

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
)	
SPECIALTY PACKAGING HOLDINGS,)	Case No. 10-10142 (KG)
INC., <i>et al.</i> , ¹)	
)	
Debtors.)	(Joint Administration Requested)
)	

MOTION OF DEBTORS FOR ORDER: (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL ASSETS OF CERTAIN DEBTORS PURSUANT TO 11 U.S.C. § 363, (B) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO 11 U.S.C. § 365, (C) ESTABLISHING AUCTION PROCEDURES FOR SALE AND ASSIGNMENT/ASSUMPTION, (D) APPROVING BID PROTECTIONS; (E) SETTING DATE OF AUCTION AND DATE OF SALE HEARING; AND (F) APPROVING FORM OF NOTICE AND RELATED RELIEF

("SALE MOTION")

Specialty Packaging Holdings, Inc. ("**SPH**"), together with its direct and indirect debtor subsidiaries, The Specialty Packaging Group, Inc. ("**SPG**"), Cosmetics Specialties, Inc. ("**CSI**"), Cosmolab, Inc. ("**Cosmolab**"), Cosmetics Specialties East, LLC ("**CSE**"), and Cosmolab New York, Inc. ("**CNY**") (collectively, the "**Debtors**"), as debtors and debtors-in-possession in the above-captioned chapter 11 cases, by their undersigned attorneys, respectfully request that this Court enter an order, pursuant to 11 U.S.C. §§ 105(a), 363(b), (f) and (m), 364(c)(1), 365, 1107 and 1108, and Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"): (i) authorizing the sale of substantially all of the assets of

¹ The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Specialty Packaging Holdings, Inc. (7942), The Specialty Packaging Group, Inc. (6668), Cosmetics Specialties, Inc. (0826), Cosmolab, Inc. (1367), Cosmetics Specialties East, LLC (0313), and Cosmolab New York, Inc. (2222). The primary mailing address for the Debtors is: 1100 Garrett Parkway, Lewisburg, TN 37091.



CSI, Cosmolab, and CNY (collectively, the “**Selling Debtors**”), free and clear of liens, claims, interests and encumbrances, and authorizing the assumption and assignment of certain of the Selling Debtors’ executory contracts and unexpired leases (the “**Sale**”), (ii) establishing auction procedures (the “**Bidding Procedures**”) for the Sale, (iii) establishing certain bid protections in connection therewith; (iv) approving the form of notice and related relief (the “**Sale Motion**”); (v) scheduling an auction (the “**Auction**”) in connection with the Sale; (vi) scheduling the Sale Hearing (the “**Sale Hearing**” or the “**Sale Approval Hearing**”); and (vi) granting other related relief. In support of their Motion, the Debtors respectfully state:

I. INTRODUCTION

1. On the date hereof (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are continuing to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors, collectively, are an industry-leading global developer and manufacturer of color cosmetics. The Debtors’ primary manufacturing facility is located in Lewisburg, Tennessee. For a more detailed description of the Debtors’ business operations and the events leading up to the chapter 11 filing, see the Declaration of Michael J. Musso in Support of the Chapter 11 Petitions and First Day Motions and Applications (the “**Musso Declaration**”).

II. JURISDICTION

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief sought herein are sections §§ 105(a), 363(b), (f) and (m), 365, 503, 507(b), 364(c)(1) and (d), 1107 and 1108 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014.

III. RELIEF REQUESTED

5. On or about January 15, 2010, the Selling Debtors and All4 Cosmetics, Inc. (the "**Buyer**") entered into an asset purchase agreement (the "**Purchase Agreement**"),² whereby the Buyer proposes to purchase the assets of the Selling Debtors that are used by the Selling Debtors in connection with the manufacturing and selling of cosmetic products (the "**Purchased Assets**"),³ free and clear of all of liens, claims, interests and encumbrances, and to potentially assume certain of executory contracts and unexpired leases of the Selling Debtors (the "**Assumed Contracts**"). A copy of the Purchase Agreement is attached hereto as **Exhibit A**.⁴ The consideration for the purchase of the Purchased Assets and assumption of the Assumed Contracts is (i) Thirteen Million Dollars (\$13,000,000) in cash minus (ii) any Accounts Shortfall⁵ plus (iii) Buyer's obligations to pay up to One Million Dollars (\$1,000,000) under Article III of the Purchase Agreement relating to certain payments to suppliers, plus (iv) any Assumed Liabilities. (collectively, the "**Purchase Price**").

