



ARCADIA, INC., ARCADIA ARCHITECTURAL PRODUCTS, INC., and ARCADIA, INC. dba WILSON PARTITIONS

SALES AGREEMENT & LIMITED WARRANTY

1. PARTIES & EXCLUSIVITY OF AGREEMENT. The terms of this Sales Agreement & Limited Warranty ("**this Agreement**") govern all past, present and future sales of "**goods**" or "**products**" to you, the "**Buyer**", by Arcadia Architectural Products, Inc., by Arcadia, Inc. dba Wilson Partitions, by Arcadia, Inc. and/or by a subsidiary or division of Arcadia, Inc. (each corporation and their divisions and their subsidiaries are collectively referred to hereinafter as "**ARCADIA**"). This Agreement constitutes Buyer's agreement that any terms, conditions, or provisions contained in Buyer's oral or written offer, purchase order, acceptance, or other communications shall not apply to any sales, quotations, order confirmations, Order Acknowledgments, or other transactions between Arcadia and Buyer. The provisions of this Agreement, Buyer's Credit Application, the Credit Agreement, & Personal Guaranty (all three separately captioned documents are collectively referred to as "**The Agreement**") constitute **the sole, exclusive, and entire agreement** among Arcadia, Buyer, and any Guarantor. Arcadia and Buyer do not intend to create third party beneficiary rights by this or any other agreement and no such rights have been or shall be deemed to have been created.

2. QUOTATIONS. No verbal quotations or order confirmations shall be binding, until or unless confirmed by Arcadia in a written quotation, written order confirmation, or written invoice and then **The Agreement shall constitute the sole, exclusive and entire agreement between Buyer and Arcadia and between Guarantor and Arcadia.** Arcadia's quotations are good for 30 days. When Buyer requests tests or inspections, Buyer shall pay the cost of same plus handling, packing, and freight. Any change in export or import duties, in taxes, in freight, or in insurance rates, shall be borne by and paid for by Buyer.

3. ORDER ACCEPTANCE. All orders are subject to acceptance or rejection by Arcadia. Arcadia shall not be liable for loss, theft, or damages of any kind or nature whatsoever. Arcadia's liability for any finishing errors, treatment errors and any other processing errors shall not exceed the value of the finishing, treatment, or process undertaken by Arcadia. The foregoing limitations shall apply notwithstanding the negligence of any employee or subcontractor of Arcadia.

4. PAYMENT, DEFAULT, & REMEDIES.

4.1 Payment. Arcadia shall be entitled to service charges (interest), at the rate of 1.5% per month, on any invoice not paid when due, or within thirty days of the invoice

date if no due date is specified. Payments shall be made to Arcadia at Arcadia's office located at 2301 E. Vernon Avenue, Vernon, California, 91436.

4.2 Default. In the absence of the express written consent of Arcadia, the following shall be deemed events of default:

(a) Buyer's failure to make payment to Arcadia when due, as provided in this Agreement.

(b) A breach of any representation, obligation, or warranty set forth in The Agreement.

(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.

(e) The disclosure by Buyer, or its employees, of any information that is confidential or proprietary to Arcadia, including but not limited to any information not readily available to competitors of Arcadia or to the general public.

(f) Buyer's refusal or failure to provide advance payment or adequate assurance of payment upon written demand from Arcadia.

(g) The failure of Buyer to provide Arcadia with reasonably available accurate information, necessary to preserve or perfect a mechanic's lien or similar remedy.

4.3 Remedies Upon Default. Upon the occurrence of any one or more defaults as set forth in Section 4.2 and elsewhere 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 as being 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 materials to Buyer, without waiving the default or interest and without being obligated to continue to extend credit.

(d) Institute legal action to enforce its Mechanic's Lien, Payment Bond, Stop Payment Notice, or Joint Check Agreement rights with respect to goods sold by Arcadia to Buyer and, add to Buyer's account all legal fees and costs incurred because of such action.

(f) Proceed against any person(s) on any Personal Guarantees issued by them to Arcadia.

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

5. DELAYS. Production, shipping, processing and delivery dates given by Arcadia are estimates. Buyer is cautioned to make allowance for delays and Buyer agrees that **Arcadia shall not be liable to Buyer, or to anyone else, for delays**. Arcadia reserves the right to ship goods up to a reasonable time ahead of scheduled delivery dates. Buyer agrees to accept delivery upon reasonable notice of readiness from Arcadia.

6. SECURITY INTEREST. Buyer hereby grants to Arcadia a purchase money security interest in all goods sold to Buyer by Arcadia. Buyer also grants Arcadia a non-purchase-money contingent security interest in all accounts receivable, inventory, equipment, and cash accounts. However, Arcadia shall not assert or perfect the non-purchase-money contingent security interest, until and unless Buyer's indebtedness to Arcadia includes at least \$15,000 of indebtedness that is more than 60 days past due.

