

## PORCELAIN TILE CERTIFICATION AGENCY

### PROGRAM PARTICIPATION AGREEMENT

**THIS PROGRAM PARTICIPATION AGREEMENT** is entered into by and between the PORCELAIN TILE CERTIFICATION AGENCY, an Illinois Not-for-Profit Corporation (hereinafter, “Agency”), and \_\_\_\_\_ (hereinafter, “Participant”).

**WHEREAS**, the Agency is a not for profit organization which has as a primary purpose the promotion in the porcelain tile industry of the development and adoption of technically sound and market relevant standards for porcelain tile (the “Standards”); and

**WHEREAS**, Agency has established and operates a Porcelain Tile Certification Program (the “Program”) for manufacturers and sellers of porcelain tile who have agreed to support the Standards; and

**WHEREAS**, the Participant has agreed to support the Standards by participating in the Program; and

**WHEREAS**, the Participant desires to acquire certain rights to use a Program certification mark owned by the Agency to demonstrate its support of the Standards on the terms hereinafter set forth.

**NOW THEREFORE**, for good and valuable consideration receipt of which is hereby acknowledged, the parties mutually agree as follows:

- 1. DEFINITIONS.** The following terms shall have the meanings indicated when used herein.
  - 1.1** “Agreement” shall mean this Agreement and the Attachments hereto.
  - 1.2** “Application for Certification” is the application for certification attached hereto as Attachment B.
  - 1.3** “Certificate of Conformance” shall mean written authorization granting Participant a right to use Replicas.
  - 1.4** “Conforming Porcelain Tile” shall mean ceramic tile that meets the Criteria.
  - 1.5** “Conditions of Use” shall mean the terms and conditions contained in Attachment A hereto.
  - 1.6** “Criteria” shall mean the standards used by Agency for determining whether ceramic tile has a water absorption of 0.5% or less, when tested in accordance with ASTM C373, and is certifiable as Conforming Porcelain Tile.
  - 1.7** “Mark” or “Certification Mark” shall mean the trademarks or service marks as shown on Attachment C.

**1.8** “Policies” shall mean the policies governing the use of the Certification Mark issued by Agency from time to time.

**1.9** “Replica” shall mean a brand, imprint, stamp tag or label which, among other things: (a) contains a counterpart of the Mark, (b) identifies the applicable criteria to which the Mark relates, and (c) identifies the Participant.

**2.** Participant is eligible to participate in the Program if its supports the Standards by the manufacture or sale of Conforming Porcelain Tile as determined by Agency.

**3.** Subject to a determination by Agency that one or more of Participant’s product series listed in its Application for Certification have passed an initial qualifying test as meeting the Criteria, Agency hereby grants to Participant pursuant to this Agreement a non-exclusive, non-assignable, limited right to use the Certification Mark under the terms and conditions hereinafter set forth for those specific series of porcelain tile listed in its Application for Certification which have been tested and determined to meet the Criteria.

**3.1** The Agency shall have absolute control, in its sole discretion, over the design, redesign, modification, change, enhancement, improvement, authorized or unauthorized use, manner and degree of application, manner and extent of registration, maintenance, protection, enforcement, ownership, licensing, use and termination of its Certification Mark.

**3.2** Participant acknowledges the Agency’s exclusive right, title, and interest in and to the Certification Mark and acknowledges that nothing herein shall be construed to accord to Participant any rights in the Certification Mark except as otherwise expressly so provided. Participant acknowledges that its use of the Certification Mark hereunder will not create in it any right, title or interest in the Certification Mark other than the limited rights granted herein and that all such use of the Certification Mark and the goodwill generated thereby will inure to the benefit of the Agency.

**3.3** Should the Agency, in its sole discretion, deem it necessary to record Participant as a licensee of the Certification Mark in any jurisdiction, it shall do so at Participant’s expense; provided that Participant may avoid such expenses by covenanting in an amendment to this Agreement that it will not use the Certification Mark in such jurisdictions. Participant will fully cooperate with Agency to effect any such recordation.

