



ARCSEA International

18927 Hickory Creek Dr., Suite 220, Mokena, IL 60448
(708) 995-3320

CERTIFICATION AGREEMENT

THIS AGREEMENT, effective on the date of the last signature set forth below, is between ARCSEA International, LLC (“ARCSEA”), a Texas limited liability corporation which certifies systems that have been found to meet applicable standards and the requirements of the applicable code(s), and the undersigned “Certificate Holder”, a person or organization desiring to have a system accepted and listed by ARCSEA, and who is identified in the attached Application for Evaluation and Inspection.

The parties agree as follows:

1. This is a Certification Agreement between ARCSEA and Certificate Holder for the system listed on the attached Application for Evaluation and Inspection (the “System”). Certification is solely a representation of ARCSEA that the System specifications, and installation as examined, have been found to meet applicable standards. Certification does not carry any guarantee of acceptance by local jurisdictions or authorities. **ARCSEA MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.** ARCSEA has the right under this Agreement to conduct periodic inspections of the System and to review Certificate Holder’s quality assurance procedures and records related thereto in accordance with the provisions of Paragraphs 15 and 17 hereof. This right of inspection and review permits ARCSEA to verify that Certificate Holder has appropriate quality controls and has the ability to use and maintain the System in compliance with the requirements of the applicable standard(s).

INTEREST GRANTED

2. ARCSEA is the owner of various certification marks and the goodwill associated therewith (the “Certification Marks”), both unregistered and registered with the United States Patent and Trademark Office, which are of great value to ARCSEA. Certificate Holder agrees that the Certification Marks, together with the goodwill connected therewith, are the sole and exclusive property of the ARCSEA, and Certificate Holder claims no rights and shall claim no right therein, other than provided herein.

3. Acceptance of the System for Certification by ARCSEA, as indicated by the issuance of a Standard 63 Rainwater Harvesting System Certification (“Certificate”) for said System, constitutes a non-assignable, non-exclusive and revocable license to use the Certification Marks as provided in the ARCSEA/ASPE/ANSI Standard 63 Rainwater Catchment System Field Certification Program Policy & Procedure (“Procedures”) for the term of the Certification in a manner which is consistent with this Agreement and the Procedures.

4. Certificate Holder shall have no right or license to use any Certification Marks on any unlisted product or system or to license or sublicense any other person or entity to use any
ARCSEA

Certification Mark. Nothing in this Agreement shall be construed to give Certificate Holder or any other person or entity any right, title or interest in any of the Certification Marks, except as expressly granted in this Agreement. Certificate Holder agrees that it will not register or attempt to register any Certification Mark in its own name or in the name of any other person or entity, and that it will not use any Certification Mark as any part of the name or identity of any person or entity.

TERM

5. Subject to the provisions of this Agreement, this Certification, and Certificate Holder’s right to employ the Certification Marks on the certified system, shall extend for up to two (2) years (depending on the type of system) from the date of the Certificate issued under the terms of this Agreement, and shall continue automatically for successive periods unless this Agreement is modified or changed. In the event that this standard Certification Agreement is modified by ARCSEA, ARCSEA shall notify Certificate Holder of its proposed changes in writing at least 90 days prior to the expiration of any initial certification period or subsequent renewal period and it shall be a condition precedent to the continued effectiveness of the Certification and license that Certificate Holder execute and deliver to ARCSEA by the end of such period the modified Certification Agreement. In the event no changes to the Agreement have been made, payment of a renewal invoice constitutes documentation of an intention to renew sufficient to meet the requirements of this paragraph. Nothing in this paragraph 5 shall be deemed to alter Certificate Holder’s other obligations set forth herein.

CERTIFICATE HOLDER’S GENERAL OBLIGATIONS

6. Subject to Paragraph 18 below, Certificate Holder shall affix at least one of the Certification Marks listed in the Procedures to System as described in that document. If Certificate Holder reasonably believes that the aesthetic appearance of the product may be affected by this requirement, then Certificate Holder shall contact ARCSEA to obtain ARCSEA’s consent to permit Certificate Holder to affix the Certification Mark (s) in another manner.

