



APPLICATION TO PURCHASE CONSTRUCTION MATERIALS, SALES AGREEMENT, PERSONAL GUARANTY, AND LIMITED WARRANTY FOR

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 corporation, subsidiary, or division of any of said companies (collectively referred to hereinafter as “Arcadia”).

APPLICATION TO PURCHASE CONSTRUCTION MATERIALS

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,
 PERSONAL GUARANTY, AND LIMITED WARRANTY**

1. APPROVAL OF APPLICATION. The company identified above as "**Buyer**" intends to purchase construction materials ("**goods**" or "**products**") from 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/or any present or future sister corporation, subsidiary, or division of any of said companies (collectively referred to hereinafter as "**Arcadia**"). All pages of this document, including the Application, shall be referred to as "**this Agreement**". In this Agreement the terms "**goods**" and "**products**" are used interchangeably and refer to anything sold by Arcadia to Buyer. The Application information on page 1 and on the top of this page will be reviewed and approved or disapproved, verbally or in an email, by Arcadia's Credit Manager at 2301 E. Vernon Avenue, Vernon, California, 91436. If the Application is approved, Arcadia will accept purchase orders from Buyer and will sell goods to Buyer pursuant to the sole and exclusive terms contained in this Agreement.

2. PERSONAL GUARANTY. The undersigned agrees and acknowledges that he/she/they ("**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 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; (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) any execution of 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 interest or 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; (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 personal guaranty; (xi) Arcadia's actual or imputed knowledge that Guarantor is not an officer or owner of Buyer; (xii) Arcadia's sale of materials on credit to Buyer even though Buyer is in default, or was in default, as the term "default" is defined in Section 6.5 of this Agreement; (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 it also specifically states the Guarantor is terminating the Guaranty.

3. CREDIT REPORTS & DISCLOSURE OF CREDIT INFORMATION. Buyer and Guarantor authorize Arcadia to obtain business and consumer credit reports on them for credit and/or collection information. Buyer and Guarantor 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 any act which reasonably implies acceptance of Buyer's purchase order. All sales and other dealings between or among Arcadia and Buyer and/or Guarantor 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 material 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 same plus handling, packing, and freight. Arcadia shall not be liable for loss, theft, or damages of any kind or nature whatsoever. Arcadia's cumulative liability for any finishing errors, treatment errors, and/or any other errors

shall not exceed the value of the finishing, treatment, or process undertaken by Arcadia.

6. BUYER'S FORMS, PAYMENT, INTEREST, SECURITY INTEREST, DEFAULT, AND JOB INFORMATION.

6.1 Terms on Buyer's Forms. Any terms, conditions, or other provisions, contained in Buyer's purchase order or in other communication (collectively "**purchase order**") from Buyer to Arcadia not contained, word for word, in this Agreement shall be null and void. **This Agreement constitutes the sole, exclusive, and entire agreement among Arcadia, Buyer, and all guarantors and 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 before Arcadia is obligated to put any order into production. 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 product 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 the invoice. If Arcadia allows Buyer to purchase goods on credit, Arcadia may, in its sole discretion, periodically, and without notice, terminate credit or increase or decrease the amount of credit extended to Buyer, without in any way limiting or modifying Guarantor's liability to Arcadia.

6.3 Other Payment Provisions. In the event of a default, as defined in Section 6.5, Buyer's entire account with Arcadia shall automatically become due and payable. Arcadia shall be entitled to service charges (interest), at the rate of 1.5% per month, on any amount not paid when due or within thirty days of the delivery of any part of the goods, if no 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.

6.4 Security Interest. Buyer hereby grants to Arcadia a purchase money security interest in all goods, sold to Buyer by Arcadia, and in the proceeds from the sale of such goods. 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 6.5 (a),(b), (c), (d) or (e) below and, (ii) Buyer's indebtedness to Arcadia includes at least \$20,000 of indebtedness that is more than 30 days past due.

6.5 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 order confirmation, or in an invoice;
- (b) A breach of any representation, obligation, or warranty set forth in this Agreement, including any material misrepresentation contained in the Application on page 1 and on the top of page 2 of this Agreement;
- (c) The termination of any 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; or,
- (e) The disclosure by Buyer, or its employees, of any information that is confidential or proprietary to Arcadia.

6.6 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.

7. 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**, regardless of the reason for the delays, including, but not limited to, any mistake or negligence by Arcadia. 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.

8. DELIVERY & TRANSPORTATION. Unless otherwise stated in writing, all sales are FOB at Arcadia's facilities. Upon tender of the goods at the FOB location, all incidents of ownership, including risk of loss or damage, passes to the Buyer when Buyer picks up the goods or within two business days following the tender if Buyer fails to pick up the goods before such time. If the goods are shipped by common carrier, all incidents of ownership, including risk of loss or damage, passes to the Buyer upon delivery of the goods to the common carrier. If the goods are delivered by Arcadia's truck, all incidents of ownership, including risk of loss or damage, passes to the Buyer upon arrival of the truck at the delivery location; Arcadia is not responsible for damage to the goods during the unloading of the goods from the truck.

