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January 17, 2024

VIA FEDERAL EXPRESS & EMAIL: [MO.MADANI@MYFLORIDALICENSE.COM](mailto:MO.MADANI@MYFLORIDALICENSE.COM)

Mo Madani,  
Technical Director  
Building Codes & Standards Office  
2601 Blair Stone Road  
Tallahassee, FL 32399

Re: **Response to Complaint Regarding Florida Product Approval No. 22267 (ES-SGD2020) and Florida Product Approval Number 17897.5 (ES-8000T)**

Dear Mr. Madani,

Our firm represents E.S. Windows, LLC (“**ES Windows**”). We are in receipt of the November 8, 2023, complaint (the “**Complaint**”) made by PGT Innovations, Incorporated (“**PGT**”), a direct competitor of ES Windows, regarding Florida Product Approval No. 22267 (“**FPA 22267**”), which was issued for ES Windows’ Series ES-SGD2020 Sliding Glass Door (the “**SGD Product**”) and Florida Product Approval No. 17897.5 (the “**FPA 17897.5**”), which was issued for ES Windows’ Series ES-8000T Jumbo Aluminum Window Wall System (the “**Window Wall Product**”).<sup>1</sup> In the Complaint, PGT alleges that ES Windows failed to properly certify the Approved Products, and misrepresented their performance capabilities to the Commission and the public. These allegations are misplaced and unfounded.

PGT’s allegations are unverified and lack merit for at least three reasons. First, the Approved Products were thoroughly tested and approved in accordance with all state laws, rules, and regulations governing the Florida Product Approval System. Second, PGT does not offer any real proof that the Approved Products do not meet the applicable standards for approval. That is

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<sup>1</sup> Florida Product Approvals shall be referred to generally as “**FPA**s.” FPA 22267 and FPA 17897.5 shall be referred to collectively as the “**Subject FPA**s.” The SGD Product and the Window Wall Product shall be referred to collectively as the “**Approved Products**.”

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because it cannot. Third, PGT's reliance on marketing materials from the manufacturer of the PVB interlayers ("**Interlayers**") utilized in the Approved Products as allegedly establishing a strict limitation on the Interlayer's use in the products is also without basis. PGT's unverified allegations are nothing more than an arguably illegal attempt by a direct competitor to defame ES Windows' products and engage in unfair competition.<sup>2</sup> This letter serves only as ES Windows' response to PGT's unfounded Complaint. ES Windows will address PGT's improper motives for filing the Complaint in the appropriate forum at the appropriate time.

***The Approved Products were thoroughly tested and approved in accordance with applicable laws, rules, and regulations.***

For over 30 years, ES Windows, through its parent companies and affiliates, has manufactured and sold aluminum and glass windows, doors, and façades for residential and commercial projects in North, Central, and South America. ES Windows and its affiliates are industry leaders, recognized as trusted manufacturers of high-quality impact-resistant windows and doors and their products are well-known and easily recognizable in the industry. As early as 2002, ES Windows introduced its hurricane resistant windows and doors to the market, especially tailored to comply with the requirements of Florida's High Velocity Hurricane Zone ("**HVHZ**"). ES Windows has remained committed to upholding the highest standards in the industry and has diligently sought the necessary approvals for its products through the Florida Building Commission's Florida Product Approval System (as well as the Miami-Dade County Product Control Approval System) for its various impact window and door products sold for use in Florida.

The Florida Product Approval System establishes a rigorous protocol to evaluate the standards of products used in construction in Florida, in accordance with national and international consensus standards, adopted by the Florida Building Code ("**FBC**"). Further, products that receive a statewide FPA with the HVHZ endorsement, have been shown to comply with the most stringent requirements of the FBC. All products that comprise the structure's building envelope — doors, shutters, windows, and prefabricated buildings — require the issuance of an FPA with HVHZ endorsement in order to be used for construction in Florida's HVHZ.<sup>3</sup> The Florida Building Commission issues an FPA only when a product complies with the applicable product requirements.

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<sup>2</sup> PGT's Complaint is, arguably, a direct attack on the Florida Building Commission as well.

<sup>3</sup> As referenced above, a product may alternatively receive a local product approval to meet the code criteria for the HVHZ, such as a Notice of Acceptance ("**NOA**") issued by the Miami-Dade County Product Control Approval System. NOAs are subject to similarly stringent evaluation. This letter does not address such evaluation in more detail because ES Windows' NOAs are not at issue in the subject Complaint.

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During the FPA application process for the Approved Products, ES Windows submitted the following supporting documentation, as required by applicable law, rules, and regulations:

1. An evaluation report from a licensed Florida Professional Engineer developed and signed and sealed, based upon standard tests or standard comparative or rational analysis, or a combination thereof and indicates that the product was evaluated to be in compliance with the Code and that the product is, for the purpose intended, at least equivalent to that required by the Code;
2. Statement of compliance with the appropriate section or standard of the Code;
3. Complete description of the product, including all drawings, manufacturer's product designations and materials, except materials specifications identified as proprietary;
4. Installation instructions developed by an evaluation entity, including: (i) type, and grade of anchor, and/or manufacturer's anchor specifications, including minimum nominal size, minimum penetration into substrate and minimum edge distances; (ii) type, physical dimensions, material and grade of any accessory item or strap, if applicable; (iii) spacing of anchors, shims, accessory items and straps; and (iv) illustrated diagrams of the attachment of the product to the structure;
5. Limitations and Conditions of use;
6. Certification of independence in conformance with Rule 61G20-3.009, F.A.C.; and
7. Signed and sealed copy of the Validation Checklist.