**3.4** Participant warrants and represents with respect thereto that (a) it will not at any time challenge the Agency’s right, title, or interest in the Certification Mark or the validity the Certification Mark or any registration thereof; (b) it will not do or cause to be done or omit to do anything, the doing, causing, or omitting of which would contest or in any way impair or tend to impair the rights of the Agency in the Certification Mark; (c) it will not represent that it has any ownership in or rights with respect to the Certification Mark; and (d) it will not, either during or subsequent to the term of this Agreement, adopt, use, or register any certification Mark, trademark, service mark, trade name, insignia or logo that is confusingly similar to or a colorable imitation of the Certification Mark.

**4.** The Mark may be used by Participant only in connection with Conforming Porcelain Tile. The Mark may be applied to, affixed upon or used in connection with such products only by means of Agency approved Replicas in the form or forms set forth in the Conditions of Use and

Attachment C hereto. In conjunction with the use of such Replicas, Participant may utilize Certificates of Conformance in such form and style and subject to such rules as may be approved by Agency.

**5.** Participant agrees that the Mark, Replicas, or Certificates of Conformance will be used only in connection with its products which meet the Criteria and are subject to this Agreement and the Conditions of Use. When using the Mark, Participant may use additional symbols, trademarks, or trade names that, in the exclusive opinion of Agency, are compatible with the nature and purpose of the Mark; provided, however, that no use of such symbol, trademark, trade name or combination thereof, in the exclusive opinion of Agency, shall be used in such manner that it could be confusingly similar to the Mark.

**6.** The Program may be revised or modified at any time by Agency in Agency's sole discretion, and due notice thereof shall be given to Participant. Such revisions or modifications shall be effective at the time determined by Agency.

**7.** Participant shall not change the Conforming Porcelain Tile in any manner that results in non-compliance with the Criteria, or if Participant does not manufacture the Conforming Porcelain Tile, it shall not continue to use the Mark, Replicas, or Certificates of Conformance without disclosing any changes or modifications of which it is aware to Agency in writing and re-submitting the tile for requalification at Participant's sole cost and expense if the Agency in its sole discretion determines that such re-testing is warranted.

**8.** In the event a dispute arises between Participant and Agency concerning Participant's conformance or nonconformance with any aspect of the Program, or this Agreement, Participant may obtain a review of said matter by the Agency's Board of Directors or its designee for that purpose. A decision by the Board of Directors or its designee shall be final.

**9.** Agency, its officers, directors, members, employees and counsel shall not be liable for any act or omission of Participant. Participant shall defend Agency, its officers, directors, members, employees and counsel against any claims, and shall indemnify and hold them or any of them harmless from any liability which may be imposed on them or any of them, resulting from or arising out of Participant's acts or omissions in breach of this Agreement or in connection with Participant's use of the Mark, its products bearing the Mark, or its participation in this Program.

**10.** Agency has, and at all times retains, full and exclusive ownership of and property rights in and to all Replicas, certificates, tags, labels and stamps bearing the Mark even though purchased directly by Participant from sources other than Agency. In the event such Replicas, certificates, tags, labels and stamps become unusable for any reason whatsoever, the unusable material shall be disposed of as directed by Agency. Brands, stamps and other devices or means used to imprint such Replicas, certificates and symbols shall not be altered or defaced and shall not be removed from the premises of Participant where they were originally used except as may be directed by an authorized representative of Agency. They shall be maintained and used in a clean condition. Additionally:

**10.1** Participant is responsible for maintaining its own inventory of Replicas, certificates, tags, labels and stamps bearing the Mark.

**10.2** All Replicas, certificates, tags, labels, stamps or printed or electronic usages or references to the Mark must be available at any time, for inspection by, or surrender to, a

representative of Agency. Participant shall inform Agency in writing of all dispositions of Replicas, certificates, tags, labels and stamps.

**10.3** Participant must at all times fully comply with the Conditions of Use.

**10.4** Participant must provide copies of the Conditions of Use to all entities that receive Participant's products bearing the Mark.

