



**CREDIT APPLICATION,
SALES AGREEMENT, LIMITED WARRANTY, AND PERSONAL GUARANTY FOR
PURCHASES OF CONSTRUCTION MATERIALS FROM THE FOLLOWING COMPANIES:**

Arcadia, Inc.; Arcadia Architectural Products, Inc.; Arcadia, Inc. dba Wilson Partitions; Arcadia, Inc. dba Arcadia Custom; Arcadia, Inc. dba Arcadia Texas, Inc.; Arcadia, Inc. dba Wilson Partitions, Inc.; and any present or future sister corporations, subsidiaries, or divisions of them (“Arcadia”).

CREDIT APPLICATION

(VERSION 1-1-21)

Company Name of Applicant (“Buyer”): _____
 Street Address _____
 City, State, Zip Code _____
 Phone number _____ Cell Number _____
 Email Address of person signing this Agreement _____
 Are you going to install the material you will be buying from Arcadia _____
 What is your Glazing Contractor’s License Number _____
 What is your Federal Tax ID Number _____

OWNERS (PRINCIPALS) of BUYER:

Owner’s Name _____ Social Security # _____
 Home Address of Owner _____
 Name of Additional Owner _____ Social Security # _____
 Email Address of Additional Owner _____
 Name of President _____
 Name of Vice President _____
 What year did the Owners (Officers) listed above purchase or start this Company _____

BANK: _____ City & State _____
 Account Number (needed to get a Bank reference) _____
 BANK’S Email _____

TRADE REFERENCES:

Your current supplier for Doors _____
 Email address _____ Phone _____
 Your current supplier for Windows _____
 Email address _____ Phone _____

Your current supplier for Glass _____
Email address _____ Phone _____
Your current supplier for Storefront Material _____
Email address _____ Phone _____
Your current supplier for Curtain Wall _____
Email address _____ Phone _____
Your current supplier for Aluminum Frames _____
Email address _____ Phone _____
Other major supplier of construction materials _____
Email address _____ Phone _____

SALES AGREEMENT, LIMITED WARRANTY, AND PERSONAL GUARANTY

1. RECITALS & APPROVAL OF CREDIT. The companies identified on the top of page 1 as "**Arcadia**" manufacture and produce curtain walls, storefronts, sliding glass window walls, aluminum framed glass doors and windows, all-glass doors, window and door hardware accessories, glazing systems, guardrails, sun control materials, visual curtainwall system mock-ups, installation drawings, architectural specified and designed construction components, and other construction materials (collectively "**Products**"). The company identified on the top of page 1 as "**Buyer**" desires to purchase Products from Arcadia. All pages of this 15-page document, including the documents incorporated into this document by section 15.1 shall be referred to as "**this Agreement**". [All references to page numbers and section numbers are references to pages and section numbers in this Agreement unless otherwise indicated.] The Application information on page 1 and on page 2 will be reviewed and approved or disapproved, verbally or in an email, by Arcadia's Credit Manager at 2301 E. Vernon Avenue, Vernon, California 90058. If the Application is approved or if Arcadia accepts a purchase order from Buyer, all sales by Arcadia to Buyer shall be governed exclusively by the terms and conditions contained in this Agreement.

2. DELIVERY DATES & DELAYS. The manufacture of most of Acadia's Products is a complex process that requires a considerable amount of time for procurement of raw materials, planning, engineering, and fabrication. Accordingly, **all delivery dates quoted or given by Arcadia are estimates only, not promises.** Buyer is cautioned to make allowance for delays, order products early, and store them in a warehouse or at the job site, if necessary, to make sure they are available when needed. **Buyer assumes all risk of delays.**

2.1 BUYER'S WAIVER OF DELAY CLAIMS. **Buyer hereby waives and releases Arcadia from all claims for delay damages including delays caused by Arcadia's mistake, active negligence, or passive negligence.**

2.2 ELIMINATION OF BUYER'S WAIVER OF DELAY CLAIMS. For a surcharge Buyer may eliminate its waiver of delay damage claims caused by Arcadia and shift the risk of such delays to Arcadia. The terms, conditions, and cost of shifting the risk of delays to Arcadia are negotiable and shall become effective only if they are memorialized by a formal agreement in writing signed by Buyer and Arcadia.

3. CREDIT REPORTS & DISCLOSURE OF CREDIT INFORMATION. Buyer and the individuals who sign on page 15 ("**Guarantors**") authorize Arcadia to obtain business and consumer credit reports on them for credit and/or collection information. Buyer and Guarantors authorize Arcadia to disclose any information in this Agreement to any supplier, bank, or lender for the purpose of obtaining personal and business financial information of any kind.

