



NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

This NON-DISCLOSURE AND NON-COMPETITION AGREEMENT is made and entered into as of the ____ day of _____ 200__ (the "**Effective Date**") by and between **Crystal Clear Window Works USA, LLP**, a Tennessee limited liability partnership (the "**Partnership**") and _____, a _____, (the "**Recipient**").

WHEREAS the Recipient will receive Information (hereinafter defined) concerning the business, products and services of the Partnership in its engagement as a potential authorized dealer of the Partnership (the "**Business Relationship**").

WHEREAS, the Partnership requires a procedure whereby its Information will not be disclosed publicly or used without proper written authorization; and

WHEREAS, the Partnership would not disclose Information except in consideration of this Agreement and the Recipient agrees that the disclosure of the Information is valuable and sufficient consideration for its obligations under this Agreement; and

NOW THEREFORE, in consideration of the mutual promises, covenants and obligations contained in this Agreement, the parties agree as follows:

1. DEFINITIONS

For the purposes of this Agreement the following terms shall have the meanings set forth below:

"Affiliate" means any corporation, company or entity that directly or indirectly controls, is controlled by or is under common control with a party.

"Information" means all information directly or indirectly communicated before or after the Effective Date by the Partnership, or an Affiliate thereof, to Recipient in any form or medium (including all information summarized, reproduced or derived therefrom) that is: (i) designated as being confidential; or (ii) that the Recipient should reasonably regard as being confidential based upon the content of the information and/or circumstances surrounding its disclosure. Information shall include, without limitation, all technical, financial or business information disclosed pursuant to the Business Relationship, including trade secrets, techniques, data, specifications, software, programs, documentation, source code, customer information, business plans or strategies, or other technical, financial or business information in any form.

"Trade Secret" means any Confidential Information that: (i) derives independent economic value from not being generally known and not being readily ascertainable by proper means by other parties who can obtain value from its disclosure or use; and (ii) is the subject of efforts that are reasonable to maintain its secrecy.

2. OBLIGATIONS ARISING FROM DISCLOSURE

Unless specifically authorized in writing by the Partnership, Recipient and any Affiliate of Recipient shall:

- (a) use Information solely in connection with the Business Relationship;

- (b) maintain the Information in strict confidence using the same degree of care it uses to safeguard its own confidential or proprietary information, but in no event less than reasonable care;
- (c) disclose the Information only to its employees with a “need to know” such information as mandated by the Business Relationship;
- (d) except where expressly permitted in writing by the Partnership, not copy or duplicate Information or allow any other party not subject to a confidentiality agreement with the Partnership to copy or duplicate Information; and
- (e) promptly return to the Partnership, upon its request, or certify as destroyed Information in whatever form.

Recipient shall advise all employees with a “need to know” such Information, as set forth above, of the existence and terms of this Agreement. Any violation of this [Section 2](#) by Recipient or by an employee of Recipient is a breach of this Agreement by Recipient. Recipient’s obligation to protect Information shall be for a period of ten (10) years after the Effective Date. The Recipient’s obligation to protect Information which is Trade Secret shall continue as long as such information is entitled to trade secret protection under Tennessee law.

3. EXCEPTIONS

The foregoing obligations set forth in [Section 2](#) hereof shall not apply to any Information that:

- (a) can be documented as being or becoming generally available to the public other than as a result of a violation of law, a breach of this Agreement or any other obligation of confidentiality;
- (b) the Recipient is required by law to disclose, provided that prior to disclosing any Information, the Recipient promptly notifies the Partnership. The Recipient shall cooperate with the Partnership to lawfully limit and/or obtain appropriate protective orders or any other similar orders with respect the portion(s) of such data or information as is/are the subject of any such required disclosure;
- (c) is actually known to the Recipient prior to the time of receipt of such Information and that: (a) actual knowledge of such information can be established by evidence that would be acceptable to a court of competent jurisdiction; and (b) such Information is not subject to another obligation of confidentiality;
- (d) is approved in writing by the Partnership for release or other use by the Recipient according to the terms set out in such written approval;

The burden of demonstrating the applicability of any of the exceptions in this [Section 3](#) shall be upon the Recipient.