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 Document Claim on Delivery Receipt. Section 9.1 notwithstanding, claims for damage or shortages must be noted on the delivery receipt at the time of delivery. 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 make a claim to Arcadia within 14 days of the date Buyer receives the invoice or the statement. In no even may the Buyer assert a claim more than 45 days after the date of delivery of the goods for any inaccuracies in the invoice or statements sent to Buyer within the ordinary course of business between Arcadia and Buyer even if Buyer asserts that it did not receive the 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 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 both the fair market value of the goods 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 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 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 goods, except for suit based solely upon latent defects. In the case of a claim for latent defects, suit must be filed within nine months of the date Buyer 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 this Section 9.5 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 9 on Claims Procedure and Remedies.

10. RETURNS. All sales are final. Goods 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 goods prior to installing, altering, or otherwise using the goods.** If goods 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 goods 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 through the exercise of reasonable investigation or inspection before they were used or installed.

11. INSTALLATION. Arcadia shall not be liable for problems related to or caused by the glazing of goods or by the installation of the goods. Buyer understands and shall recommend to its clients 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, 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 insure 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 goods (collectively, "**Specifications**") is to manufacturer 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 goods contained in the order confirmation and the Specifications of the goods 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 irrebutable presumption that the Specifications in the order confirmation are the final Specifications of the goods agreed to by Buyer and Arcadia. Such notice must be emailed to the Arcadia salesman handling Buyer's account, to pvalentin@arcadiainc.com, to twilliamson@arcadiainc.com, and mailed by U.S. mail in the manner provided in Section 22 of this Agreement. 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 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 selection of goods or in the installation of the goods. 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. If the order confirmation does not include all needed manufacturing specifications ("**Missing Specs**"), Arcadia shall manufacture the goods using its choice of any Missing Specs and shall not be liable for any damages if its choice does not violate any applicable building codes, statutes, or industry standards.

Windows and doors are rated by independent certification agencies to meet their specifications. Selecting the appropriate goods for a project and installing the goods 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 goods 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 ADA, 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 goods should actually be installed or applied.

13. PRODUCT CLAIMS. In the event of a complaint or a claim regarding the goods, Buyer shall promptly provide Arcadia with a detailed written report and photographs describing the issues or claims. Buyer shall employ personnel to perform minor 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 such evidence with its first purchase order and then from time to time as requested by Arcadia.

15. REPRESENTATIONS AND WARRANTIES. Arcadia has not made any representations or warranties with respect to goods except for those contained on Arcadia's website and in this Agreement, and Buyer represents and warrants that it will not rely on any other representations or warranties. **ARCADIA WARRANTS THAT IT HAS GOOD TITLE TO THE GOODS SOLD HEREUNDER AND THAT THE GOODS ARE MERCHANTABLE UNLESS THEY WERE MANUFACTURED IN CONFORMANCE WITH BUYER'S SPECIFICATIONS. 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 FOR ALL OTHER WARRANTIES AND OBLIGATIONS OTHER THAN THOSE EXPRESSLY MADE TO BUYER IN THIS AGREEMENT. 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. Arcadia specifically does not warrant the accuracy of any advice or recommendations given to Buyer by Arcadia, or on behalf of Arcadia, except that the written representations about what industry standards the products meet or exceed are accurate.

THE WARRANTY OF MERCHANTABILITY IS VOIDED 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 MAINTAINED.

The Arcadia-Custom Thermal Aluminum Warranty is void if the end user fails to care for and maintain the goods as set forth in the Arcadia-Custom Thermal Aluminum Warranty Care & Maintenance Guide; both of those documents are on Arcadia's website and are incorporated herein as if set forth in full.

16. AGENCY AND 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 ever make any representations on behalf of Arcadia, but instead 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. 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 one of the following: (i) the repair or replacement of the defective goods by Arcadia; (ii) the payment by Arcadia to Buyer of the reasonable cost of repairing or replacing the defective goods; or (iii) the cancellation of the contract and the return to Buyer of funds paid to Arcadia for the defective goods. If Arcadia chooses option (iii), Arcadia may require Buyer to return the goods in question to Arcadia, or Arcadia may allow the Buyer to keep the goods. These remedies are exclusive; Buyer waives all other remedies.

Arcadia shall not, under any circumstances, even if advised in advance of the possibility of such damages, be responsible for special, economic, consequential, or incidental damages such as, but not limited to damage to other property; lost profits or revenue; damage to reputation; the labor and material cost of repairing, removing, and/or replacing defective goods; or, damages caused by delays, back-charges, or loss of use.

All limitations on Arcadia's liability contained in this Agreement shall apply notwithstanding any alleged negligence of any employee or subcontractor of 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 goods by Arcadia to Buyer, if such goods were manufactured pursuant to Buyer's designs, specifications and/or formulas, and were not normally offered for sale by Arcadia. 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 AND SUIT. In the event of a lawsuit brought by Buyer, Guarantor, or Arcadia, arising out of or related to this Agreement, the successful party shall be entitled to attorneys' fees. Any suit, by Buyer, Guarantor, 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 Guarantor.

