

**WATER SALE AND PURCHASE AGREEMENT BETWEEN THE
VILLAGE OF HOMEWOOD, COOK COUNTY, ILLINOIS
AND THE VILLAGE OF FLOSSMOOR, COOK COUNTY, ILLINOIS**

THIS AGREEMENT is entered into this _____ day of _____, 2021, by and between the Village of Homewood, Cook County, Illinois, a non-home rule municipality, of the State of Illinois (“*Homewood*”) and the Village of Flossmoor, Cook County, Illinois, a non-home rule municipality of the State of Illinois (“*Flossmoor*”).

ARTICLE I: RECITALS

- 1.1 *Source of Water Supply to Homewood.* Homewood entered into a Water Sale and Purchase Agreement with the City of Chicago Heights, Cook County, Illinois, a home-rule municipality of the State of Illinois (“*Chicago Heights*”), on July 28, 2020 a copy of which is attached hereto as *Exhibit A* (the “*Chicago Heights Contract*”) providing for the purchase of a supply of Lake Michigan Potable Water (as hereinafter defined) from Chicago Heights sufficient to annually supply Homewood’s residential, commercial and industrial users including sufficient quantities to annually resell water to Flossmoor in amounts not to exceed the annual Illinois Department of National Resources (IDNR) allocation in effect, from time to time, including any allowable excess for both Homewood and Flossmoor.
- 1.2 *Source of Water Supply of Chicago Heights.* Chicago Heights is able to provide Lake Michigan Potable Water to Homewood for resale to Flossmoor as a wholesale purchaser pursuant to a certain Purchase Agreement between the City of Chicago Heights, Illinois and the Civil City of Hammond, Indiana (“*Hammond*”) dated February 14, 2013, as amended September 6, 2018 and July 1, 2020 (the “*Hammond Contract*”). Hammond is a wholesale purchaser of Lake Michigan Potable Water from the Hammond Water Works Department which operates a complete water works system providing intake, treatment and transmission of Lake Michigan Potable Water. Pursuant to the Hammond Contract,

Chicago Heights was assigned a water supply capacity sufficient to supply Homewood and Flossmoor with adequate quantities of Lake Michigan Potable Water and has agreed to secure adequate quantities of Lake Michigan Potable Water from Hammond for any future water supply contracts Chicago Heights may approve.

1.3 *Flossmoor Contract with Homewood.* Flossmoor is authorized by law to enter into this Agreement with Homewood for a term of twenty-five (25) years and to purchase Lake Michigan Potable Water as required for its residential and commercial users within and without its territorial limits so long as it does not exceed the allocation established by IDNR, from time to time, including any allowable excess pursuant to the conditions of the IDNR and the terms hereof. For purposes of this agreement, Flossmoor's residential and commercial users shall include all Flossmoor water customers within Flossmoor's territorial limits and those customers outside of Flossmoor's territorial limits currently served by the Flossmoor water system, including Flossmoor Golf Club.

1.4 *Representations by Homewood.* Homewood is authorized by law to enter into and carry out the terms of this Agreement and has contracted with Chicago Heights to obtain sufficient Lake Michigan Potable Water for the purpose of reselling to Flossmoor during the term of this Agreement.

ARTICLE II. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

Point of Connection/Point of Delivery. At the water meter owned by Homewood in the vault at the intersection of Homewood's water main to Flossmoor's water main located in the right-of-way at 18408 Western Avenue in Homewood.

Hammond: The Civil City of Hammond, Indiana.

Flossmoor Supply Line. The water line supplying the Flossmoor water system located in Homewood within the Western Avenue right-of-way, from the Point of Connection/Point of Delivery and running south to Homewood's border with Flossmoor.

Adjusted Base Rate: The annual adjustment in the Total Base Rate as provided in *Article IX*.

Chicago Heights Delivery Rate: The cost per 1,000 gallons charged by Chicago Heights to Homewood for delivery of Lake Michigan Potable Water to Homewood, adjusted annually as provided in *Article IX*.

Homewood Delivery Rate: The cost per 1,000 gallons charged by Chicago Heights to Homewood, adjusted annually pursuant to the Chicago Heights Contract, plus seventy cents (\$.70) adjusted annually as provided in *Article IX*.

Peak Hours: 6:00 a.m. to 10:00 p.m.

