



EcoDistricts

Certification Agreement

This CERTIFICATION AGREEMENT (this “Agreement”), is made as of the Effective Date between EcoDistricts™, an Oregon non-profit corporation (“EcoDistricts”), and [INSERT REGISTRANT NAME] (“Registrant”) (together, EcoDistricts and Registrant are referred to as the “Parties” and each individually as a “Party”).

RECITALS

A. EcoDistricts has developed a framework for promoting neighborhood and district-scale sustainable development best practices (the “Protocol”), pursuant to which local governments and community organizations (collectively, “Organizations”) may pursue certification from EcoDistricts of compliance by subareas of their communities (each, a “District”) with the Protocol, the end result of which is the award by EcoDistricts of a certification designating such District(s) as “EcoDistricts™ Certified” (“Certification”).

B. The process of certifying a District, the end result of which is Certification (the “Certification Process”), is governed by this Agreement, the Protocol, EcoDistricts’ handbook promulgating the rules and regulations pertaining to the Certification Process (the “Certification Handbook”), pursuant to which Organizations seeking Certification of a District shall from time to time be required to submit to EcoDistricts various reports, materials, maps, documents or information in connection with the Certification Process (collectively, “Submissions”). The initial Submission is the registration of a District for inclusion in the Certification Process (a “Registration”).

C. This Agreement governs the relationship between EcoDistricts and Registrant with respect to the submission of a Registration for any District for inclusion in the Certification

Process.

AGREEMENT

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Protocol. Any capitalized term when first used but not defined shall be assumed to be defined later in this Agreement.

1.2 Interpretation. The terms “must” and “shall” are deemed to mean “mandatory,” and the terms “should” and “may” are deemed to mean “voluntary.” The term “or” shall be deemed to mean “and/or” unless clearly indicated otherwise. The term “including” shall be deemed to mean “including but not limited to” unless the context indicates otherwise. Capitalized terms are defined terms, with their definition set forth in Section 1.1 above or the Protocol unless the context indicates otherwise. References to exhibits shall be deemed references to the exhibits attached to this Agreement. The Recitals are incorporated herein by reference as a part hereof.

2. CERTIFICATION PROCESS

2.1 Registration. Registrant may from time to time submit to EcoDistricts a Registration for inclusion of a District in the Certification Process. Registrant acknowledges that submission of a Registration for a District is no guarantee of Certification, which EcoDistricts may withhold in its sole and absolute discretion should the Registrant not comply with EcoDistricts’ Certification requirements.

2.2 Certification Process.

2.2.1 Registrant agrees to comply at all times with the terms, conditions and requirements of this Agreement, the Protocol and the Certification Handbook, including all updates and changes provided to Registrant or made available by EcoDistricts from time to time. The current versions (as of the Effective Date) of the Protocol (version 1.3) and the Certification Handbook (version 1.3) are available for review online at www.ecodistricts.org (the “Certification Website”). Each of the Protocol and the Certification Handbook (the “Certification Documents”) may be updated by EcoDistricts from time to time through updates and addenda published on the Certification Website, subject to the terms of [Section 7.2](#) below. Registrant hereby represents and warrants that it has fully reviewed and understands the Certification Documents. Notwithstanding anything to the contrary herein, Registrant agrees to be bound to interpretations of Certification Document provisions that are specific to and solicited by Registrant and any general interpretations included in the Certification Handbook.

2.2.2 Registrant’s Representations and Warranties.

(a) Registrant warrants to EcoDistricts the truth and accuracy, to the best of its knowledge, of all Submissions, and shall promptly notify EcoDistricts of any changes to any of the information contained in previously-submitted Submissions.

(b) Registrant represents and warrants that Registrant has the permission to use any and all product and trade names used in the Registration or any Submission.

2.2.3 Submission Reviews.

(a) EcoDistricts shall use reasonable efforts to complete the review of any Submissions and notify the Registrant via electronic mail of the review result within 30 calendar days of receipt of a complete Submission.

