

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>		NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>		Asset Purchase Agreement	
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Texas EIFS, L.C.		10/30/2006	LIMITED LIABILITY COMPANY: TEXAS
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	ParexLaHabra, Inc.		
<b>Street Address:</b>	4125 E. La Palma Ave.		
<b>Internal Address:</b>	Suite 250		
<b>City:</b>	Anaheim		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	92807		
<b>Entity Type:</b>	CORPORATION: CALIFORNIA		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	3354726	TEIFS	
<b>CORRESPONDENCE DATA</b>			
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	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
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<b>NAME OF SUBMITTER:</b>	J. Pargen Robertson, Jr.		
<b>Signature:</b>	/J. Pargen Robertson, Jr./		
<b>Date:</b>	10/28/2010		

OP \$40.00 3354726

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**TRADEMARK**  
**REEL: 004305 FRAME: 0751**

**Total Attachments: 92**

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**ASSET PURCHASE AGREEMENT**

**by and among**

**PAREXLAHABRA, INC.**

**("Buyer"),**

**TEXAS EIFS, LC**

**("Seller"),**

**and**

**Holders of Units of Membership of Seller**

**("Members").**

**Dated: October 30, 2006**

**FINAL VERSION**

**TRADEMARK  
REEL: 004305 FRAME: 0754**

## TABLE OF CONTENTS

Article I.	Definitions .....	1
Article II.	Purchase and Sale of Assets .....	1
2.1.	Transfer of Purchased Assets .....	1
2.3.	Excluded Liabilities .....	3
2.4.	Consideration; Escrow .....	3
2.5.	Allocation of Consideration .....	4
2.6.	Payment of Debt Prior to Closing .....	5
2.8.	Closing Costs and Fees .....	5
Article III.	Conditions Precedent to Closing and Closing .....	5
3.1.	Seller's Conditions Precedent .....	5
3.2.	Buyer's Conditions Precedent .....	6
3.3.	Closing .....	7
3.4.	Conveyances at Closing .....	8
Article IV.	Representations and Warranties of Seller .....	9
4.1.	Organization and Good Standing .....	9
4.2.	Authorization; Enforceability .....	9
4.3.	Ownership of Seller; Subsidiaries .....	10
4.4.	Books and Records .....	10
4.5.	Conflicts; Third Party Consents .....	10
4.6.	Financial Statements .....	11
4.7.	Purchased Assets .....	11
4.8.	Liabilities .....	12
4.9.	Absence of Certain Changes or Events .....	12
4.10.	Taxes .....	14
4.11.	Facilities .....	16
4.12.	Intellectual Property; Software .....	18
4.13.	Contracts; No Defaults .....	18
4.14.	Employee Benefits .....	21
4.15.	Labor Matters; Employees .....	22
4.16.	Legal Proceedings .....	23
4.17.	Compliance with Law .....	24
4.18.	Permits .....	25
4.19.	Environmental Matters .....	25
4.20.	Insurance .....	26
4.21.	Inventory; Receivables; Payables .....	27
4.22.	Related Party Transactions .....	28
4.23.	Suppliers and Customers .....	28
4.24.	No Brokers .....	28
4.25.	Product Warranty and Liabilities .....	29
4.26.	No Other Agreements .....	29
4.27.	Bank Accounts .....	29
4.28.	Material Misstatements or Omissions .....	29
Article V.	Representations and Warranties of Buyer .....	29
5.1.	Organization of Buyer .....	29

5.2.	Authorization.....	29
5.3.	Conflicts; Third Party Consents .....	30
5.4.	Legal Proceedings.....	30
5.5.	No Brokers.....	30
Article VI.	Covenants of Seller and Buyer.....	31
6.1.	Further Assurances .....	31
6.2.	Consents .....	31
6.3.	Employee Matters.....	31
6.4.	Collection of Accounts Receivable and Letters of Credit.....	32
6.5.	Books and Records .....	33
6.6.	Tax Matters.....	33
6.7.	Bulk Sales.....	35
6.8.	Use of Intellectual Property.....	35
6.9.	Insurance.....	35
6.10.	Facility Lease.....	36
6.11.	Employment Agreement .....	36
6.12.	Closing Inventory.....	36
6.13.	Antitrust Matters .....	36
6.14.	Escrow.....	36
Article VII.	Covenant Not to Compete.....	37
7.1.	Covenant Not to Compete .....	37
Article VIII.	Indemnification .....	38
8.1.	Special Definitions.....	38
8.2.	Survival of Representations.....	38
8.3.	Indemnification By Seller.....	38
8.4.	Indemnification by Members.....	39
8.5.	Indemnification by Buyer .....	40
8.6.	Limitations on Indemnification; Other Matters .....	40
8.7.	Indemnification Procedures .....	42
Article IX.	Miscellaneous .....	44
9.1.	Assignment.....	44
9.2.	Notices .....	44
9.3.	Choice of Law.....	45
9.4.	Entire Agreement; Amendments and Waivers.....	45
9.5.	Multiple Counterparts .....	45
9.6.	Expenses.....	45
9.7.	Publicity .....	45
9.8.	Headings .....	45
9.9.	Confidential Information.....	46
9.10.	Burden and Benefit.....	47
9.11.	Waiver of Jury Trial.....	47
9.12.	Service of Process; Consent to Jurisdiction .....	48
9.13.	Attorneys' Fees.....	48
9.14.	Representation by Counsel .....	48
9.15.	Schedules.....	48
9.16.	No Interpretation Against Drafter.....	48

Section 1.1. Defined Terms .....51  
Section 1.2. Other Defined Terms .....61

**FINAL VERSION**

**TRADEMARK**  
**REEL: 004305 FRAME: 0757**

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of October 30, 2006, is by and among PAREXLAHABRA, INC., a California corporation ("Buyer"), Texas EIFS, LC, a Texas Limited Liability Company ("Seller"), and all holders of units of membership of Seller ("Members").

### RECITALS

- A. Seller owns certain assets which it uses in the conduct of the Business (as defined below).
- B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, such assets, subject to the terms and conditions set forth in this Agreement.
- C. Members wish to join in certain representations, warranties and indemnification obligations as set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

#### ARTICLE I. DEFINITIONS

Defined Terms and the Other Defined Terms appear as Section 1.1 and Section 1.2 at the end of this Agreement commencing at page 51.

#### ARTICLE II. PURCHASE AND SALE OF ASSETS

**2.1 Transfer of Purchased Assets.** Upon the terms and subject to the conditions contained in this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall acquire from Seller, the Purchased Assets, free and clear of all Encumbrances. "Purchased Assets" means all of Seller's right, title and interest in and to all business, properties, assets and rights, used in, or related to, the Business owned by Seller and in which Seller has an interest, whether tangible or intangible, real or personal, (except for assets expressly listed as Excluded Assets) and including, but not limited to, the following:

(a) all "Eligible Accounts Receivable," meaning all receivables, notes, letters of credit and other items which Buyer has designated as an Eligible Account Receivable and each of which meets all of the following conditions: (i) no portion of the account is unpaid more than ninety (90) days past the oldest invoice date as of the Closing Date; (ii) the Seller has no Knowledge of any fact or circumstance that would



affect the payment of the account; (iii) all charges posted to the account are proper and were made in the Ordinary Course of Business; (iv) no account includes attorneys' fees or collection charges of any kind, or any service or interest charges and (v) if the account is owed by an Affiliate or Member of Seller, the account has a balance at Closing of amount no greater than the amount listed on Schedule 2.1(a) and the Affiliate or Member has executed a Member Account Receivable Certificate;

(b) all refunds, deposits, prepayments or prepaid expenses (including, without limitation, any prepaid insurance premiums) of Seller related to the Business and all accounting records, files, guarantees and collateral relating thereto;

(c) all Leasehold Improvements of Seller;

(d) all "Personal Property" of Seller, meaning all machinery, equipment, tools, fixtures, furniture, office equipment, computer hardware, supplies, spare parts, tooling, molds, patterns, materials, vehicles and other items of tangible personal property (other than Inventory) of every kind owned or leased by Seller, including but not limited to the Personal Property Assets as described on Schedule 4.7, (wherever located (including any Personal Property in the possession of any suppliers of Seller) and whether or not carried on its books), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and documents related thereto;

(e) the "Closing Inventory" of Seller, meaning all Inventory of Seller at the close of business two days prior to the Closing Date, as determined by a physical inventory to be made by Buyer and Seller, and as listed on the update to Schedule 4.21(a);

(f) all Books and Records of Seller;

(g) all Intellectual Property of Seller;

(h) all Permits of, or held by or for the benefit of, Seller and all pending applications therefore and renewals thereof, including, without limitation, those Permits listed on Schedule 4.18, to the extent transferable;

(i) all rights and licenses to use computer software;

(j) all of Seller's available supplies, invoices, shipping materials, sales literature, promotional literature, customer, supplier and distributor lists, art work, photographs, display units, Internet domain names, US Postal Service boxes, telephone and fax numbers and purchasing records;

(k) all rights of Seller under or pursuant to all warranties, representations and guarantees made by suppliers in connection with the Purchased Assets or services furnished to Seller pertaining to the Business or affecting the Purchased Assets, to the extent such warranties, representations and guarantees are assignable;

(l) all known or unknown, liquidated or unliquidated, contingent or fixed, rights or claims, causes of action, causes in action, rights of recovery and rights of set-off of any kind, against any Person and/or relating to any Purchased Assets or the Business, including, without limitation, any Encumbrances or other rights to payment or to enforce payment in connection with products of the Business delivered on or prior to the Closing Date;

(m) all goodwill and other intangible rights of Seller relating to the Business; and

(n) all Seller Contracts to be transferred to Buyer, a list and copies of which are attached hereto as Schedule 2.1(n) ("Assumed Contracts").

(o) all leases of rolling stock and manufacturing equipment.

**2.2 Excluded Assets; Excluded Liabilities.** Buyer shall not purchase or assume the cash of Seller (the "Excluded Assets"). Buyer shall not assume, or otherwise be responsible for, any Liabilities of Seller, in each case, whether liquidated or unliquidated, or known or unknown, and whether arising out of occurrences prior to, at or after the Closing Date, including, but not limited to, Seller's accounts payable and debts, except for those liabilities of which the origin is after the Closing Date and that are associated with the Assumed Contracts that Buyer shall assume as from the Closing Date (the "Excluded Liabilities"). Seller shall continue to be liable and responsible for all Excluded Liabilities and Excluded Assets.

**2.3 Consideration.** As Consideration for the sale and purchase of the Purchased Assets in accordance with Section 2.1, Buyer shall cause the consideration (the "Consideration") to be determined, delivered and paid as provided in this Section 2.3.

(a) The Consideration shall be:

(i) The book value of the Closing Inventory; plus

(ii) The book value of the Eligible Accounts Receivable; plus

(iii) Five Million Six Hundred Thousand Dollars (\$5,600,000.00); plus or minus any prorated expenses or prepayments listed on Schedule 2.3(a).

(b) At Closing, Buyer or its nominee shall deliver by wire transfer of immediately available funds to the account specified in writing by Seller to Buyer, the Consideration, less:

(i) 25% of the book value of the Eligible Accounts Receivable, which Buyer shall retain as described in Section 6.4 (the "Holdback"); and

(ii) 100% of any payment of Indebtedness made pursuant to Section 2.5; and

(iii) \$700,000, which Buyer shall place in escrow as described in Section 2.3(c) (the "Escrowed Funds").

(c) At Closing, Buyer or its nominee shall deliver the Escrowed Funds by wire transfer of immediately available funds to the escrow agent designated by Seller and Buyer ("Escrow Agent").

(d) One Hundred Twenty (120) days after the Closing Date, Buyer shall cause to be delivered by wire transfer of immediately available funds from Buyer or its nominee to the account specified in writing by Seller to Buyer, the Net Holdback.

(e) One year after the Closing Date, Buyer shall cause to be delivered by wire transfer of immediately available funds from the Escrow Agent to the account specified in writing by Seller, a disbursement of Escrowed Funds (\$400,000 plus accrued interests, net of claims and expenses, as set forth in the Escrow Agreement).

(f) Two years after the Closing Date, Buyer shall cause to be delivered by wire transfer of immediately available funds from the Escrow Agent to the account specified in writing by Seller, a disbursement of Escrowed Funds (estimated to be \$300,000 plus accrued interest, net of claims and expenses, as set forth in the Escrow Agreement).

#### **2.4 Allocation of Consideration.**

(a) The Consideration shall be allocated by Buyer among the Purchased Assets owned by Seller in the manner required by Section 1060 of the Code and set forth on an "Allocation Schedule." At Closing, Buyer will prepare and deliver to Seller the draft Allocation Schedule. Seller will have the right to raise objections to the Allocation Schedule within fourteen (14) days after its receipt thereof, in which event the parties will negotiate in good faith to resolve such objections; provided, however, that if the parties are unable to agree on any item of allocation, Buyer shall make the final determination. Within three (3) days after delivery of the Net Holdback pursuant to Section 2.3(d), Buyer will deliver to Seller a final version of the Allocation Schedule that reflects the final price for Eligible Accounts Receivable.

(b) Buyer and Seller agree to (i) be bound by the Allocation Schedule, (ii) act in accordance with the Allocation Schedule in the filing of all Tax Returns (including, without limitation, filing Form 8594 with each of the Buyer's and Seller's United States federal income Tax Return for the taxable year that includes the Closing Date) and in the course of any Tax audit, Tax review or Tax litigation relating thereto, and (iii) take no position and cause their respective Affiliates to take no position inconsistent with the Allocation Schedule for income Tax purposes, including United States federal and state income Tax and foreign income Tax, unless otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code. Not later than thirty (30) days prior to the filing of their respective Forms 8594 relating to this transaction, each of Buyer and Seller shall deliver to the other party a copy of its Form 8594.

**2.5 Payment of Debt Prior to Closing.** Schedule 2.5 sets forth a true, correct and complete schedule of any Indebtedness of Seller. No later than three days prior to Closing, Seller shall deliver to Buyer any updates to Schedule 2.5 and any supporting payoff confirmation letters. No later than three days prior to Closing, Seller shall deliver to Buyer a payoff demand letter, including wire instructions, from each holder of Indebtedness set forth on the updated Schedule 2.5, for each debt that must be paid from the Consideration at Closing in order to satisfy in full any and all obligations owed to such holder as of the Closing Date. Any amounts paid directly by Buyer to such holder or holders will be deducted dollar for dollar from the Consideration delivered to Seller under Section 2.3(b) above.

**2.6 Closing Costs and Fees.** Seller shall pay the fees and costs of recording or filing all applicable conveyancing instruments described in Section 3.4. Seller shall pay all costs of transferring any existing Permits included in the Purchased Assets which may be lawfully transferred.

### ARTICLE III. CONDITIONS PRECEDENT TO CLOSING AND CLOSING

**3.1 Seller's Conditions Precedent.** Seller's obligation to consummate the transactions contemplated hereby shall be subject to the satisfaction or waiver by Seller of each of the following conditions, at or prior to the Closing Date:

(a) No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction, except for the lawsuit referred to in Schedule 4.16.

(b) There shall have been obtained all permits, approvals, and consents of all governmental bodies or agencies which Seller and Buyer may reasonably deem necessary or appropriate so that consummation of the transactions contemplated by this Agreement will be in compliance with applicable laws, as listed in Schedule 3.1(b).

(c) All of the representations and warranties of Buyer contained herein or in any other document of Buyer delivered pursuant hereto shall be true and correct as of the date when made and shall be deemed to be made again as of the Closing Date and shall be true and correct in all material respects at and as of such time. At the Closing, Buyer shall have delivered to Seller a certificate, signed by an executive officer of Buyer, certifying to the foregoing.

(d) Buyer shall have delivered, or shall be prepared to deliver at the Closing, all payments of Consideration and all documents required of Buyer to be delivered at the Closing as set forth in Section 3.4(b).

(e) Buyer shall have delivered to Seller appropriate evidence of all necessary corporate action by Buyer in connection with the transactions contemplated hereby.

(f) Buyer shall have performed or tendered performance in all material respects of the covenants on Buyer's part to be performed which, by their terms, are intended to be performed on or before the Closing Date.

(g) Any filings required to be made by Seller and Buyer under any Antitrust Law shall have been made, and the specified waiting periods thereunder (and any extensions thereof) shall have expired or been terminated without the receipt of any objections from the appropriate governmental agency.

**3.2 Buyer's Conditions Precedent.** Buyer's obligation to consummate the transactions contemplated hereby shall be subject to the satisfaction or waiver by Buyer of each of the following conditions, at or prior to the Closing Date:

(a) Seller shall have performed or tendered performance in all material respects of the covenants on Seller's part to be performed which, by their terms, are intended to be performed on or before the Closing Date. At the Closing, Seller shall have delivered to Buyer a certificate, signed by an executive officer of Seller, certifying to the foregoing.

(b) All representations and warranties of Seller contained herein or in any other document of Seller delivered pursuant hereto shall be true and correct as of the date when made and shall be deemed to be made again as of the Closing Date and shall be true and correct in all respects at and as of such time. At the Closing, Seller shall have delivered to Buyer a certificate, signed by an executive officer of Seller, certifying to the foregoing.

(c) There shall have been obtained all permits, approvals, and consents of all governmental bodies or agencies which Buyer and Seller may reasonably deem necessary or appropriate so that consummation of the transactions contemplated by this Agreement will be in compliance with applicable laws, as listed in Schedule 3.1(b).

(d) Seller shall have obtained consent to the assignment of the Paint Store Lease.