Off-Peak Hours: 10:00 p.m. to 6:00 a.m. the following day.

Total Base Rate: The sum of the Chicago Heights Delivery Rate and the Homewood Delivery Rate calculated annually.

Water or Lake Michigan Potable Water. Water from Lake Michigan which has been filtered and treated in accordance with regulations and requirements of the United States Environmental Protection Agency, the Indiana Department of Environmental Management, and the Illinois Environmental Protection Agency such that it is safe for drinking.

ARTICLE III. WATER SERVICES.

3.1 *Purchase and Sale.* Flossmoor agrees to purchase Water from Homewood. Homewood agrees to sell and deliver Water to Flossmoor pursuant to the terms herein at the Point of

Connection/Point of Delivery. Flossmoor agrees not to sell any Water to any additional customers beyond those identified in paragraph 1.3 above without Homewood's consent.

3.2 *Chicago Heights Contract.* Flossmoor acknowledges that it has reviewed the Chicago Heights Contract. Homewood agrees it shall not take any action to reduce the amount of Water supplied by Chicago Heights to Homewood for resale to Flossmoor.

3.3 *Maintenance.* Homewood shall maintain, at its sole cost and expense, the pumps, storage facilities, valves, and related equipment used to receive Water from Chicago Heights and to deliver Water to Flossmoor at the Point of Connection/Point of Delivery. Homewood agrees not to sell Water to any other customer without confirmation that the capacity required by Flossmoor is maintained in the allocation of Water and supply capacity from Chicago Heights and Hammond .

3.4 *Responsibility for Maintenance.* Flossmoor and Homewood shall furnish, install, operate and maintain their respective delivery and transmission systems located within their territorial boundary limits. In addition, Flossmoor shall be responsible for installing, operating, and maintaining the Flossmoor Supply Line. Homewood shall, at no time, be obligated to perform any act inside the corporate boundaries of Flossmoor.

3.5 *Exclusive Water Vendor.* Subject to the provisions of Sections 4.3(a) and 4.5 below, Flossmoor shall purchase its potable water supply exclusively from Homewood, to the exclusion of all other water vendors except in the event of an emergency that precludes Homewood from meeting its water delivery obligations to Flossmoor hereunder. Homewood shall advise Flossmoor as soon as reasonably possible under the circumstances should such an emergency arise. Homewood shall also advise Flossmoor once the

emergency has been resolved and Homewood delivery has resumed, at which time delivery from an emergency source to Flossmoor shall cease.

ARTICLE IV. WATER ALLOCATIONS.

4.1 *Delivery of Allocations.* The quantities of Water to be supplied to Flossmoor pursuant to Article III, on an annual basis, shall be in an amount allocated to Flossmoor by the IDNR including any allowable excess.

4.2 *Use of Allocations.* Flossmoor shall use its best efforts to not use Water, on an annual basis, in excess of its allocation.

4.3 *Cross-Connections; Change in Flossmoor Boundaries.*

(a) Homewood understands that Flossmoor, in the future, may have cross-connections between its water transmission system and those of other communities, and, may, from time to time, hereafter relocate, add, or delete such connections. Homewood further understands that the purpose thereof is to enable Flossmoor to engage in mutual assistance programs with such municipalities, to furnish water or to receive water in an emergency. Nothing herein shall be construed to limit Flossmoor's right to engage in such mutual assistance programs.

(b) At such time as territory is annexed to Flossmoor, consumers within such territory may be sold Water hereunder.

(c) At such time as territory is disconnected from Flossmoor and annexed to another municipality, Flossmoor may continue to sell Water to consumers located in such territory until the right of such consumers to purchase water from Flossmoor is terminated as provided in Section 7-1-37 of the Illinois Municipal Code (65 ILCS 5/7-1-37) or as such statute may, from time to time, be amended.

(d) At such time as territory is disconnected from Flossmoor but not annexed to another municipality, Flossmoor may, in its discretion, continue to sell Water to consumers located in such territory.

4.4 *IDNR Allocations.* Homewood and Flossmoor shall notify each other of changes to their IDNR allocations.