(b) Registrant shall answer all reasonable questions EcoDistricts poses to Registrant during the Certification Process pertaining to the Submissions or the District in general.

(c) If EcoDistricts' review of the Submission indicates that Protocol requirements have not been met, EcoDistricts will notify the Registrant via electronic mail of the deficiencies, and Registrant shall then have 30 calendar days to correct the deficient Submission. EcoDistricts shall deem any such deficient Submission withdrawn if not timely corrected by Registrant.

2.2.4 Registrant's failure to comply with the Certification renewal requirements specified in the Certification Policy (including the payment of all Fees specified therein in connection with renewal of Registrations) may result in removal of the District from the Certification Process or rescission of any Certification previously awarded to the District at the sole discretion of EcoDistricts.

3. INTELLECTUAL PROPERTY

3.1 Marks.

3.1.1 EcoDistricts and Registrant acknowledge that each Party owns certain names, trademarks, service marks, copyrights, and other intellectual property (collectively, the "Marks"), and owns or has certain merchandising rights in and to the Marks and all goodwill associated with or symbolized by them. The Marks include the designation of any District as "EcoDistricts™ Certified", which designation means such District is certified by EcoDistricts to be in compliance with the Protocol and entitled to display or otherwise use the designated servicemarks for Certified Ecodistricts as promulgated by EcoDistricts. It is understood that in

promoting EcoDistricts' and Registrant's activities and the District, EcoDistricts and Registrant may make references to each other, and in so doing, may display the Marks of EcoDistricts and Registrant. Each Party grants to the other a nonexclusive, nontransferable license to use its Marks during the term of this Agreement, solely in connection with activities related to this Agreement and subject to the terms and conditions set forth below, or otherwise submitted in writing to the other Party. Each Party agrees to utilize the Marks of the other using only graphics provided by the other Party. EcoDistricts agrees to adhere to Registrant's reasonable trademark and branding guidelines, if any, which are submitted in writing to EcoDistricts.

3.1.2 Neither Party will impugn or challenge, or assist in any challenge to, the validity, registration, or ownership of the other Party's Marks. Each Party is solely responsible for taking actions it deems appropriate to obtain trademark, service mark, or copyright registration for its Marks. All uses of, references to, and goodwill in the Marks shall inure to the benefit of the owner, and all rights with respect to the Marks not specifically granted in this Agreement are reserved to the owner.

3.1.3 Neither Party is granted any right or license under this Agreement to produce, distribute, or sell any products, promotional or advertising materials, or merchandising or novelty items bearing the Marks of either Party.

3.1.4 In connection with all use of EcoDistricts' Marks as set forth herein, Registrant agrees to use EcoDistricts' Marks in accordance with all applicable laws, rules, and regulations and will comply at all times with EcoDistricts' Trademarks Policy as published by EcoDistricts at the EcoDistricts website (<http://ecodistricts.org>) and as may be updated from time to time subject to the provisions of Section 7.2 below (the "Trademark Usage Policy"). Registrant hereby represents and warrants that Registrant has fully reviewed the Trademark Usage Policy.

3.1.5 All rights to EcoDistricts' Marks not expressly granted herein are reserved by EcoDistricts, and no license is granted hereunder for the use of the Marks for any purpose beyond the uses set forth in this Section 3.1, or to any other intellectual property of EcoDistricts. Registrant acknowledges and affirms EcoDistricts' ownership of its Marks and the validity and enforceability thereof, and Registrant shall not engage in or support any action, claim, or challenge that is inconsistent with the foregoing.

3.1.6 Each Party acknowledges that the Marks, and the goodwill associated with them, possess characteristics which make it difficult to assess monetary damages sustained as a result of a Party's unauthorized use of the Marks. Each Party recognizes that the other would suffer irreparable injury by such unauthorized use and agrees that injunctive and other equitable relief is appropriate in the event of a breach of any of the terms of this Section 3.1. Such remedy shall not be exclusive of any other remedies, nor shall it be deemed an election of remedies.

3.1.7 If this Agreement is terminated, Registrant must immediately cease using EcoDistricts' Marks. EcoDistricts must also immediately discontinue using Registrant's Marks.

