

FLORIDA WATER STARSM CERTIFICATION PROGRAM

HOME BUILDER PARTICIPATION AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, by and between the Florida Green Building Coalition (hereafter “FGBC”) and

(Home Builder Company Name), (hereafter “Builder”).

Builder DBPR License number: _____

Builder Name as Registered with DBPR: _____

Primary Contact Name: _____

Contact Address: _____

Contact Phone: _____ Contact Email: _____

Project Name: _____

Project Location: _____

Number of Homes: _____

Builder will be participating under the following program designation (Builder designee must initial to accept):

WHEREAS:

- FGBC has been licensed by the St. Johns River Water Management District (SJRWMD), to utilize the Florida Water StarSM service mark and logo in administering a certification program (hereafter “the Program”) within the jurisdictional areas of the Suwannee River Water Management District and the Northwest Florida Water Management District, as defined in section 373.069(2), Florida Statutes, and
- The purposes of the Program are to establish minimum voluntary standards for water efficiency in new residential homes, including landscaping, and encourage consumers to select such homes, and
- The Builder wishes to participate in the Program.

NOW, THEREFORE, in consideration of the above stated premises, which are hereby made a part of this Agreement, the mutual promises and agreements set forth in this Agreement and referenced attachments, receipt of which is hereby acknowledged, the parties agree as follows:

1. Commencement and Expiration of Agreement

The term of this Agreement shall commence on the date of acceptance. This Agreement shall be for the duration of the project identified herein, unless cancelled by written notice by either

party; provided, however, that if Builder fails to begin construction of any residential structures implementing the Program within two (2) years of the effective date, this Agreement shall automatically terminate. The FGBC may waive automatic termination upon a showing by the Builder of good cause.

2. Termination of Agreement

This Agreement may be terminated by either party, with or without cause, by providing not less than thirty (30) days written notice to the other party of its intention to terminate. Builder's sole remedy for any alleged breach of this Agreement is termination pursuant to this provision.

3. Governing Laws

This Agreement and all rights, duties and obligations hereunder shall be governed by the laws of the State of Florida and the city and/or county jurisdiction where the home design and construction is performed.

4. Assignment

The Builder may not assign nor delegate any portion of this Agreement to a third party without the prior written consent of FGBC.

5. Indemnity

Builder is solely responsible for the proper construction and implementation of all of the residential water efficiency measures covered by the Program and selected for implementation in accordance with applicable federal, state, and local regulations and the requirements of Builder's contract with the homeowner.

Builder agrees to indemnify and hold harmless FGBC and SJRWMD, and any and all directors, officers, employees and agents of FGBC or SJRWMD, against any and all claims and demands arising out of Builder's fraudulent use or misrepresentation of the Program, and any claims based upon the construction or implementation of the residential water efficiency measures provided for under the Program.

6. Independent Entity

Builder's participation in the Program shall be as an independent entity and not as an agent or employee of FGBC. Builder controls and directs the means and methods by which its construction activities are accomplished. Builder is solely responsible for construction of Program elements in accordance with applicable federal, state, and local regulations. Neither FGBC nor any of its agents implementing the Program assume any duty to ensure that Builder's activities are implemented in accordance with Program requirements.

7. Builder as Principal

Builder is solely responsible for any and all work performed by subcontractors or installers of Builder or pursuant to this Agreement.

8. License and Permit Requirements

- 8.1 Builder shall hold all necessary licenses from all appropriate entities and governmental agencies in the State of Florida and applicable city and/or county jurisdictions.
- 8.2 Builder warrants all such licenses are now and shall remain current and in good standing during the term of this Agreement.
- 8.3 Builder shall obtain any and all permits or authorizations required to design and/or construct all homes, landscapes and relevant facilities.

9. Equipment and Performance Standards

- 9.1 Builder agrees to abide by all requirements and selected standards set forth in Attachment A and further agrees that the requirements and standards may be revised by providing written notice to Builder not less than 120 days prior to the effective date of the new requirements and standards.
- 9.2 In the event the requirements and standards are changed during construction of the project that is the subject of this Agreement, Builder may elect to abide by either the requirements and standards in effect on the date the project was submitted to FGBC for inclusion in the Program, or by the standards in effect on the date of completion. Once Builder submits a pre-application that meets certification standards, Builder has nine (9) months to complete at least one house in accordance with those standards, or be subject to revised standards.

10. Training

- 10.1 Builder agrees to designate a primary designee as a point of contact for the Program. The designee may attend, at Builder's expense, a Program orientation developed and offered by the SJRWMD.
- 10.2 Builder's designee may attend, at Builder's expense, an annual refresher training of not more than two (2) hours developed and offered by the SJRWMD.
- 10.3 Costs incurred by Builder for staff training (i.e., salaries, transportation) will be the sole responsibility of Builder and will not be reimbursed by FGBC.