(e) The owners of the Warehouse Facility I and Warehouse Facility II and Buyer shall have agreed upon the terms of the lease, including the call option, for the Warehouse Facility I and Warehouse Facility II.

(f) All necessary consents to the assignment of Assumed Contracts requiring consents shall have been obtained in written instruments reasonably satisfactory to Buyer.

(g) Seller shall have delivered, or shall be prepared to deliver at the Closing, all documents required of Seller to be delivered at the Closing as set forth in Section 3.4(a).

(h) No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

(i) Seller shall have delivered to Buyer appropriate evidence of all necessary corporate action by Seller in connection with the transactions contemplated hereby, including, without limitation:

(i) certified copies of resolutions duly adopted by Seller's Executive Committee Members and Members approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Seller of this Agreement; and

(ii) a certificate as to the incumbency of officers of Seller executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

(j) Joe McClaran shall have agreed to enter into Employment Agreements with Buyer on terms mutually satisfactory to McClaran and Buyer.

(k) The Purchased Assets shall have been released from all pledges, liens, security interests and other encumbrances, if any.

(l) Buyer shall have obtained all necessary consents and approvals of this Agreement and the transactions contemplated herein from its governing bodies, including its directors and shareholders, and its lenders.

(m) From the period between the date hereof and the Closing Date, there shall not have occurred any Material Adverse Change and no event shall have occurred and no circumstance shall exist that would, with or without the passage of time, result in a Material Adverse Change.

(n) Any filings required to be made by Seller and Buyer under any Antitrust Law shall have been made, and the specified waiting periods thereunder (and any extensions thereof) shall have expired or been terminated without the receipt of any objections from the appropriate governmental agency.

**3.3 Closing.** The closing of the transfer of the Purchased Assets provided for in Section 2.1 (the "Closing") shall take place at \_\_\_\_\_ m. local time on [September 29, 2006] (the "Closing Date"), at \_\_\_\_\_, or at such other time, date and place as Seller and Buyer may mutually agree.

### 3.4 Conveyances at Closing.

(a) Deliveries to Buyer. At the Closing, Seller shall deliver, or cause to be delivered, to Buyer, the Ancillary Agreements, including the following:

- (i) satisfactory bills of sale to all Purchased Assets, substantially in the form attached hereto as Exhibit A ("Bills of Sale");
- (ii) all Consents, filing and notifications set forth on Schedule 4.5(b);
- (iii) the Books and Records of Seller;
- (iv) the leases, including the lease covering Warehouse Facility I and Warehouse Facility II and the purchase option for Warehouse Facility I and Warehouse Facility II and the assignment of lease for the Paint Store Facility (collectively, the "Facility Leases");
- (v) a certified copy of the Certificate of Organization issued by the Secretary of State of Texas and a certificate of good standing with respect to Seller, issued by the appropriate Governmental Bodies of the State of Texas and any other jurisdiction listed on Schedule 4.1;
- (vi) an opinion of counsel to Seller, dated the Closing Date, substantially in the form attached hereto as Exhibit D;
- (vii) a signed copy of resolutions of the Members and Executive Committee Members of Seller, dated on or before the date of this Agreement, authorizing the execution and delivery of this Agreement by Seller and consummation by Seller of the transactions contemplated hereby and directing the officers of Seller to execute and deliver this Agreement and the Ancillary Agreements and to complete the transactions as contemplated hereby and thereby;
- (viii) the Escrow Agreement;
- (ix) payoff letters or other written confirmation that any encumbrance or lien on the Assets has been removed and any security interest terminated;
- (x) a certificate from each Member or Affiliate of Seller that owes an account receivable to be purchased by Buyer, in the form attached hereto as Exhibit B, indicating that the Member or Affiliate owes the amount shown on the books and records of Seller on the date of Closing and waives any defenses to collection of such amounts by Buyer ("Member Account Receivable Certificate"); and
- (xi) such other documents and such deeds, bills of sale, assignments, certificates of title and other instruments of conveyance and transfer as Buyer may reasonably request to evidence compliance with the conditions to this

Agreement or which may otherwise be necessary to effect the transactions contemplated by this Agreement.

(b) Deliveries to Seller. At the Closing, Buyer shall deliver, or cause to be delivered, to Seller, the following:

(i) that portion of the Consideration to be delivered to Seller at Closing;

(ii) the Facility Leases;

(iii) a copy of the Certificate of Incorporation of Buyer and a California certificate of good standing with respect to Buyer;

(iv) the Escrow Agreement;

(v) a copy of the resolutions of Buyer's governing bodies authorizing and approving this Agreement and the transactions contemplated hereby.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller and Members, jointly and severally, hereby represent and warrant to Buyer that the statements contained in this Article IV are true and correct as of the date hereof and will be true as of the Closing Date:

**4.1 Organization and Good Standing.** Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas and has all requisite power and authority to own, lease and operate its properties and assets and to carry on the Business as it is presently being conducted. Seller is duly qualified or authorized to do business as a foreign limited liability company and is in good standing under the laws of each jurisdiction listed on Schedule 4.1, such jurisdictions being all the jurisdictions in which its conduct of the Business or the ownership of its properties makes such qualification or authorization necessary. Seller shall deliver true, correct and complete copies of the Certificate and Articles of Incorporation of Seller, and all amendments thereto.

**4.2 Authorization; Enforceability.** Seller has all requisite power and authority, and has taken all action necessary, to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to be executed by Seller in connection with the consummation of the transactions contemplated by this Agreement, including, without limitation, the Ancillary Agreements and each of the documents set forth in Section 3.4(a) (such other agreements, documents, instruments and certificates required to be executed by Seller being referred to herein, collectively, as the "Seller Documents"), and to consummate the transactions contemplated hereby and thereby. This Agreement and each of the Seller Documents have been duly and validly executed and delivered by Seller to the extent a party thereto and (assuming the due authorization, execution and delivery by



the other parties hereto and thereto) this Agreement and each of the Seller Documents constitutes valid and legally binding obligations of Seller, as applicable, enforceable against Seller in accordance with their respective terms.

#### **4.3 Ownership of Seller; Subsidiaries.**

(a) Each Person identified in Schedule 4.3(a) is the record owner of the ownership interest in Seller set forth next to the name of such Person in Schedule 4.3(a), free and clear of all Encumbrances. All of the outstanding equity interests of Seller are duly authorized, validly issued, fully paid and non-assessable and owned by the Persons set forth in Schedule 4.3(a). None of the outstanding equity interests or other securities of Seller was issued in violation of any Laws.

(b) Seller has no Subsidiaries and no ownership interests in other partnerships, joint ventures, limited liability companies or corporations; except that Seller may own not in excess of 1% in the aggregate of any class of capital stock of any corporation if such stock is publicly traded and listed on any national or regional stock exchange or on the NASDAQ national market.

**4.4 Books and Records.** Seller has made and kept (and delivered to Buyer) Books and Records and accounts, which, in reasonable detail, accurately and fairly reflect the activities of Seller and the Business. Seller has not engaged in any transaction, maintained any bank account or used any corporate funds except for transactions, bank accounts and funds which have been and are reflected in the normally maintained Books and Records of Seller.

#### **4.5 Conflicts; Third-Party Consents.**

(a) Assuming all Consents described in Schedule 4.5(b) have been obtained or made, as applicable, the execution, delivery and performance of this Agreement and the Seller Documents by Seller and Members to the extent a party thereto shall not, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with or result in a violation of (A) any provision of the Certificate and Articles of Incorporation of Seller, or (B) any resolution or other action adopted or taken by the Members or Executive Committee Members of Seller;

(ii) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge, any of the transactions contemplated by this Agreement or the Seller Documents or to exercise any remedy or obtain any relief under, any Law or any Order to which Seller or Members or any of the Purchased Assets may be subject;

(iii) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Permit that is held by Seller that relates to the Business or any of the Purchased Assets;

(iv) contravene, conflict with or result in a violation or breach of any provision of, or give any Person the right to declare a Default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Contract of Seller;

(v) result in the imposition or creation of any Encumbrance upon or with respect to any of the Purchased Assets; or

(vi) result in any breach of, or constitute a Default (or event which with the giving of notice or lapse of time, or both, would become a Default) under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance on any of the shares of stock of any of the Purchased Assets pursuant to, any note, bond, mortgage, indenture, Contract, agreement, license, permit, franchise or other instrument to which Seller or any Member is a party.

(b) Except as set forth in Schedule 4.5(b), the execution and delivery of this Agreement and the Seller Documents by Seller and Members to the extent a party thereto, and the consummation of the transactions contemplated hereby and thereby does not, and shall not require any Consent, or other action by, or filing with or notification to, any Governmental Body or any other Person.

#### **4.6 Financial Statements.**

(a) Buyer has received true, correct and complete copies of the Year-End Financial Statements and the Interim Financial Statements.

(b) The Financial Statements have been prepared from the Books and Records and fairly present the financial condition and the results of operations, income, expenses, assets, liabilities (including all reserves), changes in Members' capital accounts and cash flow of Seller as of the respective dates of, and for the periods referred to in, such Financial Statements, all in accordance with GAAP applied on a consistent basis throughout the periods ending with December 31, 2005. Thereafter, Interim Financial Statements have been maintained systematically on a consistent basis.

(c) Seller has maintained a standard system of accounting established and administered in accordance with GAAP and with the applicable Law and accounting principles to which the accounting records of Seller may be subject though December 31, 2005; thereafter, Seller has maintained a standard system of accounting consistent with practices established in prior periods.

**4.7 Purchased Assets.** Seller has and will transfer good and marketable title to the Purchased Assets and upon the consummation of the transactions contemplated hereby and by the Seller Documents, Buyer will acquire good and marketable title to all of the Purchased Assets, free and clear of all Encumbrances. Schedule 4.7 contains accurate lists and summary descriptions of all Purchased Assets comprised of Personal

Property where the cost of an individual item exceeds Five Hundred Dollars (\$500.00). All Personal Property that is part of the Purchased Assets is in good operating condition and repair and is usable in the Ordinary Course of Business, reasonable wear and tear excepted, and conforms to all material Laws (including Environmental Laws) relating to their use and operation.

**4.8 Liabilities.** Seller has no Liabilities due or to become due except Liabilities that are reflected in the Interim Balance Sheet which have not been paid or discharged since the Interim Balance Sheet Date, or otherwise specifically disclosed in Schedule 4.8.

**4.9 Absence of Certain Changes or Events.**

(a) Except as set forth on Schedule 4.9(a), since the Interim Balance Sheet Date, Seller has conducted the Business in the Ordinary Course of Business and there has not been any:

(i) Material Adverse Change and no event has occurred and no circumstance exists that would, with or without the passage of time, result in a Material Adverse Change;

(ii) (A) change in the ownership of Seller; (B) grant of any option or right to purchase stock or equity interest of Seller; (C) issuance of any security convertible into any such ownership or interest; (D) declaration or payment of any distribution or payment in respect of such ownership interest;

(iii) amendment to the Certificate and Articles of Incorporation of Seller;

(iv) payment, increase or advance by Seller of any bonuses, salaries or other compensation (including management or other similar fees) to any officer or Executive Committee Member or entry into any employment, severance or similar Contract with any such officer or Executive Committee Member or employees of the Business, other than bonuses and increases in salary to employees made in the Ordinary Course of Business;

(v) adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, severance or other employee benefit plan for or with any of the employees of the Business or any increase in the payment to or benefits under any Employee Plan or other benefit obligation for or with any employees of the Business, other than increases provided under such Employee Plan or other benefit obligation to all employees of the Business made in the Ordinary Course of Business;

(vi) change in employee relations which has or would adversely affect the Business or the relationship between the employees of the Business and the management of the Business;

(vii) damage to (other than ordinary wear and tear) or destruction or loss of any Purchased Asset, whether or not covered by insurance, that would adversely affect the Purchased Assets or the Business;

(viii) entry into, termination or acceleration of, or receipt of notice of termination by Seller of (i) any license, distributorship, dealer, sales representative, joint venture, credit or similar agreement or (ii) any Contract or transaction which relates to the Business involving a Liability by or to Seller of at least One Thousand Dollars (\$1,000.00) which will remain unpaid at Closing or for which Seller may be liable after the Closing;

(ix) sale (other than sales of inventory in the Ordinary Course of Business), lease or other disposition of any Purchased Asset;

(x) mortgage, pledge or imposition of any Encumbrance on any Purchased Asset;

(xi) delay or failure to repay when due any obligation of Seller or any extension of payment terms therefore, including without limitation, accounts payable and accrued expenses, except to the extent such obligation is being disputed in good faith by Seller;

(xii) accrual of any expenses of Seller, except for such accruals in the Ordinary Course of Business;

(xiii) capital expenditures by Seller in excess of One Thousand Dollars (\$1,000.00);

(xiv) cancellation or waiver by Seller of any claims or rights with a value to Seller individually or in the aggregate in excess of One Thousand Dollars (\$1,000.00);

(xv) payment, discharge or satisfaction of any Liability by Seller, other than the payment, discharge or satisfaction of Liabilities in the Ordinary Course of Business;

(xvi) incurrence of or increase in any Liability of Seller, except in each case in the Ordinary Course of Business, or any accelerated or deferred payment of or failure to pay when due any Liability;

(xvii) loan to, investment in or agreement relating to any such loan or investment with any Person or any employee of Seller, other than pursuant to an employment agreement entered into in the Ordinary Course of Business with employees, or payment to any Affiliate (or any Affiliate thereof) of Seller, other than payments made to such Persons in the Ordinary Course of Business for actual obligations owed, products purchased or services rendered, in each case, in amounts not in excess of the fair value thereof;

(xviii) failure to use reasonable efforts to preserve intact the current business organization of Seller, keep available the services of its current employees and agents and maintain the relations and good will with its suppliers, customers, landlords, creditors, employees, agents and others having business relationships with Seller;

(xix) disposition or lapsing of any Intellectual Property or any disposition or disclosure to any Person of any Intellectual Property not theretofore a matter of public knowledge or disposition or lapsing of any Intellectual Property or any disposition or disclosure to any Person of any Intellectual Property not theretofore a matter of public knowledge not in Ordinary Course of Business;

(xx) change in the accounting or Tax reporting methods, principles or practices used by Seller which affects the Purchased Assets, the Assumed Liabilities, or the Business;

(xxi) downward revaluation by Seller of the Purchased Assets in all cases, in excess of Five Thousand Dollars (\$5,000.00) in the aggregate, and including, without limitation, writing down the value of Inventory or writing off notes or accounts receivable;

(xxii) variance in the levels of materials included in the Inventory from the levels maintained in the Ordinary Course of Business;

(xxiii) action taken by Seller to accelerate the collection of any receivable or which changes credit terms to customers;

(xxiv) election made, extension granted or waiver of a statute of limitations with respect to Taxes of Seller or settlement or compromise of any federal, state, local or foreign claim or Liability for Taxes of Seller; or

(xxv) agreement, whether oral or written, by Seller with respect to or to do any of the foregoing other than as expressly provided for herein.

(b) Since the Interim Balance Sheet Date, Seller has not expended funds other than in the Ordinary Course of Business.

(c) Seller is not insolvent under applicable Laws or unable to pay its debts. No administrative or other receiver has been appointed by any Person over the Business or the Purchased Assets. Seller shall not become insolvent as a result of the consummation of the transactions contemplated by this Agreement. Seller, after giving effect to the transactions contemplated by this Agreement, shall be able to pay its debts as they become due and shall have adequate capital to conduct its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement or otherwise with the intent to hinder, delay or defraud either present or future creditors of Seller.

#### 4.10 Taxes.

(a) Filing of Tax Returns. Seller has duly and timely filed (or caused to be filed) with the appropriate taxing authorities all Tax Returns required to be filed through the Closing Date. All such Tax Returns filed are true, correct and complete in all respects. Seller is not currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made against Seller or its assets by an authority in a jurisdiction where Seller does not file Tax Returns such that Seller is or may be subject to taxation by that jurisdiction.

(b) Payment of Taxes. All Taxes owed and due by Seller (whether or not shown on any Tax Return) have been paid. The unpaid Taxes of Seller (i) did not, as of the date of the Interim Balance Sheet, exceed any reserve for Tax Liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Interim Balance Sheet (rather than in any notes thereto), and (ii) will not exceed that reserve as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of Seller in filing its Tax Returns. Since the date of the Interim Balance Sheet, Seller has not (A) incurred any Liability for Taxes other than in the Ordinary Course of Business or (B) paid Taxes other than Taxes paid on a timely basis and in a manner consistent with past custom and practice.

(c) Audits, Investigations, Disputes or Claims. No deficiencies for Taxes have been claimed, proposed or assessed by any taxing authority or other Governmental Body against Seller. There are no pending or, to the Knowledge of Seller or any Member, threatened audits, investigations, disputes or claims or other actions for or relating to any Liability for Taxes with respect to Seller, and there are no matters under discussion by or on behalf of Seller with any Governmental Body, or known to Seller, with respect to Taxes that are likely to result in an additional Liability for Taxes with respect to Seller. Audits of federal, state and local Tax Returns by the relevant taxing authorities have been completed for the periods set forth in Schedule 4.10(c) and, except as set forth in such schedule, Seller has not been notified that any taxing authority intends to audit a Tax Return for any other period. Seller has delivered or made available to Buyer true, correct and complete copies of Seller's federal, state and local Tax Returns for the years ended December 31, 2000 through 2005, as well as true, correct and complete copies of all examination reports and statements of deficiencies assessed against or agreed to by Seller or its Predecessor at any time. Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency that is currently in effect. No power of attorney granted by Seller with respect to any Taxes is currently in force.