² A copy of the Purchase Agreement is attached to the Sale Motion as Exhibit A and incorporated herein. Capitalized terms not otherwise defined herein shall have the respective meaning ascribed to them in the Purchase Agreement.

³ The description of Purchased Assets is qualified in its entirety by the Purchase Agreement. To the extent that any statements in this Motion differ from the Purchase Agreement, the Purchase Agreement shall control.

⁴ The exhibits to the Purchase Agreement are not attached to this Motion because the exhibits to the Purchase Agreement are voluminous. Copies of the exhibits may be obtained from counsel to the Debtors upon written request.

⁵ "**Accounts Shortfall**" is defined in the Purchase Agreement as the amount, if any, by which the sum of all Eligible Accounts as of the Closing Date is less than Three Million Dollars (\$3,000,000).

6. By this Motion, the Debtors seek relief in two forms. First, Debtors seek entry, on an expedited basis, of an order (the “**Bidding Procedures Order**”), substantially the form of **Exhibit B** attached hereto and made a part hereof: (a) approving the Bidding Procedures for the Sale; (b) approving certain bid protections in connection therewith; (c) scheduling a date for the Auction; (d) scheduling the Sale Hearing; and, (e) approving the form and manner of notice of the Sale. The proposed form of Notice of the Sale is attached hereto as **Exhibit C** (the “**Notice of Bidding Procedures**”). Consistent with the Purchase Agreement, Debtors ask that the Court set a hearing within 15 days of the filing hereof related to the relief requested in the Bidding Procedures Order. Second, Debtors seek approval of the Sale, and the assignment and assumption of certain executory contracts and unexpired leases, to Buyer or the Successful Bidder determined at the Auction (the “**Sale Approval Order**”), substantially in the form of **Exhibit D** attached hereto. As required by the Purchase Agreement, Debtors request that the Court enter the Sale Approval Order by the earlier of 50 days after the entry of the Bidding Procedures Order or April 15, 2009, so that Debtors can then move forward with consummation of the Sale to the Buyer or the Successful Bidder.

IV. SUMMARY OF THE BIDDING PROCEDURES

7. The following is a brief summary of certain provisions of the Bid Procedures and matters to be disclosed in accordance with Local Rule 6004-1(c), and is qualified entirely by reference to the Purchase Agreement and the Bid Procedures Order:

Provisions Governing Qualification of Bidders and Qualified Bidders	<p>Any competing bid for the Purchased Assets must:</p> <p style="padding-left: 40px;">(A) be in writing;</p> <p style="padding-left: 40px;">(B) be received by Debtors no later than 5:00 p.m. (Eastern Time) on the day that is three (3) business days prior to the Auction;</p> <p style="padding-left: 40px;">(C) be accompanied by a clean duly</p>
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executed asset purchase agreement (the "Modified Purchase Agreement") and a marked Modified Purchase Agreement reflecting the variations from the Purchase Agreement;

(D) be accompanied by a cash deposit equal to at least the greater of One Million Dollars (\$1,000,000.00) or 7.5% of the amount of the competing bid;

(E) identify the assets that the bidder offers to purchase and the liabilities the bidder proposes to assume;

(F) not contain any due diligence or financing contingencies;

(G) demonstrate that the bidder is able to consummate the transaction (financially and otherwise) on the terms of the Modified Purchase Agreement;

(H) include evidence of authorization and approval from the bidder's board of directors (or comparable governing body);

(I) identify each executory contract or unexpired lease upon which closing is conditioned, and

(J) be for substantially all the Purchased Assets and contain a proposed cash purchase price at least in the amount of (i) the Purchase Price offered by the Buyer plus (ii) cash in the amount of the \$400,000 Break-Up Fee plus (iii) an additional cash overbid of at least \$200,000.