4.5 *Emergency.*

(a) If for any reason, including unexpected failure or malfunction in the water distribution systems of Hammond, Chicago Heights, or Homewood, Homewood is unable to furnish Water in the quantities required to be furnished from time to time to Flossmoor, Homewood shall use due diligence during any such occurrence to provide Water (insofar as practicable) to Flossmoor. Homewood shall immediately request that its Water supplier promptly take such actions, including making and expediting repairs or adjustments as are necessary, to restore delivery to Flossmoor of the Water to be furnished from time to time under this Agreement.

(b) Homewood shall, as soon as reasonably possible under the circumstances, give Flossmoor notice of leaks, malfunctions, or any other unplanned conditions that might impact Homewood's ability to provide Water to Flossmoor or otherwise cause Homewood to temporarily shut down any portion of its supply source for Water to be supplied to Flossmoor for a period of more than two (2) hours. The notice shall include the nature of the problem and whether its source is believed to be Hammond, Chicago Heights, or its own Water supply system and any plan to respond to the problem, and any known and estimated timelines for resolving the problem. Homewood recognizes and agrees that notice to Flossmoor pursuant to this paragraph is crucial to the public health and safety as

it allows Flossmoor to begin preparations as may be necessary to ensure adequate supply capacity, including but not limited to: (1) notifying Flossmoor water users; (2) placing limitations on water usage; (3) increasing its storage; (4) notifying neighboring municipalities with whom Flossmoor may have the emergency cross connections about the potential need to open and operate such emergency cross connections.

(c) Homewood shall provide Flossmoor at least fourteen (14) days written notice of any planned maintenance and repair activities which will result in removing from service any portion of the water main, pumps, or storage facilities by which Homewood obtains the supply of Water sold to Flossmoor for a period of two (2) hours or more. The notice shall include the nature of the planned work being performed; identify the equipment or items being removed from service; advise of the time for which the equipment is estimated to remain off-line and, whether the planned work is being performed by Hammond, Chicago Heights or Homewood.

(d) Any limitation on water usage or water supply imposed upon Flossmoor shall be no more restrictive than the limitations placed on Homewood's users of Water.

ARTICLE V. DELIVERY AND STORAGE.

5.1 *Delivery of Water Supply.* Homewood shall deliver Water to Flossmoor at the Point of Connection/Point of Delivery. Homewood shall convey the Flossmoor Supply Line by bill of sale and grant to Flossmoor a permanent non-exclusive easement to maintain, repair and replace this water line as may be necessary from time to time.

5.2 *Commencement of Delivery.* Homewood shall commence delivery of Water to Flossmoor pursuant to the terms of this Agreement on or before December 31, 2022.

5.3 *Pressure.*

(a) Homewood shall maintain pressure satisfactory for its own Water users in the immediate area of the Point of Delivery/Point of Connection, these same pressures therefore being available for the service to Flossmoor. Homewood shall furnish Water to Flossmoor at a minimum pressure of 30 P.S.I.

(b) Homewood shall in no event be responsible to Flossmoor, nor shall any right of action arise or exist against Homewood in favor of Flossmoor or any of its users by reason of variations in the main pressure at the Point of Delivery/Point of Connection of such Water caused by Flossmoor, and Flossmoor shall hold Homewood harmless and indemnify Homewood from any and all claims relating to variations in main pressure at the Point of Delivery/Point of Connection of such Water caused by Flossmoor.

(c) Flossmoor shall in no event be responsible to Homewood nor shall any right of action arise or exist against Flossmoor in favor of Homewood by reasons of variation in the main pressure at the Point of Delivery/Point of Connection of Water caused by Homewood, and Homewood shall hold Flossmoor harmless and indemnify Flossmoor from any and all claims relating to variations in the main pressure at the Point of Delivery/Point of Connection of Water caused by Homewood.

5.4 *Flossmoor Facilities.*

(a) Flossmoor shall provide, operate, maintain, repair, replace, improve and expand transmission mains, pumps, appurtenance and any other necessary equipment, on its distribution system that it either now has or is in the process of providing, and any other necessary equipment to ensure itself that it can receive and distribute Water to its users.

(b) If Flossmoor desires to construct additional facilities to carry Water from the Point of Delivery/Point of Connection and/or from some other point or points to and through its

own distribution system to serve its customers, all such extensions, pumps, equipment and system shall be furnished, installed, operated and maintained by Flossmoor. Homewood shall not have control, responsibility, or any duty to maintain any such equipment or system. Flossmoor shall not expand or relocate the Flossmoor Supply Line without Homewood's consent, nor shall it intensify its use of the non-exclusive easement granted by Homewood under paragraph 5.1 without Homewood's consent.