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 Guarantor, one copy of the notice must be mailed to the Buyer and another must be mailed to the Attention of the Guarantor. Both notices shall be sent to Buyer's address, unless Buyer or Guarantor 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 acknowledgment of receipt of the specified individuals and companies. Strict compliance with notices to the correct address and to each person mentioned is required. The receipt need not be signed by Buyer, the Guarantor, the Credit Manager, or the Sales Manager; the notice shall be deemed received if it is addressed in the manner required by this section and is addressed properly and delivered to the correct address. 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 invoices, statements, order confirmations, requests for change orders, or change orders; those documents shall not be deemed to be included in the terms "notice" or "notices". **Time is of the essence with respect to all notices**, except for acceptance or denial of Buyer's application for credit.

23. ENTIRE AGREEMENT. The provisions of this Agreement constitute the sole, exclusive, and entire agreement between or among Arcadia, Buyer, and any Guarantors, and supersede all oral representations, warranties, statements, promises, understandings, provisions in any purchase order, change order, or other documents and may not be modified or terminated except by a document, in writing, signed by Arcadia's Credit Manager and by Buyer. The provisions of the Guaranty may not be modified except by a document, in writing signed by Arcadia's Credit

Manager and by the Guarantor. Arcadia has not made any promises or representations to induce Buyer or Guarantor to enter into this Agreement; neither Buyer nor Guarantor are relying upon any promise or representation not contained in this Agreement.

Arcadia and Buyer 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. **There are no collateral verbal agreements between or among Arcadia, Buyer, and/or Guarantor.**

24. TERMINATION OF THIS AGREEMENT.

24.1 Termination by Buyer and Guarantor. Buyer and/or Guarantor may terminate this Agreement and/or terminate the personal guaranty at any time but must do so exclusively by giving notice as provided in Section 22 of this Agreement. Buyer and Guarantor shall remain responsible and liable for all indebtedness and legal obligations of Buyer to Arcadia as of the fifth business 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. The termination notice shall not apply to any purchase orders accepted by Arcadia prior to Arcadia's receipt of the termination notices. Such notice shall be the **exclusive** method of modifying or terminating Buyer's or Guarantor's liability to Arcadia. The termination of this Agreement shall not terminate any of the provisions of Section 18 and Section 28 in this Agreement regarding indemnification, nor shall it terminate the Guarantor's and Buyer's liability with respect to any purchase order accepted by Arcadia prior to Arcadia's receipt of the termination notices.

24.2 Termination by Arcadia. Arcadia may terminate this Agreement at any time but must do so exclusively by giving notice as provided in Section 22 of this Agreement, except that the two notices shall be addressed to the President of Buyer and to Guarantor at Buyer's place of business. The termination shall be effective 10 days after mailing, unless Buyer is in Default (see Section 6.5), in which case the notice shall be effective upon mailing. Buyer and Guarantor shall remain responsible and liable for all indebtedness and legal obligations of Buyer to Arcadia existing prior to the effective date of the termination notice. Such notice shall be the **exclusive** method for Arcadia to terminate the Agreement. The termination notices given pursuant to this Section 24.2 shall not apply to any purchase orders accepted by Arcadia prior to the effective date of the termination notice. The payment of Buyer's indebtedness to Arcadia shall not terminate any of the provisions of Section 18 and Section 28 in this Agreement regarding indemnification.

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 goods to Buyer, without waiving the default, without being obligated to continue to sell goods to Buyer, and without releasing Buyer and Guarantor from their obligation to pay for goods 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 goods 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 6.4 of this Agreement.

(f) Proceed against any person(s) on any personal guarantees issued by them to Arcadia.

(h) The Buyer's and Guarantor's payment obligations are to 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 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 writing 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.

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 credit Buyer's account with the amount collected from the third-party(s) less Arcadia's actual court costs and actual attorneys' fees incurred and paid by Arcadia in pursuing any third-party. If Arcadia tries but does not recover any payment from any third-party, Arcadia's reasonable court 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 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 goods to Buyer.

28. INDEMNIFICATION. Buyer shall defend, indemnify, and hold Arcadia harmless from and against any third-party claims for damages based upon alleged product defects, design defects, nonconforming Specifications, delays, personal injury, damage to other property, strict tort, violation of building codes, laws, and regulations, or any other claims for damages which Buyer has waived or is barred from making against Arcadia by this Agreement. Buyer shall not file any action against Arcadia for indemnification for any claims which Buyer has waived or from which Buyer is barred, by the provisions of this Agreement, from making against Arcadia. Buyer's duty to defend and hold Arcadia harmless from and against a product defect claim or personal injury claim shall be deemed waived if Buyer has

named Arcadia as an additional insured on its general liability policy and the carrier agrees to defend Arcadia and does defend Arcadia.

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. 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.

▶ Dated: _____

(This Agreement shall be binding once it is signed, even if no date has been inserted.)

▶ _____
Signature (As Guarantor & For Buyer)

▶ _____
Print Name & Title

▶ _____
Signature of Second Officer or Owner
(As Guarantor & For Buyer)

▶ _____
Print Name & Title

(At least one corporate officer or owner of Buyer must sign this Agreement. A second signature from an additional officer or owner may increase the likelihood of approval of the Application.)