



**CREDIT APPLICATION AND SALES AGREEMENT**

containing **limited warranty and personal guaranty** for purchases of construction products 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 6-16-21)**

**COMPANY** Name of Applicant ("**Buyer**"): \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Phone number \_\_\_\_\_ Cell Number \_\_\_\_\_

Email Address of person signing this Sales 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 \_\_\_\_\_

Buyer and the individuals (“**Guarantors**”) who sign this Credit Application and Sales Agreement 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 Credit Application to any supplier, bank, or lender for the purpose of obtaining personal and business financial information of any kind.

## **SALES AGREEMENT**

**1. THE PARTIES.** 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 products, visual curtainwall system mock-ups, installation drawings, architectural specified and designed construction components, and other construction materials (collectively “**Products**”). The business entity, identified as “**Buyer**” in the Credit Application above, desires to purchase Products from Arcadia. Arcadia and Buyer represent and warrant that they have knowledge and skill peculiar to the manufacture and installation of the Products. All pages of this document, including the Credit Application, shall be referred to herein as **Sales Agreement** and all references to section numbers are references to section numbers in this Sales Agreement. **All sales by Arcadia to Buyer shall be governed exclusively by the terms and conditions contained in this Sales Agreement.**

## **2. ARCADIA IS NOT LIABLE FOR DELAY CLAIMS OR FOR ECONOMIC DAMAGES.**

2.1 **Delivery dates are estimates and delays are foreseeable.** The

manufacture of many of Arcadia's Products is a complex process that requires a considerable amount of time for planning, procurement of raw materials, engineering, and fabrication. It is foreseeable that some of the Products delivered by Arcadia may be incomplete, damaged, non-conforming, defective, or less than the number ordered. It is also foreseeable that Buyer may need to make changes to its purchase order and that its purchase order may contain mistakes or lack information needed to fabricate Products satisfactory to Buyer. Therefore, **all delivery dates quoted or given by Arcadia are estimates only; Arcadia makes no representation or promise that the complete, undamaged, conforming, and defect-free Products will be ready for delivery by the quoted dates.** Buyer represents and warrants that it will make allowances for delays, order Products early, thoroughly inspect them, and, give Arcadia an opportunity to inspect them and make any necessary repairs or replacement before Buyer installs them. Buyer may need to store the Products in a warehouse, in its shop, or at the job site. In consideration of Buyer's representation and warranties in this section 2.1, Arcadia will grant job account payment terms to Buyer giving buyer extra time to pay for Products. **Buyer assumes all risk of delays.**

**2.2 Buyer's Waiver Of Delay Claims. Buyer hereby waives and releases Arcadia from all claims for delay damages. It is within the contemplation of Arcadia and Buyer that delays may be caused by one or more of the following:**

- a. Arcadia's active or passive negligence in raw material procurement, planning, engineering, or fabrication;
- b. Arcadia's lack of personnel or sufficient local manufacturing facilities to fulfill all orders by Buyer's desired delivery date(s) in the normal course of Arcadia's business;
- c. Arcadia's decision not to prioritize Buyer's order over other customers' orders that are in an earlier stage of processing;
- d. Arcadia's need to obtain, repair, replace, or supply any Products that: Buyer failed to order; that are missing, damaged, non-conforming, or otherwise unsuitable;
- e. Any condition which makes it impossible or impracticable for Arcadia to deliver Products by Buyer's desired delivery date(s); or,
- f. Buyer's issuance of a change order to Arcadia.