(d) Lien. There are no Encumbrances for Taxes on any of the Purchased Assets of Seller or any of its equity interests.

(e) Tax Sharing Agreements. There are no Tax-sharing agreements or similar arrangements (including indemnity arrangements) with respect to or involving Seller, any of the Purchased Assets, the Business, and, after the Closing Date, neither Seller, nor any of the Purchased Assets, or the Business shall be bound by any such

Tax-sharing agreements or similar arrangements or have any Liability thereunder for amounts due in respect of periods prior to the Closing Date.

(f) Partnerships and Single Member LLCs. Except as set forth on Schedule 4.10(f), Seller (i) is not subject to any joint venture, partnership, or other arrangement or contract which is treated as a partnership for Tax purposes, (ii) does not own a single member limited liability company which is treated as a disregarded entity, (iii) is not a member of a "controlled foreign corporation" as defined in Section 957 of the Code (or any similar provision of state, local or foreign law) and (iv) is not a "personal holding company" as defined in Section 542 of the Code (or any similar provision of state, local or foreign law).

(g) No Withholding. Seller has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897 of the Code. Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor or other third party. The transactions contemplated herein are not subject to the tax withholding provisions of Section 3406 of the Code, or of Subchapter A of Chapter 3 of the Code or of any other provision of law.

(h) International Boycott. Seller has not participated in and is not participating in an international boycott within the meaning of Section 999 of the Code.

(i) Permanent Establishment. Seller does not have nor has Seller ever had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country.

(j) Tax Shelters. Seller has not participated in and is not participating in, any transaction described in Section 6111(c) or (d) of the Code or Section 6112(b) of the Code or the Treasury Regulations thereunder, or in any reportable transaction described in such regulations.

(k) Compliance with Tax Collection Obligations. All deductions and payments that have become due to be made by Seller under any Tax Law in respect of employees' salaries and social securities contributions have been made in accordance with applicable Law.

#### **4.11 Facilities.**

(a) Facilities. Seller leases three Facilities (collectively referred to herein as the "Leased Real Property"):

(i) A non-exclusive 28,684 square feet of the real property located at 220 Burluson, San Antonio, Texas 78280-1717, and more specifically described in Schedule 4.11(a)(i), together with all improvements (the "Warehouse Facility I");

(ii) A non-exclusive 10,800 square feet of the real property located at 220 Burleson, San Antonio, Texas 78280-1717, and more specifically described in Schedule 4.11(a)(ii), together with all improvements (the "Warehouse Facility II")

(iii) The real property located at 309 NW Loop 410, San Antonio, Texas 78216, and more specifically described in Schedule 4.11(a)(iii), together with all improvements (the "Paint Store Facility")

(b) Other than the Leased Real Property, Seller does not own or lease any real property or any interest in any Facility or real property. Seller has delivered true, correct and complete copies of the leases for each Facility to Buyer.

(c) Actions. There are no pending or, to the Knowledge of Seller or any Member, threatened condemnation proceedings or other Legal Proceedings relating to any Facility.

(d) Leases or Other Agreements. There are no leases, subleases, licenses, occupancy agreements, options, rights, concessions or other agreements or arrangements, written or oral, granting to any Person other than Seller the right to purchase, use or occupy any Facility or any portion thereof or interest in any such Facility.

(e) Leased Real Property. Seller enjoys peaceful and undisturbed possession of the Leased Real Property and is legally in sole and undisputed occupation thereof. There are no disputes, oral agreements or forbearances in effect as to the Leased Real Property and no other matters or things which adversely affect the proper use and enjoyment of any of the Leased Real Property for the purpose of the Business now being carried on at the Facilities by Seller.

(f) Certificate of Occupancy. All Facilities, including the Leased Real Property, have received all required approvals of Governmental Bodies (including, without limitation, Permits and a certificate of occupancy or other similar certificate permitting lawful occupancy of the Facilities) required in connection with the operation thereof and have been operated and maintained in all respects in accordance with applicable Laws.

(g) Registration. The current use, ownership and/or any other activity with respect to each Facility is in compliance with applicable Laws and all registrable rights, titles and interests of Seller to each Facility has been duly registered with the official registries of the relevant jurisdictions in accordance with all applicable Laws.

(h) Utilities. All Facilities are supplied with utilities (including without limitation water, sewage, disposal, electricity, gas and telephone) and other services necessary for the operation of such Facilities as currently operated, and there is no condition which would reasonably be expected to result in the termination of the present access from any Facility to such utility services.



(i) Improvements, Fixtures and Equipment. The facilities and improvements constructed on the Facilities, including, without limitation, all Leasehold Improvements and Personal Property owned or leased by Seller at the Facilities are (i) insured to the extent and in a manner customary in the industry, (ii) structurally sound with no known material defects, (iii) in good operating condition and repair, subject to ordinary wear and tear, (iv) not in need of maintenance, repair or correction except for ordinary routine maintenance and repair, and (v) in conformity with all applicable Laws.

(j) No Special Assessment. Seller has not received notice of any special assessment relating to any Facility or any portion thereof and there is no pending or threatened special assessment.

(k) Rent. All rent payments and other rental obligations that became due and payable by Seller on or prior to the date hereof have been paid and discharged.

**4.12 Intellectual Property; Software.** Schedule 4.12 hereto sets forth a true, correct and complete list of all Intellectual Property, including any software and any licenses and agreements relating to such Intellectual Property (other than trade secrets, know-how and goodwill attendant to such Intellectual Property and other intellectual property rights not reducible to schedule form), owned, licensed to or used by Seller with respect to the conduct of the Business as presently conducted or presently proposed to be conducted by Seller. Schedule 4.12 separately identifies the Intellectual Property owned by Seller and the Intellectual Property licensed to or used by Seller. Seller owns all right, title and interest in, or has a valid and binding license to use, the Intellectual Property set forth (or required to be set forth) on Schedule 4.12, and (A) the rights of Seller to such Intellectual Property are free and clear of all Encumbrances that might interfere with use of the same; (B) there are no restrictions on the direct or indirect transfer of any license or other agreement, or any interest therein, held by Seller in respect of such Intellectual Property; and (C) all license and other agreements relating to such Intellectual Property are valid, legal, binding, enforceable and in full force and effect, and Seller has not received any notice that it is, and it is not, in Default (or with the giving of notice or lapse of time or both, would be in Default) under any license or other agreement relating to such Intellectual Property.

#### **4.13 Contracts; No Defaults.**

(a) Seller has made available to Buyer true, correct and complete copies, of all Contracts of the following categories, containing the parties to each such Contract, the effective date thereof, a summary of the subject matter thereof, in each case, to the extent applicable:

(i) Contracts that involve performance of services or delivery of goods by Seller during any twelve (12) month period of an amount or value, individually or, for a series of related Contracts, in the aggregate, in excess of One Thousand Dollars (\$1,000.00);

(ii) Contracts that involve performance of services or delivery of goods or materials to Seller during any twelve (12) month period of an amount or value, individually or, for a series of related Contracts, in the aggregate, in excess of One Thousand Dollars (\$1,000.00);

(iii) Contracts that were not entered into in the Ordinary Course of Business;

(iv) Leases of Personal Property of Seller and other Contracts, in each case, affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments, in each case, of less than One Thousand Dollars (\$1,000.00) or with terms of less than six months);

(v) Licensing agreements of Seller and other Contracts, in each case, with respect to patents, trademarks, copyrights or other Intellectual Property, including agreements with current or former employees, consultants or contractors regarding the appropriation or the non-disclosure of any of the Intellectual Property;

(vi) collective bargaining agreements of Seller and other Contracts, in each case, to or with any labor union or other employee representative of a group of employees and each other written employment or consulting agreement with any employees or consultants of the Business;

(vii) joint ventures or partnerships (however named) of Seller and other Contracts, in each case, involving a sharing of profits, losses, costs or liabilities by Seller with any other Person;

(viii) Contracts containing covenants that in any way purport to restrict the business activity of Seller or limit the freedom of Seller to engage in any line of business or to compete with any Person or that subject Seller to confidentiality or non-disclosure obligations;

(ix) Contracts providing for payments to or by any Person based on sales, purchases or profits, other than direct payments for goods;

(x) powers of attorney granted by or to Seller that are currently effective and outstanding;

(xi) Contracts entered into other than in the Ordinary Course of Business that contain or provide for an express undertaking by Seller to be responsible for consequential damages;

(xii) Contracts for capital expenditures in excess of One Thousand Dollars (\$1,000.00);

(xiii) Contracts which, to the Knowledge of Seller or any Member, will result in a loss to Seller;

(xiv) Contracts between Seller and any of its respective former or current officers, Executive Committee Members, agents and employees (other than standard employment agreements previously furnished to or approved by Buyer);

(xv) written warranties, guaranties, and or other similar undertakings with respect to contractual performance extended by Seller, other than in the Ordinary Course of Business; and

(xvi) each amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing.

(b) To the Knowledge of Seller or any Member, no Executive Committee Member, officer, agent, employee, consultant or contractor of the Business is bound by any Contract that purports to limit the ability of such Person to (i) engage in or continue any conduct, activity or practice relating to the Business or (ii) assign to Seller or to any other Person any rights to any invention, improvement or discovery relating to the Business.

(c) Assuming due authorization, execution and delivery of the Contract and compliance by the other parties thereto, each of the Contracts is in full force and effect and is valid and enforceable in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and (ii) the general principles of equity, regardless of whether asserted in a proceeding in equity or at law.

(d) Seller is, and during the last three (3) years has been, in compliance with all terms and requirements of each such Contract under which Seller has or had any obligation or Liability or by which Seller or any of the assets owned or used by Seller is or was bound.

(e) To the Knowledge of Seller or any Member, each other Person that has or had any obligation or Liability under any such Contract under which Seller has or had any rights is, and during the last three (3) years has been, in compliance with all terms and requirements of such Contract.

(f) To the Knowledge of Seller or any Member, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a violation or breach of, or give Seller or any other Person the right to declare a Default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any such Contract.

(g) Seller has not given to or received from any other Person, any written or, to the Knowledge of Seller or any Member, other notice or other communication regarding any actual, alleged, possible or potential violation or breach of, or Default under, any of the Contracts.

(h) There are no renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any amounts paid or payable to Seller under current or completed Contracts with any Person and no such Person has made written demand for such renegotiation.

(i) Contracts relating to the provision of products or services by Seller have been entered into in the Ordinary Course of Business and have been entered into without the commission of any act alone or in concert With any other Person, or any consideration having been paid or promised, that is or would be in violation of any Laws.

(j) Neither Seller nor any Member has any reason to believe that the products and services called for by any unfinished Contract cannot be supplied in accordance with the terms of such Contract, including time specifications, or has any reason to believe that any unfinished Contract will, upon performance by Seller, result in a loss to Seller.

(k) There are no claims against Seller to return merchandise by reason of alleged overshipments, defective merchandise or otherwise, or of merchandise in the hands of customers under an understanding that such merchandise would be returnable.

(l) Except as disclosed to Buyer, all of the Seller Contracts may and will be terminated upon 30 or fewer days' notice, without penalty and without the Consent of any other Person.

(m) With respect to the Schooner Group, neither Seller nor any Member has any obligations to the Schooner Group or is aware of any Liability or pending or threatened Legal Proceeding with respect to any relationship or commitment Seller or the Members may have had with the Schooner Group.

#### **4.14 Employee Benefits.**

(a) Schedule 4.14 contains a true, correct and complete list of all Employee Plans. Seller has delivered or made available to Buyer (i) true, correct and complete copies of all Employee Plans, including written interpretations thereof and written descriptions thereof which have been distributed to employees of the Business, all annuity contracts or other funding instruments relating thereto, and a complete description of all Employee Plans which are not in writing, and (ii) complete age, salary, service and related data as of the last day of the last plan year for employees and former employees of the Business.

(b) Seller and any ERISA Affiliate do not sponsor, maintain, contribute to or have an obligation to contribute to, and have not sponsored, maintained, contributed to or had an obligation to contribute to, any Pension Plan subject to Title IV of ERISA or any Multiemployer Plan.

(c) Each Welfare Plan which covers or has covered employees or former employees of Seller or current or former employees of Seller and which is a

"group health plan," as defined in Section 607(1) of ERISA, has been operated in compliance with provisions of Part 6 of Title I, Subtitle B of ERISA and Section 4980B of the Code at all times.

(d) There is no Legal Proceeding or Order outstanding, relating to or seeking benefits under any Employee Plan with respect to which Buyer may incur any Liability that is pending, or to the Knowledge of Seller or any Member, threatened or anticipated, against Seller or any such Employee Plan.

(e) Each Employee Plan with respect to which Buyer may incur any Liability has at all times been maintained in all respects, by its terms and in operation, in accordance with all applicable Laws, including, without limitation, ERISA and the Code. All amendments required to bring each Employee Plan with respect to which Buyer may incur any liability into conformity in all respects with ERISA, the Code and other applicable Laws have been made, except for such amendments with respect to which the remedial amendment period has not yet expired.

(f) Seller and its ERISA Affiliates have made full and timely payment of all amounts required to be contributed under the terms of each Employee Plan with respect to which Buyer may incur any Liability and applicable Law or required to be paid as expenses under such Employee Plan, and shall continue to do so through the Closing Date.

(g) Each Employee Plan intended to qualify under Section 401 of the Code has received a current and valid prototype opinion letter from the Internal Revenue Service that it does so qualify, and to the Knowledge of Seller or any Member, no event has occurred and no condition exists that could reasonably be expected to result in the revocation of such prototype opinion letter or the loss of such qualification or exemption.

(h) Neither the execution and delivery of this Agreement or other related agreements by Seller nor the consummation of the transactions contemplated hereby or thereby will result in the acceleration or creation of any rights of any person to benefits under any Employee Plan with respect to which Buyer may incur any Liability (including, without limitation, the acceleration of the vesting or exercisability of any stock options, the acceleration of the vesting of any restricted stock, the acceleration of the accrual or vesting of any benefits under any Pension Plan or the acceleration or creation of any rights under any severance, parachute or change in control agreement).

#### **4.15 Labor Matters; Employees.**

(a) General. Seller is not a party to any collective bargaining or other labor Contract with respect to employees of the Business. There has not been, there is not presently pending or existing, and, to the Knowledge of Seller or any Member, there is not threatened (i) any strike, slowdown, picketing or work stoppage against Seller with respect to employees of the Business; (ii) any Legal Proceeding against or affecting Seller with respect to employees of the Business or the Business relating to the alleged

violation of any Law or Order pertaining to labor relations or employment matters, including any charge or complaint filed by an employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission or any comparable Governmental Body, organizational activity, or other labor or employment dispute against or affecting the Business or Seller with respect to employees of the Business; or (iii) any application for certification of a collective bargaining agent with respect to employees of the Business. No event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute with respect to employees of the Business. No manager, executive or key employee of Seller has expressed any present intention to terminate his or her employment. No employee of Seller is a party to any confidentiality, non-competition, proprietary rights or other such agreement between such employee and any Person that would be material to the performance of such employee's employment duties, or the ability of Buyer to conduct the Business. There is no lockout of any employees of the Business by Seller, and no such action is contemplated by Seller. Seller, in the conduct of the Business, has complied with all material Laws relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar Taxes, occupational health and safety, and plant closing. Seller is not liable for the payment of any compensation, damages, Taxes, fines, penalties or other amounts, however designated, for failure to comply with any of the foregoing Laws. To the Knowledge of Seller or any Member, no employee of the Business intends, or is expected, to terminate his employment relationship with the Business following the consummation of the transactions contemplated hereby.

(b) WARN Act. Since the enactment of the Worker Adjustment and Retraining Notification Act (the "WARN Act"), 29 U.S.C. §§ 2101 et seq., Seller has not effectuated (i) a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment of Seller affecting employees of the Business, or (ii) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of Seller, nor has Seller, in the conduct of the Business, been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local law, for which there is unpaid liability. None of the employees of Seller has suffered an "employment loss" (as defined in the WARN Act) in the past three years that would trigger any liability under the WARN Act.

**4.16 Legal Proceedings.** Except as set forth on Schedule 4.16, there is no claim, Legal Proceeding or Order (a) pending or, to the Knowledge of Seller or any Member, threatened or anticipated against or affecting Seller, the Business or the Purchased Assets (or to the Knowledge of Seller or any Member, pending or threatened, against any of the officers, Executive Committee Members or employees of Seller with respect to their business activities on behalf of Seller or the trustees of administrators of any Pension Plan); (b) that challenges or that may have the effect of preventing, making illegal, delaying or otherwise interfering with any of the transactions contemplated by this Agreement; or (c) related to the Business or the Purchased Assets to which Seller is otherwise a party. To the Knowledge of Seller or any Member, there is no basis for any such claim or Legal Proceeding. The claims or Legal Proceedings

set forth (or required to be set forth) on Schedule 4.16 will not, individually or in the aggregate, have a Material Adverse Effect. Except as set forth on Schedule 4.16, to the Knowledge of Seller or any Member, no officer or Executive Committee Member or employee of the Business is subject to any Order that prohibits such Person from engaging in or continuing any conduct, activity, or practice. Except as set forth on Schedule 4.16, neither Seller nor the Business or the Purchased Assets is subject to any Order of any Governmental Body and Seller is not engaged in any Legal Proceeding to recover monies due it or for damages sustained by it. Seller is not and has not been in Default with respect to any Order, and there are no unsatisfied judgments against Seller, with respect to the Business or the Purchased Assets. There are no Orders or agreements with, or Encumbrances by, any Governmental Body or quasi-governmental entity relating to any Environmental Law which regulate, obligate, bind or in any way affect Seller or any Facility or Former Facility.