ARTICLE VI. WATER QUALITY.

- (a) Homewood shall supply Flossmoor at the Point of Delivery/Point of Connection with Water of a quality commensurate with that furnished by Homewood to its own customers. At a minimum, all Water furnished to Flossmoor at the Point of Delivery/Point of Connection shall meet all applicable water quality standards established by any state or federal regulatory agency with jurisdiction over Homewood.
- (b) If the Water fails to meet the minimum water quality standards at Point of Delivery/Point of Connection as provided above, Homewood shall, after receiving notice, take immediate action to correct any such water quality deficiency.
- (c) Homewood shall bear no responsibility for water quality of Water beyond the Point of Delivery/Point of Connection.
- (d) Flossmoor and Homewood shall each notify the other as promptly as practicable of any failure of Water to meet the water quality standards set by the United States or State Environmental Protection Agency in either Party's system. Notifications under this Section shall be given directly to the Director of Public Works or their designee, the Village Manager or their designee, and the Village President of Homewood and the Mayor of Flossmoor.

(e) Homewood shall not be responsible to Flossmoor for any non-compliant water that might exist in the Water furnished under this Agreement that is caused by and arises in any distribution system of Flossmoor. The Parties recognize and acknowledge that currently, (i) the source of Water supply is Lake Michigan at the boundary of Hammond with Lake Michigan and, thereafter, to Chicago Heights then to Homewood and then to Flossmoor; and, (ii) both Parties are familiar with the conditions existing at the source.

(f) If Flossmoor causes any non-compliant water to be distributed in its water system, the Parties shall promptly investigate the condition and Flossmoor shall promptly remedy and remove any such condition. If the remedying of the existence of non-compliant water requires work to be done, within Homewood's system then Flossmoor promises and agrees to reimburse and indemnify Homewood directly for such remedial work required in its system and the damages resulting therefrom.

(g) If Homewood causes any non-compliant water to be distributed in the system of Flossmoor, the Parties shall promptly investigate the condition, and Homewood shall promptly remedy and remove any such condition. If the remedying of the existence of non-compliance water requires work to be done by Flossmoor on Flossmoor's own system, then Homewood promises and agrees to reimburse and indemnify Flossmoor directly for such remedial work required in its system and the damages resulting therefrom.

(h) If the Parties identify non-compliant water in both systems, the respective Parties shall promptly investigate the condition and causation and remove such causation and remedy the condition. Each Party agrees to reimburse and indemnify the other Party should it be determined to have been caused by the other Party. If it is determined that the cause was from that portion of the Chicago Heights system that supplies Homewood, Homewood

shall promptly notify Chicago Heights to promptly remove the causation and condition and shall, if practicable, seek financial reimbursement for both Homewood and Flossmoor should either community need to take action to remedy the condition in their respective systems. Any cost incurred in seeking financial reimbursement from Chicago Heights shall be shared by Homewood and Flossmoor in proportion to each community's water usage for the previous 12 months. If Homewood sells water to any community in addition to Flossmoor, the amount sold to those communities shall be attributed to Homewood in calculating its proportionate share under this paragraph.

ARTICLE VII. WATER STORAGE.

7.1 *Storage Capacity.* Flossmoor shall provide and maintain at all times during the term of this Agreement water storage of sufficient capacity to store not less than 1.5 times the average daily usage of water from time to time in effect for Flossmoor (per IEPA Title 35, Subtitle F, Section 653.110). If Flossmoor's storage capacity falls below this capacity for a reason that is unrelated to the temporary removal of a storage facility for repairs or maintenance, Flossmoor shall construct and provide additional storage that is sufficient to increase its storage to the required amount.

7.2 *Interruption of Delivery.* If the supply from Homewood is, for any reason, temporary unavailable, Flossmoor shall utilize its water storage capacity or any available emergency connection which meets all required standards to supply Flossmoor during such outage to minimize strain on Homewood's water system.

ARTICLE VIII. MEASUREMENT.