**2.3 BUYER'S WAIVER OF ECONOMIC DAMAGE CLAIMS. Buyer hereby waives and releases Arcadia from all claims for consequential, special, economic, or incidental damages**

**even if Arcadia is aware of or is advised in advance of the possibility of such damages and/or even if such damages are a result of delayed deliveries due to Arcadia's mistake or negligence.** This waiver and release, and all other provisions of this Sales

Agreement, apply to Products purchased for use on either public or private works of improvement. The term "**economic damages**" as used herein includes, but is not limited to: (i) damage to property; (ii) loss of use of property; (iii) the cost to remove defective, damaged, or non-conforming Products; (iv) the cost to install any materials or Products to replace defective, damaged, or non-conforming Products; (v) loss of actual or anticipated earnings, profits, or revenue; (vi) damage to reputation; (vii) liquidated damages; (viii) back-charges for liquidated or other damages; (ix) loss of business or employment opportunities; (x) overhead and overtime expenses; (xi) the loss of programs or data stored or used with Arcadia; and, (xii) any special, economic, or incidental loss or damage however caused including damages incurred because Arcadia did not deliver the Products within the time they were needed by Buyer.

### **3. BUYER'S RELIANCE ON QUOTATIONS.**

3.1 **Bid Quotations**. A "Bid Quotation" is one that satisfies all of the following conditions: (i) Buyer notified Arcadia, in writing, that it will be relying on Arcadia's quotation for a competitive bid that Buyer will be submitting for the award of a construction contract or subcontract; (ii) Buyer submitted its competitive bid after receiving Arcadia's written quotation; (iii) Buyer relied on Arcadia's quotation and factored it into its bid price; and, (iv) Buyer is awarded the contract. A Bid Quotation shall be considered an offer to sell to Buyer the quantity of the Products specified in the quotation, but not a lesser quantity, subject to the terms and conditions in this Sales Agreement and in the Bid Quotation. Arcadia's Bid Quotation shall expire on the sooner of seven (7) days after the contract is awarded to Buyer or thirty (30) days after the date of the Bid Quotation, unless, before such expiration date, Buyer gives Arcadia a signed purchase order which conforms exactly to the Bid Quotation. If Buyer issues a purchase order that is not signed or that is in any way inconsistent with or different than the Bid Quotation, the purchase order shall be deemed to be a rejection of the Bid Quotation and a release of Arcadia from any obligation with respect to the Bid Quotation, unless Arcadia issues an order confirmation.

3.2 **Price Quotations**. This subsection 3.2 does not apply to Bid Quotations. All quotations that do not qualify as Bid Quotations are referred to herein as "**Price Quotations**". Price Quotations expire 30 days from the date of the Price Quotation, or, if the quotation is not dated, it shall expire 30 days from delivery of the Price Quotation to Buyer, unless otherwise provided in the written Price Quotation. A Price Quotation is not an offer to sell; it may be withdrawn by Arcadia at any time, and it is not binding until the occurrence of a "**Purchase Order Confirmation**", which is defined as: (i) Arcadia's

issuance of a written order confirmation or order acknowledgment in response to a purchase order from Buyer; (ii) Arcadia's commencement of work, required by the purchase order; or, (iii) any event which makes Arcadia liable to a third party for any raw materials or components ordered by Arcadia for the manufacture of the Products included in the purchase order from Buyer.

#### **4. ORDER CONFIRMATIONS SUPERSEDE PURCHASE ORDERS.**

4.1 **Arcadia's Purchase Order Confirmation.** If Buyer issues a purchase order, Arcadia may study it and may discuss it with Buyer. Arcadia will issue a written Purchase Order Confirmation which may or may not contain additional, different, and/or contradictory instructions, designs, specifications, prices, quantities or other information. Arcadia's written Purchase Order Confirmation shall be conclusively presumed to be the latest, complete, and exclusive expression of Buyer's agreement with Arcadia with respect to the Products, unless, within 72 hours (holidays and weekends not included), Buyer gives notice to Arcadia of any and all objections to the written Purchase Order Confirmation. Buyer's notice must comply with the notice requirements of Section 21 and, to avoid delays, must also be sent by email to Arcadia's Sales Manager and Credit Manager. No earlier specifications, templates, measurements, or other information previously discussed, submitted, provided, or proposed shall be admissible to contradict, interpret, or supplement Arcadia's order confirmation or, in the absence of an order confirmation, Buyer's purchase order followed by a Confirmation.