7. DESIGN SPECIFICATIONS. Buyer agrees that Arcadia's sole obligation with respect to the design specifications of the goods is to manufacture them in accordance with the specifications included in Arcadia's order confirmation. Buyer agrees that Arcadia shall not be liable for any damages if the specifications in the purchase order, the quotation, the order acknowledgment, or the order confirmation do not conform or comply with the owner's/architect's specifications, building codes, or any applicable statute including but not limited to the ADA. Any changes must be in writing. Specifications cannot be changed after the manufacturer or Arcadia begins production. Arcadia has not and will not be involved in the product selection or installation process. Buyer acknowledges that windows and doors 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. Windows and doors are rated by independent certification agencies to insure they meet their specifications. Selecting the appropriate products and the installation and application of these products is the sole responsibility of Buyer and Buyer represents and warrants that Arcadia has not made any representation as to which products are appropriate and that Buyer is not relying upon any representation by any employee, officer, or agent of Arcadia in the selection and application of the proper systems and sizes to ensure that (1) when installed Arcadia's products will keep water from passing beyond, around, or through the products, (2) 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 ADA, or (3) that the products are suitable for the owner's intended use. Unless Buyer has requested in writing and paid a separate and additional fee to Arcadia for assembly and installation instructions and unless the same is reflected on Arcadia's quote, order confirmation, or invoice.

8. INSTALLATION. Arcadia is not liable for problems related to or caused by the glazing of goods or by the installation of the goods. Buyer agrees that any installation instructions provided by Arcadia may not be applicable to the goods purchased and that Buyer understands and agrees that all goods manufactured by Arcadia should be installed by licensed installers who have a minimum of 5 years' experience installing the specific type of goods purchased from Arcadia. Waterproofing experts should be used to design and insure that adequate flashing details and methods are used.

9. CLAIMS PROCEDURE & REMEDIES.

9.1 Notice of Claims. Buyer must give Notice (as that term is defined in Section 10 of This Agreement) to Arcadia of any claim for shortage, defect, patent defect, latent defect (defects not discoverable by reasonable and customary inspection), nonconformity, incorrect price, damage, non-delivery, or for any other reason within 14 days of the date Buyer discovered or could have reasonably discovered the problem by a reasonable inspection.

9.2 Claims which must be noted on the Delivery Ticket. Section 9.1 notwithstanding, claims for breakage or shortages must be noted on the delivery ticket at the time of receipt by Buyer. Buyer's failure to make a claim on the Delivery Ticket shall create an irrebuttable presumption that all of the goods were received by Buyer, that the goods were not damaged, and that the kind and quantity of goods received were exactly as stated on the delivery receipt.

9.3 Invoices and Statements Create Presumptions. If Buyer believes that any invoice or statement sent to it by Arcadia is inaccurate, Buyer must make a claim to Arcadia within 14 days of the date Buyer receives the invoice or statement. Buyer's failure to make a claim to Arcadia with respect to the invoices or statements shall create an irrebuttable presumption the invoices and statements are accurate and complete and that all of the materials were received by Buyer, that the materials were not damaged, that the kind and quantity of materials received were exactly as listed on the invoices, and, that the price indicated on the invoice or statement is the fair market value and the price agreed to by Buyer. 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 Strict Compliance. **Buyer's failure to strictly comply with the claims procedure set forth in this Section 9, or to prove that Buyer gave timely notice in the manner set forth in this Section and in Section 10, shall be a complete waiver and bar to any claim or to any set-off against Arcadia.**

9.5 Time Limitation to File Suit on a Claim. Any suit against Arcadia must be filed within one year after the delivery of goods, or in the case of a claim for latent defects, within one year of the date Buyer became aware of the defect or should have reasonably become aware of the defect. Failure to file suit within one year shall be a complete bar to any offset or to any claim by Buyer against Arcadia. Arcadia's investigation of a verbal claim shall not be deemed a waiver of the claims procedure set forth in this section, for that claim or for any other claim.

9.6 **Time is of the essence with respect to all Notices, claims, and/or suits required or allowed by this Section on Claims Procedure and Remedies.**

10. NOTICES. All notices from Buyer to Arcadia required or allowed in this Agreement must be mailed by certified return receipt requested mail 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. The notices shall be effective five business days after receipt. In the event of a dispute regarding receipt of the two notices, Buyer and Guarantor have the burden of proving delivery of the notices, and the exclusive means of satisfying that burden is to produce signed green card receipts, the post office records of delivery, or a written acknowledgment from Arcadia that both the Credit Manager and the Sales Manager received the Notice.