#### **4.17 Compliance with Law.**

(a) Except as set forth on Schedule 4.17, Seller, the conduct of the Business and all statutory filings made by Seller are and at all times have been in compliance with all material Laws or Orders applicable to them or to the conduct and operations of the Business or relating to or affecting the Purchased Assets or the employees of the Business. Seller has not received any notice to the effect that, or, to the Knowledge of Seller or any Member, has otherwise been advised of (i) any actual or alleged violation of, or failure to comply with, any such Laws or Orders or (ii) any actual or alleged obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature. No event has occurred or circumstance exists that (with or without notice or lapse of time) (i) is reasonably likely to constitute or result in a violation by Seller of, or a failure on the part of Seller to comply with, any such Laws or Orders or (ii) is reasonably likely to give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) None of Seller or, to the Knowledge of Seller or any Member, any employee or Representative thereof has, directly or indirectly, (i) made any contribution, bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of form, whether in money, property or services (A) to obtain favorable treatment in securing business, (B) to pay for favorable treatment for business secured, (C) to obtain special concessions or for special concessions already obtained, for or in respect of Seller or any of its Affiliates or (D) in violation of any Laws of the United States (including, without limitation, the Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. Sections 78dd-1 et seq.)) or any laws of any other country having jurisdiction; or (ii) established or maintained any fund or asset that has not been recorded in the Books and Records of Seller.

(c) No Executive Committee Member or officer of Seller has at any time, past or present, been convicted of or entered a plea of guilty or nolo contendere to any felony or crime of moral turpitude. Seller has not taken any action or engaged in

any activity which would cause the assets of Seller (other than the Excluded Assets) to be subject to seizure by any Governmental Body.

**4.18 Permits.** Schedule 4.18 sets forth a true, correct and complete list of all material Permits held by Seller, used in the conduct of the Business or which relate to the Purchased Assets. The Permits set forth on Schedule 4.18 collectively constitute all of the material Permits necessary for Seller to permit Seller to own and use the Purchased Assets to own and use its assets, in each case, in the manner in which they are presently owned and used. Except as set forth on Schedule 4.18, Seller is and for the past three (3) years has been in compliance with all material Permits set forth on Schedule 4.18. Seller has not received any notice to the effect that, or otherwise been advised of (i) any actual or alleged violation of, or failure to comply with, any such Permits or (ii) any actual or alleged revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Permit set forth on Schedule 4.18. To the Knowledge of Seller or any Member, no event has occurred or circumstance exists that (with or without notice or lapse of time) (i) may constitute or result directly or indirectly in a violation by Seller of, or a failure on the part of Seller to comply with, any such Permits or (ii) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Permit set forth (or required to be set forth) on Schedule 4.18. All applications for or renewals of all Permits set forth (or required to be set forth) on Schedule 4.18 have been timely filed and made. No present or former officer, Executive Committee Member, Representative or employee of Seller or any Affiliate thereof, or any other Person, owns or has any proprietary, financial or other interest (direct or indirect) in any Permit set forth (or required to be set forth) on Schedule 4.18.

**4.19 Environmental Matters.** Except as set forth in Schedule 4.19:

(a) Seller and Seller's operation of the Facilities are and have been in compliance in all respects with, and have not been and are not in violation of or liable under, any Environmental Law. Neither Seller nor, to the Knowledge of Seller or any Member, any other Person for whose conduct Seller is responsible, has received any written or other notice or communication (including but not limited to notices of violations or potential responsibility, requests for information, consent decrees, judgments, judicial or administrative Orders or liens) from (i) any Governmental Body or private citizen or (ii) the current or prior owner or operator of any Facilities, of any actual or alleged violation or failure to comply with any Environmental Law, or of any actual or Threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any of the Facilities or the Purchased Assets.

(b) There are no pending or, to the Knowledge of Seller or any Member, Threatened claims, Encumbrances or other restrictions of any nature (including but not limited to notices of violations, consent decrees, judgments, judicial or administrative orders or liens), resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law, with respect to or affecting any of the Facilities or the Purchased Assets.



(c) Neither Seller nor any other Person for whose conduct Seller is or may be held responsible, has any Environmental, Health, and Safety Liabilities with respect to Seller's operation of the Facilities or the Purchased Assets.

(d) There are no Hazardous Materials kept by Seller at the Facilities, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, dumps or any other part of the Facilities or incorporated into any structure therein or thereon. Seller has not conducted or permitted to be conducted and is not aware of any Hazardous Activity conducted with respect to Seller's operation of the Facilities or ownership or operation of the Purchased Assets, except for those Hazardous Activities conducted in conformance with Environmental Laws and which are disclosed in Schedule 4.19. To the Knowledge of Seller and all Members, no Person has conducted or is aware of any Hazardous Activity conducted with respect to Seller's operation of the Facilities or ownership or operation of the Purchased Assets, except for those Hazardous Activities conducted in conformance with Environmental Laws and which are disclosed in Schedule 4.19.

(e) There has been no Release or, to the Knowledge of Seller or any Member, Threat of Release, of any Hazardous Materials at or from the Facilities or, to the Knowledge of Seller or any Member, at any other locations where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used or processed from or by Seller's operation of the Facilities or the Purchased Assets.

(f) Seller has all Environmental Permits required under any provision of any Environmental Law relating to Seller's operations are now, and during the past three (3) years have been, in compliance with all such Environmental Permits and neither Seller nor any Member has Knowledge of any changes in circumstances that could adversely impact the Seller's ability to comply with Environmental Laws or maintain its current Permits.

(g) Seller has delivered or made available to the Buyer true, correct and complete copies and results of any reports, studies, analyses, tests or monitoring that is in the possession or control of Seller, including, without limitation, an assessment report completed after the date of this Agreement, with respect to the Leased Real Property, pertaining to Hazardous Materials or Hazardous Activities in, on or under the Facilities or concerning compliance by Seller or any other Person for whose conduct it is or may be held responsible, with Environmental Laws.

(h) All documents within Seller's possession or control related to any of the foregoing have been made available to Buyer.

**4.20 Insurance.** Schedule 4.20 sets forth a true, correct and complete list showing as to each policy or binder the carrier and the policy number of all policies or binders of insurance of any kind or nature covering Seller, the Business, the Purchased Assets, or any employees, properties or assets of Seller, including, without limitation,

policies of life, disability, fire, theft, workers compensation, employee fidelity and other casualty and liability insurance. Seller has delivered or made available to Buyer true, correct and complete copies of all insurance policies or binders of Seller, all pending applications for policies or binders, and any statements by the accounting firm that reviewed the Financial Statements with regard to the adequacy of coverage or of the reserves for claims. All such policies are in full force and effect, insures Seller, with respect to the Business, in reasonably sufficient amounts against all risks usually insured against by Persons operating similar businesses or properties of similar size in the localities where such businesses or properties are located, and are sufficient for compliance with all applicable Laws and all Contracts to which Seller is a party. Seller is not in Default under any of such policies or binders, and Seller has not failed to give any notice or to present any claim under any such policy or binder in a due and timely fashion. To the Knowledge of Seller or any Member, there are no facts upon which an insurer might be justified in reducing coverage or increasing premiums on existing policies or binders. There are no outstanding unpaid claims under any such policies or binders and there are no outstanding unpaid premiums except in the Ordinary Course of Business of Seller. Such policies and binders are in full force and effect as of the Closing Date and the Closing.

#### **4.21 Inventory; Receivables; Payables.**

(a) Schedule 4.21(a) contains a true, correct and complete list of all Inventory set forth on the Interim Balance Sheet. The Inventory as set forth on the Interim Balance Sheet or arising since the Interim Balance Sheet Date was acquired and has been maintained in accordance with the regular business practices of Seller, consists of new and unused items of a quality and quantity usable or saleable in the Ordinary Course of Business within the past six months, and is valued at reasonable amounts based on the normal valuation policy of Seller, at prices equal to the lower of cost or market value on a first-in-first-out basis. None of such Inventory is obsolete, unusable, slow-moving, damaged or unsalable in the Ordinary Course of Business, except for such items of Inventory which have been written down to realizable market value, or for which adequate reserves have been provided, in the Interim Balance Sheet. Except as described in Schedule 4.21(a), the present quantities of all Inventory are reasonable in the present circumstances of the Business and consistent with the average level of Inventory in the past twelve (12) months. Schedule 4.21(a) will be updated immediately before Closing.

(b) All accounts receivable of Seller set forth on the Interim Balance Sheet and all accounts receivable arising since the Interim Balance Sheet Date, have arisen from bona fide transactions in the Ordinary Course of Business. Except as set forth as Schedule 4.21(b), none of the accounts receivable of Seller reflected on the Interim Balance Sheet and arising since the Interim Balance Sheet Date are subject to any defenses, counterclaims or rights of setoff and all such accounts receivables are fully collectible in the Ordinary Course of Business without resort to Legal Proceedings and within one hundred twenty (120) days of the Closing Date at the aggregate recorded amounts thereof, net of any applicable reserves for returns, discounts, chargebacks, unauthorized deductions or doubtful accounts reflected thereon, which

reserves are adequate and were calculated in a manner consistent with past custom and practice and in accordance with GAAP consistently applied or, in the case accounts receivable arising since the Interim Balance Sheet Date, net of any applicable reserves, the amount of which shall be reasonable and shall be consistent with the reserves set forth on the Interim Balance Sheet.

**4.22 Related Party Transactions.** Except as set forth on Schedule 4.22, none of Seller, Members, any Affiliate thereof, Seller's officers or Executive Committee Members or any Affiliate or immediate relative thereof is presently or has been a party to any transaction with Seller relating to the Business or has borrowed any moneys from or has any outstanding Indebtedness or other similar obligations to Seller. Except as set forth on Schedule 4.22, none of Seller, Members, any Affiliate thereof, or any Representative or key employee of any such Persons (a) owns any direct or indirect interest of any kind in (except for ownership of less than 1% of any public company, provided, that such owner's role is that solely of a passive investor), or controls or is a Executive Committee Member, officer, employee or partner of, consultant to, lender to or borrower from, or has the right to participate in the profits of, any Person which is (i) a competitor, supplier, customer, landlord, tenant, creditor or debtor of Seller, (ii) engaged in a business related to the Business or (iii) a participant in any transaction to which Seller is a party or (b) is a party to any Contract with Seller. Except as set forth on Schedule 4.22, Seller has no Contract or understanding with any officer, Member, Executive Committee Member or key employee of Seller with respect to the subject matter of this Agreement or the Consideration payable hereunder or any other matter related to, or which might impact, the Business.

**4.23 Suppliers and Customers.** Seller has furnished to Buyer a true, correct and complete list of (a) the ten (10) largest suppliers of Seller, as measured by the dollar amount of purchases therefrom, and (b) the fourteen (14) largest customers of Seller, as measured by the dollar amount of purchases thereby, in each case, during Seller's last fiscal year and showing the approximate total purchases or sales, as applicable, in dollars by Seller, as applicable, to or from each such supplier or customer, as applicable, during such fiscal year. Since the Interim Balance Sheet Date, there has been no Material Adverse Change in the business relationship or prospects of Seller with any customer or supplier so listed. Neither Seller nor any Member has received any communication from any customer or supplier so listed of any intention to terminate or materially reduce purchases from or supplies to Seller. Among other products, Seller makes a base coat material and a finish coat material and sells them together with polystyrene foam and mesh as an exterior insulation finish system (EIFS), also known as "TEIFS Wall Systems." Seller does not, and never did, manufacture and sell Exterior Insulation Finish Systems other than the TEIFS Wall Systems. No TEIFS Wall Systems have been manufactured for residential purposes or, to the Knowledge of Seller and all Members, used for residential purposes, as "residential" is defined in Sellers policy of Commercial General Liability Insurance.

**4.24 No Brokers.** None of Seller or any of the Affiliates or Representatives of Seller has entered into or will enter into any Contract, agreement, arrangement or understanding with any broker, finder or similar agent or Person which will result in the

obligation of Buyer to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated by this Agreement.

**4.25 Product Warranty and Liabilities.** True, correct and complete copies of all standard written warranties provided generally to customers of Seller with respect to products of the Business during the past three (3) years have previously been delivered to Buyer. Seller has not been a party to any Claims or had Claims made against it with respect to any products or designs of the Business or raw materials used in the Business or by-products or waste generated by the Business, except for those set forth on Schedule 4.25. All Claims on Schedule 4.25 have been settled, adjudicated or otherwise finally determined as set forth on Schedule 4.25 (except for any Claim also listed as a Legal Proceeding on Schedule 4.16). Neither Seller nor any Member has Knowledge and neither Seller nor any Member has received notice of any defect with respect to any products or designs of the Business or raw materials used in the Business or by-products or waste generated by the Business which gave rise or might give rise in the future to a product warranty or product liability claim in excess of One Thousand Dollars (\$1,000.00).

**4.26 No Other Agreements.** Neither Seller nor any Affiliates of Seller has any legal obligation, absolute or contingent, to any other Person to sell or transfer the Purchased Assets (other than Inventory in the Ordinary Course of Business), to sell any equity interest in Seller or to effect any merger, consolidation or other reorganization of Seller or to enter into any agreement with respect thereto.

**4.27 Bank Accounts.** Seller has delivered to Buyer forth a true, correct and complete list showing the name and address of each bank in which Seller thereof has any account, safe deposit box, borrowing arrangement or certificate of deposit, the number of any such account or any such box and the names of all Persons authorized to draw thereon or to have access thereto.

**4.28 Misstatements or Omissions.** No representation or warranty made by Seller in this Agreement or the Disclosure Schedules, contains or will contain any untrue statement of a fact, or omits or will omit to state any fact necessary to make the statements or facts contained therein not misleading.

## ARTICLE V. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date hereof and as of the Closing Date and the Closing.

**5.1 Organization of Buyer.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

**5.2 Authorization.** Buyer has all requisite power and authority, and has taken (or will take prior to Closing) all action necessary, to execute and deliver this

Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to be executed by Buyer in connection with the consummation of the transactions contemplated by this Agreement, including, without limitation, each of the documents set forth in Section 3.4(b) (such other agreements, documents, instruments and certificates required to be executed by Buyer being hereinafter referred to, collectively, as the "Buyer Documents"), and to consummate the transactions contemplated hereby and thereby. This Agreement and each of the Buyer Documents have been duly executed and delivered by Buyer and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement and each of the Buyer Documents constitute, valid and legally binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting creditors' rights generally and (b) the general principles of equity, regardless of whether asserted in a proceeding in equity or at law.

**5.3 Conflicts; Third-Party Consents.** Except as set forth on Schedule 5.3, neither the execution, delivery and performance of this Agreement or the Buyer Documents nor the consummation of the transactions contemplated hereby and thereby, nor compliance by Buyer with any of the provisions hereof or thereof, will (a) contravene, conflict with, or result in violation of, any provision of the certificate of incorporation or bylaws of Buyer, (b) conflict with, violate, result in the breach or termination of, or constitute a Default under any indebtedness, instrument, obligation or Contract to which Buyer is a party or by which Buyer or their properties or assets are bound or (c) violate any Law or any Order of any Governmental Body by which Buyer or its properties or assets are bound. No Order of, Consent or Permit from or declaration or filing with, or notification to, any Person, including, without limitation, any Governmental Body, is required to be made or obtained by Buyer in connection with the execution, delivery and performance of this Agreement or the Buyer Documents and the consummation of the transactions contemplated hereby and thereby.

**5.4 Legal Proceedings.** There are no Legal Proceedings or Orders pending, or, to the knowledge of Buyer, threatened (a) that are reasonably likely to prohibit or restrain the ability of Buyer to enter into this Agreement or consummate the transactions contemplated hereby or (b) that challenge or that may have the effect of preventing, making illegal, delaying or otherwise interfering with any of the transactions contemplated by this Agreement.

**5.5 No Brokers.** Buyer and its Affiliates and Representatives have not entered into and will not enter into any Contract, agreement, arrangement or understanding with any broker, finder or similar agent or Person which will result in the obligation of Seller to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

**ARTICLE VI.  
COVENANTS OF SELLER AND BUYER**

Seller and Buyer each covenant with the other as follows:

**6.1 Further Assurances.** Upon the terms and subject to the conditions contained in this Agreement, the parties agree, after the Closing, (a) to use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements, (b) to execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the transactions contemplated hereunder or thereunder, and (c) to cooperate with each other in connection with the foregoing. As promptly as possible after the Closing, Seller will make all filings required by Law to be made by it in order to consummate the transactions contemplated hereby, will obtain all other required Consents (provided, that neither Seller nor Buyer shall be required to make any payments, commence litigation or agree to modifications of the terms of any Contracts in order to obtain any such Consent) and Permits and will apply for any new Permits necessary to consummate the transactions contemplated hereby. As promptly as possible after the Closing, Buyer will give all notices to third parties and make all filings required by Law to be made by it in order to consummate the transactions contemplated hereby.