4.2 **Changes to the order confirmation or purchase order.** If Buyer wishes to make a change to the Confirmation, Buyer can request a change. Arcadia will make the change provided that Arcadia and Buyer agree in writing as to the effect the change will have on the purchase price.

**5. TERMS ON BUYER'S PURCHASE ORDER SHALL BE DISREGARDED.** Buyer waives all terms, conditions, descriptions, and other provisions contained in Buyer's purchase order, or in any other communications, and agrees that such terms, conditions, and other provisions shall be null and void. **This Sales Agreement and the Purchase Order Confirmation shall constitute the sole, exclusive, and entire agreement between Arcadia and Buyer with respect to any purchase order.**

#### **6. PAYMENT TERMS, ADJUSTMENT OF CREDIT LIMITS, INTEREST, SALES TAX, DEFAULT, AND ARCADIA'S REMEDIES UPON DEFAULT.**

6.1 **Credit payment terms.** If Arcadia extends credit payment terms to Buyer, those terms require payment within 30 days of the delivery date unless different terms are established.

6.2 **Payment in advance.** If Arcadia does not offer credit payment terms, Buyer shall pay fifty percent (50%) of the sales price of the Products described in the written

Purchase Order Confirmation before Arcadia is obligated to begin performance. Buyer shall pay the remaining sales price balance to Arcadia, by wire transfer, at least three days before shipment. Arcadia is not required to ship the Products until it has received the full sales price. If Buyer's order includes shop drawings, 10% of the sales price shall be paid to Arcadia for the shop drawings before Arcadia will deliver the Shop Drawings, and an additional 40% of the sales price must be paid before Arcadia shall be required to commence production. The 10% advance-payment for Shop Drawings is not a deposit and it is not refundable; it is the price of the shop drawings.

6.3 **Changing credit limit.** 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' or Buyer's liability to Arcadia.

6.4 **Interest.** In the event of a default, as defined in section 6.6 below, Buyer's entire account with Arcadia shall automatically become due and payable. Arcadia shall be entitled to a time-price differential (commonly referred to as interest, finance charge, or "service charge" and collectively referred to herein as "**finance charges**") of 1.5% per month, on any amount not paid when due per Buyer's terms. All payments shall be made to Arcadia, at 2301 E. Vernon Avenue, Vernon, California 90058.

6.5 **Sales Tax.** Buyer shall be liable for and pay all sales and use taxes to Arcadia. If the price on Arcadia's price quotation, bid quotation, or written Purchase Order Confirmation does not mention sales tax, it is agreed that the price is only for the Products and that Buyer shall also be liable to Arcadia for the applicable sales tax and will pay the sales tax to Arcadia.

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;
- (b) A breach by Buyer of any representation, warranty, or obligation set forth in this Sales Agreement, including any material misrepresentation contained in the Credit Application portion of this Sales Agreement;
- (c) The termination of any one or more of the personal guarantees 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 material and intentional misrepresentation by Buyer contained in the job information document provided to Arcadia pursuant to section 20.1 below.

6.7 **Arcadia's Remedies Upon Default.** Upon the occurrence of any one or more defaults as set forth in section 6.6 above, 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 any or all of its Mechanic's Lien, Payment Bond, Stop Payment Notice, or Joint Check Agreement rights with respect to Products sold by Arcadia to Buyer. Arcadia may add to Buyer's account all legal fees and costs incurred as a result of such action. Such legal action shall not terminate the security interests granted to Arcadia pursuant to section 16;
- (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.

Arcadia may delay exercising any one or more of the remedies set forth 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 Sales Agreement.

## **7. PRODUCT CLAIMS.**

7.1 **Claims for damaged Products and for shortages must be noted on the delivery receipt at the time of delivery.** Buyer's failure to make a signed notation on the delivery receipt of the specific Products damaged or missing shall create the irrebuttable presumptions that all of the Products listed on the receipt were received by Buyer and that they were not damaged. If the packaging of the Products makes it impossible to detect any damages or shortages upon a reasonable inspection, Buyer may avoid the irrebuttable presumptions in this section 7.1 by giving Arcadia a notice of claim within five (5) business days of the delivery date.