4. QUOTATIONS, ORDER CONFIRMATIONS, CHANGE ORDERS, AND REQUESTS FOR CHANGE ORDERS. Arcadia's quotations, order confirmations, change orders, and requests for change orders shall be governed exclusively by this Agreement. Quotations may be withdrawn at any time before Arcadia issues a written acceptance of Buyer's purchase order. The phrase "Arcadia's written acceptance of Buyer's purchase order" includes an order acknowledgment, any other document purporting to accept Buyer's purchase order, and Arcadia's procurement of materials required to produce the Products described on Buyer's purchase order. All sales and other dealings between or among Arcadia and Buyer and/or Guarantors shall be governed exclusively by this Agreement.

5. ORDER ACCEPTANCE. All purchase orders must be in writing and purchase orders are not legally binding until they are accepted, in writing, by Arcadia or until Arcadia commences performance of work required by the purchase order, to Arcadia's detriment. Any order accepted by Arcadia cannot be countermanded, revised, or canceled after Arcadia has begun production of the order or after Arcadia becomes liable to a third party for any part of the order. There will be a charge for a change to the purchase order and a price adjustment for the change. Any change in export or import duties, taxes, freight, or insurance rates shall be borne by and paid for by Buyer. If Buyer requests tests or inspections, Buyer shall pay the cost of the tests or inspections plus handling, packing, and freight costs.

6. 6.1 BUYER'S FORMS, 6.2 PAYMENT, 6.3 AMOUNT OF CREDIT, 6.4 SERVICE CHARGES, 6.5 SECURITY INTEREST, 6.6 DEFAULT, & 6.7 JOB INFORMATION 6.8 SALES TAX.

6.1 Terms on Buyer's Forms. Any terms, conditions, or other provisions, contained in Buyer's purchase order or in other communications (collectively "purchase order") from Buyer to Arcadia shall be null and void unless they are contained, word for word, in this Agreement. This Agreement constitutes the

sole, exclusive, and entire agreement among Arcadia, Buyer, and the individuals whose signatures appear on page 15 ("Guarantor(s)"). All disputes between or among Arcadia, Buyer, and Guarantors shall be governed exclusively by this Agreement.

6.2 Payment Before Shipment. Unless otherwise agreed in a writing signed by Arcadia's Credit Manager, Buyer shall pay half (50%) of the purchase price of Products ordered by Buyer before Arcadia is obligated to begin performance required by the Buyer's purchase order. This 50% advance-payment requirement may only be waived, in writing, by an Arcadia manager, but any such waiver with respect to orders over \$20,000 shall be null and void unless waived by both Arcadia's Credit Manager and one other Arcadia Manager. Arcadia may, in its sole discretion, extend credit for the remainder of the purchase price until production is completed. If Buyer's order includes Shop Drawings, 10% of the sales price shall be paid to Arcadia before Arcadia will begin preparing the Shop Drawings and an additional 40% of the sales price must be paid before Arcadia commences production. The 10% advance-payment for Shop Drawings is not refundable under any condition. Buyer shall pay the remaining purchase price balance to Arcadia at least three days before shipment. Arcadia is not required to ship the Products until it has received the full purchase price, unless credit for the remaining unpaid portion of the purchase price has been granted to Buyer, in a writing signed by Arcadia's Credit Manager or general manager. If such credit is granted, payment of the balance, without any discount, is due within 30 days of the date of Arcadia's invoice.

6.3 Amount of Credit. If Arcadia allows Buyer to purchase Products on credit, Arcadia may terminate credit or increase or decrease the amount of credit extended to Buyer, in Arcadia's sole discretion, as often as Arcadia chooses, without notice, and without in any way limiting or modifying Guarantors' liability to Arcadia.

6.4 Interest and Other Payment Provisions. In the event of a default, as defined in section 6.6, Buyer's entire account with Arcadia shall automatically become due and payable. Arcadia shall be entitled to time price differential (referred to herein as interest, service charge, or finance charge) of 1.5% per month, on any amount not paid when due or within thirty days of the delivery of any Products if no payment due date is specified. In the event of a default, all payments shall be made to Arcadia at Arcadia's office located at 2301 E. Vernon Avenue, Vernon, California 90058.

6.5 Security Interest. Buyer hereby grants to Arcadia a purchase money security interest in all Products, sold to Buyer by Arcadia, and in the proceeds from the sale of such Products. Buyer also hereby grants to Arcadia a non-purchase-money contingent security interest in all accounts receivable, cash accounts of any kind, inventory, equipment, general intangibles, books, records, and machinery of Buyer. Arcadia shall not perfect the non-purchase-money contingent security interest by filing a UCC-1, until and unless, (i) there is a default as that term is defined in section 6.6 below and, (ii) Buyer's indebtedness to Arcadia includes at least \$20,000 of indebtedness that is more than 30 days past due.