Prior to obtaining financial information from Debtors, any proposed purchaser must execute a confidentiality agreement.

Any non-qualifying bid may be modified to become a Qualifying Bid prior to the Auction in the event Debtors, in consultation with Bank of America and the Committee, determine to extend the deadline

	<p>for submission for bids; provided, however, that no extension shall be made to such deadline beyond the deadline set forth in the Purchase Agreement without the written consent of Buyer or further order of the Court.</p>
<p>Deposits, Binding Nature of Bid, and Back-Up Bidders</p>	<p>Bids shall be binding on all Qualified Bidders until the earlier of (i) 24 hours after the Closing of the Sale transaction or (ii) 30 days after the Auction. The bids of all parties other than the Successful Bidder shall serve as back-up bids. If the Successful Bidder fails to consummate an approved Sale pursuant to the Sale Approval Order and within the time period specified therein, the Back-Up Bidder with the highest and best back-up bid will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Court; <u>provided, however</u>, that in the event that the Back-Up Bidder is the Buyer, then the Debtors will be obligated to consummate the sale as set forth in the Purchase Agreement. Should such Back-Up Bidder fail to close, the Debtors will be authorized, but not required, to consummate the sale to the next Back-Up Bidder, and so on; provided, however, that in the event that the Back-Up Bidder is the Buyer, then the Debtors will be obligated to consummate the Sale as set forth in the Purchase Agreement.</p> <p>If the sale proposed by the Successful Bidder or the Back-Up Bidder (as applicable) does not close due to the breach by the Successful Bidder or any Back-Up Bidder (as applicable) of its Purchase Agreement, then the Earnest Money Deposit shall be paid to the Debtors (subject to the security interest therein of the DIP and Pre-Petition Secured Parties). No such Earnest Money Deposit paid to Debtors shall be credited against the obligations of any Back-Up Bidder.</p> <p>All Earnest Money Deposits shall be</p>

	<p>returned to each bidder not selected by the Debtors as the Successful Bidder by the earlier of (i) two (2) business days after the Closing of the Sale transaction or (ii) thirty-two (32) days after the Auction, unless such bidder is obligated to close as a Back-Up Bidder. If the Successful Bidder's or any Back-Up Bidder's (as applicable) proposed sale does not close for any reason other than a breach by the Successful Bidder or such Back-Up Bidder (as applicable), then the Earnest Money Deposit shall be released to the Successful Bidder or the Back-Up Bidder (as applicable) within five (5) business days after termination of such party's Purchase Agreement, if earlier than the period set-out in the first sentence of this subsection.</p>
Bid Protections – “No Shop”	<p>There is no provision preventing the Debtors from soliciting competing offers. The Debtors were subject to a no shop provision for approximately 2 weeks in December 2009 only pursuant to a letter of intent that is now superseded.</p>
Bid Protection - Break-Up Fee	<p>Buyer is entitled to a break-up fee of \$400,000, which is just over 3% of the purchase price. Buyer is not requesting a separate expense reimbursement, so the break-up fee size is justified and fully reasonable.</p>
Bid Protection – Bidding Increments, and Treatment of Break-Up Fee at Auction	<p>Each overbid must be in steps of at least two-hundred-thousand dollars (\$200,000). Buyer will get credit for the Break-Up Fee in any topping bids that it makes, and submitting a bid at the auction will not waive Buyer's right to the Break-Up Fee.</p>
Modifications	<p>After consulting with Bank of America and the Committee, the Debtors may: (a) determine, in their business judgment, which bid or bids, if any, constitute the highest and best offer for the Purchased Assets; and (b) reject, at any time before entry of the Sale Order by this Court approving any bid as the Successful Bid, any bid that, in the Debtors' sole discretion, is (i) inadequate or insufficient; (ii) not in</p>