7.2 **Buyer's inspection.** Buyer should thoroughly inspect the Products within five (5) business days of receipt to make sure that they are satisfactory in every respect.

7.3. **Information required in notice of claim.** A notice of claim must include a detailed description of each problem, a description of the specific Products affected by each problem, a statement giving the number of the Products affected by each particular problem, and sample pictures of each problem type.

7.4 **Buyer's Waiver Of Claims.** **Buyer waives all claims if prior to the installation, alteration, repair, or sale to a third party, of the Products, Buyer does not: (i) notify Arcadia of a claim for patent defects within ten (10) business days of receipt of the Products; (ii) allow Arcadia to inspect all of the Products which are the subject of the claim anytime between the receipt of the notice of claim and ten (10) business days thereafter; or (iii) allow Arcadia a reasonable amount of time after Arcadia's timely inspection to repair and/or replace any of the Products (Buyer agrees that a reasonable amount of time shall be not less than ten (10) business days and not more than a commercially reasonable number of days). All claims and "notice of claims" must be given in the manner specified in section 21 unless otherwise indicated.**

7.5 **Time to File Suit if claim is not resolved.** If a claim is not resolved to Buyer's satisfaction, suit against Arcadia must be filed within one year after the delivery of Products. In the case of a claim for a latent defect, suit must be filed within one year of the date Buyer first became aware of the latent defect or first became aware of a latent defect claim. Failure to file suit within the time limits in this section 7.5 shall be a complete bar to any offset, claim, or counterclaim by Buyer against Arcadia.

**8. Invoices and Statements Create Rebuttable Presumptions.** If Buyer believes that any invoice or statement sent to it by Arcadia is inaccurate, Buyer must give notice to Arcadia within forty-five (45) days of the date that Buyer receives the inaccurate invoice or statement or the failure to give such notice within 45 days shall create a rebuttable presumption that the invoices and statements are accurate and complete, and that the prices indicated on the invoices and statements reflect the fair market value of the Products, the agreed upon prices, and the amount owing to Arcadia by Buyer on the account stated as of the date of the statements.



## **9. LIMITATIONS OF BUYER'S REMEDIES**

9.1 **BUYER'S EXCLUSIVE REMEDY.** To the extent allowed by law, any liability of Arcadia to Buyer, whether arising out of or related in any way to any contract, negligence, active negligence, warranty, or otherwise, shall be limited to Arcadia's choice of: (i) repairing the defective Products; and/or (ii) replacing the defective component, part, or entire Product at no cost to Buyer. **Buyer shall bear all costs of removing the defective items, installing the replacement(s), and repairing the damage, if any, caused by such removal and re-installation.** These remedies are exclusive; **Buyer waives all other remedies.**

9.2 **Buyer is responsible for minor and routine repairs.** Buyer shall employ its own 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 or sales manager of Arcadia. In addition, a Buyer of Products manufactured by Arcadia Custom for a single-family residence shall perform major repairs covered by Arcadia Custom's warranty, if requested by Arcadia. Arcadia Custom will reimburse Buyer for the reasonable labor cost of making such repairs, but only if the repairs are not minor or routine.

## **10. ARCADIA IS NOT RESPONSIBLE FOR DESIGN SPECIFICATIONS.**

10.1 Selection of Products. **Buyer waives all claims against Arcadia** based on liability for the selection of the Products for any particular project, design, use, or configuration; the selection is the sole responsibility of the Buyer and the architects. **Arcadia expressly disclaims any warranty or representation that the Products are fit for Buyer's intended use.** Buyer acknowledges that laws and building and safety codes governing the design and use of glazed entrance, window, and curtain wall materials vary widely, and **Buyer expressly waives** any warranty that the use of the Products in any particular project or design configuration will comply with federal, state, or municipal laws, ordinances, or building and safety codes.