8.1 *Point of Delivery/Point of Connection.* Homewood shall measure the quantity of Water furnished to Flossmoor under this Agreement during each hour of each day at the Point of

Delivery/Point of Connection. The unit of measurement shall be gallons of water, U.S. Standard Liquid Measure, or such other unit of measurement as the Parties may agree in writing.

8.2 *Measuring Devices.* The measuring devices, together with a meter housing or other suitable meter enclosure, structure or building to house them, all as described in *Exhibit B* (collectively, the “*Devices*”), shall be used at the Point of Delivery/Point of Connection for the purpose of controlling, measuring, and recording the quantity of Water furnished under this Agreement and of transmitting and recording pressures and other required operational information to Homewood and Flossmoor. The Devices shall be compatible with each other’s SCADA systems and shall be capable of reporting said measurements/readings/data as required to both Homewood and Flossmoor. A remote terminal unit (RTU) compatible with both Homewood and Flossmoor’s system and programmed by Homewood shall be provided in the meter enclosure to facilitate communication to the Flossmoor system. The Devices shall be subject to the approval of both Homewood’s and Flossmoor’s engineers. *Exhibit B* shall be a complete set of working drawings of the Devices prepared and provided to each other subsequent to the execution of this Agreement. *Exhibit B* may be amended from time to time by the Parties. Data reflecting storage volume and flow rate at Homewood’s Point of Delivery from Chicago Heights ; Homewood pumping stations and reservoirs shall be made available to Flossmoor to view but not to operate. .

8.3 *Chicago Heights Second Pipeline.* Homewood agrees to share with Flossmoor the engineering study to be undertaken by Chicago Heights regarding potential installation of a second water delivery pipeline beneath the Calumet River.

- 8.4 *Access to Devices.* Representatives of Homewood and Flossmoor shall have access at all reasonable times to all Devices for examination, inspection and testing.
- 8.5 *Calibration of Devices.* Homewood shall annually calibrate the accuracy of each of the meters and appurtenant equipment for the purpose of measuring the supply of Water furnished under this Agreement. The results of any such inspection and calibration shall be promptly provided to Flossmoor.
- 8.6 *Readings/Estimates.* The readings made of the meters for the purpose of billing Flossmoor shall be made by Homewood on the first business day of every calendar month and promptly provided to Flossmoor. The amount of Water purchased and sold shall be determined by the meter readings installed at the Point of Delivery/Point of Connection, as aforesaid, and Flossmoor shall pay for the amount of Water as shown by such readings at the rates hereinafter provided. If such meter or meters malfunction or fail to operate properly for a period of thirty (30) days or more, until such meter(s) are repaired or replaced, then the Parties shall compute the water delivered and not metered on the basis of the water readings for the same month of the previous year, and the daily average for such period shall be used as the basis for computing the amount of Water delivered and not metered, and the amount to be paid for such unmetered period shall be based upon such computation.

ARTICLE IX. WATER RATES.

- 9.1 *Total Base Rate.* At the time Homewood begins delivering water to Flossmoor the Total Base Rate shall be \$4.75 per 1,000 gallons. (“Total Base Rate”) The Total Base Rate includes the Hammond Water Base Rate (\$2.05 per 1,000 gallons), the Chicago Heights Delivery

Rate (\$2.00 per 1,000 gallons), and an initial Homewood Delivery Rate to Flossmoor of \$0.70 per 1,000 gallons.

9.2 *Annual Rate Adjustments.*

(a) The Total Base Rate, excluding any surcharge or tax imposed by a third-party pursuant to Section 9.3, shall be adjusted annually on the first day of the month immediately following the anniversary of the commencement of water delivery by Chicago Heights to Homewood, or January 1, 2023, whichever occurs first, by increasing the Total Base Rate by the increase in the Consumer Price Index-For All Urban Consumers (CPI-U) for the preceding 12-month period (“Adjusted Base Rate”), provided, however, that the amount of the annual increase to the Total Base Rate shall not be less than one percent (1%) and shall not be more than three percent (3%), irrespective of the actual change in the CPI-U. Each annual increase thereafter in the Adjusted Base Rate shall be cumulative of the preceding annual increase; and shall include the same percentage adjustment as made to the Total Base Rate charged by Chicago Heights to Homewood. Homewood agrees to annually notify Flossmoor of the percentage increase in Adjusted Rate Base as soon as it receives notice of the percentage increase from Chicago Heights.