	<p>conformity with the requirements of the Bankruptcy Code, the Bidding Procedures or the terms and conditions of the Sale set forth in the Purchase Agreement; or (iii) contrary to the best interests of the Debtors and their estates and creditors. The Debtors may extend or alter any requirement or deadline contained herein that the Debtors determine, in their business judgment, will better promote the goals of the Bidding Process; <u>provided, however</u>, that no extension or alteration shall be made to any such requirement or deadline that conflicts with the provisions set forth in the Purchase Agreement without the written consent of the Buyer or further order of the Court.</p>
<p>Compliance with Other Delaware Requirements</p>	<p>The Bid Procedures and Order provide: (i) for notice of the date, time, and place of the Auction and the method for adjourning, (ii) that each bidder must state that it has not engaged in collusion, (iii) the auction will be conducted openly and all creditors are permitted to attend, and (iv) the bidding will be transcribed or videotaped.</p>

The Debtors have determined that the proposed structure for the Bidding Procedures is the one most likely to maximize the realizable value of the Purchased Assets together with the Assumed Contracts the benefit of the Debtors' estates, creditors and other interested parties, consistent with the need to expedite the process. The Debtors assert that the relief requested related to the Bidding Procedures Order is appropriate and proper, and have set out appropriate legal authorities supporting the bid procedures below, following the summary of the Sale.

V. SUMMARY OF THE PURCHASE AGREEMENT AND THE SALE

8. The following is a brief summary of certain provisions of the Purchase Agreement and matters to be disclosed in accordance with Local Rule 6004-1, and is qualified entirely by reference to the Purchase Agreement and the Sale Order:

<p>Purchased Assets</p>	<p>“Purchased Assets” means all assets of Selling Debtors owned on the Closing Date other than the Excluded Assets. Purchased Assets include, without limitation, Debtors: (a) the facilities; (b) the Assumed Contracts; (c) equipment; (d) intangible assets; (e) inventory; (f) miscellaneous assets; (g) all accounts receivable (subject to a downward price adjustment at the time of Closing if the accounts are less than \$3 million, and subject to an upward adjustment if ultimate collections are over the Accounts Threshold (as defined in the Purchase Agreement)⁶ so that all collections above that threshold are remitted to Sellers); (h) all goodwill associated with the Selling Debtors, the Business and the Purchased Assets; and (i) all other property, other than the Excluded Assets, of every kind, character or description owned by the Selling Debtors and used in connection with the Business, whether or not reflected on the Selling Debtors’ financial statements, wherever located and whether or not similar to the items specifically set forth above. <u>See</u> Section 1.67 of the Purchase Agreement.</p> <p><u>Excluded Assets</u>, retained by Debtors, include (a) all cash and cash equivalents, (b) all assets related to employee benefit plans, (c) all minute books, corporate records, and certain books and records, (d) all insurance policies, (e) all tax refunds and rebates, (f) all deposits or prepaid expenses related to Excluded Assets or Excluded Liabilities, (g) all claims against third-parties not directly related to a Purchased Asset, (l) all avoidance actions, (m) inventory and receivables related to a certain consumer product line previously produced by Debtors.</p>
<p>Assumed Liabilities</p>	<p>Buyer shall assume, pay, perform and discharge all of the Selling Debtors’ undischarged obligations incurred or arising under the Assumed Contracts listed in</p>

⁶ Pursuant to Section 1.67 of the Purchase Agreement, the Accounts Threshold is \$3 million.