10.2 **Customary manufacturing standards.** If the written Purchase Order Confirmation does not include all specifications, Arcadia may manufacture the Products using its choice of any industry acceptable specifications and Buyer waives all claims related to or arising out of such choices.

10.3 **Buyer shall not rely on any representations.** Buyer represents and warrants that it shall not rely on any representation by any employee or representative of Arcadia in the selection and application of the proper Products and sizes to ensure that: (i) when installed, the Products will keep water from passing beyond, around, or through the Products; (ii) the Products conform or comply with the owner's or architect's specifications, or (iii) that the Products are suitable for the owner's intended use.

10.4 **Installation instructions.** 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, written Purchase 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 any Product should actually be installed or applied. If Buyer does not purchase assembly and installation instructions, Buyer represents that it shall rely only on its own knowledge of proper installation means and methods and not on Arcadia's knowledge.

10.5 **Deviations from Owner's Specifications.** Arcadia's sole obligation with respect to the specifications and/or description of the Products ("**Specifications**") in the written Purchase Order Confirmation is to manufacture the Products within industry accepted tolerances of the Specifications. The written Purchase Order Confirmation shall be conclusively presumed to be the latest and exclusive agreement with respect to all Specifications. No earlier Specifications, templates, measurements, other information previously discussed, submitted, provided, or proposed shall be admissible to interpret or supplement the written Purchase Order Confirmation. **BUYER WAIVES ALL CLAIMS for damages if the Specifications of the Products contained in the written Purchase Order Confirmation do not conform to or comply with the owner's or the architect's specifications.**

**11. ARCADIA IS NOT RESPONSIBLE FOR GLAZING OR INSTALLATION.** Arcadia shall not be liable for problems arising out of or related to the glazing of Products by anyone other than Arcadia or by the manner of the installation or assembly of the Products by anyone other than Arcadia. Buyer represents and warrants that all of its employees who will install Arcadia's Products shall have a minimum of 5 years' experience installing such Products and that if Buyer is not the installer, that Buyer will recommend to the owner and installer that all Products should be installed by licensed installers who have a minimum of 5 years' experience installing the specific type of Products to be installed. Buyer shall also recommend that waterproofing experts should be used to design and ensure that adequate flashing details and methods are used to prevent water intrusion.

**12. RISK OF LOSS & TRANSPORTATION.** Unless otherwise stated in Arcadia's written Purchase Order Confirmation, 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 when 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, only 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.

### **13. ARCADIA'S LIMITED WARRANTIES AND REPRESENTATIONS.**

13.1 **Arcadia's limited warranties.** Arcadia has not made any representations or warranties with respect to Products except for those contained in the following Warranty/Care Documents which are incorporated herein as if set forth in full and which can be downloaded and read by going to the websites below:

- a. Arcadia Inc. Go to <https://arcadiainc.com/warranty/> . Scroll down close to the bottom of the page and click on the words "ANODIZED FINISH" inside the white oval and/or on the words "PAINT FINISH" in the blue oval.
- b. Arcadia Custom. Go to <https://arcadiacustom.com/warranties/> . Scroll down almost to the bottom of the page to the section labeled "Downloadables". There you can click on and download the Steel Warranty; the Aluminum Warranty; the Wood Warranty; any of the Maintenance Guides for Steel, Wood, and/or Aluminum; and, the Glass Quality Standards ASTM 1036.

13.2 **Buyer's Representations.** Buyer represents and warrants that it is not relying, and that it will not rely, on any representations or warranties other than those contained in the Warranty/Care Documents or in this Sales Agreement.

13.3 **Conflicting terms.** In the event of a conflict between any of the terms, conditions, or warranties in the Warranty/Care Documents listed in subsections "a" and "b" of section 13.1 above and the provisions in this Sales Agreement, the provisions of this Sales Agreement shall be controlling. Buyer and the owner of the construction project may obtain copies of the Warranty/Care Documents from an Arcadia salesperson or from Arcadia's credit department in addition to viewing them or copying them from the two website pages provided above.