**11.** This Program Participation Agreement may be terminated or suspended immediately at any time by Agency in whole or in part if, in the exclusive opinion of Agency:

**11.1** Participant has used or is using the Mark, in any form or manner whatsoever in connection with porcelain tile products which were not listed in its Application for Certification, products which were listed but did not meet the Criteria, or products which were listed and initially met the Criteria but no longer do so.

**11.2** Participant has misused or is misusing or has permitted or is permitting the misuse of the Mark by others.

**11.3** Participant's certification lapses and is not renewed.

**11.4** Participant has failed to fully comply with the Conditions of Use or has failed to provide copies of it to its customers.

**11.5** Participant is aware that its customers are not complying with the Conditions of Use and has not or is not taking reasonable steps to bring such customers into compliance.

**11.6** Participant in other respects is not complying with any provision of this Agreement or the requirements of the Program.

**12.** Agency shall notify Participant in writing of Agency's suspension of all or part of this Agreement and the right to use the Mark. Such notice shall set forth the reason(s) for the suspension. Any complete or partial suspension may be lifted only after Agency, in its exclusive opinion, is satisfied that the basis for the suspension no longer exists and that Participant's porcelain tile meets the Criteria as confirmed by a requalifying test conducted at the expense of Participant.

**13.** The Agency provides the rights granted hereunder "AS IS" and without warranty or guaranties of any kind. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE AGENCY DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES.

**14.** IN NO EVENT SHALL THE AGENCY, ITS OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND COUNSEL BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIM IS BASED AND EVEN IF THE AGENCY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

**15.** In no event shall Agency, its officers, directors, members, employees, and counsel be liable for damages in excess of an amount greater than the total payments (if any) received from Participant in the preceding six (6) months of the act or omission giving rise to such liability.

**16.** Participant will at all times comply with all laws, regulations, ordinances, rules and orders that are applicable to it in connection with its manufacture and sale of Conforming Porcelain Tile.

**17.** If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way.

**18.** The parties are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party.

**19.** The Agreement sets forth the entire understanding and agreement of the parties and supercedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be amended by a writing executed by both parties that expressly states that it is changing the provisions of this Agreement and precisely which and how such provisions are being changed. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

**20.** Participant may not transfer its rights or obligations under this Agreement in whole or in part to any third party without the prior written consent of the Agency and any attempt to do so is void.

**21.** The term of this Agreement shall be three (3) years for Participants that manufacture Conforming Porcelain Tile, and one (1) year for all Participants that do not manufacture the tile they are selling, beginning as of the effective date of this Agreement; provided however, this Agreement may be terminated at any time by, and in the sole discretion of, either party by giving sixty (60) days advance written notice of termination to the other party. The terms of Sections 3.2, 3.4, 9, 13, 14, 15, 27, 28, 29 and 31 shall survive any termination of this Agreement.

**22.** In the event of the suspension or termination of this Agreement, Participant shall immediately cease using all replicas, tags, labels, stamps, certificates or other materials, whether printed or electronic bearing the Mark and, upon demand by Agency shall surrender same to Agency. In addition Participant shall immediately take all reasonable steps to cancel any and all uses of and delete any and all references to the Mark from all of Participant's products in Participant's inventory and in the inventories of its customers and others.

**23.** Participant agrees that use of the Mark without authorization gives rise to damages that do not have a remedy at law. Participant agrees to consent to an immediate and permanent injunction against such use, without bond, in a court of competent jurisdiction.

**24.** If at any time Conforming Porcelain Tile fails to conform to the Criteria, Participant will immediately cease all use of the Mark. Participant will also notify all customers who may have non-compliant tile.

**25.** The Agency shall be permitted to charge the Participant for all expenses related to Participant's participation in the Program. Agency shall determine the nature and amounts of such

charges to be paid under this Agreement, including without limitation all costs associated with the initial qualifying tests and all subsequent qualifying tests for the Participant. The Agency may also charge a reasonable annual fee to cover administrative costs with respect to Participant's participation in the Program.