ES Windows' FPA applications for the Approved Products were of course necessarily subject to various stages of review, including review by an independent validator and review by the Commission. After review by the Commission, ES Windows was duly granted FPAs for the Approved Products, which verify and confirm compliance with all applicable rules and regulations governing the use of construction materials in the HVHZ under the FBC.

Importantly, ES Windows' compliance obligations do not end with the issuance of an FPA. Once the Subject FPAs were issued, ES Windows was further required to implement a quality assurance program required by both Florida and Miami-Dade County rules. The quality assurance program is overseen by the Commission to ensure that approved products perform in accordance with stated FPA standards. As part of the quality assurance program, the Approved Products were subject to regular audits by Commission approved quality assurance program auditors. ES Windows has, at all times, complied with the requirements of the quality assurance program.

***PGT failed to prove that the Approved Products do not meet the applicable standards for approval.***

In connection with the FPA application and review process described above, ES Windows necessarily had the Approved Products tested by independent third-party laboratories approved by the Commission. The testing followed all applicable protocols from the then-latest TAS201/202/203 to be fully compliant with impact and HVHZ requirements. PGT's allegations to the contrary are based entirely on unverified, unidentified, and uncertified testing purportedly performed on the SGD Product by an unknown laboratory and observed by unidentified engineers. PGT does not claim to have tested the Window Wall Product.

The test reports that support FPA 22267 (Ref. BT-ESW-18-002 issued on May 17, 2018, Ref. BT-ESW-16-010 issued on April 20, 2017, and Ref. FTL-12390 issued on December 18, 2020) clearly indicate sufficient testing and review to support all applicable requirements. Despite these clear positive results, PGT irresponsibly and gratuitously alleges that the SGD Product did not meet applicable standards for approval. These allegations are based on "testing" that PGT performed on samples of the SGD Product it purportedly obtained "through a third party dealer." **However, not surprisingly, PGT provides neither the name of the third-party dealer, the test reports, nor certifications or opinions from identified Florida Licensed Professional Engineers that the SGD Product failed to meet applicable standards.** In the absence of the foregoing information, PGT's allegations are unauthorized, unsupported, unpersuasive, and likely unlawful derogatory and anti-competitive statements.

Window Wall Product FPA 17897.5 was tested and rated by an approved, independent third-party laboratory, and supporting calculations were prepared in accordance with all applicable codes and standards. The test report (Ref. BTESW-20-049) unequivocally shows that the Window Wall Product satisfied all applicable requirements. Ignoring these results, PGT erroneously claims that the Window Wall Product does not meet applicable standards for approval. Remarkably, PGT admits that it did not test the Window Wall Product. Instead, PGT's allegations are based on its purported testing of the SDG Product, which PGT asserts (without any support whatsoever) is similar enough to the Window Wall Product to support its *inferred* conclusions

In short, PGT's unverified "test results" are meaningless.

***PGT's reliance on Interlayer marketing materials is misplaced.***

PGT alleges it is impossible for the Approved Products to comply with applicable standards when they utilize an Interlayer in dry glazed applications. PGT's allegations are based on marketing materials published by an Interlayer manufacturer from whom ES Windows sources the Interlayers used in the Approved Products. PGT's reliance on the marketing materials is misplaced for two material reasons.

First, the marketing materials are not a definitive authority of the Interlayer's limitations under **all possible** applications, nor do they or can they definitively prohibit the implementation

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of the Interlayer products in dry-glazing applications. One component of a system may react totally differently in a system than in a standalone test. That is clearly the case here. Second, regardless of their intent or purpose, the Interlayer marketing materials are not relevant to the FPA application review and approval process. Rather, the review is based on the **actual performance** of an **assembled system**, which includes the Interlayer—not the performance of the Interlayer alone. In this instance, the Approved Products, as assembled systems, were tested for actual performance. The assembled systems' actual performance during testing are memorialized in reports prepared by approved independent laboratories and, importantly, were not refuted by PGT's "testing." The assembled systems of course passed all required tests and were confirmed by supporting engineering calculations.

ES Windows takes pride in its commitment to deliver top-tier products that enhance safety and withstand the challenges posed by the HVHZ. Having numerous, valuable FPAs demonstrates ES Windows' products' compliance with the FBC — including, specifically, the requirements of the HVHZ. In this regard, ES Windows' FPAs represent significant goodwill in both the construction industry and the communities that ES Windows serves worldwide. Given their complete lack of support, PGT's allegations can only be interpreted as an improper attempt to undermine ES Windows' goodwill and reputation in the industry.

ES Windows remains committed to upholding the highest standards in the industry and appreciates your attention to this issue.

We are aware of the meeting scheduled for February 5, 2024. ES Windows shall rely on this response, although it may have representatives attend remotely. If the Commission requires any further information from ES Windows or any of its engineers or testing laboratories, please advise.

Very truly yours,

*/s/ Phillip M. Hudson*

Phillip M. Hudson III, P.A.

PMH