6.6 Default. In the absence of the express written consent of Arcadia, any one or more of the following shall be deemed a default:

- (a) Buyer's failure to make payments to Arcadia by the due date specified in this Agreement, in an Arcadia order confirmation, or in an Arcadia invoice;
- (b) A breach by Buyer of any representation, obligation, or warranty set forth in this Agreement, including any material misrepresentation contained on page 1 and on the top of page 2;
- (c) The termination of any one or more personal guaranty of the obligations of Buyer to Arcadia;
- (d) The return of Buyer's check to Arcadia for any reason followed by the failure of Buyer to pay Arcadia the amount of the returned check within 3 business days, by wire transfer or cashier's check delivered to Arcadia at 2301 E. Vernon Avenue, Vernon, California 90058;
- (e) The disclosure by Buyer, or its employees, of any information that is confidential or proprietary to Arcadia; or
- (f) Any misrepresentation by Buyer contained in the information provided pursuant to section 6.7 below.

6.7 Job Information. Buyer shall provide Arcadia with such information regarding any and all of Buyer's construction projects as Arcadia deems necessary or convenient to preserve or perfect Arcadia's statutory remedies including, but not limited to the mechanic's lien, stop payment notice, or public works payment bond statutory remedies.

6.8 Sales Tax. Buyer shall pay all state sales and use taxes even if Arcadia fails to show a charge for such taxes on its invoices or Statements to Buyer.

7. DELIVERY. Arcadia reserves the right to ship Products up to 25 days ahead of scheduled delivery dates. Buyer agrees to accept delivery upon notice of readiness from Arcadia, and Buyer shall be liable for freight, storage, handling costs, and any other expenses or losses incurred by Arcadia as a result of Buyer's inability or refusal to accept said delivery or as a result of Buyer's failure to furnish Arcadia with shipping instructions.

8. RISK OF LOSS & TRANSPORTATION. Unless otherwise stated in writing, all sales are FOB at Arcadia's manufacturing facilities. Upon Arcadia's tender of possession of the Products at Arcadia's manufacturing facilities, all incidents of ownership, including risk of theft, loss, or damage, passes to the Buyer at the moment that Buyer begins taking physical possession of the Products. If the Products are shipped by common carrier, all incidents of ownership, including risk of theft, loss, or damage, passes to the Buyer upon

delivery of the Products to the common carrier. If the Products are delivered by Arcadia's truck, all incidents of ownership, including risk of theft, loss, or damage, passes to the Buyer upon arrival of the truck at the delivery location. Buyer is responsible for unloading the truck and Arcadia is not responsible for damage to the Products during the unloading of the Products from the truck even if Arcadia employees assist in unloading.

9. CLAIMS PROCEDURE AND REMEDIES.

9.1 Notice. Buyer must give Notice to Arcadia (in the manner provided in section 22) of any claim for defect, latent defect (defects not discoverable by reasonable and customary inspection), nonconformity, incorrect price, non-delivery, or for any other reason within seven days of the date Buyer discovered or could have reasonably discovered the problem by a reasonable inspection or investigation.

9.2 Buyer Must Document Claim on Delivery Receipt. Claims for damage or shortages must be noted on the delivery receipt at the time of delivery, Section 9.1 notwithstanding. Buyer's failure to make a note of the damage or shortages on the delivery receipt shall create an irrebuttable presumption that all of the Products were received by Buyer, that the Products were not damaged, and that the kind and quantity of Products received were exactly as stated on the delivery receipt and/or the purchase order.

9.3 Invoices and Statements Create Irrebuttable Presumptions. If Buyer believes that any invoice or statement sent to it by Arcadia is inaccurate, Buyer must give notice to Arcadia within 45 days of the date that Buyer receives the inaccurate invoice or statement. Buyer's failure to make a timely claim to Arcadia with respect to the invoices or statements shall create an irrebuttable presumption that the invoices and statements are accurate and complete, that all of the Products included on the invoices were received by Buyer, that the Products were not damaged, that the kind and quantity of Products received were exactly as listed on the invoices, and that the price indicated on the invoice or statement is both the fair market value of the Products and the price agreed upon by Buyer and Arcadia. Nothing in this section 9.3 shall be deemed to waive or diminish the requirements and consequences of sections 9.1 and 9.2 above.

9.4 Compliance. **Buyer's failure to comply with the claim procedures set forth in section 9, or to prove that Buyer gave timely notice in the manner set forth in section 9 and in section 22, shall be a complete waiver and bar to any claim or to any set-off against Arcadia.**

9.5 Time to File Suit. Any suit against Arcadia must be filed within one year after the delivery of Products, except for suit based solely upon latent defects. In the case of a claim for latent defects, suit must be filed within one year of the date Buyer first became aware of the latent defect claim or should have reasonably become aware of the latent defect claim. Failure to file suit within the time limits in section 9.5 shall be a complete bar to any offset, claim, or counterclaim by Buyer against Arcadia.