	Schedule 3.1 to the Purchase Agreement, with respect to the period commencing on the day following the Closing Date, except for \$25,000 of cure costs. See Section 3.1 of the Purchase Agreement.
Contracts and Leases	Those executory contracts or unexpired leases (if any) identified by the Buyer on Schedule 3.1 of the Purchase Agreement. The Debtors and the Buyer, or such other Successful Bidder, reserve the right to add or delete contracts or leases from the list of Assumed Contracts.
Purchase Price	The consideration for the purchase of the Purchased Assets and assumption of the Assumed Contracts is (i) Thirteen Million Dollars (\$13,000,000) in cash <u>minus</u> (ii) any Accounts Shortfall ⁷ <u>plus</u> (iii) pay up to One Million Dollars (\$1,000,000) under Article III of the Purchase Agreement relating to certain payments to suppliers, plus (iv) any Assumed Liabilities. See Section 2.2 of the Purchase Agreement.
Conditions to Closing	<p>Closing is subject to various conditions to be set forth in the Purchase Agreement, including, without limitation, the following:</p> <p>(i) accuracy of Buyer's and the Selling Debtors' representations and warranties and performance of all covenants and obligations in the Purchase Agreement;</p> <p>(ii) Buyer either (a) shall have obtained documentation or other evidence satisfactory to Buyer in its reasonable discretion that Buyer has received confirmation from all applicable Governmental Bodies that upon the Closing all Governmental Authorizations required to operate the Business as currently operated will be transferred to, or issued or reissued</p>

⁷ "Accounts Shortfall" is defined in the Purchase Agreement as the amount, if any, by which the sum of all Eligible Accounts as of the Closing Date is less than Three Million Dollars (\$3,000,000).

in the name of, Buyer, or (b) shall be able to operate the Business in all material respects pursuant to the Limited Power of Attorney and the Interim Management Agreement;

(iii) there must not have been commenced and be continuing against Buyer or any Selling Debtor, or against any Person affiliated with Buyer or any Selling Debtor, any Proceeding (other than the Bankruptcy Case and any objections or proceedings pending therein which have been overruled or denied) (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions;

(iv) neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a violation of, or cause Buyer or any Person affiliated with Buyer to suffer any material adverse consequence under, any applicable Legal Requirement or Order;

(v) any and all defaults arising prior to the Closing with respect to any Assumed Contract shall have been cured or waived without any material modifications to the subject Assumed Contract unless expressly authorized by Buyer to the full extent required by Section 365(b)(1)(A) and other applicable provisions of the Bankruptcy Code and any order of the Bankruptcy Court, *provided*, however, that this condition shall be deemed satisfied in full if Seller has satisfied or provided for the satisfaction at Closing of its obligation to pay cure costs as required by Section 3.1 of

	<p>the Purchase Agreement; and,</p> <p>(vi) entry of the Sale Order not subject to any stay, and finding that the Buyer has acted in good faith pursuant to Section 363(m).</p> <p><u>See Sections 8.1 through 8.9 and 9.1 through 9.5 of the Purchase Agreement.</u></p>
Sale to Insiders	The Buyer is an entity that is unrelated to that of Debtors.
Agreements With Management	It is the Buyer's current intention to retain (hire) the current employees of the Selling Debtors. Some of the existing management team may remain, but no formal agreements have been reached with management and Buyer is not assuming employment agreements.
Releases	No releases have been entered into in connection with the Sale of the Purchased Assets. The parties have no prior relationship, so there is no basis for releases of prior acts; a closing will act as a waiver and release of any breaches of the purchase agreement. <u>See Section 11.3.</u>
Private Sale/No Competitive Bidding	There is no provision preventing the Debtors from soliciting competing offers. The Debtors were subject to a no shop provision for approximately 2 weeks in December 2009 only pursuant to a letter of intent that is now superseded.
Closing and Other Deadlines	<p><u>Entry of the Bidding Procedures Order:</u> No later than 30 days after the filing of this Motion. <u>See Section 11.1(c) of the Purchase Agreement.</u></p> <p><u>Entry of Sale Order:</u> The earlier of: (i) fifty</p>