7. Certificate Holder agrees that the ® designation is to be interpreted as part of any Certification Mark where shown, and the use or non-use of such designation except as shown in the Procedures is strictly prohibited. The display of other IAPMO or ARCSEA Certification Marks with the product or any modification of the approved display shall only be made with the prior written approval of ARCSEA. Certificate Holder recognizes that from time to time IAPMO or ARCSEA may add to, change or otherwise modify its Certification Marks or the products on which the Certification Marks may be employed. Certificate Holder agrees that it will conform with such subsequent changes, within one year of the Certification renewal, following written notice thereof by IAPMO and/or ARCSEA, and that it will follow and use any such changes as if they were part of this Agreement at the time of the execution hereof.

8. In no case shall Certificate Holder amend, alter, abridge or otherwise edit the Certificate or any other certification documents produced by ARCSA. Whether it be for internal use of Certificate Holder, or if Certificate Holder provides copies of certification documents to others, the documents shall only be reproduced in their entirety or as otherwise specified in the applicable certification scheme. In no case shall Certificate Holder use its product certification in such a manner as to bring ARCSA into disrepute or issue any written or oral statement, or issue or publish any advertisement which states or implies a commercial endorsement, or express or implied warranty for any purpose, of any product by IAPMO or ARCSA, their respective management, committees or boards of directors. Neither IAPMO nor ARCSA approves or recommends any system, product or material, and therefore only the phrases "accepted by", or "accepted for Certification by" followed by the appropriated Certification Mark is permissible. The use of any language which in any manner tends to be misleading or to enlarge the scope or intent of the Certification of the product is strictly prohibited. Any and all claims made by Certificate Holder with regard to the certified systems shall be consistent with, and limited by, the scope of the Certification provided as set forth in writing on the Certificate provided to Certificate Holder by ARCSA. Certificate Holder may submit advertising copy and promotional material to ARCSA for prior approval, and ARCSA will respond to Certificate Holder's request for such approval within a reasonable time. Under no circumstances, however, shall Certificate Holder use any such submitted advertising copy or promotional material until it receives approval therefor from ARCSA.

9. Certificate Holder shall not use any of the Certification Marks in a manner which implies that an uncertified System is certified or is the equivalent of a certified system. Without limiting the foregoing, Certificate Holder shall not use a certified System bearing a Certification Mark as a component or sub-component of an uncertified System or an uncertified assembly of Systems in a manner which implies that the entire product or assembly is certified.

10. Certificate Holder agrees to promptly notify ARCSA of any actual or suspected uses or infringements of any Certification Mark. ARCSA alone, at its sole discretion, has the right to challenge any unauthorized uses or infringements of the Certification Marks, and alone has the right to prosecute any person or entity who unlawfully uses or attempts to use any of the Certification Marks. Under no circumstances shall Certificate Holder have any right to challenge any unauthorized uses or infringements of the Certification Marks or to prosecute any person or entity who unlawfully uses or attempts to use any of the Certification Marks, without the express prior written permission of ARCSA.

In order to assist ARCSA with its applications for registration, renewal and the pursuit of opposition to registration by others of the Certification Marks, and in order to assist ARCSA with its protection and enforcement of the Certification Marks, upon request by and at the cost of ARCSA, Certificate Holder shall furnish to ARCSA, copies of, any and all documents, not deemed confidential by Certificate Holder, necessary or desirable to evidence IAPMO's or ARCSA's ownership of the Certification Marks and to verify the quantity of certified systems controlled by Certificate Holder. ARCSA will use such documents solely for purposes of establishing its ownership of the Certification Marks and the widespread use of the Certification Marks in the marketplace. Certificate Holder is not, and shall not hold itself out as, an agent, legal representative, joint venturer, partner, employee or servant of IAPMO or ARCSA for any purpose whatsoever.