11. RETURNS. All sales are final. Goods may not be returned to Arcadia for credit without Arcadia's prior written consent. **Buyer must examine the goods prior to installing, altering, or otherwise using the goods.** If goods are processed by Buyer, Buyer's subcontractor, or by anyone in any manner, Buyer waives all claims with respect to those goods except for latent defect claims. No returns will be allowed and no credit will be given if the claimed defect, non-conformity, or damage could have

been discovered through the exercise of reasonable investigation and care before they were used or installed.

12. REPRESENTATIONS AND WARRANTIES. There have been no oral or written representations or warranties made by Arcadia with respect to the goods sold to Buyer except for those contained in This Agreement. Arcadia warrants that goods sold hereunder are merchantable unless they were manufactured in conformance with Buyer's specifications, and that Arcadia conveys good title thereto. **ARCADIA MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED. BUYER WAIVES ALL CLAIMS AGAINST ARCADIA FOR IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES AND OBLIGATIONS OTHER THOSE EXPRESSLY MADE TO BUYER IN THE FIRST SENTENCE OF THIS SECTION 12.** Buyer acknowledges that Arcadia strictly forbids its employees to make any representations or warranties with respect to the goods, including but not limited to fitness of goods for a particular purpose. For example, Arcadia, does not warrant that the goods are fit for buyer's particular use or purpose. Arcadia specifically does not warrant the accuracy of any advice or recommendations given to Buyer with respect to goods sold by Arcadia. **The warranty of merchantability is voided if parts not supplied by Arcadia are added to the goods supplied by Arcadia.**

13. LIMITATIONS OF ARCADIA'S LIABILITY. Any liability of Arcadia to Buyer, whether arising out of or related in any way to any contract, negligence, strict tort, warranty, or otherwise, shall be limited to Arcadia's choice of any one of the following: (a) the repair or replacement of the defective goods by Arcadia; (b) the payment by Arcadia to Buyer of the reasonable cost of repairing or replacing the defective goods, but not the cost of removing or reinstalling goods; or (c) the cancellation of the contract, Buyer's return of the goods in question to Arcadia, and Arcadia's refund of the purchase price to Buyer. These remedies are exclusive; Buyer waives all other remedies. **Arcadia shall not, under any circumstances, even if advised of the possibility of such damages, be responsible for special, economic, consequential or incidental damages** such as, but not limited to loss of or damage to other property; lost profits or revenue; damage to reputation; the labor and material cost of replacing defective goods; or damages caused by delays, back-charges, or loss of use. Arcadia shall not be liable for damage to the products due to failure to properly care for and maintain the products.

14. PATENT INDEMNITY. Buyer shall defend and hold Arcadia harmless from any action against Arcadia or its suppliers based on a claim that the manufacture or sale of goods by Arcadia to Buyer constitutes infringement of any United States letters patent, if such goods were manufactured pursuant to Buyer's designs, specifications and/or formulas, and were not normally offered for sale by Arcadia, if Arcadia gives Buyer prompt written notice of the claim or action.

15. CONFIDENTIAL AND PROPRIETARY INFORMATION. No Information transmitted, in any manner or means, by Buyer to Arcadia by shall be deemed to be confidential or proprietary.

16. ATTORNEYS' FEES AND SUIT. In the event of a lawsuit brought by either Buyer or Arcadia, for breach of contract, the successful party shall be entitled to attorneys' fees as follows: 40% of the claim but not less than \$1,500 if the claim is \$5,000 or less; 33.3% of the claim if the claim is over \$5,000; or reasonable attorneys' fees if the defendant filed an Answer in the action (even if the Answer is ultimately stricken). Any suit, by Buyer or Arcadia, must be brought in the Los Angeles Superior Court, or in the Federal District Court in Los Angeles. This Agreement shall be governed by the laws of the State of California.

17. PERSONAL GUARANTY. If a personal guaranty has been executed as part of Arcadia's Credit Agreement, the guarantor(s) waive the benefit of any limitations affecting their liability under such guaranty or the enforcement thereof to the extent permitted by law. Guarantor jointly and severally personally guarantees payment of all present and future indebtedness of Buyer to Arcadia including all renewals and extensions of such indebtedness. Without limiting the generality of the foregoing, Guarantor waives all notices from Arcadia and waives the right to require Arcadia to proceed against Buyer. Guarantor's personal guaranty shall not be deemed to be suspended, stayed, released, terminated or discharged by any modification, substitution, settlement, supplement, extension of time, or compromise granted to Buyer; by any change in the relationship between Guarantor and Buyer, including the sale of any or all of Guarantor's ownership interest in Buyer; by the execution of new or additional guarantees by Guarantor or by others; by any change whatsoever in the business relationship between Arcadia and Buyer, including but not limited to any change in credit terms, amount of credit, or amount of interest or service charges; by any transfer of new or additional security by anyone for payment of Buyer's indebtedness to Arcadia; by the bankruptcy of Buyer; by the release or discharge of Buyer's obligation to pay its debt to Arcadia; by an automatic stay of proceedings against Buyer; by Arcadia's failure to exercise diligence against Buyer or against any guarantor, including Guarantor; by a failure or refusal by Buyer or Guarantor to execute a new or updated Credit Agreement and/or personal guaranty; or, by Arcadia's knowledge that Guarantor is not an officer or owner of Buyer. **This is an absolute and continuing Guaranty.** Guarantor specifically authorizes Arcadia to obtain consumer credit reports on Guarantor for any purpose. 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 10, that Guarantor is no longer an Owner and/or no longer actively engaged in conducting the business of Buyer.

