

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM611572

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
SEQUENCE:	1		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Texas Foam, L.P.		06/18/2019	Limited Partnership: TEXAS
RECEIVING PARTY DATA			
Name:	Huntington Texas LLC		
Street Address:	125 Caliber Ridge Drive, Suite 200		
City:	Greer		
State/Country:	SOUTH CAROLINA		
Postal Code:	29651		
Entity Type:	Limited Liability Company: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3988514	XXDS	
CORRESPONDENCE DATA			
Fax Number:	5124767644		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	512-476-7900		
Email:	trademarks@fleckman.com		
Correspondent Name:	Jason Paul Blair		
Address Line 1:	P.O. Box 30194		
Address Line 4:	Austin, TEXAS 78755		
NAME OF SUBMITTER:	Jason Paul Blair		
SIGNATURE:	/Jason Paul Blair/		
DATE SIGNED:	12/01/2020		
Total Attachments: 39			
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ASSET PURCHASE AGREEMENT

among

TEXAS FOAM, INC.,

TEXAS FOAM II, L.P.,

SPARKLY PROPERTIES, LTD.,

THOMAS FORREST,

and

HUNTINGTON TEXAS LLC

dated as of

June 18, 2019

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of June 18, 2019, is entered into among Texas Foam, Inc., a Texas corporation, Texas Foam II, L.P., a Texas limited partnership, and Sparkly Properties, Ltd., a Texas limited partnership (each a “**Seller**” and collectively, “**Sellers**”), Thomas Forrest, the sole shareholder of Texas Foam, Inc. and a partner of Texas Foam II, L.P. and Sparkly Properties, Ltd. (the “**Owner**”), and Huntington Texas LLC, a Delaware limited liability company (“**Buyer**”).

RECITALS

WHEREAS, Sellers wish to sell to Buyer, and Buyer wishes to purchase from Sellers, the rights of Sellers to the Purchased Assets (as defined herein), subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I PURCHASE AND SALE

Section 1.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, Sellers shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Sellers, all of Sellers’ right, title and interest in and to the following tangible and intangible assets of Sellers (collectively, the “**Purchased Assets**”), free and clear of any mortgage, lien, option, security interest, pledge, deed of trust, easement or right of use, servitude, right of way, conditional sales contract, encroachment, restriction on transferability or other claim, charge or encumbrance of a similar nature (“**Encumbrances**”):

- (a) the fixed assets (the “**Fixed Assets**”) listed on Schedule 1.01(a) of the disclosure schedules attached hereto (“**Disclosure Schedules**”);
- (b) the real property (the “**Real Property**”) identified on Schedule 1.01(b);
- (c) all of the buildings, offices, plants, structures, fixtures, building systems and equipment, and all components thereof (including the roof, foundation and structural elements), located on the Real Property (the “**Improvements**”);
- (d) each contract listed on Schedule 1.01(d) (the “**Assigned Contracts**”);
- (e) all inventories, finished goods, raw materials, work in progress, packaging, supplies, and parts (collectively, the “**Inventory**”);
- (f) work-in-process with respect to services provided by Sellers;
- (g) accounts receivable;

- (h) all books, records, information, lists, and files of Sellers maintained or relating solely or primarily to Sellers' business, including, without limitation, with respect to current, former and prospective customers;
- (i) all Seller Intellectual Property (as hereinafter defined); and
- (j) the goodwill of Sellers' business.

Notwithstanding anything the contrary herein, Buyer is not a successor in interest to Sellers and nothing in this Section 1.01 shall obligate Buyer to assume any liability, whether or not related to the Purchased Assets or otherwise, unless Buyer expressly assumes such liability pursuant to the terms and conditions of Section 1.03.

Section 1.02 Excluded Assets. Except those expressly sold, transferred and assigned to Buyer pursuant to Section 1.01, all assets, properties, rights and interests of Sellers are excluded from the transactions contemplated herein and are not included in the Purchased Assets (collectively, the "**Excluded Assets**"). Without limiting the foregoing, the Excluded Assets include (i) cash and cash equivalents on hand immediately prior to and at Closing, (ii) Sellers' pension, retirement, and benefits plans, and (iii) those assets set forth on Schedule 1.02.

Section 1.03 Assumed Liabilities. Buyer shall assume and be liable for and to pay, perform and discharge when due, only (a) those liabilities related to the Purchased Assets first arising on or after the Closing Date (which shall include required costs to obtain the Discharge Permit (as hereinafter defined), including the fees and expenses of Arroyo Consulting arising on or after the Closing Date, but shall explicitly exclude any liability (third party claim or other) related to the Purchased Assets in connection with the Sellers' failure to possess and/or obtain the Discharge Permit prior to the Closing Date, regardless of whether the liability resulting solely from such failure arises before, on or after the Closing Date, (b) Sellers' trade accounts payable existing as of the Closing Date (not including accrued payroll liabilities which shall be Excluded Liabilities pursuant to Section 1.04(b) for all purposes hereunder), but only to the extent such accounts payable are not past due as of the Closing Date and were incurred by Sellers in the ordinary course of operating Sellers' business prior to the Closing Date, and (c) the remaining payments on the Promass PS 1014 Machine EPS Molding Machine and the Promass EPS Discontinuous Pre-Expander PR 500 and Lift Table, with an aggregate remaining liability value of \$264,348.74 (collectively, the "**Assumed Liabilities**"), but only to the extent the existence of such liabilities or the particular facts and circumstances that give rise to such liabilities do not or would not constitute a breach of any of Sellers' representations and warranties hereunder or otherwise give rise to a claim for indemnification by Buyer hereunder, and specifically excluding any Excluded Liabilities (as hereinafter defined) and any liabilities associated with, related to, or arising out of any Seller actions or failures to act prior to the Closing Date.

Section 1.04 Excluded Liabilities. Notwithstanding anything herein to the contrary, Buyer is not assuming or agreeing to be liable for, or agreeing to pay, perform or discharge any liabilities or obligations of Sellers of any kind, whether known or unknown, contingent, matured or otherwise, whether or not currently existing or hereinafter created, and whether or not arising out of or relating to the Purchased Assets or the Sellers' business, other than the Assumed Liabilities (collectively, the "**Excluded Liabilities**"). The Excluded Liabilities shall at and after

the Closing remain the sole and exclusive responsibility of the Sellers. Without limiting the generality of the foregoing, the Excluded Liabilities shall include the liabilities of Sellers set forth on Schedule 1.04 and any liabilities associated with, related to, or arising out of:

- (a) Sellers' ownership and use of the Purchased Assets and operation of Sellers' business prior to the Closing Date;
- (b) Sellers' employment of any present or former employee of Sellers, including, without limitation, any liabilities associated with any claims for wages or other benefits, severance, termination or other payments;
- (c) any liabilities, obligations, or claims associated with, related to, or arising out of any pension, retirement, or benefits plans maintained by Sellers;
- (d) the Excluded Assets;
- (e) Sellers' obligations under this Agreement;
- (f) Assigned Contracts to the extent (i) arising in the first instance prior to the Closing Date, or (ii) arising after the Closing Date but relating to a breach of an Assigned Contract by Sellers prior to the Closing Date;
- (g) taxes imposed with respect to Sellers' business, the Purchased Assets and/or any income or gains derived with respect thereto for any tax period, or portion thereof, ending on or before the Closing Date;
- (h) Sellers' non-compliance with any applicable Legal Requirement; and
- (i) any breach of warranty or similar claim relating to products or services provided by Sellers prior to the Closing Date.

Section 1.05 Purchase Price. The aggregate purchase price for the Purchased Assets shall be eight million seven hundred five thousand three hundred fifty-two dollars and six cents (\$8,705,352.06) (as it may be adjusted pursuant to Section 1.06, the "**Purchase Price**"). Buyer shall pay the Purchase Price to Sellers on the Closing Date, less the Escrow Amount, by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth on Schedule 1.05.

Section 1.06 Working Capital Adjustment.

(a) Definitions. For purposes of this Section 1.06, the following terms shall have the following meanings:

- (i) "**Closing Working Capital**" means, with respect to Sellers' business as of the Closing Date, the difference (whether positive or negative) of current assets and current liabilities, calculated on a trailing twelve-month average in accordance with the methodology set forth on Schedule 1.06.

(ii) “**Final Closing Working Capital**” means the Closing Working Capital, as finally determined in accordance with Section 1.06(b) and (c).

