

FLORIDA WATER STARSM PROGRAM

HOME BUILDER PARTICIPATION AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20____, by and between the St. Johns River Water Management District (hereafter “SJRWMD”) and

(Home Builder Company Name)

_____, (hereafter “Builder”).

Builder DPBR License number _____
Primary Designee contact information: _____
Project Name: _____
Project Location: _____
Number of Homes: _____

WHEREAS:

- SJRWMD offers a promotional program that is entitled: Florida Water StarSM (hereafter “the Program”), and
- The purposes of the Program are to establish minimum voluntary standards for water efficiency in new residential homes and encourage consumers to select such homes, and
- 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 terms 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 District 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 SJRWMD.

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 SJRWMD, and any and all directors, officers, employees and agents of 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 Contractor

Builder's participation in the Program shall be as an independent contractor and not as an agent or employee of SJRWMD.

7. Builder as Principal

Builder is solely responsible for any and all work performed by subcontractors of Builder or installer 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

Builder agrees to abide by all requirements and selected standards set forth in Attachment A and further agrees that SJRWMD may revise the requirements and standards by providing written notice to Builder not less than 120 days prior to the effective date of the new requirements and standards. 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 SJRWMD 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. The designee may attend a program orientation. SJRWMD will determine class content.
- 10.2 Builder's designee may attend an annual refresher training of not more than two (2) hours. SJRWMD will determine class content.
- 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 SJRWMD.

11. Use of SJRWMD's Florida Water StarSM and Water StarSM Program Names and Logos

- 11.1 The Florida Water StarSM Program name and logo and the Water StarSM name and logo are the sole and exclusive property of SJRWMD and are protected by the copyright laws of the United States and the state of Florida. Builder is granted a non-exclusive license to utilize the Florida Water StarSM Program name 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 name 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 Water StarSM or Florida Water StarSM program or logo must include the state of Florida Builder's license number.
- 11.6 Upon termination of this Agreement by either party, Builder must immediately cease all use of the Program name, logo and materials in its advertising. Should Builder fail to immediately cease such use, SJRWMD may seek extraordinary relief in the form of a temporary restraining order, preliminary or permanent injunction. Builder hereby agrees that all legal conditions for that relief are met, including a showing of irreparable harm to SJRWMD.

12. SJRWMD Right of Inspection; Warranties

- 12.1 At its discretion, SJRWMD may investigate Builder's compliance with the requirements and standards set forth in Addendum A of this Agreement. SJRWMD 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 SJRWMD makes no 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 the District 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 District or its Agent as not meeting Program requirements and standards and reimburse the District 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 right to participate in the Program.

13. Builder Level of Participation in Program

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

_____ Florida Water StarSM Gold Home (individual, qualifying homes)
_____ Florida Water StarSM Silver Home (individual, qualifying homes)

14. Customer Solicitation

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

15. 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.

16. Exclusive Benefit of the Parties

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

17. Waiver

The failure or election of SJRWMD 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.

18. 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 Duval County if substantial performance of the Project is in Alachua, Baker, Bradford, Clay, Duval, Nassau, Putnam, and/or St. Johns counties, or in Orange County if substantial performance of the Project is in Brevard, Flagler, Indian River, Lake, Marion, Okeechobee, Orange, Osceola, Seminole, or Volusia counties. 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, Licensee hereby consents to

trial by the court and waives its right to seek a jury trial in such proceedings.

19. 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 St. Johns River Water Management District 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.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BUILDER

By: _____
Executive Director or Designee

By: _____

Date: _____

Typed Name and Title
Date: _____

Attest: _____

Typed Name and Title

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