consecutive months, Howey shall either buy additional wastewater capacity from the CDD in the manner provided in Section 3.4 or shall pay the capital costs of providing the additional capacity needed, but only if the CDD provides Howey written notice that wastewater received by the CDD has exceeded Howey’s subscribed capacity for a one (1) month period and such notice is received by Howey within fifteen (15) days following the termination of that one (1) month period for which Howey’s usage exceeded its subscribed capacity.

SECTION 5. SERVICE STANDARDS. The parties mutually agree that after connection of Howey’s Collection Facilities to the Interconnect Facilities, the CDD agrees to comply with all state, regional, and federal requirements and rules applicable to the provision of Wastewater Service Capacity to the public. Notwithstanding the above, the CDD does not guaranty or warrant any special service, pressure, quality, capacity, availability, or other facility other than what is required to fulfill a duty of reasonable care to the customers to whom it provides such Wastewater Service Capacity. Upon connection of Howey’s Collection Facilities to the Interconnect Facilities, any customers that have connected or will connect into Howey’s Collection Facilities shall be Howey’s retail customers. Howey shall be the party responsible for discontinuing services to customers provided for hereunder if customers fail to pay bills for said services.

SECTION 6. CONSISTENCY OF WASTEWATER. Howey acknowledges and recognizes that in the operation and maintenance of the CDD’s Wastewater System, the CDD has certain obligations to protect the health, safety and welfare of the public and to prevent undue burden to the CDD’s customers resulting from extraordinary discharges attributable to Howey.

(a) Howey agrees that all Sewage collected by Howey and transmitted to the CDD shall conform to the CDD’s published standards prior to introduction into the CDD’s Treatment Facilities.

(b) 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 CDD’s Wastewater System and delivered to the Treatment Facilities. Non-domestic wastes from commercial establishments may be introduced into the CDD’s Wastewater System only upon prior written approval from the CDD based on the CDD’s determination that such non-domestic waste will not harm the Treatment Facilities. Should any non-domestic wastes, grease or oils, including but not limited to, floor wax, paint, chlorides, or salt water be delivered to the Treatment Facilities, Howey will be responsible for payment of the cost and expense required in correcting or repairing any resulting damage to the Treatment Facilities or property of third parties. The CDD shall have the right to sample Howey’s sewage to verify compliance with this Agreement.

(c) In the event the CDD determines that property served or to be served by Howey poses a threat of introducing chlorides, salt water, or similar constituents into the Treatment Facilities at levels determined by the CDD, in accordance with current industry standards, to be harmful to the Treatment Facilities, including but not limited to, the Treatment Facilities' ability to provide effluent meeting reuse standards, and its acceptability as an irrigation supply source for vegetation, 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 Treatment Facilities. In the event of such declination or discontinuance of service, Howey shall have the right to provide or obtain treatment of the effluent from such property through its own facilities or from a third party.

SECTION 7. WHOLESALE WASTEWATER USER CHARGES.

Drafting note: the CDD remains interested in negotiation of new wholesale rates.

The CDD agrees to provide transmission, treatment and disposal of Howey's wastewater for a monthly charge per ERU.

(a) The volume may be measured by the CDD at the Point of Connection between the CDD and Howey. After the first of each month, the CDD shall submit an invoice to Howey for treatment services rendered to Howey during the previous month detailing the number of ERUs. Payment of the invoice and the consequences of failure by Howey to pay the invoice timely shall be governed by the Local Government Prompt Payment Act in Part VII of Chapter 218 of Florida Statutes.

(b) The initial rate payable by Howey shall be \$ [REDACTED] per month per ERU for customers connected to Howey's Collection Facilities. This rate shall remain in effect until the fourth anniversary of effective date of this Agreement unless:

CDD elects to conduct, at its expense, a rate study for the entire CDD Wastewater System, both inside and outside the boundaries of Howey. The study shall arrive at a uniform retail rate for all retail customers of the CDD's Wastewater System, and may consider conversion to a metered rate per thousand gallons of wastewater flow. Upon completion of the rate study, that replacement rate shall be charged uniformly to all CDD retail wastewater customers, and the wholesale rate to be charged to Howey will be eighty-five percent (85%) of the retail rate determined by the study. That replacement rate (and the 85% wholesale rate to be paid by Howey) shall remain in effect for at least the remainder of the four (4) years running from the date of the first building permit issued in the Developments.

After the fourth anniversary of the effective date of this Agreement either Howey may require the CDD to conduct, or the CDD may elect to conduct, a new rate study to determine both retail and wholesale rates, and such study may consider conversion to a metered rate per thousand gallons of wastewater flow. Howey and the CDD each shall pay one-half (1/2) the cost of this

second rate study. If neither party requests a rate study at the end of the four-year period, then any future rate studies shall be at the discretion of the CDD and at the expense of the CDD.