(iii) “**Target Closing Working Capital**” means four hundred five thousand dollars (\$405,000).

(iv) “**Upward Adjustment Threshold**” means the Target Closing Working Capital plus 20%.

(v) “**Downward Adjustment Threshold**” means the Target Closing Working Capital minus 20%.

(b) Preparation of Closing Statement. Within ninety (90) calendar days after the Closing Date, Buyer will prepare and deliver to Sellers a closing statement, prepared in accordance with Schedule 1.06 (the “**Closing Statement**”), setting forth the calculation of Closing Working Capital as of 11:59 p.m. (Eastern Time) on the Closing Date. Buyer and Sellers shall cooperate in good faith in connection with the initial preparation of the Closing Statement and the review thereof and provide each other with any information, documents, and access to the relevant employees of the other party as each party may reasonably require to prepare or review (as applicable) the Closing Statement; provided, however, that neither Buyers nor the Sellers nor any of their respective affiliates shall be required to provide any work papers that they consider proprietary, such as internal control documentation, engagement planning, time control and audit sign off, and quality control work papers. If Buyer fails to deliver the Closing Statement to Sellers within such ninety (90) calendar day period after the Closing Date, then Sellers shall notify Buyer of such in writing, and Buyer shall then have fifteen (15) days from receipt of such notice to deliver the Closing Statement. In the event that Buyer then fails to deliver such Closing Statement, and if Sellers have cooperated, in good faith, with the initial preparation of the Closing Statement, as provided for in this Section 1.06, then, at the sole option of the Sellers, the Sellers may extend the date for delivering the Closing Statement or the Sellers may prepare the Closing Statement in accordance with Schedule 1.06 and declare that such Closing Statement shall be final and binding on the Parties for purposes of this Section 1.06.

(c) Acceptance of Statement; Dispute Procedures.

(i) Sellers shall be entitled to conduct a review of the Closing Statement prepared by Buyer. Within thirty (30) days after the receipt by Sellers of the Closing Statement, Sellers shall inform Buyer in writing that either (A) they accept the Closing Statement without amendment or (B) they take the view that the Closing Statement does not comply with the requirements as stipulated in this Agreement or that Sellers dispute any of the amounts set forth therein, specifying in reasonable detail the nature and amount of the dispute and the basis therefor, which disputes shall be limited to disagreements as to whether the Closing Statement was prepared in accordance with Schedule 1.06 and in accordance with this Agreement and as to whether there were mathematical errors in the calculation of the Closing Working Capital (the “**Claims Statement Notice**”). Upon receipt by Buyer of the Claims Statement Notice, Buyer and Sellers shall in good faith attempt to resolve any such

dispute. If Buyer and Sellers do not reach agreement in resolving any such dispute within twenty (20) days after delivery of the Claims Statement Notice, Buyer and Sellers shall submit the dispute to BDO USA, LLP, or if such accounting firm is not available or unwilling to arbitrate the dispute, then to an independent internationally recognized accounting firm mutually agreed to by Buyer and Sellers (in either case, the “**Arbiter**”) for resolution. Each of Buyer and Sellers shall give the Arbiter full access to all information and documents that the Arbiter may deem necessary for reaching its decision. The Arbiter shall give each of Buyer and Sellers adequate opportunity to present their views in writing and, if considered helpful by the Arbiter, at a hearing or hearings to be held in the presence of the parties and their advisors. Within thirty (30) days following its appointment, or as soon thereafter as reasonably practicable, the Arbiter shall determine (it being understood that in making such determination, the Arbiter shall be functioning as an expert and not as an arbitrator), based solely on written submissions by Buyer and Sellers and not by independent review, only those issues in dispute and shall render a written report as to the resolution of the dispute and the resulting computation of Closing Working Capital, which shall be conclusive and binding on the parties. In resolving any disputed item, the Arbiter (1) shall be bound by Schedule 1.06 and the provisions of this Section 1.06 and may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party, in either case as set forth in the Closing Statement or Claims Statement Notice, as applicable. The fees, costs and expenses of the Arbiter shall be allocated to and borne by Buyer and Sellers based on the inverse of the percentage that the Arbiter’s determination (before such allocation) bears to the total amount of the total items in dispute as originally submitted to the Arbiter. For example, should the items in dispute total in amount to \$1,000 and the Arbiter awards \$600 in favor of the Sellers’ position, 60% of the costs of its review would be borne by Buyer and 40% of the costs would be borne by Sellers.

(ii) The Closing Statement shall become final and binding on, and non-appealable by, the parties on the earliest of (A) the 31st day following the delivery of the Closing Statement by Buyer to Sellers if no Claims Statement Notice has been delivered to Buyer prior to such day, (B) Sellers’ written notice to Buyer notifying Buyer of its acceptance of the Closing Statement, (C) the date of Sellers’ preparation and delivery of the Closing Statement to Buyer pursuant to Section 1.06(b), (D) with such changes as are necessary to reflect matters resolved in writing by Buyer and Sellers, the date all outstanding disputed items are resolved, or (E) with such changes as are necessary to reflect the Arbiter’s resolution of the disputed items (together with any changes necessary to reflect matters previously resolved by the parties and any matters not disputed pursuant to the Claims Statement Notice), the date the Arbiter delivers written notice of its decision pursuant to Section 1.06(c)(i). The date on which the Closing Statement shall become final, binding and non-appealable by the parties is hereinafter referred to as the “**Determination Date**.”

(d) Adjustment. Within seven (7) business days after the Determination Date:

(i) if the Final Closing Working Capital is greater than the Upward Adjustment Threshold, Buyer shall pay Sellers, in cash by wire transfer of immediately available funds, an amount equal to (i) the Final Closing Working Capital less (ii) the Target Closing Working Capital (the “**Working Capital Upward Adjustment**”); and

(ii) if the Final Closing Working Capital is less than the Downward Adjustment Threshold, Sellers and Buyer shall provide joint written instructions to the Escrow Agent to deliver from the escrow fund to Buyer an amount equal to (i) the Target Closing Working Capital less (ii) the Final Closing Working Capital (the “**Working Capital Downward Adjustment**”). To the extent that the Working Capital Downward Adjustment exceeds the Escrow Amount, such difference shall be paid by Sellers to Buyer in cash by wire transfer of immediately available funds concurrently with the provision of the joint written instructions to the Escrow Agent.

(e) The Working Capital Upward Adjustment or Working Capital Downward Adjustment, as the case may be, if any, will be considered an adjustment of the Purchase Price.

(f) The dispute resolution provisions of this Section 1.06 will not apply to, and the scope of the Arbitrator’s authority herein will not extend to, any dispute of the parties relating to the interpretation, breach or enforcement of any other provision of this Agreement.

Section 1.07 Allocation of Purchase Price. Sellers and Buyer agree to allocate the Purchase Price among the Purchased Assets and among the Sellers for all purposes (including tax and financial accounting) in accordance with Schedule 1.07. Buyer and Sellers shall file all tax returns (including amended returns and claims for refund) and information reports in a manner consistent with such allocation and in the manner required by the Internal Revenue Code.

Section 1.08 Withholding Tax. Buyer shall be entitled to deduct and withhold from the Purchase Price all taxes that Buyer may be required to deduct and withhold under any applicable tax law. All such withheld amounts shall be treated as delivered to Sellers hereunder.

ARTICLE II CLOSING

Section 2.01 Closing. The consummation of the transactions contemplated hereby (the “**Closing**”) is to take place remotely by means of facsimile, electronic mail or other electronic transmission effective as of 11:59:59 p.m. (local Eastern Time) on the second business day after all of the conditions to the Closing set forth in Article VI are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other place as the parties mutually agree in writing (the “**Closing Date**”). All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

Section 2.02 Closing Deliverables.