3.2 District Information. Collectively, any information submitted to EcoDistricts by Registrant in order to complete the Certification Process for a District, including information related to Registrant, the District, or the owners of real property within the District (the "District Owners"), whether provided before or after execution of this Agreement, together with all information contained within Submissions, shall be referred to herein as "District Information". Registrant hereby grants EcoDistricts and its agents and contractors a non-exclusive, royalty-free license to access, view, reproduce and otherwise use all District Information submitted to EcoDistricts, including all copyrighted materials, trademarks, and other proprietary information, solely for the purposes of assessing the District. This license also grants EcoDistricts the right to

use, reproduce, publish, create derivative works from, perform and display such District Information as described in the Certification Handbook; provided, however, that unless Registrant consents in writing in advance (which consent shall not be unreasonably withheld, conditioned or delayed), EcoDistricts shall not use District Information containing identifiable information for any purpose other than for assessing the District. EcoDistricts reserves the right to change the ways they use and disclose District Information; provided however, EcoDistricts will provide Registrant with no less than ninety (90) days prior written notice of any changes. Nothing in this Agreement shall prevent EcoDistricts from disclosing information where legally compelled to do so. Unless prohibited by law, EcoDistricts will provide prompt notice of any compelled disclosure to Registrant to facilitate an opportunity to limit or prevent the disclosure at Registrant's sole expense. EcoDistricts may also disclose District Information if such disclosure, in EcoDistricts' reasonable discretion, is deemed to be in the interest of public safety.

4. LIABILITY

4.1 No Representations and Warranties; Limitation of Liability.

4.1.1 EcoDistricts hereby disclaims, to the greatest extent allowed by law, any and all warranties, representations, and conditions, whether written, oral, express, implied or statutory, including any warranty against infringement, warranties of accuracy, completeness, title, merchantability, or fitness for a particular purpose, with respect to Certification, the Certification Process, and any Registration, application, or form provided by or on behalf of EcoDistricts. EcoDistricts explicitly disclaims any and all liability arising from Registrant's use of any of EcoDistricts' Marks.

4.1.2 All determinations related to Certification are in the sole and absolute discretion of EcoDistricts, and in no event shall EcoDistricts have any liability as a result of any

decision to grant or not to grant Certification to the District (or any portion of thereof) for any reason.

4.1.3 Without limiting the broad scope of this Section 4.1, Registrant agrees and acknowledges that:

(a) Certification is not a representation, and does not mean (1) that the District is, or that any individual building(s) or interior space(s) in the District are, structurally sound or safe, constructed in accordance with applicable laws, regulations or codes, free of mold or mildew, or free of volatile organic compounds or allergens or toxins, or (2) that the District (or any individually registered building(s) in the District) has achieved or shall achieve a relative or specific level of energy efficiency, performance, or utilization of renewable, recycled or recyclable resources as a result of any grant of Certification;

(b) Any grant of Certification does not mean that EcoDistricts endorses, verifies, or agrees with any District Information that has been provided or represented to EcoDistricts;

(c) Any grant of Certification shall not guarantee:

(i) Energy efficiency for the District properties;

(ii) Cost-savings for the District Owners;

(iii) Economic benefits for Registrant or District Owners; or

(iv) Government incentives for Registrant or District owners; and

(d) Any grant of Certification does not guarantee Registrant or any District Owner of the satisfaction of any mandates or requirements for the District or that any buildings therein will achieve a certain level of environmental attributes.

4.2 EcoDistricts and its officers, employees, and agents, shall have no liability to Registrant, any District Owner, or any third party in contract, tort, or otherwise, arising out of or relating to this Agreement or the use or non-use by any person of any information provided by EcoDistricts to Registrant or any District Owner in connection with the Certification Process except as provided in Section 4.2.1 below. In no event shall EcoDistricts be liable for any indirect or consequential losses, including damages or costs due to loss of profits, tax credits, economic benefits, data, loss of goodwill.