**26.** Participant shall immediately notify Agency upon discontinuing its participation in the Program, or its failure to comply with the terms of this Agreement.

**27.** This Agreement shall be construed in accordance with the laws of the State of South Carolina and any disputes or claims arising hereunder shall be brought exclusively in the appropriate state or federal courts of South Carolina and the parties agree to the exclusive personal jurisdiction in such courts.

**28.** Participant agrees that it shall be liable to Agency for any and all costs and expenses, including reasonable attorney fees associated with Agency's enforcement of this Agreement against Participant.

**29.** Nothing in this Agreement grants Participant any rights, title or other ownership interest in the Marks. Any rights that may be created through the use by Participant of the Mark shall inure to Agency.

**30.** Neither party shall be responsible for any delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to acts of God, strikes, riots, acts of war, terrorism, epidemics, fire, communication and power failures, earthquakes or other natural disasters.

**31.** All notices and other communications shall be in writing and shall be delivered personally or by next-day courier or faxed with confirmation of receipt, to Agency at the addresses specified below, or to Participant at the address specified on its Application for Certification. Any such notice shall be effective upon receipt, if personally delivered or faxed, or one day after delivery to a courier for next-day delivery.

Porcelain Tile Certification Agency  
Attn: Rick Church  
800 Rosevelt Road, Building C, Suite 312  
Glen Ellyn, IL 60137  
Telephone: (630) 942-6588  
Facsimile: (630) 790-3095

**32.** The rights and obligations of the Agency under this Agreement are intended to be consistent with its status as a corporation exempt from Federal income tax under §501(c)(6) of the Internal Revenue Code of 1986 as amended. Nothing contained in this Agreement shall be construed in a manner which is inconsistent with the requirements of such tax exempt status.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers on the respective dates hereinafter set forth.

**PORCELAIN TILE CERTIFICATION AGENCY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **ATTACHMENT A**

### **CONDITIONS OF USE OF PORCELAIN TILE CERTIFICATION AGENCY TRADEMARK**

The Porcelain Tile Certification Agency (“PTCA”) has established a Certification Program for manufacturers and sellers of porcelain tile. The program is based upon strict compliance with the requirements of Conforming Porcelain Tile defined as ceramic tile that has a water absorption of 0.5% or less, when tested in accordance with ASTM C373.

PTCA owns the exclusive rights to the PTCA Certification Mark, hereafter referred to as the Mark, which it has granted others limited rights to use in connection with promotion of its Certification Program. The Mark is set out in Attachment C of the Program Participation Agreement and is also attached hereto.

By using this Mark, and as a condition of and as consideration for such use, you agree with PTCA to use it only in accordance with the following Conditions of Use:

- You agree to use the Mark only on or in connection with Conforming Porcelain Tile listed in the Application for Certification.
- All questions regarding the use of the Mark, including interpretations of these Conditions of Use and any suspected misuse by others, should be immediately directed to PTCA at its website, or by fax or by phone.
- Participant shall not grant approval to any other person or entity to use the Mark.
- Participant shall immediately advise PTCA of any misuse or suspected misuse of the Mark by others.
- The Mark must not be used in a manner that would mislead or confuse buyers or users. For example, no promotional materials for Conforming Porcelain Tile should display the Mark in such a way that directly or indirectly implies that non certified products are certified under this Certification Program.
- The Mark must be used only in its entirety and in a format specified by the PTCA.
- Participant may not alter or otherwise change the Mark's appearance. All replicas must follow the original artwork.
- All written or electronic promotional materials must be continually reviewed for proper usage of the Mark. PTCA is available to review such promotional materials and to advise on proper usage of the Mark. Full use should be made of this review process.
- PTCA has the exclusive right to determine whether or not any use of any kind whatsoever of its Mark is proper, and any decision by PTCA in this regard is final.