13.4 **Buyer's Waiver Of Warranties. AS TO PRODUCTS CUSTOM-MADE TO BUYER'S SPECIFICATIONS, BUYER WAIVES ALL IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED OR STATUTORY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.**

13.5 **Additions to or alteration of the Products affects Warranties. BUYER WAIVES ALL CLAIMS FOR DAMAGES RELATED TO OR ARISING OUT OF ITEMS ADDED TO THE PRODUCTS** by anyone other than Arcadia, even if Arcadia knew, in advance, that the items would be added to the Products. Such items include but are not limited to parts, components, gaskets, glass, glazing materials, finishes, and sealants.

**14. BUYER IS AN INDEPENDENT CONTRACTOR. THERE ARE NO 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 represents and warrants that Buyer shall make it clear to all concerned that: (i) Buyer does not have the authority to make any representations or promises on behalf of Arcadia; (ii) Buyer cannot enter into any agreement or contract on behalf of Arcadia; and, (iii) Buyer cannot create any third-party beneficiary rights in any contract between Buyer and Arcadia. Arcadia and Buyer do not intend to create any third-party beneficiary rights by this Sales Agreement or by any other agreement.

**15. 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 the defense of such action to Buyer, in writing as soon as Arcadia becomes aware of the action.

**16. SECURITY INTEREST IN BUYER'S ASSETS.** 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 of Buyer's assets, including but not limited to, all accounts receivable, bankruptcy preference claims, 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 and, (ii) Buyer's indebtedness to Arcadia includes at least \$20,000 of indebtedness that is more than 30 days past due. Buyer may give Arcadia a notice terminating the security interest at any time, but the termination shall not be effective until and unless all indebtedness to Arcadia has been paid in full.

**17. 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 that is not disseminated to the general public by Arcadia, shall be deemed to be confidential and proprietary.

**18. 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 policy shall carry limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The liability policy shall also 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.

**19. 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 Sales Agreement, the successful party shall be entitled to attorneys' fees. The Buyer's and Guarantors' payment obligations must be performed at Arcadia's offices at 2301 E. Vernon Avenue, Vernon, California 90058. Any suit for payment due from Buyer and/or from Guarantors, shall be brought and maintained in the Los Angeles Superior Court or in the Federal District Court in Los Angeles. The laws of the State of California shall govern the interpretation and enforcement of this Sales Agreement.

**20. JOB INFORMATION AND PAYMENT FROM A COLLATERAL SOURCE.**

20.1 **Job information.** In order to preserve its statutory remedies, Arcadia opens a new job account for each new construction project ("**Job Account**"). Buyer shall give Arcadia, in writing, information regarding all of Buyer's construction projects as Arcadia deems necessary or convenient to protect, preserve, or perfect Arcadia's Statutory Remedies. Statutory remedies include, but are not limited to, mechanic's liens, stop payment notices, state and federal public works payment bonds, and bonds to release mechanic's liens or to release stop payment claims.

20.2 **Collateral recovery on a Job Account.** If Arcadia recovers any money from a third party on a statutory remedy or otherwise, Arcadia shall apply the recovered amount as follows: first to Arcadia's actual and reasonable attorneys' fees incurred and paid by Arcadia in pursuing the remedies; second, to court costs; third, to finance charges on the Job Account; and, fourth, to the principal balance owing on the Job Account.

**21. NOTICES.** Unless otherwise provided in this Sales Agreement, all notices required or allowed in this Sales 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(s) be sent to different addresses. 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 21 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 the Credit Manager, the Sales Manager, the Buyer, or the Guarantors; 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 person 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. The requirements of this Section 21 do not apply to quotes, purchase orders, order confirmations, tenders of delivery, invoices, statements, requests for change orders, or change orders. This section does apply to objections to the order confirmation or to the invoices and statements. The purpose of this section is to create a record of the notice and resolve all disputes as to whether a notice was actually given.