11. Certificate Holder shall promptly inform ARCSA in the event of any change that may affect Certificate Holder's ability to comply with the terms of this Agreement and the terms of the Certification granted. By way of example, and not limitation, Certificate Holder shall promptly notify ARCSA of any change in corporate ownership, change in the systems, or major change in Certificate Holder's maintenance of the systems.

QUALITY STANDARDS

12. Certificate Holder shall maintain the System design, quality and workmanship in accordance with the current applicable standards recognized by ARCSA, or as such standards may be changed. Upon request, Certificate Holder may obtain a list of the then current applicable standards recognized by ARCSA. In addition, Certificate Holder shall make no substantial change in material, process, use or design of the listed System without prior written approval of ARCSA. As used in this paragraph 12, the term "substantial change" means any change which would make any of the information set forth on the Certificate for the System false or misleading.

13. Certificate Holder acknowledges and agrees that (a) new drawings, tests and samples may be required as a result of any such substantial changes; (b) any substantial change in the original System after acceptance and Certification by ARCSA, which is not authorized by ARCSA will automatically result in decertifying of the System until such written approval is received; and a new application, additional fees and test reports may be required in the event of any such decertifying.

14. In the event of any changes in the current applicable standards recognized by ARCSA, ARCSA will notify Certificate Holder of the change or changes in writing. With this notification, ARCSA will advise Certificate Holder of any need for supplementary testing/inspection of the Certified System and will confer with Certificate Holder to mutually agree upon the period of time needed by the Certificate Holder to (a) prepare for and perform such testing or inspection; and (b) submit to ARCSA the test reports and/or inspection report documenting satisfactory compliance of the new and/or revised requirement(s). ARCSA shall use good faith efforts to accommodate Certificate Holder's needs and requirements in this regard. Notwithstanding the foregoing, however, Certificate Holder acknowledges and agrees that it is the Certificate Holder's responsibility to fully comply with all standards applicable to Certificate Holder's certified systems.

QUALITY CONTROL

15. Certificate Holder shall establish, maintain and use a procedure for installation and maintenance of systems. Certificate Holder shall keep records of any issues Certificate Holder encountered with the systems since the last on-site inspection performed by ARCSA, which issues are as a result of problems with or failures of, the System which could be reasonably deemed to (i) result from failures or problems with Certificate Holder's procedure; (ii) pose a health and safety risk to consumers or the general public due to circumstances under Certificate Holder's control; or (iii) expose ARCSA or IAPMO to liability as a result of the use or operation of such systems. Certificate Holder shall make the records related only to the certified Systems available to ARCSA upon request. At a minimum, Certificate Holder's records shall (A) state the nature of the issue; (B) identify the certified System pertinent to the issue; and (C) confirm the remedial action(s) taken and the status (open or closed) of the issue, as known to Certificate Holder. In the event that the record required by this Paragraph is not retained by Certificate Holder at the location which is being inspected by ARCSA, Certificate

Holder shall advise ARCSA in writing of the location of such record and shall provide the record to ARCSA.

SYSTEM LOCATION

16. Certificate Holder shall furnish to ARCSA, in writing, the street address, hours of operation, anticipated dates when the site of a certified System will be temporarily closed or shut down. Certificate Holder shall also provide the name and telephone number of a contact person for each such location, both at the time of application for evaluation and in the event of any changes in this information.

CONTINUOUS COMPLIANCE INSPECTIONS

17. Certificate Holder consents to the review of Certificate Holder's certified System by ARCSA or its subcontractor; and Certificate Holder shall permit ARCSA or its subcontractor when required by the Procedures to make announced (with reasonable prior notice) compliance inspections of; (a) the System; and (b) Certificate Holder's records relating to water quality testing, self inspections, maintenance of the System, as well as any issues related to the System (collectively, "Records"); provided, however, that in the event ARCSA reasonably believes in good faith that Certificate Holder is not in compliance with the terms and conditions of this Certification Agreement, ARCSA may make a reasonable number of additional announced (with reasonable prior notice) inspections of the System and Records as is necessary. In the event that ARCSA is prevented from reviewing the Records or the System, ARCSA may, in its sole discretion, revoke the Certificate. Certificate Holder shall pay to ARCSA an inspection fee in the amount described on pricing schedule, for any inspection conducted under the provisions of Paragraph 17 hereof.