- (a) Prior to or at the Closing, Sellers shall deliver to Buyer the following:
- (i) one or more bills of sale in form and substance satisfactory to Buyer (collectively, the “**Bills of Sale**”) and duly executed by Sellers, transferring the Purchased Assets to Buyer;
 - (ii) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that each Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code, duly executed by Sellers;
 - (iii) such documents as are necessary to transfer the Real Property;
 - (iv) written evidence of the release of all Encumbrances on the Purchased Assets;
 - (v) written evidence of the receipt of all permits, approvals, consents and waivers that are listed on Schedule 2.02(a)(v);
 - (vi) a certificate of the Secretary or Assistant Secretary (or equivalent officer) of each Seller certifying as to (A) the resolutions of the shareholders or partners of such Seller, duly adopted and in effect, which authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby, and (B) the names and signatures of the officers of such Seller authorized to sign this Agreement and the documents to be delivered hereunder;
 - (vii) a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 6.02(a) and Section 6.02(b) have been satisfied;
 - (viii) the Escrow Agreement, duly executed by Sellers;
 - (ix) written evidence of the Owner’s purchase of the entirety of Kirk Groat’s interests in Texas Foam II, L.P. and Sparkly Properties, Ltd., such that Owner is the sole owner of Texas Foam II, L.P. and Sparkly Properties, Ltd.;
 - (x) a trademark assignment agreement assigning to Buyer all rights, title and interest in and to the trademark “XXDS”, in form and substance reasonably satisfactory to Buyer, duly executed by Sellers, Owner, and Kirk Groat;
 - (xi) the consulting agreement with Thomas Forrest pursuant to the terms of which he shall provide consulting services to Buyer on an “as needed” basis for a period of up to twelve (12) months following the Closing Date for a total consideration of three hundred fifty thousand dollars (\$350,000) payable in twelve (12) equal monthly installments, which agreement will only be terminable by Buyer for cause (the “Thomas Forrest Consultant Agreement”), duly executed by Thomas Forrest;

(xii) the consulting agreement with Darcia Forrest pursuant to the terms of which she shall provide consulting services to Buyer on an “as needed” basis for a period of up to twelve (12) months following the Closing Date for a total consideration of one hundred fifty thousand dollars (\$150,000) payable in twelve (12) equal monthly installments, which agreement will only be terminable by Buyer for cause (the “Darcia Forrest Consultant Agreement”), duly executed by Darcia Forrest; and

(xiii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

(b) Prior to or at the Closing, Buyer shall deliver to Sellers the following:

(i) the Closing Payment;

(ii) a certificate of the Secretary or Assistant Secretary (or equivalent officer) of Buyer certifying as to (A) the resolutions of the board of directors (or equivalent) of Buyer, duly adopted and in effect, which authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby, and (B) the names and signatures of the officers of Buyer authorized to sign this Agreement and the documents to be delivered hereunder;

(iii) the Escrow Agreement, duly executed by Buyer;

(iv) evidence of payment of the Escrow Amount to the Escrow Agent;

(v) the Thomas Forrest Consultant Agreement, duly executed by Buyer;

(vi) the Darcia Forrest Consultant Agreement, duly executed by Buyer;
and

(vii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Sellers, as may be required to give effect to this Agreement.

Section 2.03 Escrow. At the Closing, Buyer shall transmit nine hundred thousand dollars (\$900,000) (the “**Escrow Amount**”) by wire transfer of immediately available funds, to an escrow agent selected by Sellers and approved by Buyer (such approval not to be unreasonably withheld) (the “**Escrow Agent**”), to be held by the Escrow Agent pursuant to the terms and conditions of an escrow agreement substantially in the form attached hereto as Exhibit A (the “**Escrow Agreement**”), to satisfy any post-closing adjustment obligations of Sellers pursuant to Section 1.06 and any indemnity obligations of Sellers pursuant to Section 7.02. All fees and costs associated with the Escrow Agreement and the Escrow Agent shall be split equally between Buyer and Sellers. To the extent there is any conflict between this Agreement and the Escrow Agreement in respect of the mechanics for distribution of the Escrow Amount, the terms of the Escrow Agreement will control.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers and Owner jointly and severally represent and warrant to Buyer that the statements contained in this ARTICLE III are true and correct as of the date hereof. For purposes of this ARTICLE III, "Sellers' knowledge," "knowledge of Seller" and any similar phrases shall mean the actual or constructive knowledge of any manager or officer of any Seller or of Owner, after due inquiry.

Section 3.01 Organization and Authority of Sellers; Enforceability. Each Seller is duly organized, validly existing and in good standing under the laws of the State of Texas. Each Seller has full corporate power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Sellers of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Sellers. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Sellers, and (assuming due authorization, execution and delivery by Buyer) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms.

Section 3.02 No Conflicts; Consents. The execution, delivery and performance by Sellers of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the articles of organization, by-laws or other organizational documents of Sellers; (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to any Seller or the Purchased Assets; (c) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, acceleration or modification of any obligation or loss of any benefit under any contract or other instrument to which any Seller is a party or to which any of the Purchased Assets are subject; or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets. No consent, approval, waiver or authorization is required to be obtained by Sellers from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Sellers of this Agreement and the consummation of the transactions contemplated hereby.

Section 3.03 Purchased Assets. Sellers own and have good and valid title to the Purchased Assets, free and clear of Encumbrances. Any and all Encumbrances on any of the Purchased Assets have been paid in full and released on or before the Closing Date. The Purchased Assets constitute all of the assets, properties and rights used in or necessary for the Sellers to conduct their business as it was conducted immediately prior to the Closing.

Section 3.04 Tangible Assets.

(a) Sellers have good and valid title to all of the Fixed Assets and Improvements, free and clear of all Encumbrances.

(b) Each Fixed Asset is owned by the respective Seller indicated on Schedule 1.01(a). The Bills of Sale conveying the Fixed Assets have been validly executed by the respective Seller owning the Fixed Assets conveyed by such Bills of Sale. The Fixed Assets are in good operating condition and repair, ordinary wear and tear excepted, are adequate and suitable for their current and contemplated uses and for the continued operation of Sellers' business as it was conducted immediately prior to the Closing and consistent with past practice, and have been maintained and repaired in a commercially reasonable manner. The Fixed Assets are in the substantially same condition as they were when inspected and appraised by the Buyer on or about November 9, 2018.

(c) The Improvements are in good operating condition and repair, ordinary wear and tear excepted, are supplied with necessary utilities and other services, are safe, adequate and suitable for their current and contemplated uses and for the continued operation of Sellers' business as it was conducted immediately prior to the Closing and consistent with past practice, and have been maintained and repaired in a commercially reasonable manner.

(d) The Fixed Assets and the Improvements constitute all of the tangible assets used in or necessary for Sellers to conduct their business as it was conducted immediately prior to the Closing.

Section 3.05 Real Property. Sellers have good and marketable title in fee simple to the Real Property, free and clear of any Encumbrances, other than zoning, entitlement and other land use restrictions that (i) do not, individually or in the aggregate, materially impair the conduct of Sellers' business as it was conducted immediately prior to the Closing at the Real Property, (ii) do not require the payment of any money by Buyer, (iii) do not contain any option, right of purchase, right of first offer or right of first refusal with respect to any portion of the Real Property, and (iv) do not involve any monetary lien or encumbrance against the Real Property, including, without limitation, any mechanics', carriers', workmen's, repairmen's or other like lien. Sellers have not granted any sublease or assignment in respect of any portion of the Real Property. The Real Property constitutes all of Sellers' right, title and interest in and to real property used in or necessary for Sellers to conduct their business in a manner equivalent in all material respects to the manner in which Sellers conduct their business on the date hereof. The use and operation of the Real Property in the conduct of the Sellers' business do not violate in any material respect any Legal Requirement, covenant, condition, restriction, easement, license, permit or agreement. There are no Actions pending nor, to Sellers' knowledge, threatened against or affecting the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

Section 3.06 Inventory. All Inventory: (a) was acquired or produced in the ordinary course of business consistent with past practice; (b) contains all appropriate forms of identification necessary to be in compliance with applicable Legal Requirements; (c) is free and clear of all Encumbrances; (d) consists of a quality and quantity usable or salable in the ordinary course of business at not less than gross cost, except for obsolete or discontinued items, items of below-standard quality, or other items that cannot be used or sold in the ordinary course of business, all of which have been written off or written down to net realizable value; (e) conforms to customary trade standards for marketable goods; and (f) complies in all material respects with all applicable

contractual requirements, Legal Requirements, and other industry production and quality standards, published specifications, drawings, standards, samples and other descriptions, and express and implied warranties.

Section 3.07 Intellectual Property.

(a) “**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; (v) websites and internet domain name registrations; and (vi) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present and future infringement and any other rights relating to any of the foregoing).