(c) One of the following firms will be selected to conduct these two rate studies, if they are conducted:

- (1) Burton & Associates (Mike Burton);
- (2) Brown & Caldwell (Mike Rocca); or
- (3) PRMG (Rob Ori) Need new name as Rob Ori has sold this business.;

or

- (4) such other firm that the parties may hereinafter agree to.

The retail rate determined by the study shall apply uniformly to all the CDD's retail wastewater customers, both inside and outside Howey's boundaries. The wholesale rate to be charged to Howey shall be the wholesale rate determined by the study conducted after the four-year period, and the retail rate charged by Howey to its retail wastewater customers shall be a rate determined by Howey's Town Council to be sufficient to pay the costs of Howey's retail wastewater operation.

(d) In all events, at such time as the wholesale rate charged to Howey exceeds \$_____ per ERU or, in accordance with the findings of a rate study as provided above, converts to a metered rate per thousand gallons of wastewater flow, and thereafter throughout the term of this Agreement, the CDD shall charge a uniform rate to all its retail wastewater customers, both within the town limits of Howey and outside the town limits, without discrimination. If and when rate studies are conducted from time to time, as allowed by Section 8 and this Section, such studies shall assume, for purposes of calculating Howey's wholesale rate, that the costs incurred by the CDD for administration, billing and collection, capital improvements, and operation and maintenance of its treatment, collection and transmission system not related to providing service to Howey shall be excluded from the wholesale rate.

SECTION 8. CHANGE OF RATES. For each year after the expiration of the initial rate established as provided in Section 7, the CDD may increase its retail wastewater rates and the wholesale rate paid by Howey either

- (i) by a percentage not exceeding the price-increase-or-decrease index established during that year by the Florida Public Service Commission for wastewater utilities as required by Section 367.081(4)(a) ??? of Florida Statutes, or
- (ii) as determined and calculated by a rate study performed by one of the firms listed in Section 7.

SECTION 9. ASSIGNMENT OF CDD RETAIL WASTEWATER AGREEMENTS. The CDD hereby confirms its assignment to Howey by the 2007 Wholesale Agreement of the right to be the retail wastewater service provider for the 2007 Developments and Howey confirms its assumption of such obligations for the 2007 Developments. The CDD retains the right under the CDD Service Agreements to provide wastewater treatment for the

2007 Developments, but only as a wholesale provider to Howey. Howey confirms that the 2007 Developments have purchased and made provision for payment in full of Wastewater Treatment Capacity sufficient for the needs of such customers, and that no other or additional wastewater connection fee, impact fee, service availability fee, or other capital charges whatsoever (however characterized by Howey) shall be due from the 2007 Developments for or on account of the provision of wastewater treatment.

SECTION 10. RESERVATION AND MAINTENANCE FEES. In the event that the CDD adopts reservation and maintenance fees that apply to customers uniformly, both inside and outside the boundaries of Howey, the fees shall be payable by the Developments, and the CDD shall be entitled to receive from Howey all such fee revenues collected, without deduction of any type. Howey shall use reasonable efforts to collect such fees from its customers and shall pay the amounts collected to the CDD within 25 days of receipt. Payment of the collected amounts by Howey that is delinquent in remittance to the CDD shall be Governed by the Local Government Prompt Payment Act in Part VII of Chapter 218 of Florida Statutes. Should any customer not pay reservation and maintenance fees, then the CDD shall notify Howey, at which time such capacity will be forfeited in accordance with the procedure adopted by the CDD.

SECTION 11. INDEPENDENT CONTRACTOR RELATIONSHIP; NO LIABILITY FOR HOWEY OR CDD DEBT.

11.1. Neither the CDD nor Howey is or shall be deemed to be an agent of the other, and neither shall have the authority or power to obligate or act for or on behalf of the other. Each is entering into this Agreement as an independent contractor.

11.2. The parties agree expressly that (i) the CDD has no obligation whatsoever to creditors of Howey or other third-parties for any existing or future debts or other obligations of Howey of any type or nature, and (ii) Howey has no obligation whatsoever to creditors of the CDD or other third-parties for any existing or future debts or other obligations of the CDD of any type or nature.

SECTION 12. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties hereto. No right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. To that end, this Agreement is expressly declared to have no third-party beneficiary.

SECTION 13. ASSIGNMENT AND RIGHT OF FIRST REFUSAL.