9.6 Time is of the essence with respect to all notices, claims, and/or suits not otherwise barred by this Agreement.

10. RETURNS. All sales are final. Products may not be returned to Arcadia for credit or repair without Arcadia's prior written consent signed by a corporate officer of Arcadia. **Buyer must examine the Products prior to installing, altering, or otherwise using or selling the Products.** If Products are installed, altered, or used in any way by Buyer, by Buyer's customer, or by anyone in any manner, Buyer waives all claims with respect to those Products except for latent defect claims. No returns shall be allowed, and no credit shall be given, if the claimed defect, non-conformity, or damage could have been discovered by the exercise of reasonable investigation or inspection before they were used or installed.

11. ARCADIA IS NOT RESPONSIBLE FOR GLAZING OR INSTALLATION BY THIRD PARTIES. Arcadia shall not be liable for problems related to or caused by the glazing of Products by others or by the installation of the Products. Buyer understands and shall recommend to its clients that all Products manufactured by Arcadia should be installed by licensed installers who have a minimum of 5 years' experience installing the specific type of Products purchased from Arcadia, including but not limited to, steel, wood, or aluminum windows and doors. Buyer shall also recommend that waterproofing experts should be used to design and ensure that adequate flashing details and methods are used.

12. DESIGN SPECIFICATIONS. Buyer agrees that Arcadia's sole obligation with respect to the design specifications and/or description of the Products ("**Specifications**") is to manufacture them in accordance with the Specifications included in Arcadia's written acceptance of Buyer's purchase order. If there is any difference between the Specifications of the Products contained in the order confirmation and the Specifications of the Products contained in any other document, including but not limited to quotations, purchase orders, or correspondence, Buyer must notify Arcadia in writing within 24 hours of the date of the order confirmation, or the order confirmation shall create an irrebuttable presumption that the Specifications in the order confirmation are the final Specifications of the Products agreed to by Buyer and Arcadia. Such notice must be emailed to the Arcadia salesman handling Buyer's account, to pvalentin@arcadiainc.com, and to twilliamson@arcadiainc.com. Buyer agrees that Arcadia shall not be liable for any damages if the Specifications, the quotation, the purchase order, the order acknowledgment, or the order confirmation do not conform to or comply with the owner's/architect's Specifications, building codes, or any applicable statute including but not limited to the Americans with Disabilities Act. Any changes must be in writing and Buyer must reimburse Arcadia for all costs and expenses incurred as a result of the change. Arcadia has not and will not be involved in the selection of Products or in the installation of the Products. Buyer acknowledges that Arcadia's Products are designed and manufactured to specific performance levels and are rated and classified for particular uses. Different Product applications require different levels of product performance. If the order confirmation does not include all needed manufacturing specifications ("**Missing Specs**"), Arcadia shall manufacture the Products

using its choice of any Missing Specs and shall not be liable for any damages if its choice conforms to standard performance levels.

Selecting the appropriate Products for a project and installing the Products is the sole responsibility of Buyer. Buyer represents and warrants that it will not rely on any representation by any employee, officer, or agent of Arcadia in the selection and application of the proper Products and sizes to ensure that, (i) when installed Arcadia's Products will keep water from passing beyond, around, or through the Products, (ii) that the Products conform or comply with the owner's/architect's specifications, building codes, and any applicable statute including but not limited to the Americans with Disabilities Act, or (iii) that the Products are suitable for the owner's intended use. Unless Buyer has requested, in writing, and paid Arcadia a separate and additional fee for assembly and installation instructions, and unless the same is reflected on Arcadia's quote, order confirmation, or invoice, Buyer agrees that any details shown are for purposes of illustration only and are not intended to be accurate instructions showing how the Products should actually be installed or applied.

13. PRODUCT CLAIMS. In the event of a complaint or a claim regarding the Products, Buyer shall promptly provide Arcadia with a detailed written report and photographs describing the issues or claims. Buyer shall employ personnel to perform minor or routine repairs and adjustments. All repairs and adjustments provided by Buyer shall be at Buyer's expense unless otherwise agreed in a writing signed by an officer or the general manager of Arcadia.

14. GENERAL LIABILITY INSURANCE. Buyer shall provide Arcadia with evidence of General Liability Insurance in the form of a Certificate of Insurance and a duly authorized endorsement from the general liability carrier, naming Arcadia as an additional named insured. The General Liability Insurance shall carry limits of at least \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. Buyer's insurance shall be primary and non-contributory. Buyer shall provide Arcadia with a new Certificate of Insurance upon the expiration of the last provided Certificate of Insurance.