**6.2 Consents.** Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any of the Purchased Assets or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without the Consent of a third party thereto, would constitute a Default thereof or in any way adversely affect the rights of Buyer thereunder or thereto. Buyer and Seller further agree that, although Seller will have primary responsibility to obtain the Consents and Buyer and Seller agree to cooperate with each other in attempting to obtain all Consents, any failure to obtain any Consents by either Buyer or Seller, as the case may be, for any reason whatsoever shall not constitute a Breach of this Agreement by Seller or Buyer, as the case may be. If any Consent is not obtained, or if an attempted assignment thereof would be ineffective or would affect the rights thereunder so that Buyer would not receive all such rights, Seller will use its Best Efforts to provide to Buyer after the Closing Date the benefits of such Purchased Assets, including, without limitation, enforcement for the benefit of Buyer of any and all rights of Seller against a third party thereto arising out of the Default or cancellation by such third party or otherwise and in consideration of the receipt of such benefits, Buyer shall pay, perform and discharge on behalf of Seller all of Seller's Liabilities thereunder and in accordance with the terms thereof to the extent arising after the Closing Date, in each case, to the same extent as if such agreement had been assigned to Buyer in accordance with this Agreement. Nothing in this Agreement shall be construed as an attempt to assign any agreement or other instrument that by its terms is non-assignable without the Consent of a third party.

**6.3 Employee Matters.**

(a) Seller shall be solely responsible for all obligations and Liabilities arising under or with respect to all Employee Plans and Buyer shall not assume any Employee Plan or any obligation or Liability thereunder.

(b) Seller shall comply with the requirements of the WARN Act with respect to any "plant closing" or "mass layoff," as those terms are defined in the WARN Act, which may result from Seller's termination of the employment of any of its employees in connection with the transactions contemplated by this Agreement through the Closing Date.

(c) Seller and its ERISA Affiliates (as defined below) shall comply with the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), as set forth in Section 4980B of the Code and Part 6 of Title I of the Employee Retirement Income Security Act of 1974, as amended, with respect to any employee, former employee or beneficiary of any such employee or former employee who is covered under any Group Health Plan (as defined in Section 5001(b)(1) of the Code) maintained by Seller and its ERISA Affiliates as of the Closing Date or whose "qualifying event" within the meaning of Section 4980B(f) of the Code, occurs on or prior to the Closing Date, whether pursuant to the provisions of COBRA or otherwise.

(d) No provision of this Agreement shall create any third party beneficiary rights in any employee of Seller, any beneficiary or dependents thereof, or any collective bargaining representative thereof, with respect to the compensation, terms and conditions of employment and benefits that may be provided to any employee by Buyer or under any benefit plan which Buyer may maintain.

(e) Nothing contained in this Agreement shall confer upon any employee of Seller any right with respect to continued employment by Buyer, nor shall anything herein interfere with the right of Buyer to terminate the employment of any employee at any time, with or without cause, or restrict Buyer in the exercise of its independent business judgment in modifying any of the terms and conditions of the employment of its employees.

#### **6.4 Collection of Accounts Receivable and Letters of Credit.**

(a) Three days prior to Closing, Seller will deliver to Buyer a list of all Accounts Receivable and Buyer, in good faith consultation with Seller, will determine which accounts are Eligible Accounts Receivable. In the event of a dispute, Buyer's determination of Eligible Accounts Receivable will be binding.

(b) At Closing, Buyer will retain and hold back from its payment to Seller 25% of the price of the Eligible Accounts Receivable (the "Holdback") and Buyer will acquire hereunder, and thereafter Buyer or its designee shall have the right and authority to collect for Buyer's or its designee's account, all Eligible Accounts Receivable.

(c) Seller shall, within forty-eight (48) hours after receipt of any payment in respect of any of the foregoing, properly endorse and deliver to Buyer any letters of credit, documents or checks received on account of or otherwise relating to any such receivables, letters of credit or other items. Seller shall promptly transfer or deliver to Buyer or its designee any cash or other property that Seller may receive in respect of the Eligible Accounts Receivable. Any payments received by Buyer from and after the Closing Date from a customer with respect to any of such customer's Eligible Accounts Receivable shall first be applied to such customer's oldest Eligible Accounts Receivable, unless otherwise specified or reasonably inferred in the circumstances.

(d) Any Eligible Accounts Receivable that have not been collected within ninety (90) days after the Closing Date shall be repurchased by Seller in an amount equal to the amount of such Eligible Accounts Receivable as of the Closing Date, less any payments made on account of such Eligible Accounts Receivable from and after the Closing Date. Seller's repurchase of the uncollected Eligible Accounts Receivable shall be subtracted from the Holdback, and the remainder of the Holdback (the "Net Holdback") shall be delivered to Seller within one hundred twenty (120) days after Closing in accordance with Section 2.3(d). Thereafter, Seller shall have the right and authority to collect all Eligible Accounts Receivable that have been repurchased by Seller. Buyer shall promptly remit to Seller any payment received by Buyer in payment of Eligible Accounts Receivable repurchased by Seller.

**6.5 Books and Records.** Each party hereto agrees that it will cooperate with and make available to the other party, during normal business hours, all Books and Records, information and employees (without substantial disruption of employment) retained and remaining in existence after the Closing which are necessary or useful in connection with any Tax inquiry, audit, investigation or dispute, any litigation or investigation or any other matter requiring any such Books and Records, information or employees for any reasonable business purpose. The party requesting any such Books and Records, information or employees shall bear all of the out-of-pocket costs and expenses (including, without limitation, attorneys' fees, but excluding reimbursement for salaries and employee benefits) reasonably incurred in connection with providing such Books and Records, information or employees. All information received pursuant to this Section 6.5 shall be kept confidential by the party obtaining such information, subject to any disclosure that is required to be made by such party in order to comply with applicable Laws or the rules or regulations of any securities exchange upon which its securities are traded.

**6.6 Tax Matters.**

(a) Books & Records; Cooperation. Buyer, on one hand, and Seller, on the other hand, agree to furnish or cause to be furnished to the other, upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Business, including, without limitation, access to Books and Records in its possession, as is reasonably necessary for the filing of all Tax Returns by Buyer or Seller, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating



to any Taxes. Each of Buyer, on one hand, and Seller, on the other hand, shall retain all Books and Records with respect to Taxes pertaining to the Purchased Assets and the Business, for a period of at least seven (7) years following the Closing Date. At the end of such period, each party shall provide the other with at least ten (10) days prior written notice before transferring, destroying or discarding any such Books and Records, during which period the party receiving such notice can elect to take possession, at its own expense, of such Books and Records. Buyer, on one hand, and Seller, on the other hand, shall cooperate fully with the other in the conduct of any audit, litigation or other proceeding relating to Taxes involving the Purchased Assets and the Business. Buyer, on one hand, and Seller, on the other hand, further agree, upon request, to use their best efforts to obtain any certificate or other document from any Governmental Body or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

(b) Transfer Taxes. Seller shall be liable for (i) all Taxes imposed by any United States taxing jurisdiction in connection with the purchase and sale of assets ("Transfer Taxes"); and (ii) all recording or filing, notarial fees and other similar costs incurred in connection with this Agreement and the transactions contemplated by this Agreement. Seller and Buyer, at their own expense, shall cooperate in filing in a timely fashion all Tax Returns and other documentation relating to such Taxes.

(c) Allocation of Seller Taxes. Seller shall be responsible for and shall promptly pay when due all Taxes levied with respect to the Purchased Assets for any Pre-Closing Tax Period. All such Taxes levied with respect to the Purchased Assets for any Straddle Period shall be apportioned between the Pre-Closing Tax Period and the Post-Closing Tax Period, as follows:

(i) in the case of any Taxes other than Taxes based upon or related to income or receipts, the portion allocable to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction the numerator of which is the number of days in the Straddle Period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period, and

(ii) in the case of any Tax based upon or related to income or receipts, the portion allocable to the Pre-Closing Tax Period shall be deemed equal to the amount which would be payable if the relevant Straddle Period ended on the Closing Date, provided, however that any item of income or receipts attributable to any action of Buyer or any Affiliate of Buyer outside the Ordinary Course of Business after the Closing and on the Closing Date shall be deemed to arise on the day following the Closing Date.

Upon receipt by Buyer, on the one hand, or Seller, on the other, of any bill for such Taxes relating to the Purchased Assets, the party receiving such bill shall present a statement to the other setting forth the amount of reimbursement to which each is entitled under this Section 6.6(c) together with such supporting evidence as is

reasonably necessary to calculate the proration amount. The proration amount shall be paid by the party owing it to the other within ten (10) days after delivery of such statement. In the event that Buyer or Seller shall make any payment for which it is entitled to reimbursement under this Section 6.6(c), the applicable party shall make such reimbursement promptly but in no event later than ten (10) days after the presentation of a statement setting forth the amount of reimbursement to which the presenting party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. Notwithstanding the foregoing, none of the Buyer Indemnified Parties shall be liable for, and Seller shall indemnify and hold the Buyer Indemnified Parties harmless from and against (i) any Taxes of Seller levied with respect to the Purchased Assets for any Pre-Closing Tax Periods, or (ii) any other Taxes of Seller for any periods.

(d) Notices. Seller shall promptly notify Buyer in writing, upon receipt by Seller of notice of any pending or threatened federal, state, local or foreign Tax audits or assessments relating to the income, properties or operations of Seller that reasonably may be expected to relate to the Purchased Assets or the Business.

(e) Characterization of Payments. Any payments made to any Buyer Indemnified Party pursuant to Section 8.3 shall constitute an adjustment of the Consideration paid for the Purchased Assets for Tax purposes and shall be treated as such by Buyer and Seller on their Tax Returns to the extent permitted by Law.

(f) Withholding. At the Closing, Seller shall deliver to Buyer all necessary forms and certificates complying with applicable Law, duly executed and acknowledged, certifying that the transactions contemplated hereby are exempt from withholding under Section 1445 of the Code.

**6.7 Bulk Sales.** Seller will comply with any "bulk sales" or similar Law.

**6.8 Use of Intellectual Property.** After the Closing, Seller shall immediately and forever discontinue all use of the Intellectual Property included in the Purchased Assets transferred to Buyer at the Closing. Within thirty (30) days after the Closing Date, Seller shall change its name (including its corporate, business, company and trade names) so as to not include the Names, and to the extent any certificate of assumed name or d/b/a filings relating to the Names is not transferred to Buyer at the Closing, Seller shall file applications to amend or terminate any such certificates of assumed name or d/b/a filings so as to eliminate the right of Seller to use such Names. "Names" means "Texas EIFS," "TEIFS" and any variations and derivatives thereof and any other name or mark, including the domain names "[www.teifs.com](http://www.teifs.com)" and "[www.teifsfinehomefinishes.com](http://www.teifsfinehomefinishes.com)" or any other domain name, that has such a near resemblance thereto as may be likely to cause confusion or mistake to the public, or to otherwise deceive the public.

**6.9 Insurance.** For a period of four (4) years following the Closing Date, Seller shall (a) maintain completed operations liability insurance policies containing

terms and limits reasonably satisfactory to Buyer and (b) cause Buyer to be named as an additional insured thereunder.

**6.10 Facility Leases.** At Closing, Buyer and the owners of the Leased Real Property shall enter into a five-year lease agreement with an option to renew for two additional five-year lease terms for each of the Warehouse Facility I and the Warehouse Facility II, and Seller shall assign to Buyer the Paint Store Facility lease. The leases for the Warehouse Facility I and Warehouse Facility II will contain a call option allowing Buyers to purchase both facilities until December 31, 2009 for a total purchase price of One Million Five Hundred Thousand Dollars (\$1,500,000).

**6.11 Employment Agreement.** Buyer will enter into an Employment Agreement with Joe McClaran.

**6.12 Closing Inventory.** After the close of business two days before the Closing Date, Buyer and Seller will prepare the final list of Closing Inventory and will assign prices to each item to calculate the Consideration due under Section 2.3(a)(i). The business shall not operate in any manner that will affect the inventory from the close of business two days prior to Closing until after Closing. The purchase price for all Closing Inventory will be its book value.

**6.13 Antitrust Matters.**

(a) Buyer and Seller shall each timely and promptly make all filings which may be required by either or both of them in connection with the consummation of the transactions contemplated hereby under the Hart-Scott-Rodino Antitrust Improvements Act or any other antitrust state or federal law, rule, statute or order (collectively "Antitrust Law"). Each of Buyer and Seller shall furnish to the other such information and assistance as the other may reasonably request in connection with its preparation of any necessary filings or submissions by it to any governmental agency, including, without limitation, any filings necessary under the provisions of any Antitrust Law. Each party shall provide the other with copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between itself or its representatives, on the one hand, and the FTC, the Antitrust Division and their staffs, or any other agency, court or Governmental Body on the other hand, with respect to this Agreement and the transactions contemplated hereby. Buyer shall be responsible for the payment of all filing fees in connection with any Antitrust Law.

(b) As a condition precedent to Buyer's obligation to consummate the transactions proposed herein, on or before the Closing Date, any filings required to be made by Seller and Buyer under any Antitrust Law shall have been made, and the specified waiting periods thereunder (and any extensions thereof) shall have expired or been terminated without the receipt of any objections from the appropriate governmental agency.

**6.14 Escrow.** Pursuant to Section 2.3(c), Buyer shall deliver the Escrowed Funds to the Escrow Agent as security for the indemnification obligations of Seller and

Shareholders pursuant to Article VIII. The Escrow Agent shall hold and disburse the Escrowed Funds in accordance with the Escrow Agreement substantially in the form attached as Exhibit E.

## ARTICLE VII. COVENANT NOT TO COMPETE

**7.1 Covenant Not to Compete.** Seller and Members acknowledge and agree that the Business is conducted or will be conducted within the states of Arizona, Arkansas, Colorado, Idaho, Louisiana, Maryland, Missouri, Montana, New Mexico, Oklahoma, Oregon, Texas and Washington (collectively, the "Territory"), and that the reputation and goodwill of the Business and of Seller and Members are an integral part of the success of the Business throughout the areas where it is or will be conducted. If Buyer is deprived of any of the goodwill of the Business or of Seller or if Seller or Members in any manner utilizes such reputation and goodwill in competition with Buyer in its conduct of the Business after the Closing Date, Buyer will be deprived of the benefits it has bargained for pursuant to this Agreement. This Covenant is necessary to effectively transfer the reputation and goodwill of the Business to Buyer. Seller and Members agree and acknowledge they will receive significant benefits as a result of the consummation of the transactions contemplated by this Agreement. Accordingly, as an inducement for Buyer to enter into this Agreement:

(a) Seller and Members agree that, for a period of three (3) years following the Closing Date, no Seller or Member shall, without Buyer's prior written Consent, directly or indirectly, own, manage, operate, join, control or participate in the ownership, management, operation or control of, or serve as a Director, officer, employee, partner, agent, consultant, Representative or otherwise with, any profit or non-profit business or organization in any county of the Territory which, directly or indirectly, competes with the Business. Seller and Members agree to maintain in confidence, and not to disclose to any third party, any ideas, methods, developments, inventions, improvements and business plans and information which are the confidential information of the Business now conducted by Seller and Members or as hereafter conducted by Buyer. In the event that the Agreement in this Section 7.1 shall be determined by any court of competent jurisdiction to be unenforceable by reason of its extending for too great a period of time or over too great a geographical area or by reason of it being too extensive in any other respect, it shall be interpreted to extend only over the maximum period of time as to which it may be enforceable, and/or over the maximum geographical area as to which it may be enforceable and/or to the maximum extent in all other respects as to which it may be enforceable, as determined by any such court in any such action. Notwithstanding anything to the contrary contained herein, this paragraph shall not restrict those Members set forth in Schedule 7.1(a) from engaging in certain competitive conduct already underway as of May 6, 2006, as such conduct is described in Schedule 7.1(a).

(b) For a period of three (3) years following the Closing Date, Seller and Members shall not directly or indirectly, (i) solicit the continued employment of any employee of Seller or (ii) offer employment or seek to hire or offer employment to any

employee of Buyer who is engaged in the Business presently conducted by the Seller and Members or hereafter conducted by the Buyer, in each case, unless the employment of such employee is first terminated by Buyer or Buyer gives its written Consent to such employment or offer of employment.

(c) Seller and Members acknowledge that a Breach of any of the covenants contained in this Section 7.1 will cause irreparable harm to Buyer and the Business, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such Breach will be inadequate. Accordingly, Seller and Members agree that, if any such Person commits a Breach of any of the covenants contained in this Section 7.1, in addition to any other remedy, whether at law or in equity, which may be available, Buyer shall be entitled to specific performance and injunctive relief, including temporary and preliminary relief, without posting bond or other security.

## ARTICLE VIII. INDEMNIFICATION

### 8.1 Special Definitions.

(a) "Losses" as used in this Article VIII is not limited to matters asserted by third parties against any indemnified party, but includes Losses incurred or sustained by an indemnified party in the absence of third-party claims.

(b) "Product Liability Claim" as used in this Article VIII means any claim arising out of or related to a defect in products or designs of the Seller.

**8.2 Survival of Representations.** The representations and warranties contained in this Agreement shall terminate when the applicable statutes of limitations with respect to the liabilities in question expire; in each case giving effect to any tolling or extensions thereof. The right to indemnification, payment of Losses or other remedy based on such representations, warranties, covenants and obligations will not be affected by any investigation conducted with respect to, or any knowledge of the party entitled to such right to indemnification acquired at any time, whether before or after the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation.