(b) Homewood shall give Flossmoor annual written notice of any increase in the Rate at least thirty (30) days prior to the effective date of the modification of the Total Base Rate.

(c) Flossmoor agrees that, with respect to any future rate adjustments imposed by a third party, including, but not limited to, modifications of the Hammond Water Base Rate or the Chicago Heights Delivery Rate, in the event any approval is required by law, that Flossmoor will, without objection, join any petition rate schedule, tariff, or other

documents or proceedings which may be necessary to be filed with any public body. Further, Flossmoor agrees to abide by such adjusted rate and to pay same

9.3 *Surcharge or Tax.* No surcharge fee or tax shall be added to the Total Base Rate provided for in this Agreement by Homewood. Except that, in the event a tax or other fee is imposed on Chicago Heights or Homewood by a third-party government authority with respect to its sale of Water under this Agreement, such tax or fee will immediately be added to the Total Base Rate charged to Flossmoor.

9.4 *Adjustment for unanticipated delivery costs.* If a new statute, regulation, or requirement is imposed on Homewood by a third-party government authority over which Homewood has no control and that results in increased cost of treating, storing, or delivering water to Flossmoor, this increased cost shall be added to the delivery charge assessed to Flossmoor by Homewood in proportion to Flossmoor's use of the Homewood water system. Before assessing Flossmoor for these increased costs, Homewood shall, as soon as reasonably possible, inform Flossmoor of the new requirement, how Homewood proposes to meet that obligation, and the costs involved. The parties shall negotiate how assessment of the increased cost shall be implemented.

9.5 *Customer Charges.* Homewood shall have no right to determine charges for Water furnished by Flossmoor to its customers.

ARTICLE X. BILLING.

10.1 *Monthly Billing.*

(a) Homewood shall bill Flossmoor each month for the Water used each month and Flossmoor promises to pay such statement in full without discount within thirty (30) days after the receipt of such bill. Late charges shall be assessed against Flossmoor at the rate of five percent (5%) solely on the past due amount.

(b) If Homewood shall be required to alter, amend or establish a new rule or rules, by order of the State of Illinois, then the existing rules of Homewood and such alterations, amendments, or new rules, shall apply and govern the Parties hereto.

(c) Flossmoor agrees to budget annually sufficient money to pay for the Water furnished by Homewood and will charge sufficient rates to provide adequate funds for the payment of Water furnished by Homewood.

(d) If Flossmoor shall refuse, neglect or fail to promptly pay bills rendered for Water supplied hereunder within the time or times prescribed herein, and Homewood shall deliver by mail to Flossmoor's Mayor a notice in writing of its intention to commence legal proceeding before the Circuit Court of Cook County on account of such failure, refusal or neglect. Homewood shall have the right to shut off the supply to Flossmoor within thirty (30) days after the date of the court order authorizing the shut off, and to terminate this Agreement unless within such thirty (30) days, Flossmoor shall have made good such failure. The shutting off of the supply of Water to Flossmoor pursuant to an order of court shall not release Flossmoor from its obligation to make payments of any amount or amounts due or to become due in accordance with the terms hereof.

10.2 *Readings.* Bills shall be based on readings of the Devices at the Point of Delivery/Point of Connection, as provided in Section 8.6.

10.3 *Form of Bills.*

(a) Each bill shall indicate the total amount of Water delivered as evidenced by the readings of the meters at the beginning and end of each billing period.

(b) Each bill shall specify the basic charge per unit of Water furnished and such adjustments, if any, as are applicable.

ARTICLE XI. HOMEWOOD'S SYSTEM.

(a) All plans, specifications, contracts, construction documents pertaining to the water main connecting Homewood to the Chicago Heights distribution system and related appurtenances shall be available to Flossmoor for review upon request during business hours.

(b) Homewood will construct improvements to its water system to comply with this Agreement.

(c) Any specifications for improvements to be constructed by Homewood under this Agreement shall be under Homewood's control. All such improvements, when completed, shall be sufficient to comply with this Agreement.

ARTICLE XII. TERM AND STANDARD CONDITIONS.