15. ARCADIA'S LIMITED WARRANTIES AND REPRESENTATIONS.

15.1 Representations. Arcadia has not made any representations or warranties with respect to Products except for those contained in this document and those contained on Arcadia's website located at: <https://arcadiacustom.com/warranties/>. The following Warranties and Care Maintenance Guides are located toward the bottom of the web page under the caption, "Downloadables" (and they can be viewed, copied, and/or downloaded):

- Arcadia Custom Thermal Aluminum Warranty
- Arcadia Custom Thermal Steel Warranty
- Arcadia Custom Wood Warranty
- Thermal Steel Care Maintenance Guide
- Wood Care Maintenance Guide
- Thermal Aluminum Care Maintenance Guide
- Glass Quality Standards ASTM 1036

The above listed seven documents (the "**Website Documents**") are incorporated herein

by this reference as if set forth herein. The Website Documents and this document are collectively referred to throughout this document as "**this Agreement**". The Buyer represents and warrants that it will not rely on any other representations or warranties not included in this Agreement. In the event of a conflict between any of the terms, conditions, or warranties in the Website Documents and the provisions of this document, the provisions of this document shall be controlling. Buyer may obtain copies of the Website Documents from an Arcadia salesperson or from Arcadia's credit department in addition to viewing them or copying them from said website pages. Buyer represents and warrants that it will not rely on any representations or warranties not contained in the Website Documents or in this Agreement. Arcadia specifically does not warrant the accuracy of any advice or recommendations given to Buyer by Arcadia's employees, except for the advice and recommendations contained in the Website Documents or in this document.

15.2 Good Title and Merchantability. Arcadia warrants that it has good title to any Products sold to Buyer, and that the Products are merchantable unless they were manufactured in conformance with Buyer's specifications.

15.3 BUYER'S WAIVER OF WARRANTIES. TO THE EXTENT ALLOWED BY LAW, BUYER WAIVES ALL CLAIMS AGAINST ARCADIA FOR IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND FOR ALL OTHER WARRANTIES EXCEPT FOR THOSE EXPRESSLY MADE TO BUYER IN THIS DOCUMENT OR IN THE WEBSITE DOCUMENTS LISTED IN SECTION 15.1.

15.4 Acts Voiding Arcadia's Warranties. If parts or materials not supplied by Arcadia are added to the Products, if the Products are altered in any way, or if the Products are not properly cared for and maintained, as provided in the care maintenance guides, any and all applicable warranties are voided.

16. BUYER IS AN INDEPENDENT CONTRACTOR. THIRD-PARTY BENEFICIARIES. Buyer is and shall remain an independent contractor. Under no circumstances shall Buyer, or any of Buyer's employees, managers, officers, or partners hold themselves out as the agents, principals, partners, representatives, spokespersons, or employees of Arcadia. Without limiting the generality of the foregoing, Buyer shall not make any representations on behalf of Arcadia. Buyer shall make it clear that Buyer does not have the authority to make any representations or promises on behalf of Arcadia and that Buyer cannot enter into any agreement or contract on behalf of Arcadia or bind Arcadia in any manner whatsoever. Arcadia and Buyer do not intend to create any third-party beneficiary rights by this Agreement or by any other agreement, and no such rights have been created.

17. LIMITATIONS OF ARCADIA'S LIABILITY AND BUYER'S WAIVER OF RIGHT TO RECOVER ECONOMIC DAMAGES. Any liability of Arcadia to Buyer, whether arising out of or related in any way to any contract, negligence, active negligence, strict tort, warranty, or otherwise, shall be limited to Arcadia's choice of one or more of the following: (i) Arcadia's repair of defective Products; (ii) the payment by Arcadia to Buyer of the reasonable cost of repairing or replacing the defective Products, but Arcadia's cumulative liability for any finishing errors, treatment errors, and/or any other errors shall not exceed Arcadia's initial manufacturing cost of the finishing, treating, or processing undertaken by Arcadia; (iii) the termination of the contract and the return to Buyer of funds paid to Arcadia for those Products which were defective or in need of repair; or (iv) the delivery to Buyer of replacement Products. These remedies are exclusive; **Buyer waives all other remedies.**

17.1 **WAIVER OF ECONOMIC DAMAGE CLAIMS.** **Buyer hereby waives and releases Arcadia from all claims for special, economic, consequential, or incidental damages caused by Arcadia even if Arcadia is advised in advance of the possibility of such damages and/or such damages are a result of delayed deliveries due to Arcadia's mistake, active negligence, or passive negligence. This waiver and release, and all other provisions of this Agreement, apply to Products purchased for use on either public or private works of improvement.**

17.2 **ELIMINATION OF WAIVER OF ECONOMIC DAMAGE CLAIMS.** **For a reasonable surcharge Buyer may eliminate its waiver of economic damage claims caused by Arcadia and shift the risk of ECONOMIC DAMAGES to Arcadia.** The terms, conditions, and cost of shifting the risk to Arcadia are negotiable and shall become effective only if they are memorialized by a formal agreement in writing signed by Buyer and Arcadia.