**8.3 Indemnification By Seller.** Subject to Section 8.6 of this Agreement, Seller hereby agrees to indemnify, protect, defend and hold Buyer and the Board of Directors, officers, managers, members, employees, agents, successors and assigns of Buyer (collectively, the "Buyer Indemnified Parties") harmless from and against any and all Losses incurred by such Buyer Indemnified Parties in connection with, arising out of, resulting from or incident to:

(a) any Breach or inaccuracy of any representation or warranty of Seller set forth in this Agreement or contained in any certificate delivered by or on behalf of Seller pursuant to this Agreement;

(b) any Breach of any covenant or other agreement made by Seller in or pursuant to this Agreement;

(c) any Liability of Seller for Indebtedness outstanding as of the Closing Date;

(d) any successor or similar Liability imposed upon Buyer by reason of Buyer's status as transferee of the Business or the Purchased Assets;

(e) any Liability under the WARN Act which may result from any termination of any employees of Seller in connection with the transactions contemplated by this Agreement;

(f) any Liability arising under or with respect to any and all Employee Plans (including any Liabilities resulting from the failure of any such Employee Plan to be adequately funded, reserved or insured, as applicable, or to qualify for any intended treatment, and not including any Liability expressly assumed by Buyer under Section 6.3) and any Liability with respect to any employees, former employees or service providers of Seller relating to acts or omissions which occurred on or prior to the Closing;

(g) any Environmental, Health and Safety Liabilities and any other Liabilities or Losses to the extent arising out of, relating to or are otherwise attributable to acts or omissions occurring on or prior to the Closing;

(h) any product shipped by, or any services provided by, Seller on or prior to the Closing;

(i) any Liability of Seller arising out of or resulting from its compliance or noncompliance with any Law or Order, the basis of which arose on or before the Closing; and

(j) any Excluded Liability.

**8.4 Indemnification By Members.** Subject to Section 8.6 of this Agreement, the Members hereby agree to indemnify, protect, defend and hold the Buyer Indemnified Parties harmless from and against any and all Losses incurred by such Buyer Indemnified Parties in connection with, arising out of, resulting from or incident to:

(a) any Breach or inaccuracy of any representation or warranty of Seller or Members set forth in this Agreement or contained in any certificate delivered by or on behalf of Seller pursuant to this Agreement;

(b) any Breach of any covenant or other agreement made by Seller or Members in or pursuant to this Agreement;

(c) any Liability of Seller for Indebtedness outstanding as of the Closing Date;

(d) any successor or similar Liability imposed upon Buyer by reason of Buyer's status as transferee of the Business or the Purchased Assets;

(e) any Liability under any Law or Order which may result from any termination of any employees of Seller in connection with the transactions contemplated by this Agreement;

(f) any Liability arising under or with respect to any and all Employee Plans (including any Liabilities resulting from the failure of any such Employee Plan to be adequately funded, reserved or insured, as applicable, or to qualify for any intended treatment, and not including any Liability expressly assumed by Buyer under this Agreement) and any Liability with respect to any employees, former employees or service providers of Seller relating to acts or omissions which occurred on or prior to the Closing;

(g) any Environmental, Health and Safety Liabilities and any other Liabilities or Losses to the extent arising out of, relating to or are otherwise attributable to acts or omissions occurring on or prior to the Closing;

(h) any Liability of Seller arising out of or resulting from its compliance or noncompliance with any Law or Order, the basis of which arose on or before the Closing; and

(i) any Excluded Liability.

**8.5 Indemnification By Buyer.** Subject to Section 8.6, Buyer hereby agrees to indemnify and hold Seller its employees, agents, successors and assigns (collectively, the "Seller Indemnified Parties"), harmless from and against any and all Losses incurred in connection with, arising out of, resulting from or incident to:

(a) any Breach or inaccuracy of any representation or warranty of Buyer set forth in this Agreement or contained in any certificate delivered by, or on behalf of Buyer pursuant to this Agreement; or

(b) any Breach of any covenant or other agreement made by Buyer in or pursuant to this Agreement.

**8.6 Limitations on Indemnification; Other Matters.**

(a) Payments by an indemnified party of amounts for which such indemnified party is indemnified under this Agreement shall not be a condition precedent to recovery. The remedies provided in this Agreement will not be exclusive of or limit any other remedies that may be available to Buyer or any other indemnified party.

(b) The indemnification obligations of each of Seller, Members and Buyer with respect to any Breach of any representation or warranty pursuant to Section

8.3, 8.4 or 8.5, respectively, shall be limited to claims for Losses made prior to the last date of survival thereof referred to in Section 8.2.

(c) Deductibles.

(i) Seller and Members shall not have any Liability under this Agreement for any claims unless (i) any single Loss to the Buyer Indemnified Parties finally determined to arise thereunder exceeds Fifteen Thousand Dollars (\$15,000) or (ii) the aggregate amount of Losses to the Buyer Indemnified Parties exceeds Thirty Thousand Dollars (\$30,000) (the "Seller Deductible Amount"), in which event the indemnifying parties shall be required to pay the full amount of any such single Loss or of such aggregate Losses in excess of the appropriate Seller Deductible Amount.

(ii) Buyer shall not have any Liability under this Agreement for any claims unless (x) any single Loss to the Seller Indemnified Parties finally determined to arise thereunder exceeds Fifteen Thousand Dollars (\$15,000) or (y) the aggregate amount of Losses to the Buyer Indemnified Parties exceeds Thirty Thousand Dollars (\$30,000) (the "Buyer Deductible Amount"), in which event the indemnifying parties shall be required to pay the full amount of any such single Loss or of such aggregate Losses in excess of the appropriate Seller Deductible Amount.

(iii) An indemnified party pursuant to this Agreement shall have the right to make a claim hereunder prior to the time at which the Deductible Amount, if any, that is applicable to such claim has been surpassed for the purpose of asserting such claim within the relevant survival period of the applicable indemnification obligation and any such claim made within such period shall, to the extent such Deductible Amount ultimately is met, survive until its final resolution.

(d) Caps.

(i) No Member of Seller shall be liable pursuant to this Agreement for an amount in excess of the Member's prorata share of any single claim or loss, which shall be equal to the amount of the claim or loss multiplied by the Member's percentage of ownership specified on Schedule 4.23(a). Further no Member of Seller shall be liable for the aggregate of all claims and losses pursuant to this Agreement for an amount in excess of \$14,000 multiplied by the number of units of ownership interest in Seller that each Member owns, as listed on Exhibit F hereto.

(ii) The maximum amount of Losses for which the Buyer shall be liable pursuant to this Agreement shall be \$5,600,000.

(e) Product Liability Claims. Seller shall purchase a policy or policies of insurance to insure (i) the representations and warranties contained in Section 4.25 of this Agreement and (ii) any Product Liability Claim. Such policy shall name the Buyer Indemnified Parties as the insured parties. No later than two weeks before Closing, Seller shall deliver to Buyer a copy of the insurance policy and a certificate of insurance indicating a policy limit of no less than \$2,000,000 per occurrence, coverage terminating



no sooner than four years after the Closing Date and any exceptions to or exclusions from such policy, which exceptions or exclusions shall be acceptable to Buyer. Seller is fully liable to Buyer Indemnified Parties for any breach of the representations and warranties contained in Section 4.25 and any Product Liability Claims. The liability of each Member for the representations and warranties contained in Section 4.25 of the Asset Purchase Agreement and any Product Liability Claim is limited to the amount of the Escrowed Funds and any assets of Seller, which may specifically include any insurance policy or policies purchased in accordance with this Section.

#### **8.7 Indemnification Procedures.**

(a) The indemnified party shall cooperate in all reasonable respects with the indemnifying party and its Representatives (including, without limitation, its attorneys) in the investigation, trial and defense of any lawsuit or action and any appeal arising therefrom; provided, however, that the indemnified party may, at its own cost, participate in negotiations, arbitrations and the investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. The parties shall cooperate with each other in any notifications to insurers.

(b) If a claim for Losses (a "Claim") is to be made by a party entitled to indemnification hereunder against the indemnifying party, the party claiming such indemnification shall give written notice (a "Claim Notice") to the indemnifying party as soon as practicable after the party entitled to indemnification becomes aware of any fact, condition or event which may give rise to Losses for which indemnification may be sought under this Agreement. If any lawsuit or enforcement action is filed against any party entitled to the benefit of indemnity hereunder, written notice thereof shall be given to the indemnifying party as promptly as practicable (and in any event within fifteen (15) calendar days after the service of the citation or summons). The failure of any indemnified party to give timely notice hereunder shall not affect rights to indemnification hereunder, except to the extent that the indemnifying party has been damaged by such failure. After such notice, if the indemnifying party shall acknowledge in writing to the indemnified party that the indemnifying party shall be obligated under the terms of its indemnity hereunder in connection with such lawsuit or action, then the indemnifying party shall be entitled, if it so elects at its own cost, risk and expense, (i) to take control of the defense and investigation of such lawsuit or action, (ii) to employ and engage attorneys of its own choice, but, in any event, reasonably acceptable to the indemnified party, to handle and defend the same unless the named parties to such action or proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and the indemnified party has been advised in writing by counsel that there may be one or more legal defenses available to such indemnified party that are different from or additional to those available to the indemnifying party, in which event the indemnified party shall be entitled, at the indemnifying party's cost, risk and expense, to a single firm of separate counsel (plus any necessary local counsel) of its own choosing and (iii) to compromise or settle such lawsuit or action, which compromise or settlement shall be made only with the prior written Consent of the indemnified party, such Consent not to be unreasonably withheld or delayed.

(c) If the indemnifying party fails to assume the defense of such lawsuit or action within fifteen (15) calendar days after receipt of the Claim Notice, the indemnified party against which such lawsuit or action has been asserted will (upon delivering notice to such effect to the indemnifying party) have the right to undertake, at the indemnifying party's cost and expense, the defense, compromise or settlement of such lawsuit or action on behalf of and for the account and risk of the indemnifying party; provided, however, that such lawsuit or, action shall not be compromised or settled without the prior written Consent of the indemnifying party, which Consent shall not be unreasonably withheld or delayed. If the indemnified party settles or compromises such lawsuit or action without the prior written Consent of the indemnifying party, the indemnifying party will bear no liability hereunder for or with respect to such lawsuit or action. In the event the indemnified party assumes the defense of the lawsuit or action, the indemnified party will keep the indemnifying party reasonably informed of the progress of any such defense, compromise or settlement. The indemnifying party shall be liable for any settlement of any action effected pursuant to and in accordance with this Section 8.7 and for any final judgment (subject to any right of appeal) and the indemnifying party agrees to indemnify, defend and hold harmless an indemnified party from and against any Losses by reason of such settlement or judgment.

(d) Use of Escrowed Funds. Seller, Buyer and the Members are also party to an escrow agreement of even date herewith, attached as Exhibit E ("Escrow Agreement"). In the event of a Claim by the Buyer Indemnified Parties that arises during the term of the Escrow Agreement, the Buyer Indemnified Parties shall look first to the Escrowed Funds for any recovery, using the procedures set forth in the Escrow Agreement. In the event that the Buyer Indemnified Parties recover or are paid any amounts from the Escrowed Funds, such amounts shall be deducted, pro rata, from the Members' Pro Rata Shares listed on Exhibit F.

(e) TEIFS/Members' Representative. Seller and the Members hereby appoint Patrick Burns, Sam White and Robert Cauble, with full power of substitution, as "TEIFS/Members' Representatives" and consent to the taking by the TEIFS/Members' Representatives of any and all actions and the making of any decisions required or permitted to be taken by him under this Agreement or the Escrow Agreement. Each TEIFS/Members' Representative hereby agrees to negotiate, enter into settlements and compromises of claims, including third-party claims, to comply with orders of courts and awards of arbitrators with respect to such claims, resolve any claim made pursuant to this Agreement, take all actions necessary in his judgment for the accomplishment of the foregoing, and each hereby accepts his appointment as the TEIFS/Members' Representative for purposes of this Agreement and the Escrow Agreement. All notices delivered to any one TEIFS/Members' Representative shall be deemed to be delivered to Seller and all Members at that time. Buyer shall be entitled to deal exclusively with any one of the TEIFS/Members' Representatives on all matters relating to this Agreement and the Escrow Agreement and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of Seller and/or any Member by any one of the TEIFS/Members' Representatives, and on any other action taken or purported to be taken on behalf of

the Seller and/or any Member by any one of the TEIFS/Members' Representatives, as fully binding upon Seller and/or such Member(s).

**ARTICLE IX.  
MISCELLANEOUS**

**9.1 Assignment.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any party without the prior written Consent of the other party; except that Buyer may, without such Consent, assign all such rights to any lender as collateral security and assign all such rights and obligations to a parent or wholly-owned subsidiary (or a partnership controlled by Buyer) or subsidiaries of Buyer or to a successor in interest to Buyer which shall assume all obligations and Liabilities of Buyer under this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**9.2 Notices.** All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic or digital transmission method; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to:

If to Seller or the Members,

addressed to:

Patrick Burns  
1402 Hoefgen  
San Antonio, Texas 78210

OR

Robert Cauble  
7315 Hwy. 87 East  
China Grove, Texas 78263

OR

Sam White  
510 Cotton Gin  
Kerrville, Texas 78028

With a copy to:

Donald L. Cuba  
224 Casa Blanca  
San Antonio, Texas 78215

If to Buyer, addressed to:

ParexLahabra, Inc.  
Attention: Francois Bouan  
4125 East La Palma Avenue,  
Suite 250  
Anaheim, California 92807

With a copy to:

Sutin, Thayer & Browne, A  
Professional Corporation  
P.O. Box 1945  
Albuquerque, NM 87103-1945  
Attention: Jay D. Rosenblum, Esq.

or to such other place and with such other copies as any party may designate as to itself by written notice to the others.

**9.3 Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Texas (without giving effect to its choice of law principles), except with respect to matters of law concerning the internal affairs of any entity which is a party to or the subject of this Agreement, and as to those matters the law of the jurisdiction under which the respective entity derives its powers shall govern.

**9.4 Entire Agreement; Amendments and Waivers.** This Agreement, together with all exhibits and schedules hereto (including the schedules and the Ancillary Agreements referred to herein), constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. This Agreement may not be amended except in an instrument in writing signed on behalf of each of the parties hereto. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

**9.5 Multiple Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**9.6 Expenses.** Except as otherwise specifically provided for herein, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby. In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a Breach of this Agreement by the other party.

**9.7 Publicity.** Except as required by Law, no party to this Agreement shall issue or caused to be issued any press release or make any public statement regarding this Agreement and the transactions contemplated hereby, without prior written approval of Buyer and Seller; provided, however, that in the case of announcements, statements, acknowledgments or revelations which either party is required by Law to make, issue or release, the making, issuing or releasing of any such announcement, statement, acknowledgment or revelation by the party so required to do so by Law shall not constitute a Breach of this Agreement if such party shall have given, to the extent reasonably possible, not less than two (2) calendar days prior notice to the other party, and shall have attempted, to the extent reasonably possible, to clear such announcement, statement, acknowledgment or revelation with the other party. Each party hereto agrees that it will not unreasonably withhold or delay any such Consent or clearance. Buyer may issue or make an appropriate press release or public announcement after the Closing.

**9.8 Headings.** The titles, captions or headings of the Articles and Sections herein are for convenience of reference only and are not intended to be a part of or to affect or restrict the meaning or interpretation of this Agreement.

## 9.9 Confidential Information.

(a) The parties acknowledge that the transaction described in this Agreement is of a confidential nature and shall not be disclosed except to Representatives and Affiliates, or as required by Law, until such time as the parties make a public announcement regarding the transaction as provided in Section 9.7. No party shall make any public disclosure of the specific terms of this Agreement, except as required by Law. Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the parties hereto are parties or by which they are bound, the parties acknowledge and agree that any obligations of confidentiality contained herein and therein shall not apply to the tax treatment and tax structure of the transaction upon the earlier to occur of (i) the date of the public announcement of discussions relating to the transaction, (ii) the date of the public announcement of the transaction, or (iii) the date of the execution of this Agreement, all within the meaning of Treasury Regulations Section 1.6011-4; provided however, that each party recognizes that the privilege each has to maintain, in its sole discretion, the confidentiality of a communication relating to the transaction, including a confidential communication with its attorney or a confidential communication with a federally authorized tax practitioner under Section 7525 of the Code, is not intended to be affected by the foregoing.

(b) In connection with the negotiation of this Agreement, the preparation for the consummation of the transactions contemplated hereby and the performance of obligations hereunder, Seller acknowledges that it will have access to confidential and proprietary information relating to Buyer and its Affiliates, and Buyer acknowledges that it will have access to confidential and proprietary information relating to Seller, in each case, including technical, manufacturing or marketing information, ideas, methods, developments, inventions, improvements, business plans, trade secrets, scientific or statistical data, diagrams, drawings, specifications or other proprietary information relating thereto, together with all analyses, compilations, studies or other documents, records or data prepared by Seller or Buyer, as the case may be, or their respective Representatives or Affiliates, which contain or otherwise reflect or are generated from such information ("Confidential Information"). The term "Confidential Information" does not include information received by one party in connection with the transactions contemplated hereby which (i) is or becomes generally available to the public other than as a result of a disclosure by such party or its Representatives, (ii) was within such party's possession prior to its being furnished to such party by or on behalf of the other party in connection with the transactions contemplated hereby, provided that the source of such information was not known by such party to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the other party or any other Person with respect to such information or (iii) becomes available to such party on a non-confidential basis from a source other than the other party or any of their respective Representatives, provided that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the other party or any other Person with respect to such information.

(c) Each party shall treat all Confidential Information of the other parties as confidential, preserve the confidentiality thereof and not disclose any such Confidential Information, except to its Representatives and Affiliates who need to know such Confidential Information in connection with the transactions contemplated hereby. Each party shall use all reasonable efforts to cause its Representatives to treat all such Confidential Information of the other party as confidential, preserve the confidentiality thereof and not disclose any such Confidential Information. Each party shall be responsible for any Breach of this Agreement by any of its Representatives. If, however, Confidential Information is disclosed, the party responsible for such disclosure shall immediately notify the other party in writing and take all reasonable steps required to prevent further disclosure.