	<p>(50) days after the entry of the Bid Procedures Order or (ii) April 15, 2010. <u>See</u> Section 7.10(c) of the Purchase Agreement.</p> <p><u>Closing Date:</u> May 15, 2010 or earlier. <u>See</u> Section 7.10(f) of the Purchase Agreement.</p>
Good Faith Deposit	<p>Buyer is required to deposit One Million Dollars (\$1,000,000) into an escrow account as the deposit.</p>
Interim Arrangements with Proposed Buyer	<p>In the event that Buyer has not obtained all Governmental Authorizations required to operate the Business by the Closing Date, Buyer and Sellers agree to enter into a Limited Power of Attorney and Interim Management Agreement so that Buyer can operate under Debtors' governmental approvals, if any. <u>See</u> Section 7.11 of the Purchase Agreement.</p> <p>As part of the purchase price, the Buyer has also agreed to reimburse Debtors for payments made to essential suppliers, up to One Million Dollars (\$1,000,000), subject to certain approval and verification conditions.</p>
Use of Proceeds	<p>Bank of America (BOA) is believed to have a lien on all or substantially all of the assets of Debtors to secure its Prior Bank Obligations (as defined in the Interim Financing Order) and, further, is providing the DIP Facility. The proceeds will go to BOA to repay the DIP Facility Obligations, and/or the Prior Bank Obligations.</p>
Tax Exemption	<p>No tax exemptions under section 1146(a) of the Bankruptcy Code are contemplated in connection with the Purchase Agreement.</p>
Record Retention	<p>Debtors will retain certain corporate records. Most business records will be transferred, however, and Buyer is obligated to give access to those records to Debtors, their Representatives, any Official Committee of Unsecured Creditors, any trustee or</p>

	<p>Representative acting on behalf of the Debtors' estates or any trusts created therefrom and representatives of federal and state Taxing authorities. <u>See</u> Section 7.7(b) of the Purchase Agreement.</p>
Sale of Avoidance Actions	<p>Avoidance Actions are specifically excluded from the sale, and are listed as an Excluded Asset. See Schedule 1.41 to the Purchase Agreement.</p>
Requested Findings as to Successor Liability	<p>Title to the Purchased Assets shall vest in Buyer free and clear of all Claims and Encumbrances of any type or nature including any Claims against Debtors and all Encumbrances on the Purchased Assets for, and Buyer shall not be liable for, any and all liabilities or Claims related to Debtors' pre-closing operations of any type or nature whatsoever, except for the Assumed Liabilities, to the maximum extent permitted by applicable law. Buyer shall not be liable for any claims or debts of Debtors, except the Assumed Liabilities. Buyer is not intended to be and shall not be deemed to be a successor to any Debtor. <u>See</u> Section 7.10(b) of the Purchase Agreement.</p>
Sale Free and Clear of Unexpired Leases	<p>Debtors do not believe the sale will be free and clear of any unexpired leases.</p>
Credit Bid	<p>BOA has consented to the sale, and it is not believed that BOA will credit bid at the sale. Nevertheless, BOA retains the right to credit bid at the sale.</p>
Relief from Bankruptcy Rule 6004(h)	<p>The Purchase Agreement contemplates that the sale be effectuated immediately, so that relief from the fourteen-day stay imposed by Rule 6004(h) is requested and necessary.</p>

The Debtors assert that the relief requested related to the sale is appropriate and proper, and have set out appropriate legal authorities supporting the sale below.

VI. THE BID PROCEDURES ORDER:

NECESSITY OF AND AUTHORITY TO APPROVE THE BID PROCEDURES AND FORM OF NOTICE; THE BID PROCEDURES ARE IN THE BEST INTERESTS OF THE DEBTORS

9. A debtor in possession may sell property of the estate outside of the ordinary course of business, subject to the approval of the court after notice and a hearing. 11 U.S.C. §363(b)(1).⁸ In accordance with Rule 6004(f)(1) of the Federal Rules of Bankruptcy Procedure, sales of property outside of the ordinary course of business may occur by private sale or by public auction.