17.3 **DEFINITION OF ECONOMIC DAMAGES.** The term "economic damage(s)" as used in this Agreement includes, but is not limited to: (i) loss of use of or damage to property; (ii) loss of actual or anticipated earnings, profits, or revenue; (iii) damage to reputation; (iv) liquidated damages incurred by Buyer; (v) all costs incurred to repair and/or remove defective, damaged, or non-conforming Products; (vi) all costs incurred to replace defective, damaged, or non-conforming Products; (vii) back-charges

assessed against Buyer by a third party for liquidated or other damages; (viii) loss of business or employment opportunities; (ix) overhead and overtime expenses; and, (x) any indirect or consequential loss or damage howsoever caused including, any costs of recovering, programming, or reproducing any program or data stored or used with Arcadia.

18. PATENT INDEMNITY. At no cost to Arcadia, Buyer shall defend against, and hold Arcadia harmless from, any action against Arcadia or its suppliers based on a patent infringement claim for the manufacture or sale of Products by Arcadia to Buyer, if such Products were manufactured pursuant to designs, specifications and/or formulas given by Buyer to Arcadia and were not stock items available out of Arcadia's inventory. Arcadia shall promptly tender defense of such action to Buyer, in writing as soon as Arcadia becomes aware of the action.

19. CONFIDENTIAL AND PROPRIETARY INFORMATION. No information transmitted, in any manner or means, by Buyer to Arcadia shall be deemed to be confidential or proprietary. All information made available to Buyer in Arcadia's "QuickQuote" configuration software, and all other information made available to Buyer that is not disseminated to the general public by Arcadia, shall be deemed to be confidential and proprietary.

20. ATTORNEYS' FEES, VENUE, AND GOVERNING LAW. In the event of a lawsuit brought by Buyer, Guarantors, or Arcadia, arising out of or related to this Agreement, the successful party shall be entitled to attorneys' fees. Any suit, by Buyer, Guarantors, or by Arcadia, must be brought in the Los Angeles Superior Court or in the Federal District Court in Los Angeles. The laws of the State of California shall govern this Agreement.

21. MATERIAL TERMS AND SEVERABILITY. All provisions of this Agreement are material terms. But, if any provision of this Agreement is held illegal or unenforceable, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on Arcadia, Buyer, and Guarantors.

22. NOTICES. Unless otherwise provided in this Agreement, all notices required or allowed in this Agreement must be mailed by certified return receipt requested mail. If the notice is to Arcadia, one copy of the notice must be mailed to the attention of the Credit Manager and another must be mailed to the Attention of the Sales Manager. Both notices shall be sent to Arcadia at 2301 E. Vernon Avenue, Vernon, CA 90058. If the notice is to Buyer and/or Guarantors, one copy of the notice must be mailed to the Buyer and another must be mailed to the Attention of the Guarantors. Both notices shall be sent to Buyer's address, unless Buyer or Guarantors send a notice to Arcadia requesting that notice be sent to a different address. The notices shall be effective five business days after receipt. The party giving notice must prove that the notice was timely and

properly mailed to the persons and addresses specified in this section 22 by producing the signed green card receipts, the post office records of delivery, or a written signed acknowledgment of receipt from the specified individuals and companies. The receipt need not be signed by Buyer, the Guarantors, the Credit Manager, or the Sales Manager; the notice shall be deemed received if it is addressed in the manner required by this section, is addressed properly, and delivered to the correct address. The failure or refusal of any party to accept delivery shall be deemed the equivalent of receipt. Failure to strictly comply with the requirements of this section shall render the notice null and void. This section 22 supplements, but does not replace, the email notices required by section 12 of this Agreement. The requirements of this section 22 shall not apply to quotes, purchase orders, order confirmations, tenders of delivery, invoices, statements, requests for change orders, or change orders; those documents shall not be deemed to be included in the terms "notice" or "notices".