13.1 Assignment. This Agreement shall be binding on the parties hereto and their representatives, successors, and assigns. Neither party shall assign this Agreement or the rights and obligations to any other party without the prior written consent of the other party hereto, which may not be unreasonably withheld.

13.2 Right of First Refusal. *[to be added ... the Town is willing to enter into this Amended/Restated Agreement in reliance on a ROFR to purchase the treatment facilities,*

if and when the owner/lessor of the treatment plant, Sewer and Water Investments, Inc., ever decides to sell the plant]

SECTION 14. INDEMNIFICATION.

14.1. Neither party hereto waives its sovereign immunity, except that, consistent with applicable Florida law, including, but not limited to Chapter 768, Florida Statutes, each party shall hold the other harmless for the negligent acts of itself and its officers, agents, and employees, but only to the extent permitted by law.

14.2. If service provided hereunder is discontinued to a customer due to failure of the customer to pay for services provided, the party responsible for discontinuing service shall hold the other party harmless as to any and all claims or suits regarding such action.

SECTION 15. DEFAULT.

15.1. Either party to this Agreement, in the event of or act of default by the other, shall have all remedies available to it under the laws of the State of Florida, including but not limited to injunction to prevent default and specific performance to enforce this Agreement. The rights of the parties shall be considered cumulative and shall not be waived now or in the future by the exercise of any rights and remedies provided under the terms of this Agreement and authorized by law.

15.2. In the event of a default by Howey, the CDD agrees that it will not discontinue service to Howey except in the case of an emergency resulting from a substantial and material default under Section 6 of this Agreement, provided all payments for service required hereunder are made by Howey and until such time as a court of competent jurisdiction has rendered an adjudication of default. In the event Howey disputes amounts payable for service pursuant to this Agreement, Howey shall continue to make such payments under protest. Upon resolution of the protest, CDD shall refund any amounts determined to be overpaid, plus interest at the rate established by the Local Government Prompt Payment Act, Part VII of Chapter 218 of Florida Statutes.

15.3. In the event of default by the CDD, Howey is entitled both to all remedies available to customers of the CDD's water and sewer system, as well as all remedies otherwise provided under this Agreement.

15.4. Each of the parties hereto must give the other party written notice of any defaults hereunder and shall allow the defaulting party 30 days from the date of receipt to cure such defaults and shall otherwise comply with state law related to resolving disputes between local governments. If the default cannot be cured within 30 days the defaulting party shall commence the cure within such period and shall complete such cure within a reasonable period thereafter.

SECTION 16. NOTICES. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when either (1) hand-delivered to the official hereinafter designated, or (2) upon receipt of such notice when deposited in the U.S. mail,

postage prepaid, certified mail, return-receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith:

CDD: Mr. Bud Beucher
Central Lake Community Development District
219 East Livingston Street
Orlando, Florida 32801

with a copy to: George S. Flint
District Manager
Central Lake Community Development District
219 East Livingston Street
Orlando, Florida 32801

and: Daniel B. Harrell
Gonano & Harrell
1600 S. Federal Highway, Suite 200
Fort Pierce, Florida 34950

HOWEY: Sean O'Keefe
Town Manager
(101 North Palm Ave. 34737)
P. O. Box 128
Howey-in-the-Hills, Florida 34737

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

SECTION 17. 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 the Agreement if the rights and obligations of the parties contained herein 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 18. 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 at the expense of the parties, said expense to be shared equally.

SECTION 19. TIME OF THE ESSENCE. Time is hereby declared to be of the essence to the lawful performance of the duties and obligations contained in this Agreement.

SECTION 20. APPLICABLE LAW. This Agreement shall be construed, controlled, and interpreted according to the laws of the State of Florida.

SECTION 21. FORCE MAJEURE. In the event that the performance of this Agreement by either party is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to an Act of God or of the public enemy, war, state or national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, pandemic, or other casualty or disaster or catastrophe, governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, such party shall not be liable for such non-performance.

SECTION 22. EFFECTIVE DATE, TERM, AND TERMINATION. This Agreement shall be effective as of the date last executed by the parties (“Effective Date”). This Agreement shall continue in full force and effect in perpetuity unless and until a party exercises its right to terminate this Agreement as follows:

- 22.1 Neither party may terminate this Agreement effective as of a date prior to January 1, 2055.
- 22.2 Howey may terminate this Agreement as of the date stated in a written notice of the termination delivered by Howey to the CDD no less than 60 full calendar months before the stated date of termination.
- 22.3 The CDD may terminate this Agreement as of the date stated in a written notice of the termination delivered by the CDD to Howey no less than 120 full calendar months before the stated date of termination.