## **22. GENERAL PROVISIONS.**

22.1 **Entire Agreement.** All sales by Arcadia to Buyer shall be governed exclusively by the terms and conditions of this Sales Agreement. This Sales 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 Sales Agreement. The provisions of this Sales Agreement may be modified or terminated only by a document, in writing, signed by Arcadia's Credit Manager, Buyer, and Guarantors. **Buyer and Guarantors acknowledge that they have read this Sales Agreement and the Warranty/Care Documents, understand them, and agree to all of them after having ample opportunity to seek independent legal advice.**

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

22.3 **Material terms and severability.** All provisions of this Sales Agreement are material terms. But, if any provision of this Sales Agreement is deemed unenforceable, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this Sales Agreement remain enforceable, the remainder of this Sales Agreement shall remain operative and binding on Arcadia, Buyer, and Guarantors.

22.4 **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 Sales Agreement.

22.5 **No collateral agreements. THERE ARE NO COLLATERAL VERBAL AGREEMENTS BETWEEN OR AMONG ARCADIA, BUYER, AND/OR GUARANTORS.**

22.6 **Facsimile & email**. A signed facsimile, a signed pdf, or a signed paper copy of this Sales Agreement shall be deemed an original regardless of how or what part of it was transmitted to Arcadia or to Buyer, provided that the last page 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 Sales Agreement shall be deemed an original.

22.7 **Captions print size**. Captions are meant to facilitate locating specific contract provisions. They should not be relied on to determine the content of this Sales Agreement. This Sales Agreement was presented to Buyer as a searchable word document. Accordingly Buyer had the ability search for words and phrases which are of any interest to Buyer and to enlarge this Sales agreement on a computer screen so that the 12-point font size was easy to read.

**23. PERSONAL GUARANTY**. The undersigned agree and acknowledge that he/she/they/it ("**Guarantor**") are signing this Sales Agreement in Guarantor's individual capacity, as well as in Guarantor's capacity as a person authorized to execute this Sales Agreement on behalf of the Buyer. 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 change in the relationship between Guarantor and Buyer, including the sale of any or all of Guarantor's ownership interest in Buyer; (ii) the execution of any new or additional guarantees by Guarantor or by others; (iii) 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; (iv) a bankruptcy automatic stay of proceedings against Buyer; (v) Arcadia's failure to exercise diligence against Buyer or against any guarantor, including Guarantor; (vi) a failure or refusal by Buyer or Guarantor to execute a new or updated version of this Sales Agreement and/or of a personal guaranty; (vii) Arcadia's actual or imputed knowledge that Guarantor is not an officer or owner of Buyer; (viii) Arcadia's failure to give notice to Guarantor; or, (ix) Arcadia's failure to proceed against Buyer.

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 pursuant to section 21 that such is no longer true. The Section 21-compliant notice shall be the exclusive method available to Guarantors to modify or terminate Buyer's or Guarantors' liability to Arcadia. The termination of the Guaranty shall not terminate Guarantors': (i)

indemnification requirements listed in Section 15; or, (ii) any liability with respect to cost or expense incurred by Arcadia after a Confirmation. **This is an absolute and continuing Guaranty. 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.**

**24. THE TERMS OF THIS SALES AGREEMENT WERE NEGOTIABLE. Buyer acknowledges that, for a surcharge, Buyer could have eliminated Buyer's waivers of delay damages and/or economic damages. Buyer also acknowledges that all of the provisions of this Sales Agreement including all of Buyer's waivers were negotiable but that the provisions are acceptable to Buyer as is.**

▶ \_\_\_\_\_  
Signature (As Guarantor & For Buyer)  
Do not sign electronically

▶ \_\_\_\_\_  
Signature (As Guarantor & For Buyer)  
Do not sign electronically

▶ \_\_\_\_\_  
Print Name

▶ \_\_\_\_\_  
Print Name

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Title

▶ \_\_\_\_\_  
Title

\_\_\_\_\_  
Tom Williamson, Arcadia Credit Manager

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

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