DECERTIFICATION

18. In the event of: (i) an inspection; or (ii) a subsequent standard interpretation or standard revision; or (iii) subsequent testing reveals that a System fails to meet ARCSA's Certification criteria, then Certificate Holder shall after its receipt of written notice from ARCSA describing the issue in reasonable detail and a thirty (30) day period within which to rectify the issue or discuss a remediation plan with ARCSA: (a) immediately cease use of the Certification Marks on the System, and (b) immediately (or within a reasonable time reasonably agreed to by ARCSA) correct any and all items of non-compliance and submit to ARCSA in writing within thirty (30) days of the date of inspection or subsequent testing a report of planned and/or actual corrective action taken by Certificate Holder; provided that the thirty (30) day period described in this Paragraph applies to the written report and not the date for corrective action by Certificate Holder. Upon notification by Certificate Holder to ARCSA that all items of non-compliance have been corrected, Certificate Holder shall permit ARCSA to conduct another inspection and test of the System, at Certificate Holder's cost and expense. In the event that any subsequent inspection or test reveals that the System continues to fail ARCSA's Certification criteria, then Certificate Holder shall, subject to the provisions of this Agreement, remove the Certification Marks from the System in the presence of the inspector or promptly provide ARCSA with a certificate in a form reasonably acceptable to ARCSA and its representatives, signed by Certificate Holder or a duly authorized officer, member or agent of Certificate Holder which states that the Certification Marks have been removed from the System.

DENIAL OF CERTIFICATION / DECERTIFYING

19. In the event that Certificate Holder breaches any of its representations, warranties, covenants or agreements contained
ARCSA

in this Agreement or any application for listing, then ARCSA may (in its sole and absolute discretion) (a) deny the application for a listing (under circumstances where the product is not yet listed); or (b) Decertify the system or deny renewal of a Certification (under circumstances where the system is already listed) and terminate the license granted under this Agreement. Further, ARCSA may (in its sole and absolute discretion) immediately Decertify any System and terminate the license granted hereunder upon any continuous failure of any System to meet ARCSA's applicable Certification criteria or upon any breach of Certificate Holder's obligations or other duties under the Agreement, including by way of example and not limitation the failure of any System to meet the applicable criteria. In the event of any such failure or breach, Certificate Holder shall be notified by ARCSA in writing of the denial of the Certification or the Decertifying (as applicable), the reasons therefor. Upon Decertifying, the license granted by this Agreement shall be immediately and automatically terminated without further notice to the Certificate Holder, and all of the requirements of Paragraphs 18, 22, 23, and 24 hereof shall immediately apply.

ARCSA shall have the right to notify its membership and the general public of the delisting of any System. In addition to the Decertify, ARCSA may require, prior to accepting further applications from Certificate Holder to certify systems, proof that adequate measures have been taken by the former Certificate Holder to insure that the causes of prior breaches or failures have been eliminated, including sufficient inspections and tests to provide ARCSA with an indication that the former Certificate Holder can maintain compliance with Certification Requirements.

RENEWAL

20. Prior to the expiration of a system Certification, Certificate Holder shall file an Application for Evaluation and Inspection (Renewal) of the System's Certification with ARCSA and an executed Certification Agreement, if revisions have been made by ARCSA to the standard Certification Agreement in force at the time of renewal, each on forms provided by ARCSA. ARCSA will attempt to notify Certificate Holder prior to the expiration date of the Certification that the Certification is due for renewal. However, calendaring renewal of a product Certification is the sole and exclusive responsibility of Certificate Holder. Payment of a renewal invoice shall be a request for renewal and a reaffirmation of the terms of the Certification Agreement. Certificate Holder shall sign a new Certification Agreement at the time of renewal if the Certification Agreement terms have been changed or modified. If payment is not received prior to the date of expiration, the Certification will automatically expire on the expiration date without notice to Certificate Holder. ARCSA shall have the right to publicize the expiration of the Certification of any product.