4.2.1 EcoDistrict's liability under this Section 4.2 shall be limited to the Fees paid by Registrant hereunder within the year immediately preceding date of any claim by Registrant, any District Owner, or any third party.

4.3 Indemnity/Duty to Defend. Except to the extent that Registrant constitutes a political subdivision of a state or commonwealth of the United States, including any municipality, county or other local government (in which event the provisions of this Section 4.3 shall not apply), Registrant agrees as follows:

4.3.1 Registrant shall indemnify and hold harmless EcoDistricts together with its directors, officers, employees and agents (collectively, the "Indemnified") from against any and all demands, claims, and liability for direct losses, damages, settlements and costs (including attorneys' fees) of any nature whatsoever asserted against or suffered by the Indemnified and arising out of the Certification Process, except to the extent that:

(a) such demand or claim is caused by or arises out of the Indemnified's gross negligence or willful misconduct; and

(b) EcoDistricts has failed to take reasonable steps to mitigate such damage or loss as allowable under applicable law; provided, however, that EcoDistricts shall have no obligation to mitigate any such damage or loss unless and until it is aware of the same.

4.3.2 Registrant shall have a duty to defend EcoDistricts from any and all suits or claims to the extent that EcoDistricts is joined as a Party defendant in any suit against Registrant pertaining to the Registration, the Certification Process, or any Certification.

5. FEES

5.1 Registrant acknowledges that all fees charged by EcoDistricts in connection with the Registration and the Certification Process (collectively, the "Fees") are described at <http://ecodistricts.org> (the "Fee Website") are quoted net of all applicable taxes and duties which, where appropriate, will be payable by the Registrant to EcoDistricts. Registrant acknowledges that, subject to the terms of [Section 7.2](#) below, EcoDistricts may change the Fees applicable to any portion of the Certification Process from time to time in EcoDistricts' sole discretion as published on the Fee Website. Registrant hereby represents and warrants that Registrant has fully reviewed the schedule of Fees on the Fee Website. Except as otherwise provided in this Agreement, all Fees paid by Registrant shall be non-refundable.

5.2 Registrant shall pay all Fees required in connection with the Certification Process in a timely manner, and EcoDistricts may withhold or suspend Certification processing until payment is received. Notwithstanding anything to the contrary herein, Fees charged in connection with

each Registration submitted by Registrant shall be fixed at the amounts in effect at the time such Registrations are submitted.

6. TERM AND TERMINATION

6.1 This Agreement comes into effect at the date of acceptance of this Agreement by the Registrant pursuant to the terms of Section 7.7 below (the “Effective Date”) and will expire on the tenth anniversary of the Effective Date or if explicitly terminated:

(a) at any time by EcoDistricts upon no less than 30 days’ prior notice to Registrant, or immediately by EcoDistricts for Registrants’ failure to timely pay EcoDistricts any Fees due hereunder, for denial of Registration, for Registrant’s failure or unwillingness to comply with the Protocol or any other requirements of the Certification Process, due to the revocation or expiration of any Certification for the District, or for any other breach of this Agreement by Registrant, including any breach of Registrant’s representations and warranties contained herein; or

(b) at any time by Registrant upon no less than 30 days’ prior notice to EcoDistricts.

7. MISCELLANEOUS

7.1 Entire Agreement. This Agreement including any documents referred to herein together with all other forms relating to this Agreement submitted and accepted by both Parties constitutes the entire agreement and supersedes all prior oral or written agreements, understandings, or arrangements between the Parties relating to its subject matter. Neither Party shall be entitled to rely on any agreement, understanding, arrangement, or representation relating to the subject matter of this Agreement which is not expressly contained in this Agreement and no

change may be made to this Agreement except in writing and signed by duly authorized representatives of both Parties.