As of the date of such termination, both parties shall be fully discharged from obligations under this Agreement except for amounts payable and remaining unpaid as of the date of termination.

Drafting note: CDD suggests the term consist of XX years “following the last customer” hooked up to the system.

SECTION 23. ENTIRE AGREEMENT; EFFECT ON PRIOR AGREEMENT. The 2007 Wastewater Agreement and the 2012 Wastewater Agreement are terminated. This instrument constitutes the amended and restated agreement between the parties in its entirety and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement except the School Board Agreement, which remains in effect. Amendments to and waivers of the provisions herein may be made only by the parties in writing, by formal waiver or amendment approved by majority vote of both Howey’s Town Council and the CDD’s Board of Supervisors.

SECTION 24. EXERCISE OF POLICE POWER. This Agreement must not be construed to require Howey to exercise its police power. Nothing herein acts as a waiver of Howey’s authority to require a permit, license, certificate, rezoning, exception, variance, or other approval under Howey’s Town Charter, Code of Ordinances, and Land Development Code.

SECTION 25. RESERVED.

[**Drafting note: the CDD wants to explore an agreement with the Town whereby, for potable-water service for a 260-acre future development south of Mission Inn and north of No. 2 Road, west of the citrus plant, the Town would be the “wholesale” water utility and the CDD would be the “retail” water utility – the opposite of this wastewater arrangement.]**

SECTION 26. MARINA PROPERTY CONNECTION. Notwithstanding any other provision of this Agreement, the Owner of the Marina Property, the legal description and map depicting the area of which are attached as Exhibit “E” to this Agreement, shall have the right, at the sole cost and expense of the owner of the Marina Property and without becoming a customer of Howey, to connect to Howey’s nearest lift station without payment of any costs or fees to Howey, and Howey shall allow the wastewater from the Marina Property to flow through the Howey Collection Facilities free of charge to the Point of Connection. The cost and expense, if any, to (i) upsize Howey’s lines or pipes, (ii) repair, replace, or add any lines or pipes, or (iii) repair, replace, or add any other component of Howey’s Collection Facilities so that Howey can accommodate the wastewater from the Marina Property, shall be paid by the owner of the Marina Property. Should the owner of the Marina Property exercise this option, then Howey and the owner of the Marina Property will have their respective engineers work together to memorialize in a separate writing the details of the connection to Howey’s lift station.

SECTION 27. PUBLIC RECORDS. The CDD and Howey both shall comply fully with all applicable requirements of Chapter 119 of Florida Statutes regarding public records.

SECTION 28. NO EXCLUSIVITY. The Town may provide wastewater treatment and disposal services, or may contract with others to provide wastewater treatment and disposal services, to Future Development. The CDD has no right of exclusivity in providing such services except as expressly set forth in this Agreement.

SECTION 29. ANNEXATION OF PARCELS SERVED. As part of an agreement to provide water or wastewater service to a developer or property owner that desires to connect to Howey’s water and/or wastewater-collection system, Howey may require an agreement with a condition that the property owner consents to annexation of the property into the Town of Howey-in-the-Hills at such time it is legally able.

IN WITNESS WHEREOF, the Parties hereto have hereunder executed this Agreement on the date and year first above written.

**CENTRAL LAKE COMMUNITY
DEVELOPMENT DISTRICT**

ATTEST:
By: _____

By: Board of Supervisors
By: _____
Mr. Bud Beucher, Chairman

Approved as to form and correctness:

Print Name: _____

ATTEST WITH SEAL

TOWN OF HOWEY-IN-THE-HILLS

By: _____
Town Clerk John Brock

By: Town Council
By: _____
Mayor Martha Macfarlane

Approved as to form and legality
(for the use and reliance of the Town only)

Town Attorney

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of _____, 2021, by BUD BEUCHER as Chairman of CENTRAL LAKE COMMUNITY DEVELOPMENT DISTRICT, Board of Supervisors. 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 by means of physical presence or online notarization this ___ day of _____, 2021, by MAYOR MARTHA MACFARLANE as Mayor of TOWN OF HOWEY-IN-THE-HILLS, Town Council. She is personally known to me or has produced _____ as identification.

NOTARY PUBLIC—STATE OF FLORIDA
Printed Name: _____
My Commission Expires: _____

EXHIBIT A

[Map of Howey 180 Utility Service Area]

EXHIBIT B

[Legal descriptions of the Remaining 2007 Developments]

EXHIBIT C

[Legal Description of the 2012 Development]

EXHIBIT D

[Remaining 2007 Developments and Reserved Capacity]

EXHIBIT E

[Legal description and map of Marina Property]

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