(d) If one party or any of its Representatives or Affiliates is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) or is required by operation of Law to disclose any Confidential Information, such party shall provide the other party with prompt written notice of such request or requirement, which notice shall, if practicable, be at least forty-eight (48) hours prior to making such disclosure, so that the other party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of such a waiver, such party or any of its Representatives are nonetheless, in the opinion of counsel, legally compelled to disclose Confidential Information, then such party may disclose that portion of the Confidential Information which such counsel advises is legally required to be disclosed, provided that such party uses its reasonable efforts to preserve the confidentiality of the Confidential Information, whereupon such disclosure shall not constitute a Breach of this Agreement.

**9.10 Burden and Benefit.** This Agreement shall be binding upon and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement; provided, however, that any Person that is not a party to this Agreement but, by the terms of Section 8.2, is entitled to indemnification, shall be considered a third party beneficiary of this Agreement, with full rights of enforcement as though such Person was a signatory to this Agreement.

**9.11 Waiver of Jury Trial.** Each signatory to this Agreement hereby waives its respective right to a jury trial of any permitted claim or cause of action arising out of this Agreement, any of the transactions contemplated hereby, or any dealings between any of the signatories hereto relating to the subject matter of this Agreement or any of the transactions contemplated hereby. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court and that relate the subject matter of this Agreement or any of the transactions contemplated hereby, including, without limitation, contract claims, tort claims, and all other common law and statutory claims. This waiver is irrevocable, meaning that it may not be modified either orally or in writing, and this waiver shall apply to any subsequent amendments, supplements or other modifications to this Agreement, any of the transactions

contemplated hereby or to any other document or agreement relating to the transactions contemplated hereby.

**9.12 Service of Process; Consent to Jurisdiction.**

(a) Service of Process. Each of the parties hereto irrevocably consents to the service of any process, pleading, notices or other papers by the mailing of copies thereof by registered, certified or first class mail, postage prepaid, to such party at such party's address set forth herein, or by any other method provided or permitted under Texas or other applicable law.

(b) Consent and Jurisdiction. Each party hereto irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the United States District Court for the Western District of Texas or, if such court does not have jurisdiction or will not accept jurisdiction, in any court of general jurisdiction in the County of Bexar, Texas; (ii) consents to the jurisdiction of any such court in any such suit, action or proceeding; and (iii) waives any objection which such party may have to the laying of venue of any such suit, action or proceeding in any such court.

**9.13 Attorneys' Fees.** If any party to this Agreement brings an action to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with such action, including any appeal of such action.

**9.14 Representation by Counsel.** Each party hereto represents and agrees with each other that it has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s), that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by such party's respective counsel, that each is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

**9.15 Schedules.** In the event of any inconsistency between the statements in the body of this Agreement and those in the Disclosure Schedule (other than an exception expressly set forth as such in the Disclosure Schedule with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

**9.16 No Interpretation Against Drafter.** This Agreement is the product of negotiations between the parties hereto represented by counsel and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived.

## DEFINED TERMS

**1.1 Defined Terms.** As used in this Agreement, the terms below shall have the following meanings. Any such term, unless the context otherwise requires, may be used in the singular or plural, depending upon the reference.

"Affiliate" has the meaning set forth in the Securities Exchange Act of 1934, as it may be amended from time to time, and the rules and regulations promulgated thereunder. Without limiting the foregoing, all Executive Committee Members and officers of a Person that is a corporation, all Partners of a Person that is a partnership, and all managing members of a Person that is a limited liability company shall be deemed Affiliates of such Person for all purposes hereunder.

"Ancillary Agreements" means such deeds, assignments, bills of sale, leases, employment agreements, and other instruments necessary or desirable to complete the transaction contemplated by this Agreement.

"Balance Sheet" means the balance sheet of Seller dated the Balance Sheet Date, together with the notes thereon, audited by Seller's independent certified public accountants.

"Balance Sheet Date" means December 31, 2005.

"Benefit Arrangement" means any employment, consulting, severance or other similar contract, plan, arrangement or policy, and each plan, arrangement (written or oral), program, agreement or commitment providing for insurance coverage (including any self-insured arrangements), workers' compensation, disability benefits, supplemental unemployment benefits, vacation benefits, retirement benefits, life, health, disability or accident benefits or for deferred compensation, profit-sharing bonuses, stock options, stock purchases or other forms of incentive compensation or post-retirement insurance, compensation or benefits which (A) is not a Welfare Plan, Pension Plan or Multiemployer Plan, and (B) is entered into, maintained, contributed to or required to be contributed to, by Seller or an ERISA Affiliate or under which Seller or any ERISA Affiliate may incur any liability, in each case, covering one or more employees, Executive Committee Members or consultants or former employees, Executive Committee Members or consultants of the Business.

"Best Efforts" means the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to ensure that such result is achieved as expeditiously as possible on commercially reasonable terms.

"Books and Records" means (i) all records and lists of Seller related to the Purchased Assets or the Business, (ii) all records and lists of Seller related to its respective customers, suppliers and personnel, (iii) all product, business and marketing plans of Seller related to the Business and (iv) all books, ledgers, files, reports, plans, drawings and operating records of every kind maintained by Seller with respect to the Business.



"Breach" means, and a breach of a representation, warranty, covenant, obligation or other provision of this Agreement or any Ancillary Agreement will be deemed to have occurred if there is or has been any inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation or other provision.

"Business" means the business of manufacturing and distribution of EIFS, acrylic finishes, stucco and paints conducted by Seller as of the Closing Date as well as all other related activities in which Seller has a bona fide plan to engage as of the Closing Date. The term "employees of the Business" and other similar terms mean any employee of Seller who performs services in connection with the Business.

"Business Day" means any day of the year on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized to close.

"Cash on Hand" means, as of the date immediately preceding the Closing Date, all cash and cash equivalents (determined in accordance with GAAP) of Seller on hand as reflected in the accounting records of Seller.

"CERCLA" means the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., as amended.

"Closing Date Financial Statements" means the balance sheet and statements of operation, changes in equity and cash flow of Seller for the year ending December 31, 2005, to be prepared in accordance with GAAP and audited by independent certified public accountants.

"Code" means the Internal Revenue Code of 1986, as amended.

"Consent" means any approval, consent, ratification, waiver, or other authorization.

"Contract" means any agreement, contract, lease, note, loan, evidence of indebtedness, purchase order, letter of credit, indenture, security or pledge agreement, covenant not to compete, license, instrument, commitment, obligation, promise or undertaking (whether written or oral and whether express or implied).

"Default" means (a) a breach of or default under any Contract, (b) the occurrence of an event that with the passage of time or the giving of notice or both would constitute a breach of or default under any Contract or (c) the occurrence of an event that with or without the passage of time or the giving of notice or both would give rise to a right of termination, renegotiation or acceleration under any Contract.

"Disclosure Schedule" means the schedule executed and delivered by Seller and to Buyer as of the Closing Date setting forth information required by the representations and warranties contained in Article IV and certain other information called for by this Agreement. Unless otherwise specified, each reference in this Agreement to any

numbered schedule is a reference to the corresponding numbered schedule which is included in the Disclosure Schedule.

"Employee Plans" means all Benefit Arrangements, Pension Plans and Welfare Plans covering employees, Executive Committee Members or consultants or former employees, Executive Committee Members or consultants of the Business.

"Encumbrance" means any charge, claim, community property interest, condition, easement, equitable interest, lien, option, pledge, security interest, right of first refusal or restriction of any kind (including any restriction on use, voting, transfer (other than restrictions on transfer imposed by federal and state securities laws), receipt of income or exercise of any other attribute of ownership).

"Environment" means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwater, reservoir, stream sediments, ambient air, plant and animal life or natural resource.

"Environmental, Health and Safety Liabilities" means any Loss or Liability, arising from or under any Environmental Law or Occupational Safety and Health Law and consisting of or relating to:

(a) any environmental, health or safety matters or conditions (including onsite or off-site contamination, occupational safety and human health and regulation of chemical substances or products);

(b) Legal Proceedings arising under any Environmental Law or Occupational Safety and Health Law;

(c) financial responsibility under any Environmental Law or Occupational Safety and Health Law for Remedial Action required by applicable Environmental Law or Occupational Safety and Health Law and for any natural resource damages required by any Governmental Body; or

(d) any other compliance, corrective, investigative or Remedial Action required under any Environmental Law or Occupational Safety and Health Law.

"Environmental Law" means all federal, state, district, local and foreign laws, including common law, all rules or regulations promulgated thereunder and all treaties, Orders, consent orders, judgments or Environmental Permits in effect on or prior to the Closing Date, relating to pollution or protection of the Environment, including without limitation (i) laws relating to emissions, discharges, Releases or threatened Releases of pollutants, contaminants, chemicals, wastes or other harmful substances into the Environment and (ii) laws relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, recovery, transport or other handling of pollutants, contaminants, chemicals, wastes or other harmful substances. Environmental Laws shall include, without limitation, CERCLA, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), RCRA, the Safe Drinking Water Act (21

U.S.C. § 349, 42 U.S.C. §§ 201, 300f), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.) or any other similar federal, state or local law of similar effect, each as amended.

"Environmental Permits" means all licenses, permits, approvals, authorizations, Consents or Orders of, any Governmental Body, whether federal, state, local or foreign, required for the operation of the Facilities under Environmental Laws.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"ERISA Affiliate" means any entity which is (or at any relevant time was) a member of a "controlled group of corporations" with, under "common control" with, or a member of an "affiliated service group" with, Seller as defined in Section 414(b), (c), (m) or (o) of the Code.

"Facility" or "Facilities" means all plants, offices, manufacturing facilities, stores, warehouses, improvements and administration buildings and all other related facilities and real property used in connection with the Business, including the Leased Real Property.

"Financial Statements" means the Year-End Financial Statements, the Interim Financial Statements and the Closing Date Financial Statements and Buyer's financial statements referred to in Section 4.6(c).

"Former Facility" means each plant, office, manufacturing facility, store, warehouse, improvement, administrative building and all related facilities and real property that was owned, leased or operated by Seller or its Predecessor at any time prior to the Closing Date, but excluding any Facilities.

"GAAP" means generally accepted accounting principles as used in the United States, as in effect from time to time.

"Governmental Body" means any:

- (i) nation, state, county, city, town, village, district or other jurisdiction of any nature;
- (ii) federal, state, local, municipal, foreign or other government;
- (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal);
- (iv) multi-national organization or body; or

(v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

"Hazardous Activity" means the distribution, generation, handling, importing, management, manufacturing, processing, production, Release, storage, transfer, transportation, treatment or use of Hazardous Materials in, on, under, about or from the Facilities or any part thereof into the Environment as well as any other act, business or operation that poses a significant risk of harm to Persons or property on or off the Facilities.

"Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive, infectious, reactive, corrosive, ignitable, flammable or toxic or a pollutant or a contaminant subject to regulation, control or remediation under any Environmental Law (whether solids, liquids or gases), including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefore, polychlorinated biphenyls, radon gas, urea formaldehyde and asbestos or asbestos-containing materials.

"Indebtedness" means, with respect to Seller, the following, without duplication:

(a) all items which, in accordance with GAAP, would be included in determining total liabilities as shown on the liability side of a balance sheet of Seller at the date as of which Indebtedness is to be determined, including, without limitation, (i) all indebtedness of Seller for borrowed money or for the deferred purchase price of any property or services, (ii) any other indebtedness of Seller which is evidenced by a note, bond, debenture or similar instrument, (iii) all obligations of Seller under capital leases, (iv) all Liabilities of Seller for overdrafts or outstanding checks, (v) all Liabilities of Seller for current trade liabilities incurred in the Ordinary Course of Business; (vi) all Liabilities of Seller for accrued expenses (including employees' unused vacation, sick time and personal time and health and welfare benefits) and warranty and other reserves; and (vii) all accrued but unpaid interest, premiums payable or other charges on any of the obligations set forth in clauses (i) through (vi) above;

(b) all Liabilities secured by any Encumbrance on any Purchased Assets whether or not Seller has assumed or otherwise become liable for the payment thereof;

(c) any Liabilities for financial incentives from any Governmental Body which will come due or otherwise require prepayment as a result of the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements;

(d) all obligations of other Persons which Seller has guaranteed;

(e) all reimbursement obligations in connection with letters of credit or letter of credit guaranties issued for the account of Seller; and

(f) accrued and unpaid Transaction Expenses as of the Closing.

"Insurance Policies" means the insurance policies related to the Purchased Assets and the Business and required to be listed on Schedule 4.20.

"Intellectual Property" means: (a) inventions and discoveries (whether or not patentable and whether or not reduced to practice), improvements thereto, and patents, utility models, patent applications, utility model applications, invention disclosures, and other rights of invention, worldwide, including, without limitation, any reissues, divisions, continuations and continuations-in-part, provisionals, reexamined patents or other applications or patents claiming the benefit of the filing date of any such application or patent; (b) fictitious and assumed names, Internet domain names, trademarks, service marks, trade names, trade dress, logos, domain names, product names and slogans, including any common law rights, registrations, and applications for registration for any of the foregoing, and the goodwill associated with all of the foregoing, worldwide; (c) copyrightable works, all rights in copyrights, including moral rights, copyrights, website content, and other rights of authorship and exploitation, and any applications, registrations and renewals in connection therewith, worldwide; (d) trade secrets and confidential and proprietary information, including, without limitation, website user information, customer and supplier lists and related information, pricing and cost information, business and marketing plans, research and development, advertising statistics, any other financial, marketing and business data, technical data, specifications, designs, drawings, methods, schematics and know-how; (e) to the extent not covered by subsections (a) through (d), above, Software and websites (including all related computer code and content); (f) all claims, causes of action and rights to sue for past, present and future infringement, misappropriation or unconsented use of any of the Intellectual Property, the right to file applications and obtain registrations, and all products, proceeds and revenues arising from or relating to any and all of the foregoing, throughout the world; and (g) any other proprietary, intellectual property and other rights relating to any or all of the foregoing anywhere in the world.

"Interim Balance Sheet" means the unaudited consolidated balance sheet of Seller dated the Interim Balance Sheet Date.

"Interim Balance Sheet Date" means May 31, 2006.

"Interim Financial Statements" means the Interim Balance Sheet and the unaudited statements of operations and cash flow of Seller for the period beginning January 1, 2006 and ended on the Interim Balance Sheet Date.

"Inventory" means all inventory held for resale by Seller and all of the raw materials, works in process, finished products, supply and packaging items and similar items of Seller with respect to the Business, in each case, wherever the same may be located.

"IRS" means the Internal Revenue Service, a division of the United States Treasury Department, or any successor thereto.

"Knowledge" means and an individual shall be deemed to have "Knowledge" of a particular fact or other matter if such individual is actually aware of such fact or other matter after the making by such individual of a reasonable investigation of, or reasonable due inquiry into, the existence of such fact or matter or the circumstances related thereto.

"Knowledge of Seller" or words of similar import means, with respect to a particular fact or other matter, collectively, the Knowledge of the officers, Executive Committee Members and key employees of Seller.

"Law" means any federal, state, local, municipal, foreign, international, multinational or other administrative order, constitution, law, ordinance, principle of common law, regulation, statute or treaty.

"Leasehold Improvements" means all leasehold improvements situated in or on the Leased Real Property and owned by Seller.

"Legal Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before any Governmental Body or arbitrator.

"Letter of Intent" means that letter of intent dated May 11, 2006, and executed by Buyer and Seller.

"Liabilities" means any direct or indirect liability, loss, indebtedness, obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any type, whether known or unknown, accrued, absolute, contingent, matured or unmatured.

"Loss" means any claim, liability, obligation, loss, damage, assessment, fines, penalty, judgment, awards, settlement, interest, diminution of value, cost and expense, including reasonable attorneys', accountants' and other professionals' fees and disbursements incurred in investigating, preparing, defending against or prosecuting any claim.

"Material Adverse Effect" or "Material Adverse Change" means any effect, change, event, circumstance or condition which, when considered either individually or with other effects, changes, events or circumstances, has or causes a material adverse effect or change in the condition (financial or other), business, results of operations, assets, liabilities, properties or operations of Seller, the Business, and/or the Purchased Assets or on the ability of Seller to consummate the transactions contemplated hereby.

"Multiemployer Plan" means any "multiemployer plan" as defined in Section 3(37) of ERISA.

"Occupational Safety and Health Law" means any Law in effect on or prior to the Closing Date designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards.

"Order" means any award, decision, consent decree, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Body or by any arbitrator.

"Ordinary Course of Business" or "ordinary course" or any similar phrase means with respect to any Person, the usual and ordinary course of business of such Person, consistent with its past custom and practice.

"Pension Plan" means any "employee pension benefit plan" as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) which Seller or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, or has maintained, administered, contributed to or was required to contribute to, or under which Seller or any ERISA Affiliate may incur any liability.

"Permits" means any approval, Consent, license, permit, waiver or other authorization required for, or used in the conduct of, the business of Seller issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law.

"Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Body.

"Post-Closing Tax Period" means all Tax periods beginning after the Closing Date and that portion of all Straddle Periods beginning after the Closing Date.

"Pre-Closing Tax Period" means all Tax periods ending on or before the Closing Date and that portion of all Straddle Periods ending on the Closing Date.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended.

"Release" means and includes any spilling, leaking, pumping, pouring, injecting, emitting, discharging, depositing, escaping, leaching, migrating, dumping or other releasing into the Environment or the workplace, whether intentional or unintentional and otherwise defined in any Environmental Law.