21. By re-executing the Certification Agreement and submission thereof as a renewal, Certificate Holder certifies that each substantial change or modification of whatever kind, type or manner in or to the System, since the previous application, has been accepted by ARCSA in accordance with Paragraph 12 hereof, and that any proposed substantial change or modification is described in detail in a writing attached to the renewal application. As used in this Paragraph 21, the phrase "substantial change or modification" shall have the same meaning as the term "substantial change" set forth in Paragraph 12 hereof. Certificate Holder understands that new drawings, inspections, tests and samples may be required by ARCSA as a condition of renewal if there is any such substantial changes or modification since the last acceptance. In the absence of a writing attached to the renewal application and describing all such substantial changes or modifications, Certificate Holder certifies by re-executing the Certification Agreement that no substantial change or

modification whatsoever has been made to the System since its last acceptance by ARCSA. If any substantial change or modifications found to have been made to the System during the period of acceptance has not been submitted to ARCSA for prior approval, then ARCSA shall have the right to immediately Delist the product.

TERMINATION

22. All undisputed outstanding fees and fees due to ARCSA shall be paid by Certificate Holder before a Certification is granted or before renewal of a Certification is granted. The non-payment of any undisputed fee owed to ARCSA and failure to cure such non-payment within thirty (30) days of receipt by Certificate Holder of written notice from ARCSA describing the failure, shall be grounds for Decertification.

REMOVAL OF CERTIFICATION MARKS

23. Within three (3) months of termination or expiration of this Agreement or Decertification of a System, Certificate Holder agrees (a) to remove from the System and any related materials, including, but not limited to, its advertising labels and signage, the Certification Marks and all references to IAPMO and/or ARCSA, (b) to destroy all such property and merchandise from which any of the Certification Marks or reference to IAPMO and/or ARCSA have not been removed, and (c) not to thereafter employ any Certification Marks or any confusingly similar words or design in any manner whatsoever.

24. In the event the System is Decertified, ARCSA shall have the right to enter the facilities owned or controlled by Certificate Holder in order to verify that the Certification Marks have been removed from the Systems and related materials bearing any Certification Marks have been destroyed. Certificate Holder agrees to permit such entry by ARCSA for the purposes stated. Certificate Holder also agrees to pay all direct and reasonable costs associated with the above in accordance with ARCSA's Schedule of Fees. Certificate Holder acknowledges any representation by Certificate Holder that any unlisted System is listed by ARCSA, constitutes an infringement of ARCSA's rights in its Certification Marks and constitutes a violation of applicable state and federal trademark laws.

CONFIDENTIALITY

25. ARCSA agrees to use any and all information received from Certificate Holder, together with all Records, Customer Lists and records of complaints referred to in Paragraph 15 (collectively, the "Data"), for internal purposes only in connection with the required evaluations and documentation to be performed under this Agreement.

26. ARCSA shall maintain the Data in strictest confidence and shall not disclose the Data (a) to any person, entity or organization outside of ARCSA or IAPMO's officers and employees, and external auditors, without the express prior written consent of Certificate Holder; (b) except as may be required by court order or decree; or (c) except as may be required by applicable law or regulation; provided, that in such event, prior to any disclosure, ARCSA shall notify Certificate Holder in writing of the law or regulation that directs the disclosure of such Data, and only upon written approval by Certificate Holder may ARCSA disclose such data. Any disclosure by ARCSA in accordance with this Section shall be limited to the information strictly necessary to comply with the order or applicable law and shall be redacted as much as legally

possible. In order to provide Certificate Holder with an opportunity to contest the scope of any requests made in discovery or any subpoena, order or decree, and to attempt to protect the confidentiality of any Data, ARCSA shall notify Certificate Holder in writing prior to such disclosure as to the name and address of the intended recipient, the reason for disclosure and a description of the Data to be disclosed. It shall be the sole and exclusive responsibility of Certificate Holder to challenge or contest the scope of any such requests, subpoenas, orders and decrees, and ARCSA shall strictly follow any and all court orders or other legal process required or mandated with respect to disclosure of the Data.