11. Use of SJRWMD's Florida Water StarSM Service Mark and Logo

- 11.1 The Florida Water StarSM service mark and logo are the sole and exclusive property of SJRWMD and are protected by the copyright laws of the United States and the laws of the State of Florida. FGBC has been authorized by SJRWMD to sub-license the use of the Florida Water StarSM service mark and logo to homeowners and builders who meet Program requirements. Builder is hereby granted a non-exclusive license to utilize the Florida Water StarSM service mark and logo in accordance with the terms of this Agreement so long as this Agreement remains in effect. Builder shall not take any action that will impair SJRWMD's right, title, and interest in the Florida Water StarSM service mark and logo.
- 11.2 Only builders approved for participation in the Program may use the Program logo and materials in advertising.
- 11.3 Use of the Program name, logo and materials does not constitute an endorsement of the

Builder.

- 11.4 No changes are permitted to the Program name and logo without express approval from SJRWMD.
- 11.5 All advertising by Builder in conjunction with the Florida Water StarSM service mark or logo must include the State of Florida Builder's license number.
- 11.6 Upon termination of this Agreement by either party, Builder will immediately cease all use of the Florida Water StarSM service mark, logo, and Florida Water StarSM materials in its advertising. Should Builder fail to immediately cease such use, SJRWMD or FGBC may seek extraordinary relief in the form of a temporary restraining order, preliminary or permanent injunction. Builder hereby agrees that all legal conditions for relief are met, including a showing of irreparable harm to SJRWMD or FGBC.

12. Right of Inspection; Warranties

- 12.1 At its discretion, FGBC may investigate Builder's compliance with the requirements and standards set forth in Addendum A of this Agreement. FGBC assumes no duty with regard to third parties through its right of inspection to ensure that Builder has complied with the elements of the Program or constructed any of the items covered by the Program in accordance with applicable federal, state, or local regulations, or the requirements of Builder's contract with the homeowner.
- 12.2 Neither FGBC nor SJRWMD make any warranties whatsoever to Builder or any other persons or entities regarding the efficacy of the residential water efficiency measures covered by the Program.
- 12.3 In the event, no later than 180 days after the sale, a homeowner submits a request to FGBC to re-inspect a residence because the homeowner believes the property was not constructed in accordance with the Program's requirements and standards, Builder shall correct any deficiencies certified by the FGBC or its agent as not meeting Program requirements and standards and reimburse the FGBC for the costs of re-inspection. Failure to make such corrections shall result in withdrawal of the Florida Water StarSM certification for the subject residence and may also result in revocation of Builder's license to participate in the Program.

13. Customer Solicitation

At its discretion, FGBC will provide promotional and advertising support through media, such as, but not limited to, its website, newsletters, news releases, decals, and collateral materials for Builder to promote its participation in the Program.

14. Customer Disputes

Builder shall be solely responsible for the resolution of any and all disputes between Builder's customers and Builder. Failure to resolve disputes associated with the Florida Water StarSM features may result in removal of Builder from the Program.

15. Exclusive Benefit of the Parties

This Agreement is not intended to create any rights, powers or interest in any third party, with the exception of SJRWMD, and is made and entered into for the exclusive benefit of FGBC and Builder.

16. Waiver

The failure or election of FGBC to enforce the terms and conditions of this Agreement or to exercise any right or privilege therein shall not be construed as a waiver of any other terms, conditions, rights or privileges.

17. Attorney's Fees; Venue

In the event of any legal proceedings arising from or related to this Agreement, venue for such proceedings shall be in Leon County, Florida. In the event of any such proceedings, including appeals, each party shall bear its own attorney's fees. In the event of any civil proceedings, Builder hereby consents to trial by the court and waives its right to seek a jury trial in such proceedings.

18. Entire Agreement

This Agreement, along with any and all documents incorporated by reference herein, shall constitute the sole and entire Agreement and understanding between the parties as to the subject matter hereof. Any prior understandings, commitments or representations, expressed or implied, between the parties shall not be construed to alter or waive any part of this Agreement.

IN WITNESS WHEREOF, the Florida Green Building Coalition has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, or duly authorized designee, and Builder has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached.

FLORIDA GREEN BUILDING COALITION

BUILDER

By: _____
Suzanne B. Cook, Executive Director

By: _____

Date: _____

Typed Name and Title
Date: _____

Attest: _____

Typed Name and Title

Documents attached:
Attachment A — Florida Water StarSM Qualification Points List
Attachment B — Using the Florida Water StarSM logo