(b) Schedule 3.07 sets forth a complete list and description of the Intellectual Property that is included in the Purchased Assets (the “**Seller Intellectual Property**”). Sellers’ prior and current use of the Purchased Assets has not and does not infringe, violate, dilute or misappropriate the Intellectual Property of any person or entity and there are no claims pending or threatened by any person or entity with respect to the ownership, validity, enforceability, effectiveness or use of the Seller Intellectual Property. To Sellers’ knowledge, no person or entity is infringing, misappropriating, diluting or otherwise violating any of the Seller Intellectual Property, and Sellers and their affiliates have not made or asserted any claim, demand or notice against any person or entity alleging any such infringement, misappropriation, dilution or other violation.

Section 3.08 Financial Statements.

(a) Sellers have delivered to Buyer true, correct and complete copies of (i) the balance sheets of Sellers as of December 31 of each of the years 2017, 2016, and 2015, together with the related unaudited internally prepared statements of income for such periods (collectively, the “**Annual Statements**”); and (ii) the balance sheets and interim statements of income of Sellers for the eleven-month period ended November 30, 2018 (the “**Interim Statements**”). The Interim Statements and the Annual Statements are referred to as the “**Financial Statements.**” The Financial Statements have been prepared on an accrual basis and fairly present in all material respects the financial condition of the respective entity to which they apply and the results of operations of such respective entity, as at the respective dates of, and for the periods referred to in, such Financial Statements, on a consistent basis throughout the periods to which they relate.

(b) All books, records and accounts of Sellers are accurate and complete in all material respects and have been prepared in accordance with good business practice and applicable Legal Requirements. Sellers maintain a system of internal accounting controls sufficient to provide reasonable assurances that all transactions: (a) are executed in accordance with management’s general or specific authorization, and (b) are recorded as

necessary to permit the preparation of financial statements on a consistent basis and to maintain accountability for the Purchased Assets.

(c) Since December 31, 2017 (the “**Financial Position Date**”), Sellers have conducted their business in the ordinary course and there has not been any material adverse change in the liabilities or financial condition of Sellers, nor has there been any event, change, effect or circumstance, individually or in the aggregate, that is reasonably expected to cause Sellers to suffer a material adverse effect. Since the Financial Position Date, Sellers have not incurred any material liabilities other than in the ordinary course of business.

Section 3.09 Accounts Receivable. The accounts receivable reflected on the Interim Statements and accounts receivable arising after the date of the Interim Statements (i) have arisen from bona fide transactions entered into by Sellers involving the rendering of services in the ordinary course of business consistent with past practice; (ii) constitute only valid, undisputed claims of Sellers not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (iii) unless collected by Sellers on or prior to the Closing Date, or subject to a reserve for bad debts shown on the Interim Statements or, with respect to accounts receivable arising after the date of the Interim Statements, on the accounting records of Sellers, are, by their terms, to Sellers’ knowledge, collectible in full within one hundred thirty five (135) days after billing.

Section 3.10 Taxes. Sellers have filed or have caused to be timely filed with all required tax jurisdictions all tax returns that are or were required to be filed by it (taking into account permissible extensions), and have timely paid, or made provision for the payment of, all taxes due and payable, as shown on such tax returns. At the time of filing, all such tax returns were complete and correct in all material respects. No portion of any such tax returns has been the subject of any audit, Action, claim or examination by any governmental authority, and no such audit, Action, claim, deficiency or assessment is pending or, to the knowledge of Seller, threatened. Sellers (a) have not agreed to, or been requested to agree to, any extension or waiver of the statute of limitations applicable to any of its tax returns or any tax assessment or deficiency, or (b) are not a party to or have any liability or obligation under any tax allocation, tax sharing or tax indemnification agreement. There are no Encumbrances for taxes (other than for current taxes not yet due and payable) on any of the Purchased Assets. Taxes imposed on (and payable by) Sellers, and all taxes required to be withheld by Sellers have been or will be duly, timely and fully reported, paid and discharged to the extent failure to do so would result in an Encumbrance on any of the Purchased Assets as of the Closing Date.

Section 3.11 Contracts.

(a) **Assigned Contracts.** Sellers have delivered to Buyer (i) a true, correct and complete copy of each Assigned Contract, together with all amendments, exhibits, attachments, waivers or other changes thereto, and (ii) written descriptions of each oral contract, including copies of invoices or other written evidence of the payment amount and terms of such oral contracts. Each Assigned Contract is a valid and binding obligation of Sellers and is in full force and effect. Sellers are not in default under the terms of any Assigned Contract, and, to the knowledge of Seller, (x) no other party thereto is in default

under the terms of any Assigned Contract, and (y) no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default thereunder.

(b) **Material Contracts.** Schedule 3.11(b) sets forth a listing as of the date hereof of all of the currently effective contracts (including amendments, modifications, extensions or renewals thereto) of the following types to which any of the Sellers are a party or by which any of the Purchased Assets are bound or subject (collectively, the “**Material Contracts**”):

(i) any instrument for or relating to indebtedness (or any similar obligation) relating to the Purchased Assets, or any guaranty of any obligation for borrowings or performance relating to the Purchased Assets;

(ii) any contract for the sale or lease of any of the Purchased Assets (other than this Agreement);

(iii) any contract relating to the acquisition or disposition, directly or indirectly, of any business, or other assets or properties, or the equity interests of any other party, which (i) has closed prior to the date hereof and under which any aspect of the Sellers’ business continues to be obligated, or (ii) has not yet closed as of the date hereof;

(iv) any contract for the future purchase of materials, supplies, services, merchandise and other goods, other than in the ordinary course of business;

(v) any contract pertaining to Intellectual Property or any third party software;

(vi) any contract between Sellers and their customers, pursuant to which Sellers provide products or services to such customers (each, a “**Customer Agreement**”);

(vii) any contract with an employee or independent contractor;

(viii) any contract imposing non-competition, non-solicitation or exclusive dealing obligations on Sellers or otherwise limiting Sellers or its partners or shareholders from conducting the Sellers’ business anywhere in the world;

(ix) any contract or arrangement for Sellers to indemnify any person or entity (other than pursuant to a Customer Agreement in the ordinary course of business); or

(x) any amendment, supplement, or modification (whether oral or written) in respect of any of the foregoing, or any contract under which any Seller has agreed to enter into any of the foregoing.

(c) **Consulting Contracts.** Prior to the Closing, Sellers have terminated all consulting contracts to which any Seller was a party in connection with Sellers’ business,

with the exception of the consulting agreement with Arroyo Consulting in order to obtain a wastewater discharge permit in connection with the facility at 1278 Highway 71 West in Bastrop, Texas (the “**Discharge Permit**”) (the “**Consulting Contracts**”).

(d) **Purchase Orders.** With respect to those purchase orders set forth on Schedule 3.11(d) (the “**Assumed Purchase Orders**”), Seller has paid, as of the date hereof, the amounts set forth on such Schedule toward the fulfillment of the Assumed Purchase Orders. The remaining balances owed under the Assumed Purchase Orders, as of the date hereof, are as set forth on Schedule 3.11(d), and no other payments, fees or charges will be due or owing in connection with the Assumed Purchase Orders. Upon Buyer’s payment of the remaining balances set forth on Schedule 3.11(d), Buyer will receive title to the assets set forth on the Assumed Purchase Orders.

Section 3.12 Customers. Schedule 3.12 sets forth a true, correct and complete list, by gross sales paid for the fifty-two (52) week period ended December 31, 2018, the twenty (20) largest customers of Sellers (the “**Material Customers**”). Since December 31, 2017: (i) there has been no material adverse change in the business relationship between any Seller, on the one hand, and any Material Customer, on the other hand, and (ii) no Material Customer has advised any Seller that it intends to terminate, cancel or otherwise seek to modify materially the terms of any Customer Agreement or its business relationship with any Seller, other than in the ordinary course of business. There are no material outstanding disputes with any Material Customers.

Section 3.13 Suppliers. Schedule 3.13 sets forth a true, correct and complete list of those suppliers of products or services to whom any Seller paid more than \$50,000 during the fifty-two (52) week period ended December 31, 2018 (the “**Material Suppliers**”). Since December 31, 2017: (i) there has been no material adverse change in the business relationship between any Seller, on the one hand, and any Material Supplier, on the other hand, and (ii) no Material Supplier has advised any Seller that it intends to terminate, cancel or otherwise seek to modify materially the terms of its business relationship with any Seller, other than in the ordinary course of business. There are no material outstanding disputes with any Material Suppliers.