23. ENTIRE AGREEMENT, REPRESENTATIONS, IMPRACTICABILITY, THIRD PARTY BENEFICIARIES, AND COLLATERAL AGREEMENTS.

23.1 Entire Agreement. **All sales by Arcadia to Buyer shall be governed exclusively by the terms and conditions of this Agreement. This Agreement constitutes the sole, exclusive, and entire agreement between or among Arcadia, Buyer, and any Guarantors, and supersedes all oral and written representations, warranties, statements, promises, or understandings not contained in this Agreement. The provisions of this Agreement may not be modified or terminated by the provisions of any purchase order, change order, or other documents except by a document, in writing, signed by Arcadia's Credit Manager, Buyer, and Guarantors. Buyer and Guarantors acknowledge that they have read this Agreement and the documents referred to in this Agreement, understand them, and agree to all of them after having the opportunity to seek independent legal advice.**

23.2 Representations. No party has made any promises or representations to induce the other(s) to enter into this Agreement; no party is relying upon any promise or representation not contained in this Agreement.

23.3 The Legal Doctrine of Impracticability. The Parties agree that the California Codes and cases excusing contract performance because of impossibility, impracticability, or similar legal doctrines shall apply to and govern this Agreement.

23.4 Third Party Beneficiaries. Buyer, Guarantors, and Arcadia are the sole parties to this Agreement. The parties do not intend to create third party beneficiary rights by this Agreement or by any other agreement and no such rights shall be deemed to have been created.

23.5 Collateral Agreements. **There are no collateral verbal agreements between or among Arcadia, Buyer, and/or Guarantors.**

24. TERMINATION OF THE GUARANTY. Guarantors may terminate the personal guaranty set forth in section 30 at any time but must do so exclusively by giving notices as provided in section 22. Guarantors shall remain responsible and liable for all indebtedness and legal obligations of Buyer to Arcadia as of the fifth business day after receipt of the termination notices by both Arcadia's credit manager and by Arcadia's sales manager. Any and all security interests shall remain in full force until all indebtedness to Arcadia has been paid in full. The termination notices shall not apply to any purchase orders accepted by Arcadia prior to Arcadia's receipt of the termination notices. Such notices shall be the exclusive method available to Guarantors to modify or terminate Buyer's or Guarantors' liability to Arcadia. The termination of a Guaranty shall not terminate Guarantors' liability regarding the indemnification requirements listed in section 18 and section 28 with respect to Products sold before the termination, nor shall it terminate the Guarantors' liability with respect to any purchase order accepted by Arcadia prior to Arcadia's receipt of the termination notices.

25. REMEDIES UPON DEFAULT. Upon the occurrence of any one or more defaults as set forth in this Agreement, Arcadia may, at its option, do any one or more of the following:

- (a) Treat all of Buyer's obligations to Arcadia to be immediately due and payable, after which said indebtedness shall continue to accrue service charges at the rate of 1.5% per month;
- (b) Exercise any or all remedies provided or allowed by the laws of the State of California;
- (c) Continue to sell Products to Buyer, without waiving the default, without being obligated to continue to sell Products to Buyer, and without releasing Buyer and Guarantors from their obligation to pay for Products sold after a default;
- (d) Institute legal action to enforce its Mechanic's Lien, Payment Bond, Stop Payment Notice, or Joint Check Agreement rights with respect to Products sold by Arcadia to Buyer and, add to Buyer's account all legal fees and costs incurred as a result of such action. Such legal action shall not terminate any security interest held by Arcadia pursuant to section 6.5.
- (e) Proceed against any person(s) on any personal guarantees issued by them to Arcadia; and/or
- (f) Institute legal action against Buyer for breach of contract.

The Buyer's and Guarantors' payment obligations must be performed at Arcadia's offices at 2301 E. Vernon Avenue, Vernon, California 90058, and any suit arising out of or related to this Agreement shall be brought either in the Los Angeles Superior Court, or in the Federal District Court in Los Angeles.

26. WAIVERS. Arcadia may delay exercising any one or more of the remedies set forth in section 25 above without waiving the right to exercise any or all of those remedies at any time in the future unless Arcadia signs an agreement to permanently waive any one or more of those remedies. A consistent failure to exercise any remedy shall not establish a "course of dealing" which could be construed as a waiver of any of the provisions of this Agreement.

27. COLLATERAL RECOVERY. If Arcadia recovers any money from a third party on a mechanic's lien, stop payment notice, payment bond, or other statutory remedy, Arcadia shall apply the recovered amount as follows: first to Arcadia's actual attorneys' fees incurred and paid by Arcadia in pursuing such third-party; second, to court costs; third, to service charges accrued on Buyer's account; fourth, to the principal balance owed on the account related to the statutory claim against the third party or parties. If Arcadia tries but fails to recover all or any portion of its claim against the third-party, Arcadia's reasonable court costs and attorneys' fees may be added to Buyer's account if Arcadia's failure to recover all or any portion of the amount of its claim was due in full or in part to Buyer's failure to prove that the Products purchased from Arcadia were used on the job described on Arcadia's unpaid invoices to Buyer or because Buyer misrepresented any material fact to Arcadia. In any mechanic's lien, stop payment notice, payment bond, or other action based upon a statutory remedy against one or more third parties, all of Arcadia's unpaid invoices with respect to the action shall be deemed due within 30 days of the date of delivery of the Products to Buyer.