10. Based upon the totality of the facts and circumstances, the Debtors reasonably believe that the Sale of the Purchased Assets pursuant to the Bidding Procedures will enable the Debtors to obtain the highest and best offer for the Purchased Assets and maximize the value for the Debtors' estates. Based upon the totality of the facts and circumstances, the Debtors reasonably believe the Bidding Procedures provide the best opportunity for the Debtors to sell the Purchased Assets. Accordingly, it is in the best interests of the Debtors' estates to implement the Bidding Procedures.

11. Prior to the commencement of these chapter 11 proceedings, the Debtors identified certain potential buyers and began discussions and negotiations with certain of these potential buyers.

⁸ Section 363(b)(1) of the Bankruptcy Code provides that the "[debtor in possession] after notice and a hearing may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

12. Substantial information concerning the Purchased Assets has been or will be provided to each interested party, along with an opportunity to conduct additional reasonable due diligence. The Debtors believe that the solicitation of bids through the Bidding Procedures will maximize the chances of receiving bids for the Purchased Assets in the short term and that the Auction will enhance the opportunity to generate competitive bidding.

13. The Debtors further seek approval of the Sale Notice, substantially in the form attached hereto and incorporated herein as **Exhibit B**. The Debtors propose to serve the Sale Notice, within three (3) business days of entry of the Bidding Procedures Order, upon (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel for Bank of America; (iii) counsel for the Committee; (iv) counsel for the Buyer; (v) all parties who have filed a notice of appearance or otherwise requested notice in these chapter 11 proceedings in accordance with local rules and procedures or orders of this Court; (vi) all persons or entities with a lien on, or security interest in, any of the Purchased Assets known to the Debtors; (vii) the counterparty to each executory contract and unexpired lease of the Selling Debtors; (viii) all taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (ix) all potential buyers known by the Debtors, (x) Attorneys General in the States where the Purchased Assets are located; (xi) federal and applicable state environmental protection agencies; (xii) the Office of the United States Attorney; (xiii) any department, agency or instrumentality of the United States to which the Selling Debtors are indebted; and, (xiv) those entities listed on the Debtors' Creditor Matrix and the list of the Debtors' equity interest holders of record submitted to this Court. The Sale Notice, Bidding Procedures Motion, Sale Motion and Purchase Agreement will also be available on www.kccllc.net/sph.

14. Accordingly, for all the reasons set forth herein, the Debtors submit that this Court should approve the Bidding Procedures and the form and manner of notice of the Sale Notice.

A. APPROVAL OF CERTAIN BID PROTECTIONS

15. The Purchase Agreement and requested Bid Procedures provide for a Break-Up Fee of Four-Hundred Thousand Dollars (\$400,000) in favor of Buyer. The Break-Up Fee is inclusive of any of Buyer's expenses. The Purchase Agreement and Bid Procedures also provide that bidding will be in increments of Two-Hundred Thousand Dollars (\$200,000) (the "**Bid Increment**"), and that the minimum overbid is the Purchase Price, plus the Break-Up Fee, plus the Bid Increment. No person, other than the Buyer, shall be entitled to any expense reimbursement, break up fees, "topping," termination or similar fee or payment.

16. Bidding protections are mechanisms employed by corporations to encourage potential buyers to make bids to purchase the corporation or the corporation's assets. The protections corporations typically offer include a combination of various incentives such as break up fees and overbid protections. In re Integrated Resources, Inc., 135 B.R. 746, 750 (Bankr. S.D.N.Y. 1992), aff'd 147 B.R. 650 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2nd Cir. 1993).

17. Outside of the bankruptcy context, target corporations often employ bid protections to attract bidders. See Integrated Resources, 135 B.R. at 750; In re Hupp Indus., Inc., 140 B.R. 191, 195 (Bankr. N.D. Ohio 1992). Similarly, numerous bankruptcy courts have approved motions by debtors requesting bid protections. See Integrated Resources, 135 B.R. at 751 (citing several instances of bankruptcy court approval of bid protections). A selling

corporation's rationale for granting bid protections is to encourage an initial bid, often referred to as a "stalking horse" offer.