- 12.1 *Term.* This Agreement shall expire in twenty-five (25) years.
- 12.2 *Assignment.* This Agreement may not be assigned by either Party without the written consent of the other Party.
- 12.3 *Title to Water.* Title to Water supplied under this Agreement shall remain in Homewood to the Point of Delivery/Point of Connection and upon passing the Point of Delivery/Point of Connection, title shall pass to Flossmoor.
- 12.4 *Amendment.* This Agreement may be amended only by written agreement by the Parties.
- 12.5 *Notices.* All notices under this Agreement shall be in writing either delivered or mailed, certified mail, return receipt requested, to the Parties at:

To Homewood at:
Village President
Village of Homewood
2020 Chestnut Road
Homewood, Illinois 60430

with copies to:

Christopher J. Cummings
Village Attorney
2024 Hickory Road, Suite #205
Homewood, Illinois 60430

and

Village Manager
Village of Homewood
2020 Chestnut Road
Homewood, Illinois 60430

to Flossmoor at:

Mayor
Village of Flossmoor
2800 Flossmoor Road
Flossmoor, Illinois 60422

with copies to:

Village Manager
Village of Flossmoor
2800 Flossmoor Road
Flossmoor, Illinois 60422

and

Kathleen Field Orr
Village Attorney
2024 Hickory Road, Suite #205
Homewood, Illinois 60430

or a such other address as such party by written notice delivered to all of the parties named above.

ARTICLE XIII. INDEMNIFICATION

Indemnification. Homewood shall not be responsible for damages to person or property for any failure to supply water or for interruption of the potable water supply furnished hereunder.

Flossmoor agrees to hold harmless and indemnify Homewood against any and all claims for losses, liability or damage, including fees and expenses, arising out of or in connection with any intentional, willful or negligent actions or omissions of Flossmoor, and Flossmoor hereby assumes all risks of loss, damage or injury to person or property, in the distribution of said potable water after received at the Point of Delivery/Point of Connection.

Homewood agrees to hold harmless and indemnify Flossmoor against any and all claims for losses, liability, or damage, including fees and expenses, arising out of or in connection with any intentional, willful, or negligent actions or omissions of Homewood.

Flossmoor further agrees to hold harmless and indemnify Homewood against all claims for any dispute, loss, damage, or injury sustained, of any kind, nature or description, including attorney's fees and expenses incurred by Homewood by reason of any claims made against

Homewood by Flossmoor's residential and commercial water users, relating to Homewood's furnishing potable water to Flossmoor under this Agreement.

ARTICLE XIV. MISCELLANEOUS

Final Agreement:

- (a) This Agreement supersedes all prior negotiations or understandings and is the whole agreement of the Parties. There are no other oral or written agreements concerning the subject of this Agreement.
- (b) The provisions of this Agreement shall be interpreted when possible in a manner to sustain their legality and enforceability. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in another situation or the remaining provisions of this Agreement. If any part of this Agreement shall be held invalid for any reason, the remainder of this Agreement shall remain valid to the maximum extent possible.
- (c) This Agreement is performed in the State of Illinois and is to be construed under applicable Illinois law which shall apply to its enforcement, construction and interpretation.
- (d) The Parties stipulate that the sales under this Agreement constitute wholesale sales between Illinois municipalities. By executing this Agreement, neither party acquiesces that the rights and obligations contained within this Agreement are subject to the interpretation, enforcement or jurisdiction of any administrative agency.
- (e) The Parties agree that the Federal and State Courts located in the State of Illinois shall have exclusive jurisdiction to interpret and enforce this agreement. However, If Homewood requests that Flossmoor cooperate and assist Homewood in any proceeding

before any regulatory body, then Flossmoor agrees to cooperate or assist Homewood as requested.

- (f) If any statute, either of the United States, the State of Illinois, or any rule is subsequently promulgated by any governmental agency of the United States or the State of Illinois, binding upon Homewood and solely by reason thereof, Homewood shall not be permitted to deliver Water to Flossmoor, as provided herein, then this Agreement may be cancelled by Homewood without any liability to Homewood. However, in the event of same, Flossmoor shall have four (4) years to find an alternative water source and Homewood shall continue to provide Water to Flossmoor under the terms herein to the extent permitted by law.
- (g) Further, should any law, rule or regulation be passed and adopted by any governmental agency binding on Homewood as to the grade of Water to be furnished, or its distribution, then Flossmoor agrees that when Homewood delivers Water in compliance with such law, rule or regulation, that it has completed the obligation on its part to be performed under this Agreement.
- (h) If Flossmoor shall desire, at the expiration of this Agreement, to continue to purchase Water from Homewood, it shall have twelve (12) months before the expiration of this Agreement to notify Homewood, and, if Homewood desires to continue to sell, and if and only if, the parties hereto agree to the terms and conditions of a new purchase agreement, including a new base rate, before the expiration of this Agreement, shall Homewood be obligated to continue to supply Water to Flossmoor beyond the expiration of this Agreement. If Flossmoor decides not to negotiate a new purchase agreement, or if Flossmoor and Homewood fail to agree on a new purchase agreement,