Section 3.14 Seller Employees. Schedule 3.14 sets forth a true, correct and complete list of Sellers’ current employees (the “**Seller Employees**”), including accurate and complete information as of the date hereof regarding each Seller Employee’s annual compensation, date of hire, visa status (if applicable), overtime classification, accrued vacation and other paid time off, and all bonus and similar payments made during Sellers’ current and preceding fiscal year. All Seller Employees are employed “at will” and their employment is terminable by Sellers without notice and without penalty or damages. Sellers are not, and have not been in the past, party to or bound by any collective bargaining agreement or contract with any labor union or collective bargaining unit representing its employees and to the knowledge of Sellers there is no request for representation pending. Sellers have complied in all material respects with all applicable Legal Requirements relating to employment matters. All currently effective deferred compensation arrangements, severance agreements, retirement agreements or other employee agreements or commitments applicable to any Seller Employee have been terminated by Sellers prior to the Closing Date.

Section 3.15 Non-Foreign Status. No Seller is a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.

Section 3.16 Compliance With Laws. Sellers have complied, and are now complying, with all federal, state and local laws and regulations applicable to the ownership and use of the Purchased Assets and the operation of Sellers’ business (the “**Legal Requirements**”). Sellers have not received any (a) written notice of a violation of any Legal Requirement, or (b) notice or other communication (whether oral or written) from any governmental authority regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement, with the exception of Discharge Permit.

Section 3.17 Permits. Sellers hold all necessary permits, registrations, approvals, consents, authorizations, license, variances, and permissions required by a governmental authority in connection with the ownership and use of the Purchased Assets and the operation of Sellers’ business, consistent with applicable Legal Requirements, with the exception of the Discharge Permit (“**Permits**”). All of the Permits are valid and in full force and effect and Sellers are in material compliance with all of the terms and requirements of such Permits. Sellers have not received any written notice from any governmental authority alleging any violation of any Permit or that any Permit is subject to any investigation, revocation, withdrawal, suspension, cancellation, termination or modification. None of the Permits will be terminated or impaired or become terminable as a result of the transactions contemplated hereby.

Section 3.18 Legal Proceedings. There is no claim, action, suit, proceeding or governmental investigation (“**Action**”) of any nature pending or, to Sellers’ knowledge, threatened against or by Sellers: (a) relating to or affecting the Purchased Assets; or (b) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To Sellers’ knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

Section 3.19 Environmental Matters.

(a) Sellers are, and have been, in compliance in all material respects with all applicable laws, orders and other legal requirements relating to pollution, protection of the environment, natural resources or wildlife, public health and safety, and worker and occupational health and safety related to exposure to hazardous materials, including, without limitation, laws related to product stewardship, with the exception of the Discharge Permit which Buyer shall obtain subsequent to Closing at its sole cost and expense, (collectively, “**Environmental Laws**”). No Seller has received any written notice, order or other communication from any governmental authority claiming that any Seller is, or may be, in violation of any Environmental Law or liable for personal injury or property damage or for any other costs or expenses related to a violation of any Environmental Law or any release, treatment, storage or disposal of, or exposure to, any hazardous material.

(b) Sellers have not used, treated, stored, recycled, manufactured, disposed of, arranged for or permitted the disposal of, transported, distributed, handled, or released any Hazardous Material.

(c) There are no past or present conditions, events, circumstances or facts that could reasonably be expected to form the basis of any Action against or involving any Seller based on or related to any Environmental Law or that pose an unreasonable risk to the environment or the health or safety of persons on or at any property currently or, to the knowledge of Sellers, formerly owned or leased by Sellers.

Section 3.20 Affiliate Transactions. There are no written or oral contracts between Owner on the one hand, and any Seller on the other hand, including, without limitation, any such contracts relating to the provision of any services, the transfer of assets, or the assumption of debt by either such party (in each case, an “**Affiliate Transaction**”), and neither Owner nor any Seller has made any commitments to enter into any Affiliate Transaction.

Section 3.21 Solvency. Sellers and Owner are not entering into the transactions contemplated by this Agreement with the actual intent to hinder, delay or defraud either present or future creditors thereof. As of the Closing, immediately after giving effect to the consummation of the transactions contemplated by this Agreement, Sellers on a consolidated basis will be Solvent. For purposes of this Section 3.21, “**Solvent**” means that:

(a) the fair value of the assets of such party will exceed its consolidated debt and liabilities, contingent or otherwise;

(b) the present fair saleable value of the property of such party will be greater than the amount that will be required to pay the probable liability on its debts and other liabilities contingent or otherwise, as such debts and other liabilities become absolute and mature;

(c) such party is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured in the ordinary course of business; and

(d) such party is not engaged in, and is not about to engage in, any business or transaction contemplated as of the date hereof for which it has unreasonably small capital.

Section 3.22 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sellers.

Section 3.23 Ownership. At the Closing, the Owner will be the sole shareholder of Texas Foam, Inc. and the sole beneficial owner of Texas Foam II, L.P. and Sparkly Properties, Ltd.

Section 3.24 Full Disclosure. No representation or warranty by Sellers in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Sellers that the statements contained in this ARTICLE IV are true and correct as of the date hereof. For purposes of this ARTICLE IV, “Buyer’s knowledge,” “knowledge of Buyer” and any similar phrases shall mean the actual or constructive knowledge of any director or officer of Buyer, after due inquiry.

Section 4.01 Organization and Authority of Buyer; Enforceability. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Sellers) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the organizational documents of Buyer; or (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Buyer. No consent, approval, waiver or authorization is required to be obtained by Buyer from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby.

Section 4.03 Legal Proceedings. There is no Action of any nature pending or, to Buyer’s knowledge, threatened against or by Buyer that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

Section 4.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

Section 4.05 Sufficient Funds. At the Closing, Buyer will have immediately available funds sufficient to pay the Closing Payment and other amounts in accordance with Article I hereof and any other payments contemplated in this Agreement and to pay all fees and expenses payable by Buyer related to the transactions contemplated by this Agreement.

ARTICLE V COVENANTS

Section 5.01 Public Announcements. Unless otherwise required by applicable law, no party shall make any public announcements regarding this Agreement or the transactions contemplated hereby without the prior written consent of the other parties (which consent shall not be unreasonably withheld or delayed).

Section 5.02 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

Section 5.03 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the documents to be delivered hereunder shall be borne and paid by Sellers when due. Sellers shall, at their own expense, timely file any tax return or other document with respect to such taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

Section 5.04 Employees. Prior to the Closing Date, Buyer shall offer employment to those Seller Employees listed on Schedule 5.04 (the “**Acquired Employees**”). Each offer of employment shall be subject to such person satisfying Buyer’s standard pre-employment and background check procedures. The Acquired Employees who satisfy Buyer’s pre-employment and background check procedures and who accept employment with Buyer will become at-will employees of Buyer effective as of the Closing Date. Such offers of employment shall be at least as favorable in terms of compensation and employment related benefits as are currently offered by Sellers to the Acquired Employees.

Section 5.05 Insurance Coverage. Sellers shall purchase an extended reporting “tail” endorsement for management and entity liability, employment practices liability, and fiduciary liability insurance (the “**Tail Insurance Endorsement**”) for no less than six (6) years from the Closing Date, which Tail Insurance Endorsement shall cover all claims or expenses arising out of or relating to events which occurred on or prior to the Closing Date. Sellers shall (i) deliver to Buyer a copy of the Tail Insurance Endorsement within three (3) days of receipt by Sellers, and (ii) pay half of the premium, when due, on the Tail Insurance Endorsement (and the Buyer shall pay the other half).