"Remedial Action" means all actions required under any Environmental Law or required by a Governmental Body, including corrective actions, to (i) investigate, clean up, remove, treat or in any other way address any Hazardous Material; (ii) prevent the Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the Environment; or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care.

"Representative" means any managing member, general partner, officer, Executive Committee Member, principal, attorney, agent, employee or other representative.

"Revenues" means total operating revenues determined in accordance with GAAP and reflected on the Financial Statements.

"Seller Contracts" means all Contracts (i) under which Seller has or may acquire any rights or benefits, (ii) under which Seller has or may become subject to any obligation or Liability or (iii) by which Seller or any of the Purchased Assets is or may become bound, and as listed on Schedule 2.2(b).

"Straddle Period" means all Tax periods beginning on or before and ending after the Closing Date.

"Subsidiary" means any Person of which a majority of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by Seller.

"Tax" or "Taxes" means all federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

"Tax Return" means all returns, declarations, reports, registrations, claims for refund, and information returns and statements relating to Taxes including any schedule or attachment thereto and including any amendment thereof.

"Threatened" describes any claim, Legal Proceeding, dispute, action or other matter if (i) any demand or statement has been received (orally or in writing) with respect to such claim, Legal Proceeding, dispute, action or other matter or (ii) any notice has been received (orally or in writing) with respect thereto.

"Threat of Release" means a substantial likelihood of a Release that may require action in Order to prevent or mitigate damage to the Environment that may result from such Release.

"Trade Accounts Payable" means those current and non-delinquent trade payables of Seller arising in the Ordinary Course of Business, related to the operations of Seller, and listed on Schedule 2.2(a).

"Transaction Expenses" means (a) any fees, costs or expenses of, or other payments paid or payable to, any brokers, finders, investment bankers, consultants or other similar advisors engaged by Seller or any officers or Executive Committee Members of Seller; (b) the fees, costs, expenses and other payments described in Sections 2.8 and 6.6(b) hereof; and (c) any fees, costs or expenses of, or other



payments paid or payable to, any attorneys, accountants or other advisors engaged by Seller or any officer or Executive Committee Member of Seller, in each case, incurred in connection with the preparation and negotiation of this Agreement, the Ancillary Agreements or any other documents contemplated hereby or thereby, the performance by Seller of its or their obligations hereunder and thereunder, or the consummation of the transactions contemplated hereby or thereby.

"Treasury Regulations" means the treasury regulations promulgated under the Code.

"Welfare Plan" means any "employee welfare benefit plan" as defined in Section 3(1) of ERISA which Seller or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to or under which Seller or any ERISA Affiliate may incur any Liability, in each case, covering one or more employees, Executive Committee Members or consultants or former employees, Executive Committee Members or consultants of the Business.

"Year-End Financial Statements" means the Balance Sheet and the related audited statements of operations, changes in Seller's capital and cash flow for the year ended December 31, 2005.

**1.2 Other Defined Terms.** The following terms shall have the meanings defined for such terms in the Sections set forth below:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Allocation Schedule	2.4(a)
Antitrust Law	6.14(a)
Assumed Contracts	2.1(n)
Buyer	Preamble
Buyer Deductible Amount	8.6(a)(ii)
Buyer Documents	5.2
Buyer Indemnified Parties	8.3
Claim	8.7(b)
Claim Notice	8.7(b)
Closing	3.3
Closing Date	3.3
Closing Inventory	2.1(e)
COBRA	6.3(c)
Confidential Information	9.9(b)
Consideration	2.3
Eligible Accounts Receivable	2.1(a)
Escrow Agent	2.3(c)
Escrow Agreement	8.7(d)
Escrowed Funds	2.3(b)(ii)
Excluded Assets	2.3
Excluded Liabilities	2.3
Facility Leases	3.4(b)(ii)
Holdback	6.4(b)
Indemnification Agreement	Article VIII
Leased Real Property Documents	6.10
Member Account Receivable Certificate	3.4(a)(xi)
Members	Preamble
Members' Representative	8.7(e)
Names	6.8
Net Holdback	6.4(d)
Paint Store Facility	4.11(a)(iii)
Personal Property	2.1(d)
Product Liability Claim	8.1(b)
Purchased Assets	2.1
Seller	Preamble
Seller Deductible Amount	8.6(a)(ii)
Seller Documents	4.2
Seller Indemnified Parties	8.5
Territory	7.1
Transfer Taxes	6.6(b)
Warehouse Facility I & II	4.11(a)(i) & (ii)
WARN Act	4.15(b)

**COUNTERPART SIGNATURE PAGE**


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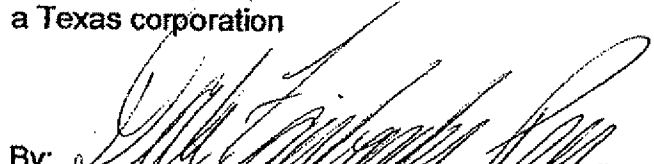
**"Buyer"**

**"Seller"**

PAREXLAHABRA, INC.,  
a California corporation

TEXAS EIFS, LC,  
a Texas corporation

By:   
\_\_\_\_\_  
Francois Bouan, President

By:   
\_\_\_\_\_  
Dale Fairbanks, President

"TEIFS/Members' Representative"

"TEIFS/Members' Representative"

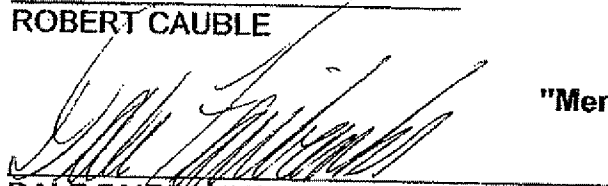
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PATRICK BURNS

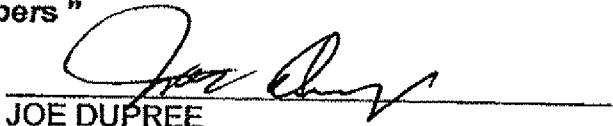
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SAM WHITE

"TEIFS/Members' Representative"

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ROBERT CAUBLE

**"Members "**

  
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DALE FAIRBANKS

  
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JOE DUPREE

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STEPHEN R. BAKER

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ROBERT R. CAUBLE

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SAM WHITE

\_\_\_\_\_  
LELAND K. SWANSON

**COUNTERPART SIGNATURE PAGE**

**"Members" (continued)**

  
\_\_\_\_\_  
MICHAEL W. TOPE

\_\_\_\_\_  
HOWARD BUTTS

\_\_\_\_\_  
PAMELA TRUSTY

GSM & RLH, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Starfoam Manufacturing, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Leland Hasting Company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Mo-Bar, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Central Texas Lath & Plaster, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SSB Investment, L.L.C.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

5B LLP, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LBD Wilson Ltd. Partnership

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Drury South, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Ducon Construction, Inc. dba Southwest  
Lath & Plaster

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE**

**"Members" (continued)**

\_\_\_\_\_  
MICHAEL W. TOPE

*Pamela Trusty Shuck*  
\_\_\_\_\_  
PAMELA TRUSTY

\_\_\_\_\_  
HOWARD BUTTS

GSM & RLH, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Leland Hasting Company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Central Texas Lath & Plaster, Inc.

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5B LLP, Inc.

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Drury South, Inc.

By \_\_\_\_\_  
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Title: \_\_\_\_\_

Starrfoam Manufacturing, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Mo-Bar, Inc.

By \_\_\_\_\_  
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SSB Investment, L.L.C.

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LBD Wilson Ltd. Partnership

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Ducon Construction, Inc. dba Southwest  
Lath & Plaster

By \_\_\_\_\_  
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**COUNTERPART SIGNATURE PAGE**

**"Members" (continued)**

\_\_\_\_\_  
MICHAEL W. TOPE

\_\_\_\_\_  
HOWARD BUTTS

\_\_\_\_\_  
PAMELA TRUSTY

GSM & RLH, Inc.

By \_\_\_\_\_  
Name: Gay Mayfield  
Title: Pres

Starrfoam Manufacturing, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Leland Hasting Company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Mo-Bar, Inc.

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\_\_\_\_\_  
HOWARD BUTTS

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GSM & RLH, Inc.

Starrfoam Manufacturing, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Leland Hasting Company

Mo-Bar, Inc.

By *Joseph K. Conner*  
Name: *Joseph K. Conner*  
Title: *Pres.*

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Central Texas Lath & Plaster, Inc.

SSB Investment, L.L.C.

By \_\_\_\_\_  
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Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Central Texas Lath & Plaster, Inc.

SSB Investment, L.L.C.

By *Neil B. Engerle*  
Name: *Neil B. Engerle*  
Title: *Manager*

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

5B LLP, Inc.

LBD Wilson Ltd. Partnership

By \_\_\_\_\_  
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Title: \_\_\_\_\_

5B LLR, Inc.

LBD Wilson Ltd. Partnership

By \_\_\_\_\_  
Name: *LYNNE JOHNSTON*  
Title: *PRES.*

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Drury South, Inc.

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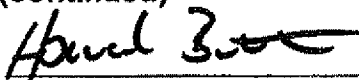
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Title: \_\_\_\_\_

Ducon Construction, Inc. dba Southwest  
Lath & Plaster

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE**

**"Members" (continued)**

\_\_\_\_\_  
MICHAEL W. TOPE

\_\_\_\_\_  
HOWARD BUTTS

\_\_\_\_\_  
PAMELA TRUSTY

GSM & RLH, Inc.

Starfoam Manufacturing, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By Gene Stanley  
Name: Gene Stanley  
Title: C.O.O.

Leland Hasting Company

Mo-Bar, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Central Texas Lath & Plaster, Inc.

SSB Investment, L.L.C.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

5B LLP, Inc.

LBD Wilson Ltd. Partnership

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Drury South, Inc.

Ducon Construction, Inc. dba Southwest  
Lath & Plaster

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE**

**"Members" (continued)**

\_\_\_\_\_  
MICHAEL W. TOPE

\_\_\_\_\_  
HOWARD BUTTS

\_\_\_\_\_  
PAMELA TRUSTY

GSM & RLH, Inc.

Starrfoam Manufacturing, Inc.

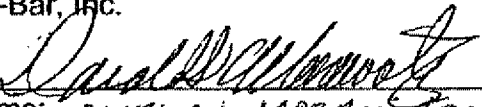
By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Leland Hasting Company

Mo-Bar, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By   
Name: DONALD L. MORAWETZ  
Title: CEO

Central Texas Lath & Plaster, Inc.

SSB Investment, L.L.C.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

5B LLP, Inc.

LBD Wilson Ltd. Partnership

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Drury South, Inc.

Ducon Construction, Inc. dba Southwest  
Lath & Plaster

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE**

**"Members" (continued)**

\_\_\_\_\_  
MICHAEL W. TOPE

\_\_\_\_\_  
HOWARD BUTTS

\_\_\_\_\_  
PAMELA TRUSTY

GSM & RLH, Inc.

Starrfoam Manufacturing, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Leland Hasting Company

Mo-Bar, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Central Texas Lath & Plaster, Inc.

SSB Investment, L.L.C.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By Patrick C Burns  
Name: Patrick C Burns  
Title: President

5B LLP, Inc.

LBD Wilson Ltd. Partnership

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Drury South, Inc.

Ducon Construction, Inc. dba Southwest  
Lath & Plaster

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE**

**"Members" (continued)**

\_\_\_\_\_  
MICHAEL W. TOPE

\_\_\_\_\_  
HOWARD BUTTS

\_\_\_\_\_  
PAMELA TRUSTY

GSM & RLH, Inc.

Starrfoam Manufacturing, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Leland Hasting Company

Mo-Bar, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Central Texas Lath & Plaster, Inc.

SSB Investment, L.L.C.


By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

5B LLP, Inc.

LBD Wilson Ltd. Partnership

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By   
Name: H. Leon Wilson  
Title: Managing Partner

Drury South, Inc.

Ducon Construction, Inc. dba Southwest Lath & Plaster

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE**

**"Members" (continued)**

\_\_\_\_\_  
MICHAEL W. TOPE

\_\_\_\_\_  
HOWARD BUTTS

\_\_\_\_\_  
PAMELA TRUSTY

GSM & RLH, Inc.

Starrfoam Manufacturing, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Leland Hasting Company

Mo-Bar, Inc.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Central Texas Lath & Plaster, Inc.

SSB Investment, L.L.C.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

5B LLP, Inc.

LBD Wilson Ltd. Partnership

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Drury South, Inc.

Ducon Construction, Inc. dba Southwest  
Lath & Plaster

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: ROGER L. BURKE  
Title: CEO



## Table of Exhibits and Schedules

### Exhibits

Exhibit A	Form of Bills of Sale
Exhibit B	Member Account Receivable Certificate
Exhibit C	Deleted
Exhibit D	Form of Opinion of Counsel to Seller
Exhibit E	Form of Escrow Agreement
Exhibit F	Members' Pro Rata Share of Indemnification Obligations

### Description

### Schedule

Schedule 2.1(a)	Amounts owing on Member and Affiliate Accounts Receivable
Schedule 2.1(n)	Assumed Contracts
Schedule 2.3(a)	Prorations
Schedule 2.5	Outstanding Indebtedness
Schedule 3.1(b)	Permits and approvals required for transactions
Schedule 4.1	Jurisdictions in Which Seller Does Business
Schedule 4.3(a)	Owners of Equity Interests in Seller
Schedule 4.5(b)	Consents
Schedule 4.7	Personal Property
Schedule 4.8	Liabilities
Schedule 4.9(a)	Exceptions to Representations and Warranties in Section 4.9
Schedule 4.10(c)	Audits
Schedule 4.10(f)	Partnerships and Single Member LLCs
Schedule 4.11(a)(i)	Description of the Warehouse Facility I
Schedule 4.11(a)(ii)	Description of the Warehouse Facility II
Schedule 4.11(a)(iii)	Description of the Paint Store Facility
Schedule 4.12	List of All Intellectual Property and Copies of all Intellectual Property Licenses and Agreements
Schedule 4.14	Employee Plans
Schedule 4.16	Legal Proceedings/Orders
Schedule 4.17	Compliance with Law
Schedule 4.18	Permits
Schedule 4.19	Environmental Matters
Schedule 4.20	Insurance
Schedule 4.21(a)	Inventory
Schedule 4.21(b)	Exceptions to Representations and Warranties Regarding Accounts Receivable
Schedule 4.22	Related Party Transactions
Schedule 4.25	Product liability claims
Schedule 5.3	Buyer consents
Schedule 7.1(a)	Exclusions from Covenant Not to Compete

### Description

**EXHIBIT A**  
**FORM OF BILL OF SALE**

**[see attached]**

*Exhibit A*  
936123  
*FINAL*

**TRADEMARK**  
**REEL: 004305 FRAME: 0840**

**EXHIBIT B**

**FORM OF MEMBER ACCOUNT RECEIVABLE CERTIFICATE**

On behalf of \_\_\_\_\_ [entity owing AR] \_\_\_\_\_ (the "Customer"), I hereby certify that:

1. As of close of business on September 30, 2006, Customer owed Texas EIFS, LC a total of \$\_\_\_\_\_.
2. There are and will be no setoffs, defenses or counterclaims against collection of any account(s) receivable owed by Customer as of Closing and purchased by ParexLahabra, Inc., including any amounts coming due after September 30, 2006.
3. There has not been filed and will not be filed before Closing by or against Customer a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought pursuant to such bankruptcy laws with respect to Customer.

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

[NAME OF ENTITY],  
a Texas \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C**

**[deleted]**

*Exhibit C*  
936123  
FINAL

**EXHIBIT D**  
**FORM OF OPINION OF COUNSEL TO SELLER**

**[see attached]**

*Exhibit D*  
936123  
**FINAL**

**TRADEMARK**  
**REEL: 004305 FRAME: 0843**

**EXHIBIT E**  
**FORM OF ESCROW AGREEMENT**

**[see attached]**

*Exhibit E*  
936123  
*FINAL*

**TRADEMARK**  
**REEL: 004305 FRAME: 0844**

**EXHIBIT F****MEMBER PRO RATA SHARE OF INDEMNIFICATION OBLIGATIONS**

<b>Member</b>	<b>Number of Units</b>	<b>Pro Rata Share of liability</b>
Dale Fairbanks	22	\$ 308,000
Joe Dupree	16	\$ 224,000
Stephen R. Baker	10	\$ 140,000
GSM & RLH, Inc.	15	\$ 210,000
Bobby Allen Lee	3	\$ 42,000
George Brueggeman	12	\$ 168,000
Kevin L. Swanson	10	\$ 140,000
Robert R. Cauble	20	\$ 280,000
June L. Bass	10	\$ 140,000
Starrfoam Manufacturing, Inc.	10	\$ 140,000
Leland Hasting Company	22	\$ 308,000
Sam White	90	\$1,260,000
Mo-Bar, Inc.	3	\$ 42,000
Michael W. Tope	7	\$ 98,000
Leland K. Swanson	6	\$ 84,000
Central Texas Lath & Plaster, Inc.	10	\$ 140,000
5B LLP, Inc.	24	\$ 336,000
Drury South, Inc.	3	\$ 42,000
Howard Butts	15	\$ 210,000
Pamela Trusty	5	\$ 70,000
SSB Investment, L.L.C.	40	\$ 560,000
LBD Wilson Ltd. Partnership	38	\$ 532,000
Ducon Construction, Inc. dba Southwest Lath & Plaster	9	\$ 126,000
<b>Total</b>	<b>400</b>	<b>\$5,600,000.00</b>

Exhibit F  
936123  
FINAL