4. INTELLECTUAL PROPERTY

The Recipient hereby acknowledges and agrees that all Information shall be owned solely by the Partnership. The Recipient further agrees that nothing contained in this Agreement shall be construed as granting any rights, by licence or otherwise, under any intellectual property rights of or concerning any of the Information.

5. EXPORT RESTRICTIONS

Recipient agrees that no Information received hereunder will be exported or disclosed to any foreign firm or country or foreign national employed by Recipient whether or not the foreign national is located in the United

States at the time of such disclosure: (i) without first complying with the U.S. Export Administration regulations and all other applicable U.S. export controls; and (ii) without obtaining the prior written consent of the Partnership, which consent may be withheld at the discretion of the Partnership and which may be conditioned on such person executing a non-disclosure agreement in a form similar to this Agreement.

6. NON-COMPETITION

The Recipient agrees not to carry on, participate or have any interest in any business venture or enterprise which is: (i) engaged in any business, with the exception of window replacement, window manufacturing or window glazing, which is competitive with the now current, or reasonably anticipated future business of the Partnership or its Affiliates; or (ii) for which the Recipient uses in any manner whatsoever any Information received or acquired during the Business Relationship, in any manner whatsoever, whether directly or indirectly, on the Recipient's behalf or on behalf of any other person, alone or with any other person, for the period of time beginning on the date hereof and ending three (3) years after the later of the termination of the Business Relationship, as the case may be. Without the Partnership's prior written consent the Recipient will not during, or for a period of two (2) years following termination or expiration of the Business Relationship, directly or indirectly solicit for employment any person who is now or becomes employed by the Partnership.

7. SURVIVAL

Unless otherwise agreed to in writing, the parties hereby acknowledge that the covenants and commitments set out herein shall be effective for the term of the Business Relationship. Recipient's obligations as provided in Sections 2, 3, 4, 5, and 6 shall survive termination or expiration of this Agreement.

8. ACKNOWLEDGMENT

The Recipient acknowledges that the restrictions contained in this Agreement are necessary for the protection and goodwill of the Partnership and considers them to be reasonable for that purpose.

9. EQUITABLE REMEDIES

In the event of a breach or threatened breach of any term of this Agreement, the Recipient agrees that the harm suffered by the Partnership would not be compensable by monetary damages alone and, accordingly, that the Partnership shall, in addition to other available legal or equitable remedies, be entitled to the issuance of immediate injunctive relief enjoining any breach or threatened breach of the Recipient's obligations hereunder.

10. MISCELLANEOUS

This Agreement shall be governed by and construed in accordance with the laws of the state of Tennessee, USA, excluding its choice of laws provisions. Each party waives trial by jury and all defenses of lack of jurisdiction and forum non conveniens. The parties hereto agree that the courts of Davidson County, Tennessee, USA shall have exclusive jurisdiction in reference to any matters herein. Failure of a party to insist upon strict adherence to any term of this Agreement on any occasion or the waiver of a breach of this Agreement in any instance shall not deprive the party of the right thereafter to insist on strict adherence to that term or any other term in this Agreement or be construed as a waiver of any subsequent breach, whether or not similar. Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining provisions of this Agreement which shall remain in full force and effect. Except as otherwise provided herein, neither party may assign this Agreement, nor may any of either party's rights or obligations hereunder be assigned, delegated or otherwise transferred to any third party, without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and inure for the benefit of the undersigned parties, their respective successors and permitted assigns. This Agreement may be executed in any number of counterparts, each of which will be an original, and all of which will together constitute one agreement. The headings contained in this Agreement are for convenience of reference only and shall not

affect the interpretation or meaning of this Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the matter herein contained. No modification or addition to this Agreement shall be valid unless made in writing and signed by duly authorized representatives of each of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Non-Disclosure and Non-Competition Agreement to be executed by their duly authorized representatives as of the date first written above.

RECIPIENT

CRYSTAL CLEAR WINDOW WORKS USA, LLP

By: _____

By: _____

Name:

Name:

Address:

**Address: 475 Craighead Street, Nashville, TN,
37204**

Telephone:

Telephone: 1-800-436-4688

Facsimile:

Facsimile: 613-727-6909