**ATTACHMENT B**

**APPLICATION FOR CERTIFICATION UNDER PORCELAIN TILE CERTIFICATION  
AGENCY’S PORCELAIN TILE CERTIFICATION PROGRAM**

**I. Contact Information**

- Applicant's Name \_\_\_\_\_
- Contact Name \_\_\_\_\_
- Mailing Address \_\_\_\_\_
- Mailing City, State/Province, Zip/Postal \_\_\_\_\_
- Shipping Address \_\_\_\_\_  
(if same as mailing, leave blank)
- Shipping City, State/Province, Zip/Postal \_\_\_\_\_
- Phone: \_\_\_\_\_
- Fax: \_\_\_\_\_
- E-Mail: \_\_\_\_\_
- Web Address: \_\_\_\_\_

**II. Eligibility for Certification**

Applicant manufactures or sells porcelain tile, which is defined as ceramic mosaic tile or ceramic paver tile that is generally made by the dust-pressed method of a composition resulting in a tile that is dense, impervious, fine-grained, and smooth with sharply formed face that has a water absorption of 0.5% or less, when tested in accordance with ASTM C373.

By signing this Application, Applicant specifically agrees:

- To be bound by the Terms and Conditions of the attached Program Participation Agreement including all attachments and to abide by the Policies of PTCA as they may be adopted or amended from time to time.
- To have PTCA conduct or arrange at a laboratory of its own choosing for an initial qualifying test of representative, commercially available samples of each series of porcelain tile production identified below for which certification is sought.
- To pay all costs and fees associated with any tests related to the porcelain tile identified below.
- To have re-qualifying tests on each such product series conducted by PTCA or its agents as follows:
  - for Participants that manufacture certified tiles, at least once every three (3) years.
  - for all other Participants at least annually.
  - When a Participant sells certified tile it manufactures and also sells certified tile that it does not manufacture, the certified tile it manufactures must be retested at least every three (3) years; while the certified tile it sells but does not manufacture, must be retested annually
- In order to support Agency general administrative costs with respect to the Program, to pay an initial certification and participation fee of \$500.00 for the first qualifying series of porcelain tile it submits, and \$100.00 for each additional series. Such fees are not refundable and do not include testing costs. Thereafter, Participant shall renew the certification by remitting an annual fee of \$100.00 per series, up to total \$1,000.00, for the duration of the agreement.
- For non-manufacturing Participants, to obtain on a semi-annual basis, a signed assurance

in substantially the same form as the Addendum attached hereto from each manufacturer of Certified Porcelain Tile that it is selling that such tile continues to meet the Criteria for certification.

- To authorize PTCA, at PTCA's sole discretion, to acquire on a random basis and test representative samples of each series of PTCA certified porcelain tile. If such samples are found to not be in compliance with the attached Program Participation Agreement and other requirements of the PTCA Certification program, Participant shall reimburse PTCA for all reasonable costs connected with such tests as well as all reasonable costs associated with any follow-up testing conducted thereafter.

**III. Product Identification**

Applicant seeks certification for each series of porcelain tile products identified below:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

**IV. Applicant's Certification**

Applicant states that the above information is true and accurate, and that by signing this Application and in consideration of its being admitted into the PTCA Porcelain Tile Certification Program, it agrees that it meets or will meet all eligibility requirements set out above and will fully comply with them.

\_\_\_\_\_  
Applicant's Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature of Applicant

## Addendum

\_\_\_\_\_ (“Manufacturer”), by its undersigned duly authorized representative, hereby acknowledges that it manufactures or sells certain series of porcelain tile, as designated on Attachment B, Application for Certification, to \_\_\_\_\_ (“Participant”), and that Participant has submitted the porcelain tile to the Porcelain Tile Certification Agency, which has determined that the tile meets the Criteria for certification as Conforming Porcelain Tile.

Manufacturer therefore covenants and agrees that it shall continue to manufacture and sell Conforming Porcelain Tile to Participant, and that it shall immediately notify Participant of any changes in specification of the Conforming Porcelain Tile or any manufacturing variances which may affect the certification.

Manufacturer: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT C**

**PORCELAIN TILE  
CERTIFICATION AGENCY TRADEMARK**