Flossmoor shall have two (2) years from the current Agreement expiration date to identify and connect to a new water source. During this two-year period, Homewood shall continue to provide Water to Flossmoor under the terms in effect at the Agreement expiration date, subject to approval by Chicago Heights, and further subject to a new “Chicago Heights Base Rate” as may be imposed upon Homewood by Chicago Heights pursuant to the contract between Chicago Heights and Homewood at that time.

- (i) This Agreement may be amended by Homewood if a court of competent jurisdiction, but only as directed by the court: (1) limits the amount of Water Homewood may use for domestic pumpage or otherwise places a material burden on Homewood in connection with the provision of Water; or, (2) limits distribution of Water to Homewood by Hammond or Chicago Heights; or (3) limits Homewood’s ability to sell Water.
- (j) The authority of the officials of Flossmoor to execute this Agreement is evidenced by the authority to the Mayor and Board of Trustees of the Village of Flossmoor given by the attached Ordinance adopted at a regular meeting held on the _____ day of _____, 2021.
- (k) The authority of the officials of Homewood to execute this Agreement is evidenced by the Resolution adopted by the Village President and Board of Trustees of Homewood, Illinois, at a regular meeting of the Village President and Board of Trustees duly held on the _____ day of _____, 2021.
- (l) Homewood agrees to annually appropriate sums sufficient to pay for Water Homewood furnished by Chicago Heights. Homewood further agrees that it will at all times charge

its water users sufficient rates in order to provide adequate funds for the payment of the water furnished by Chicago Heights.

(m) Homewood agrees to annually appropriate sums sufficient to pay for the maintenance, repair and replacements as deemed necessary of its water system up to the Point of Delivery/Point of Connection.

(n) Upon receiving payment from Flossmoor, Homewood shall promptly pay Chicago Heights that portion of Flossmoor's payment attributable to Chicago Heights' Water Base Rate charge.

(o) Homewood and Flossmoor shall each notify and keep the other informed of the name of the individual(s) in charge of operations of its respective water system.

ARTICLE XV. ADDITIONAL TERMS.

15.1 *Remedies Upon Default.* A party shall be in default of this Agreement if it fails to perform or observe any covenant, duty, or obligation of this Agreement within thirty (30) days after receipt of written notice thereof from the non-defaulting party (which written notice shall specifically describe the covenant, duty, or obligation which the other party has allegedly failed or refused to perform or observe). If such default is cured within such 30-day period, the default shall be deemed waived. If the default is one which cannot be reasonably cured within 30 days and if the alleged defaulting party shall commence curing the same within such 30-day period and thereafter diligently proceed obtain cure of the default, the said 30-day period shall be extended for such time as is reasonably necessary for the curing of the same. So long as the defaulting party diligently proceeds therewith, if such default is cured within such extended period, the default shall be deemed waived.

If and when any default occurs and not be cured as set forth in this Agreement, the non-defaulting party may, at its option: (1) seek injunctive relief compelling the alleged defaulting to perform its obligations under this Agreement; (2) pursue all other rights and remedies that may be available by law or equity, including suit for accounting or damages; or, (3) terminate this Agreement by giving written notice of termination to the alleged defaulting party.

15.2 *Legal Fees and Costs.* If either Party institutes legal proceedings against the other Party relating to a default under this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment all expenses of such legal proceedings incurred by the prevailing party, including court costs, reasonable attorneys' fees, and witness fees in connection therewith.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement, by and between Homewood and Flossmoor have executed this Agreement as dated below by each Mayor:

VILLAGE OF FLOSSMOOR

By: _____
Mayor

Attest:

Village Clerk

VILLAGE OF HOMEWOOD

By: _____
Village President

Attest:

Village Clerk