28. INDEMNIFICATION. To the fullest extent permitted by law, Buyer and Guarantors shall defend, indemnify, and hold Arcadia harmless from any third-party claims, allegations, damages, awards, judgments, and expenses of every kind or character, including, but not limited to, attorney's fees and expert costs. The obligation to defend, indemnify, and hold Arcadia harmless is limited to the kind of claims which Buyer has waived and to the kind of claims which Buyer is barred from making against Arcadia by California law and/or the provisions of this Agreement. Buyer or Guarantor shall not file any action against Arcadia for indemnification for any claims which Buyer has waived or from which Buyer is barred from making against Arcadia by the provisions of this Agreement. Buyer's obligation to defend Arcadia shall be immediate upon written notice by Arcadia to Buyer and Buyer shall, if requested at any time by Arcadia, defend Arcadia using counsel approved by Arcadia in its reasonable discretion.

29. FACSIMILE & EMAIL. A signed facsimile, a signed pdf, or a signed paper copy of this Agreement shall be deemed an original regardless of how or what part of it was transmitted to Arcadia provided that page 30 is included. A facsimile copy, a pdf copy, a scanned copy of an original or of a facsimile, and any electronically stored and printed copy of such signed copy of this Agreement shall be deemed an original.

30. PERSONAL GUARANTY. The undersigned agree and acknowledge that he/she/they/it (“**Guarantor**”) are signing this Agreement in Guarantor’s individual capacity, as well as in Guarantor’s capacity as a person authorized to execute this Agreement on behalf of the Buyer. **Guarantor understands that Guarantor’s single signature below makes Guarantor personally responsible and liable for all of Buyer’s present and future indebtedness to Arcadia and for all other liabilities of Buyer to Arcadia.** Guarantor jointly and severally personally guarantees performance of all obligations, and payment of all indebtedness, of Buyer to Arcadia including all renewals, modifications, and extensions of such obligations or indebtedness. **Guarantor waives the benefit of any limitations affecting Guarantor’s liability hereunder or the enforcement thereof to the extent permitted by law.** Without limiting the generality of the forgoing waiver, Guarantor’s personal guaranty shall not be deemed to be suspended, stayed, released, terminated, limited, or discharged by: (i) any modification, substitution, settlement, supplement, extension of time, or compromise with or granted to Buyer; (ii) any change in the relationship between Guarantor and Buyer, including the sale of any or all of Guarantor’s ownership interest in Buyer; (iii) the execution of any new or additional guarantees by Guarantor or by others; (iv) any change whatsoever in the business relationship between Arcadia and Buyer, including but not limited to any change in payment or credit terms, amount of credit, or amount of service charges; (v) any transfer by anyone of new or additional security for payment of Buyer’s indebtedness or performance of Buyer’s contractual obligations to Arcadia; (vi) the bankruptcy of Buyer or an assignment for the benefit of creditors by Buyer; (vii) the release or discharge of Buyer’s obligation to pay its debt to Arcadia; (viii) a bankruptcy automatic stay of proceedings against Buyer; (ix) Arcadia’s failure to exercise diligence against Buyer or against any guarantor, including Guarantor; (x) a failure or refusal by Buyer or Guarantor to execute a new or updated version of this Agreement and/or a personal guaranty; (xi) Arcadia’s actual or imputed knowledge that Guarantor is not an officer or owner of Buyer; (xii) Arcadia’s sale of Products on credit to Buyer even though Buyer is in default, or was in default, as the term “default” is defined in section 6.6; (xiii) Arcadia’s failure to give notice to Guarantor; or, (xiv) Arcadia’s failure to proceed against Buyer. **This is an absolute and continuing Guaranty.** It shall be conclusively presumed that all sales by Arcadia to Buyer are made in reliance upon Guarantor’s personal guaranty. Guarantor shall at all times be conclusively deemed to have an ownership interest in Buyer and to be actively engaged in conducting the business of Buyer, unless Guarantor gives notice to Arcadia, in the manner specified in section 22, that Guarantor is no longer an Owner and/or no longer actively engaged in conducting the business of Buyer. Such notice shall not be deemed a termination of the Guaranty, unless the notice also specifically states the Guarantor is terminating the Guaranty.

▶ _____
Signature (As Guarantor & For Buyer)

▶ _____
Signature (As Guarantor & For Buyer)

▶ _____
Print Name

▶ _____
Print Name

▶ _____
Title

▶ _____
Title

▶ Dated: _____