Section 5.06 Operation of the Business Prior to Closing Date. Except as otherwise consented to in writing by Buyer, or specifically required by the terms of this Agreement, at all times from the date hereof until the consummation of the transaction on the Closing Date, Sellers shall (i) conduct its business only in the ordinary course of business consistent with past practice, (ii) continue to collect accounts receivable in a manner consistent with past practice, without discounting such accounts receivable, (iii) maintain the properties and tangible assets included in the Purchased Assets in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear, (iv) use its best efforts to preserve the goodwill and relationships with its customers, suppliers, employees, members of management, lenders and all others having business dealings with Sellers, (v) perform all of its obligations under the Assigned Contracts, (vi)

comply with applicable Legal Requirements, and (vi) not take any action that would cause the representations and warranties set forth in ARTICLE III to be untrue or inaccurate. Without limiting the foregoing, except as consented to in writing by Buyer, or as required or permitted by this Agreement, Sellers shall not:

- (a) permit or allow any of the Purchased Assets to be subjected to any Encumbrances or incur any indebtedness for money borrowed that would constitute an Assumed Liability;
- (b) sell, transfer, assign, convey, license, lease or otherwise dispose of or agree to dispose of (including by the granting of an option, conditional sale agreement or otherwise) any of the Purchased Assets, except for the sale of Inventory in the ordinary course of business;
- (c) modify, amend, terminate, fail to renew or perform or cause a loss of its rights under any Assigned Contract, other than in the ordinary course of business; or
- (d) agree, authorize, commit or formally resolve to do any of the foregoing.

From the date hereof until the Closing Date, Sellers shall promptly notify Buyer of any material developments, and shall consult with Buyer regarding any significant decisions, relating to its business or the Purchased Assets.

Section 5.07 Access to Information. From the date hereof until the Closing, Sellers shall (a) afford Buyer and its representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, contracts and other documents and data related to Sellers' business; (b) furnish Buyer and its representatives with such financial, operating and other data and information related to Sellers' business as Buyer or any of its representatives may reasonably request; and (c) instruct the representatives of Sellers to cooperate with Buyer in its investigation of Sellers' business. Without limiting the foregoing, Sellers shall permit Buyer and its representatives to conduct environmental due diligence of the Real Property, including the collecting and analysis of samples of indoor or outdoor air, surface water, groundwater or surface or subsurface land on, at, in, under or from the Real Property. Any investigation pursuant to this Section 5.07 shall be conducted in such manner as not to interfere unreasonably with the conduct of Sellers' business. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement.

Section 5.08 No Solicitation of Other Bids.

(a) Sellers shall not, and shall not authorize or permit any of its affiliates or any of its or their representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal (as hereinafter defined); (ii) enter into discussions or negotiations with, or provide any information to, any third party concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Sellers shall immediately cease and cause to be terminated, and shall cause its affiliates and all of its and their representatives to immediately cease and cause to be terminated, all existing

discussions or negotiations with any third parties conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, “**Acquisition Proposal**” means any inquiry, proposal or offer from any third party relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Purchased Assets.

(b) In addition to the other obligations under this Section 5.08, Sellers shall promptly (and in any event within three business days after receipt thereof by Sellers or its representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the third party making the same.

(c) Sellers agree that the rights and remedies for noncompliance with this Section 5.08 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

Section 5.09 Notice of Certain Events.

(a) From the date hereof until the Closing, Sellers shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a material adverse effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Sellers hereunder not being true and correct, or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 6.02 to be satisfied;

(ii) any notice or other communication from any third party alleging that the consent of such third party is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any governmental authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to Sellers’ knowledge, threatened against, relating to or involving or otherwise affecting Sellers’ business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.18 or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Buyer's receipt of information pursuant to this Section 5.09 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement (including Section 7.02 and Section 8.01(b)) and shall not be deemed to amend or supplement the Disclosure Schedules.

Section 5.10 Post-Closing Operation of the Business. Sellers agree that as of the Closing Date and at any time thereafter, except as otherwise expressly provided herein or as permitted by express prior written consent of Buyer:

(a) it shall not use, directly or indirectly, (i) the names "Texas Foam, Inc.", "Texas Foam II, L.P.", "Sparkly Properties, Ltd.", "Western Foam Supply, Inc.", or any derivative, abbreviated or similar names, or (ii) any of the Seller Intellectual Property, in each case, in connection with any business that competes, directly or indirectly, with Buyer; and

(b) Sellers shall cease conducting its business.

This provision is not intended to limit in any way the use of the names listed above by Sellers in connection with managing the internal, non-operational, non-market facing affairs of Sellers in the process of winding down such entity or maintaining its legal existence as required by the terms hereof. Until the later of (i) the date that is six (6) years following the Closing Date, or (ii) the last date on which the Tail Insurance Endorsement remains in full force and effect, Sellers shall remain in compliance with applicable Legal Requirements in the State of Texas in order to remain in good standing in such jurisdiction, after which time Sellers may be dissolved.

Section 5.11 Restrictive Covenants.

(a) In order for Buyer to protect and preserve the value of the Purchased Assets, and as a material inducement to Buyer to enter into this Agreement, Sellers and Owner agree that for a period of four (4) years following the Closing Date (the "**Restricted Period**"), they will not, and will not permit any of their respective affiliates to:

(i) directly or indirectly, solicit or encourage any employee or independent contractor of the Buyer, or any of its affiliates, to resign or otherwise leave the employment or engagement of Buyer or any of its affiliates;

(ii) directly or indirectly, hire or engage any employee or independent contractor of the Buyer, or any of its affiliates, to perform services other than for the benefit of Buyer or any of its affiliates;

(iii) directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Buyer, or any of its affiliates, or potential clients or customers of the Buyer, or any of its affiliates, for purposes of diverting their business or services from the Buyer or any of its affiliates; and

(iv) directly or indirectly, own any interest in, manage, control, participate in (whether as an officer, director, employee, partner, member, shareholder, agent, representative or otherwise), consult with, render services for,

or in any other manner engage in any Competitive Business (as defined below); provided, however, that nothing herein shall prohibit any Seller from being a passive owner of not more than 3% of the outstanding capital stock of any class of any entity which is publicly traded so long as such Seller does not actively participate in the management or operations of such entity. “**Competitive Business**” shall mean any business engaged directly or indirectly in the delivery of products and/or services that are offered or delivered, or contemplated to be offered or delivered, by the Sellers or the Buyer, or any of their respective affiliates, as of the Closing Date.

(b) During the Restricted Period, Sellers and Owner shall keep secret and retain in strictest confidence, and shall not, without the prior written consent of Buyer, furnish, make available or disclose to any third party or use for their benefit or a third party, any Confidential Information. For purposes of this Section 5.11(b), “**Confidential Information**” means all information belonging to, used by, relating to or which is in the possession of the Sellers, the Sellers’ business, or Buyer, including but not limited to any information relating to financial statements, client or customer identities, potential clients or customers, employees, suppliers, servicing methods, equipment, programs, strategies and information, analyses, profit margins or other proprietary information; provided, however, that Confidential Information shall not include any information which is in the public domain or becomes generally known in the public domain through no wrongful act on the part of the Sellers or Owner.

(c) During the Restricted Period, Sellers and Owner shall not, directly or indirectly, make or solicit, or encourage others to make or solicit, disparaging or malicious comments to any person concerning Buyer or any of its officers, directors, employees, or affiliates, the products or services provided or proposed to be provided by Buyer or any of its affiliates, or the business affairs, operation, management or financial condition of Buyer or any of its affiliates; provided that such prohibition will not be deemed a prohibition against truthful testimony in any legal or administrative proceeding. Likewise, during the Restricted Period, Buyer shall not, directly or indirectly, make or solicit, or encourage others to make or solicit, disparaging or malicious comments to any person concerning Sellers or any of their affiliates, or the business affairs, operation, management or financial condition of Sellers or any of their affiliates; provided that such prohibition will not be deemed a prohibition against truthful testimony in any legal or administrative proceeding.

(d) Sellers and Owner acknowledge and agree that in the event of a breach by any Seller of any of the provisions of this Section 5.11, monetary damages will not constitute a sufficient remedy. Consequently, in the event of any such breach, Buyer may, in addition to other rights and remedies existing in its favor, apply to any court of law or equity of competent jurisdiction for specific performance or injunctive or other relief in order to enforce or prevent any violations of the provisions of this Section 5.11, in each case without the requirement of posting a bond or proving actual damages. The provisions of the preceding sentence shall be also applicable to Sellers in the event of any violation of the provisions of Section 5.11(c) by Buyer.

(e) If the final judgment of a court of competent jurisdiction declares that any term or provision of this Section 5.11 is invalid or unenforceable, the parties agree that it is their intention that the court making the determination of invalidity or unenforceability will reduce the scope, duration or area of the term or provision, delete specific words or phrases or replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

Section 5.12 Further Assurances. Following the Closing, each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

Section 5.13 Discharge Permit. From the date hereof through the Closing, each of the parties shall use commercially reasonable efforts to maintain the current efforts to obtain the Discharge Permit, which shall include, but not be limited to, working with Arroyo Consulting.