27. For purposes of this Agreement, the term "Data" does not include any information which (a) is generally available to the public other than as a result of a disclosure by ARCSA, (b) was available to ARCSA on a non-confidential basis prior to its disclosure to ARCSA by Certificate Holder as evidenced by pre-existing documentation, or (c) is available to ARCSA on a non-confidential basis from a source other than Certificate Holder, provided that such source is not bound by a confidentiality agreement with Certificate Holder or otherwise prohibited from transmitting the Data to ARCSA by any contractual, legal or fiduciary obligation. All documentation, correspondence, reports and information within the file maintained by ARCSA for Certificate Holder that does not fall within the definition of Data (as defined in Paragraphs 25-27) is the sole property of ARCSA.

GENERAL PROVISIONS

28. ARCSA warrants only that the services provided by ARCSA pursuant to this Agreement will be provided in good faith. No other representations or warranties are provided by ARCSA with respect to its services or this Agreement.

29. In no event shall either party be liable to the other party or any other person or entity for any consequential, special or indirect damages for any claim or cause of action whatsoever, whether based in contract, tort or otherwise.

30. Certificate Holder agrees to indemnify, defend and hold ARCSA and the officers, directors, members, agents and representatives harmless from and against any and all claims, liabilities, losses, damages, costs and expenses, including, but not limited to, attorney's fees, investigative costs and court costs arising out of, relating to or in connection with (a) Certificate Holder's participation in ARCSA's Certification program, including but not limited to statements by Certificate Holder to third parties relating to Certificate Holder's participation in ARCSA's Certification program, and (b) all third party claims relating to Certificate Holder's System, whether based in contract (including, but not limited to, warranty claims), tort (including, but not limited to, negligence or product liability claims) or otherwise. Certificate Holder further agrees to obtain and maintain policies of product liability insurance, general liability insurance or similar equivalents with coverages in amounts that are reasonably satisfactory to ARCSA or commercially standard in the industry.

31. In the event of any legal action or dispute brought by either party arising out of (a) the relationship created by this Agreement; (b) the subject matter of this Agreement; or (c) the interpretation or enforcement of any provision hereof, the prevailing party in such dispute or action shall receive from the losing party all of the prevailing party's costs, expenses and such amounts as the court may adjudge to be reasonable attorneys' fees. Such sums shall be included as part of any judgment.

32. All statements, notices and other communications which

are required or permitted hereunder shall be addressed to the parties at their addresses or email addresses designated in the most current Application for Evaluation and Inspection, until such addresses are changed by written notice. All notices required or permitted hereunder shall be deemed received on the day personally delivered or emailed, or five (5) days after they are mailed, postage prepaid by first class mail and correctly addressed.

33. This writing and the documents referenced herein contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, oral and written agreements and understandings with respect thereto. This Agreement may not be altered or

amended except by a writing executed by a duly authorized officer of the parties subsequent hereto.

34. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

35. The undersigned representative of Certificate Holder certifies that (a) the foregoing provisions have been read and understood, (b) Certificate Holder agrees to the foregoing provisions, and (c) the undersigned is duly authorized and empowered to execute this Agreement on behalf of Certificate Holder.

CERTIFICATE HOLDER

Company: _____
Contact: _____
Title: _____
Signature: _____
Date: _____

**ARCSA International
(For Association use only)**

By: _____
Title: _____
Signature: _____
Date: _____

Certification Marks



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Renewal sticker goes here.