18. TERMINATION OF THE AGREEMENT.

18.1 Notice to Arcadia. Buyer and Guarantor may terminate The Agreement or terminate any Guaranty at any time but must do so exclusively in the manner set forth in Section 10 of This Agreement. The notices shall be effective five business days after receipt. Buyer and Guarantor shall remain responsible and liable for all indebtedness of Buyer to ARCADIA as of the 5th day after receipt of both notices and any security interest shall remain in full force until all indebtedness to ARCADIA has been paid in full. Such notice shall be the **exclusive** method of modifying or terminating Buyer's or

Guarantor's liability to ARCADIA. In the event of a dispute regarding receipt of the two notices, Guarantor has the burden of proving delivery of the notices. Guarantor may satisfy that burden only by producing signed green card receipts, the post office records of delivery, or a written acknowledgment of receipt of both notices from the Credit Manager and Sales Manager.

18.2 Notice to Guarantor or by Buyer. Arcadia may terminate The Agreement at any time, but must do so in the manner, and subject to the requirements and provisions, in the preceding Section 10 of This Agreement, but Arcadia's notices must be sent to the attention of the President of the Buyer and to the attention of the individually name(s) of the Guarantor. The termination shall be effective 30 days after mailing, unless Buyer is in Default (as that term is defined in Section 4.2), in which case the notice shall be effective upon mailing.

18.3. Indemnification Obligations and Disputes. The termination of The Agreement shall not terminate any of the indemnification obligations and rights set forth in Sections 14 and 23 of This Agreement and The Agreement shall continue to govern any dispute among the Buyer, the Guarantor(s), and Arcadia.

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

20. ENTIRE AGREEMENT. The provisions of The Agreement and constitute the sole, exclusive, and entire agreement among Buyer, Arcadia and Guarantor(s) and supersede all prior oral representations, warranties, statements, promises, understandings, provisions in any purchase order, change order, or other documents from Buyer and may not be modified or terminated except by a document, in writing, signed by an officer, owner, or general manager of Arcadia and Buyer. Arcadia has not made any promises or representations to induce Buyer to enter into The Agreement and Buyer is not relying upon any promise or representation not contained in The Agreement.

21. WAIVERS. Arcadia may delay exercising or may omit to exercise any right, remedy or requirement, without waiving that or any other past, present or future right, requirement, or remedy, except in a writing signed by Arcadia. Arcadia's consistent waiver of any right, requirement, or remedy shall not establish a "course of dealing" which could be construed as a waiver of any of the provisions of this Agreement.

22. COLLATERAL RECOVERY. If Arcadia successfully asserts a claim against a third party on a mechanic's lien, stop notice, payment bond, or other statutory remedy, Arcadia shall credit Buyer's account only with the net amount recovered by Arcadia after deduction of all costs and actual attorneys' fees. Furthermore, if Arcadia is unsuccessful in its attempt to recover from a collateral source, Arcadia's reasonable costs and attorneys' fees may be added to Buyer's account, if the lack of success was due in part or in full to Buyer's failure to prove that the goods purchased from Arcadia were used on the job for which Buyer purchased the goods or because Buyer misrepresented any material fact to Arcadia. In any mechanic's lien, stop notice,

payment bond action, or other statutory remedial action against third parties, all of Arcadia's invoices shall be deemed due within 30 days of the date of the invoice or 30 days of the date of the invoice to Buyer.

23. INDEMNIFICATION. Buyer shall defend, indemnify, and hold Arcadia harmless from and against any third-party claims against Arcadia for damages based upon alleged product defects, design defects, delays, personal injury, damage to other property, strict tort, violation of building codes, laws, and regulations, including without limit the ADA, or from and against any other third-party claims for damages which Buyer is barred from making directly against Arcadia by the provisions of The Agreement. Buyer shall not file any action or cross complaint against Arcadia with respect to any claims which Buyer is required by this Section to defend on behalf of Arcadia. If the allegations of the third-party include additional claims for damages that Buyer could directly assert against Arcadia, Buyer shall nevertheless defend Arcadia from all the claims.

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