ARTICLE VI CONDITIONS TO CLOSING

Section 6.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of the following conditions:

(a) no final and non-appealable order of any governmental authority that prohibits the consummation of the transactions or makes the transactions illegal shall be in effect, nor shall there be any other proceeding pending before any governmental authority seeking to enjoin or restrain or otherwise prohibit the consummation of the transactions contemplated by this Agreement.

Section 6.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Sellers' representations and warranties set forth in this Agreement and any certificate or other writing delivered pursuant hereto shall be true and correct on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects);

(b) Sellers shall have materially performed all of the covenants, obligations, conditions and agreements set forth in this Agreement that are required to be performed and complied with by Sellers prior to or at the Closing, including, without limitation, the delivery of the items set forth in Section 2.02(a);

(c) all Encumbrances relating to the Purchased Assets shall have been released in full;

(d) all permits, approvals, consents and waivers that are listed on Schedule 2.02(a)(v) shall have been received;

(e) Buyer shall have secured the third-party financing necessary for it to consummate the transactions contemplated by the Agreement;

(f) Buyer's customer diligence shall be satisfactory, in Buyer's discretion;

(g) Buyer's environmental diligence, which shall include a discussion with, and/or formal update from, Arroyo Consulting, regarding the Discharge Permit process, shall be satisfactory, in Buyer's discretion;

(h) Sellers shall have delivered to Buyer the most recent balance sheets and interim statements of income of Sellers (since the Interim Statements), prepared on an accrual basis and fairly presenting in all material respects the financial condition of the respective entity to which they apply and the results of operations of such respective entity, as at the respective dates of, and for the periods referred to in, such balance sheets and interim statement of income, on a consistent basis throughout the periods to which they relate;

(i) Sellers shall have completed and provided Schedules to this Agreement for which the Sellers are obligated to provide, which shall include, but not be limited to, Schedule 1.01(a); and

(j) from the date hereof to the Closing Date, there shall not have occurred any event, change, circumstance or occurrence that, individually or together with any other event, change, circumstance or occurrence, has had, or would reasonably be expected to have, a material adverse effect on Sellers' business or the Purchased Assets, as determined in Buyer's discretion.

Section 6.03 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Sellers' waiver, at or prior to the Closing, of each of the following conditions:

(a) Buyer's representations and warranties set forth in this Agreement and any certificate or other writing delivered pursuant hereto shall be true and correct on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects); and

(b) Buyer shall have materially performed all of the covenants, obligations, conditions and agreements set forth in this Agreement that are required to be performed and complied with by Buyer prior to or at the Closing, including, without limitation, the delivery of the items set forth in Section 2.02(b).

ARTICLE VII INDEMNIFICATION

Section 7.01 Survival; Limitations; Calculation of Losses.

(a) The representations and warranties in Section 3.01 (Organization and Authority of Sellers; Enforceability), Section 3.03 (Purchased Assets), Section 3.22 (Brokers), Section 4.01 (Organization and Authority of Buyer; Enforceability), and Section 4.04 (Brokers) shall survive the Closing for a period of six (6) years (collectively, the “**Fundamental Representations**”); the representations and warranties in Section 3.10 (Taxes) shall survive the Closing until sixty (60) days after the expiration of the applicable statute of limitations with respect to claims that may arise as a result of the breach of such representations and warranties; and all other representations, warranties, covenants and agreements contained herein and all related rights to indemnification shall survive the Closing for a period of three (3) years.

(b) Except in the instances of fraud, intentional misrepresentation or willful misconduct, or for Indemnified Losses (as hereinafter defined) related to the Fundamental Representations, Section 3.10 (Taxes) or Section 3.19 (Environmental Matters), (i) neither party shall have any liability to the other party pursuant to Section 7.02(a) or Section 7.03(a) until the aggregate amount of all Indemnified Losses sustained by the Indemnified Party exceeds ten thousand dollars (\$10,000) (the “**Basket**”), in which case the Indemnifying Party will be liable to the Indemnified Party to the extent that such Indemnified Losses (or series of related Indemnified Losses) exceed the Basket, and (ii) the maximum aggregate indemnification obligation of the Sellers under Section 7.02(a) and the Buyer under Section 7.03(a) shall not exceed \$900,000.

(c) For purposes of determining whether there has been any misrepresentation or breach of a representation or warranty and for the purposes of determining the amount of Indemnified Losses resulting from any misrepresentation or breach of a representation or warranty, all qualifications or exceptions in any representation or warranty relating to or referring to the terms “material”, “materiality”, “in all material respects”, “material adverse effect” or any similar term or phrase shall be disregarded, it being the understanding of the parties that for purposes of determining liability under this Article VII, the representations and warranties of the parties contained in this Agreement shall be read as if such terms and phrases were not included in them.

Section 7.02 Indemnification By Sellers. Sellers and Owner shall jointly and severally defend, indemnify and hold harmless Buyer, its affiliates and their respective stockholders, members, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys’ fees and disbursements (collectively, the “**Indemnified Losses**”), associated with, related to, or arising out of:

(a) any inaccuracy in or breach of any of the representations or warranties of Sellers contained in this Agreement or any document to be delivered hereunder;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Sellers pursuant to this Agreement or any document to be delivered hereunder;

(c) any Excluded Asset or any Excluded Liability;

(d) any products, services, or other work product produced, sold, or delivered by Sellers to customers prior to the Closing;

(e) any tax obligation in connection with a “Bulk Sales Transfer” under the laws of any jurisdiction, including Texas, through the Closing Date, including any tax obligations arising herefrom;

(f) any tax obligation of Sellers accruing through the Closing Date, including any tax obligations arising herefrom, in any jurisdiction, in connection with the Purchased Assets or the operation of Sellers’ business;

(g) any acts or omissions by Sellers, with respect to periods prior to the Closing Date, in connection with the Real Property and/or the Discharge Permit, including, but not limited to, those associated with, related to, or arising out of (i) contamination from wastewater and (ii) environmental permitting issues; or

(h) any other liability of Sellers (other than the Assumed Liabilities) associated with, related to, or arising out of the conduct or operation of the Sellers’ business prior to the Closing.

Section 7.03 Indemnification by Buyer. Buyer shall defend, indemnify and hold harmless Sellers and their respective members, directors, officers, shareholders, partners, employees and affiliates from and against all Indemnified Losses associated with, related to, or arising out of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or any document to be delivered hereunder;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement or any document to be delivered hereunder; or

(c) any Assumed Liability.

Section 7.04 Indemnification Procedures. The party making a claim under this Section 7.04 is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this Section 7.04 is referred to as the “**Indemnifying Party**”.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the

Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than twenty (20) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that the Indemnifying Party forfeits rights or defenses or is materially prejudiced by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or, by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; provided, that if the Indemnifying Party is a Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a person that is or was a material supplier or material customer of Sellers' business, (y) seeks an injunction or other equitable relief against the Indemnified Party or (z) in the Buyer's reasonable determination: (i) the Seller does not have the financial wherewithal to assume and properly litigate the defense and/or (ii) or the potential Loss is in excess of any applicable Cap or amounts subject to offset hereunder. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 7.04(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party; provided, that if in the reasonable opinion of counsel to the Indemnified Party, after prior consultation with counsel for the Indemnifying Party: (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required following such prior consultation. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 7.04(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 7.04(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 7.04(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any Action by an Indemnified Party on account of a loss that does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than twenty (20) calendar days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that the Indemnifying Party forfeits rights or defenses or is materially prejudiced by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) calendar days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 7.05 Recoupment; Right of Offset.

(a) The Buyer’s right to recoup any losses for which it is entitled to indemnification pursuant to this Article VII shall be satisfied (i) first, from the Escrow

Amount, in accordance with the terms of the Escrow Agreement, and (ii) second, from the Sellers and Owner, including the right of offset set forth in Section 7.05(b). The foregoing shall not limit the Buyer's rights to seek remedies of specific performance, injunction or other equitable relief.

(b) Subject to Section 7.05(a), the Buyer shall be entitled to offset any amount of loss under any indemnity claim hereunder against any amounts then owed to Sellers or Owner, including, without limitation, the Working Capital Upward Adjustment.