7.2 Modification Of Terms. Except as otherwise provided herein, EcoDistricts may change any of the Certification Documents, the Fees, and the Trademark Usage Policy at any time in its sole discretion, provided, however, that EcoDistricts shall provide Registrant written notice of any changes to the Fees, and any material changes to the Certification Documents or the Trademark Usage Policy within a reasonable time after such changes are posted to the EcoDistricts website. Registrant shall have 15 business days after receipt of such notice to object to material changes to the Certification Documents or Trademark Usage Policy, and any such objection shall be made in writing. In the absence of a timely objection, Registrant shall be bound by such material changes to the Certification Documents or Trademark Usage Policy. Registrant shall be bound by any changes to the Fees 30 days after receiving notice thereof from EcoDistricts. If Registrant timely objects to a material change to the Certification Documents or Trademark Usage Policy, EcoDistricts may modify such material changes to accommodate Registrant's objections in its sole discretion. Notwithstanding any of the foregoing, Registrant's logging in to access or submit the Registration or Submissions, and following any required prompts, and Registrant's ongoing use of EcoDistricts' Marks, constitutes Registrant's irrevocable acceptance of all changes to the Certification Documents, Fees or Trademark Usage Policy. In the event that, within 30 days after any timely objection by Registrant to a material change to the Certification Documents or Trademark Usage Policy, EcoDistricts and Registrant are unable to agree on an acceptable modification to such material change, or, in any event, within 30 days after any change to the Fees, Registrant may, as its sole remedy, terminate this Agreement and receive a refund of any Fees in relation to the District paid by Registrant within the 180 days immediately preceding the date of termination.

7.3 Waiver of Rights under this Agreement. No failure or delay on the part of either of the Parties to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be.

7.4 Notices. Any notice or other document to be given under this Agreement shall be in writing in the English language and sent to the specified address for that Party, unless a different address has been provided to the other in writing for this purpose. Each such notice shall be deemed to have been duly given (i) on the same day if sent by hand or electronic mail, (ii) on the next day if sent by registered overnight delivery service, or (iii) three days after being sent by first-class mail. The specified address for EcoDistricts is the address set out at the bottom of each page of this Agreement, and the specified address for the Registrant is the address provided on the signature page of this Agreement.

7.5 Force Majeure. Any delay or failure of either Party to perform its obligations hereunder shall be excused to the extent that it is caused by an event or occurrence beyond its reasonable control such as, by way of example and not by way of limitation, acts of God and nature, acts of terrorism, actions by governmental authority (whether valid or invalid), fires, explosions, riots, natural disasters, epidemics, wars, sabotage or labor problems; provided the Party claiming force majeure promptly notifies the other Party of the event of force majeure, the anticipated duration of the event of force majeure, and the steps being taken to remedy the failure. Should the event of force majeure continue beyond 30 days, or such shorter time period as may be reasonable under the circumstances, either Party may terminate this Agreement.

7.6 Governing Law. This Agreement shall be governed by the laws of the jurisdiction in which lies the District which is the subject of dispute and the Parties hereby submit to the non-exclusive jurisdiction of the Circuit Court of Multnomah County, Oregon.

7.7 Execution. Registrant hereby acknowledges reading and understanding this Agreement and agrees to be bound by the terms hereof and of the Certification Documents. Further, Registrant understands that by agreeing to these terms it will be bound to a legally enforceable contract.

Registrant: _____ - RE-ENTER DISTRICT REGISTRANT -

District Name: _____ - ENTER FIRST AND LAST NAME -

Agent/Representative Name (if applicable): _____ - OPTIONAL -

Registrant Mailing Address: _____ - ENTER MAILING ADDRESS -

_____ - ENTER MAILING ADDRESS -

_____ - ENTER CITY, STATE, COUNTRY, ZIP CODE -

Registrant Email Address: _____ - ENTER EMAIL ADDRESS -

Signature: _____

Signed By (please print): _____ - PRINT FIRST AND LAST NAME -

Title: _____ - ENTER TITLE -

Date: _____ - ENTER TODAY'S DATE 00/00/0000 -

EcoDistricts Signature: _____

Signed by (please print): _____ - PRINT FIRST AND LAST NAME -

Title: _____ - ENTER TITLE -

Date: _____ - ENTER TODAY'S DATE 00/00/0000 -