Section 7.06 Escrow Release; Payment.

(a) The Escrow Amount or a portion thereof, as applicable, shall be released from and distributed by the Escrow Agent to the Sellers or Buyer, as applicable, in accordance with the applicable provisions of this Agreement and the terms and conditions of the Escrow Agreement.

(b) Upon resolution of any indemnification claim pursuant to this Article VII that requires the payment of all or a portion of the Escrow Amount to the Buyer, the Sellers and Buyer shall promptly, in accordance with and subject to the terms of the Escrow Agreement, instruct the Escrow Agent to release and pay the Buyer, from the then-available Escrow Amount, the amount required to resolve such indemnification claim pursuant to this Agreement and the Escrow Agreement.

(c) On the date that is twelve (12) months from the Closing Date, the Sellers and Buyer shall promptly, in accordance with and subject to the terms of the Escrow Agreement, instruct the Escrow Agent to release and distribute to the Sellers the then-remaining Escrow Amount, minus the aggregate amount of losses sought by the Buyer with respect to all unresolved indemnification claims that have been properly asserted in accordance with this Agreement as of the applicable date (the "**Indemnity Escrow Unresolved Claim Amount**").

(d) Following distributions pursuant to Sections 7.06(c), the Indemnity Escrow Unresolved Claim Amount shall be maintained until the date on which each indemnification claim by Buyer hereunder (of which notice is timely given pursuant to the terms of this Agreement and the Escrow Agreement) shall be finally resolved, on which date any remaining portion of such Indemnity Escrow Unresolved Claim Amount, after the resolution of and payment of all remaining indemnification claims, shall be released and distributed by the Escrow Agent to the Sellers upon prompt written instruction from the Sellers and Buyer in accordance with and subject to the terms of the Escrow Agreement.

(e) Once a loss is agreed to by the Sellers and Owner or finally adjudicated to be payable pursuant to this Article VII, the Sellers and Owner shall satisfy their obligations to Buyer within ten (10) business days of such final, non-appealable adjudication by wire transfer of immediately available funds.

Section 7.07 Tax Treatment of Indemnification Payments. All indemnification payments made by Sellers under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for tax purposes, unless otherwise required by law.

Section 7.08 Effect of Investigation. Buyer's right to indemnification or other remedy based on the representations, warranties, covenants and agreements of Sellers contained herein will not be affected by any investigation conducted by Buyer with respect to, or any knowledge acquired by Buyer at any time, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement.

Section 7.09 Cumulative Remedies. The rights and remedies provided in this ARTICLE VIII are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

ARTICLE VIII TERMINATION

Section 8.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Sellers and Buyer;

(b) by Buyer by written notice to Sellers if Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Sellers pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VI and such breach, inaccuracy or failure has not been cured by Sellers within ten (10) days of Sellers' receipt of written notice of such breach from Buyer;

(c) by Sellers by written notice to Buyer if any Seller is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VI and such breach, inaccuracy or failure has not been cured by Buyer within ten (10) days of Buyer's receipt of written notice of such breach from Seller; or

(d) in the event that any of the conditions set forth in ARTICLE VI are not satisfied (or waived by the party or parties whose obligations are conditioned upon such satisfaction) by August 30, 2019.

Section 8.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this ARTICLE VIII, this Agreement shall become void and of no further force and effect, and neither Buyer nor Sellers shall have any further rights or obligations to one another hereunder, except (i) with respect to any breach of this Agreement occurring prior to termination and (ii) as provided in Section 8.03 below.

Section 8.03 Existing NDA. Prior to execution of this Agreement, Sellers and Huntington Foam LLC, a Delaware limited liability company ("**Huntington**") executed that certain Nondisclosure Agreement effective the 31st of October, 2018 (the "**Existing NDA**"). In the event of any termination of this Agreement in accordance with this ARTICLE VIII, then Sellers

and Buyer stipulate and agree on behalf of themselves, their successors and assigns, that each of them shall be bound by and subject to the terms and provisions of the Existing NDA (including the provisions thereof relating to obligations with respect to Confidential Information disclosed by one party to the other party) notwithstanding the termination of this Agreement.

ARTICLE IX MISCELLANEOUS

Section 9.01 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 9.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.02):

If to Sellers:

Texas Foam, Inc.
Texas Foam II, L.P.
Sparkly Properties, Ltd.
Thomas Forrest
1278 Highway 71 W
Bastrop, Texas 78602
Attention: Thomas Forrest
Email: tom@texasfoam.com

with a copy, which shall not constitute notice, to:

Creighton, Fox, Johnson & Mills, PLLC
1601 Rio Grande, Suite 310
Austin, Texas 78701
Attention: John Creighton III
Meredith M. Bernsen
Facsimile: (512) 457-8792
Email: jc@cfjmlaw.com
mmb@cfjmlaw.com

If to Buyer:

Huntington Texas LLC
c/o Huntington Foam, LLC
12 Caliber Ridge Drive, Suite 200
Greer, SC 29651
Attention: Thomas E. Barnes
E-mail: tbarnes@hunt-sol.com

with a copy, which shall not constitute notice, to:

Becker Legal Group
99 Madison Avenue, Fifth Floor
New York, NY 10016
Attention: David M. Becker
Facsimile: (646) 390-8000
Email: dbecker@beckerlg.com

Section 9.03 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 9.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 9.05 Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 9.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 9.07 No Third-Party Beneficiaries. Except as provided in ARTICLE VII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 9.08 Amendment and Modification. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

Section 9.09 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver

thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 9.10 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Delaware without regard to any choice or conflict of law or choice of forum provision, rule or principle (whether of the State of Delaware or any other jurisdiction) that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.

Section 9.11 Submission to Jurisdiction. Any legal suit, action or proceeding associated with, related to, or arising out of this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in New Castle County, Delaware and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Notwithstanding the foregoing, to the extent any agreement or other instrument referenced herein has a different jurisdiction provision, such provision shall apply with respect to matters arising solely under and related to such agreement or instrument.

Section 9.12 Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action associated with, related to, or arising out of this Agreement or the transactions contemplated hereby.

Section 9.13 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 9.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

TEXAS FOAM, INC.

HUNTINGTON TEXAS LLC

By: Thomas M Barnes By: _____
 Name: Thomas M Barnes Name: Thomas Barnes
 Title: President Title: Chief Financial Officer

TEXAS FOAM II, L.P.

By: Thomas M Barnes
 Name: Thomas M Barnes
 Title: Partner/President

SPARKLY PROPERTIES, LTD.

By: Thomas M Barnes
 Name: Thomas M Barnes
 Title: Owner

THOMAS FORREST

By: Thomas M Barnes

June 18, 2019

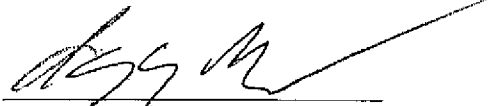
[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

TEXAS FOAM, INC.

By: _____
Name: _____
Title: _____

HUNTINGTON TEXAS LLC

By: 
Name: Thomas Barnes
Title: Chief Financial Officer

TEXAS FOAM II, L.P.

By: _____
Name: _____
Title: _____

SPARKLY PROPERTIES, LTD.

By: _____
Name: _____
Title: _____

THOMAS FORREST

By: _____

[Signature Page to Asset Purchase Agreement]

SCHEDULE 3.07

SELLER INTELLECTUAL PROPERTY

Trademark on XXDS Product Line (see attached; Kirk Groat will sign Tradement Assignment Agreement as drafted by Buyer at closing)

Proprietary Product Line

Company Website



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Trademarks > Trademark Electronic Search System (TESS)**

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XXDS

Word Mark XXDS
Goods and Services IC 020. US 002 013 022 025 032 050. G & S: insulated packaging containers of polystyrene with cardboard enclosures. FIRST USE: 20100401. FIRST USE IN COMMERCE: 20100401
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85065676
Filing Date June 17, 2010
Current Basis 1A
Original Filing Basis 1A
Published for Opposition April 19, 2011
Registration Number 3988514
Registration Date July 5, 2011
Owner (REGISTRANT) Texas Foam, L.P. Thomas Forrest and Kirk Groat, both U.S. citizens LIMITED PARTNERSHIP TEXAS 1278 Highway 71 West Bastrop TEXAS 78602
Attorney of Record William D. Raman
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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FIRST DOC	PREV DOC	NEXT DOC	LAST DOC							

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