18. If a debtor accepts a higher bid from a party other than the "stalking-horse" bidder, a break-up fee customarily is paid to the "stalking-horse" bidder to compensate the "stalking-horse" bidder for costs, including lost opportunity costs, incurred as a result of its role as a "stalking-horse" bidder. In re EWI, Inc., 208 B.R. 885, 888 (Bankr. N.D. Ohio 1997) (noting that break-up fees customarily are paid to an unsuccessful "stalking-horse" bidder); In re Hupp Indus., Inc., 140 B.R. at 195 (noting that an unsuccessful "stalking-horse" should be entitled to a reasonable break-up fee).

19. A proposed bidding incentive to be paid to a "stalking horse", such as the Break-Up Fee, should be approved when it is in the best interests of the estate. S.N.A. Nut Co., 186 B.R. at 104; see also In re America West Airlines, Inc., 166 B.R. 908 (Bankr. D. Ariz. 1994); In re Hupp Indus., Inc., 140 B.R. 195. Typically, this requires that the bidding incentive provide some benefit to the debtor's estate. Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.), 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context) (hereinafter, "O'Brien").

20. The Debtors submit that the proposed Bid Protections are reasonable and customary for sales of this size and properly calculated to maximize the value of the Purchased Assets. The Third Circuit Court of Appeals in O'Brien has identified at least two instances in which bidding incentives may benefit the estate. First, a break-up fee or expense reimbursement may be necessary to preserve the value of the estate if assurance of the fee "promote[s] more

competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” Id. Second, if the availability of break-up fees and expense reimbursement were to induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. Id.

21. In O’Brien, the Third Circuit reviewed the nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee. Such factors are as follows:

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;
- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a “sales configuration mode” to attract other bidders to the auction;
- e. the ability of the request for a break-up fee to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;
- f. the correlation of the fee to a maximization of value of the debtor’s estate;
- g. the support of the principal secured creditors and creditors (h) committees of the break-up fee;
- h. the benefits of the safeguards to the debtor’s estate; and
- i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

O’Brien, 181 F.3d at 536.

22. The Bid Protections satisfy the factors articulated O'Brien and will enhance the bidding process. Specifically, the Bid Protections allows the Debtors to set a floor for the Purchased Assets and, thus, insist that competing bids be materially higher or otherwise better than the Buyer's bid, a clear benefit to the Debtors' estates. Potential bidders are benefited by the negotiations and due diligence already undertaken by the Buyer and will thus be more likely to bring their own competing bids and increase competition, and potentially, value to the estate, at the Auction.

23. Further, it is appropriate and reasonable to compensate the Buyer for undertaking the efforts and expenditures to establish a "floor" bid for the Purchased Assets, as well as establishing the terms for the sale and assignment of such assets in the event a sale is made to another purchaser. Moreover, the Debtors do not believe the Buyer would agree to act as a stalking horse bidder without the Bid Protections. In fact, greater Bid Protections were sought by Buyer in negotiations; those agreed upon represent a compromise negotiated at arms-length.

24. The Debtors believe that the Bid Protections will not stifle bidding. To the contrary, the Debtors believe that in the event of an Auction, the Bid Protections will encourage bidding by serving "any of three possible useful functions: (1) to attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other bidders to follow; or (3) to attract additional bidders." In re Integrated Res., Inc., 147 B.R. 650, 662 (S.D.N.Y. 1992). In other words, if the Purchased Assets are sold to a competing bidder, it will – in all likelihood – be because of Buyer's crucial role as an initial bidder generating interest in the Purchased Assets.

25. In addition, the Debtors, in their business judgment, believe that a Break-Up Fee in the amount of \$400,000 as contemplated by the Purchase Agreement is fair and reasonable because of risk, effort and expenses undertaken and incurred by the Buyer in entering into the

Purchase Agreement. “A break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder’s efforts and to the magnitude of the transaction, break-up fees are generally permissible.” Id. The Break-Up Fee of approximately 3% of the Purchase Price, is within the range of fees typically paid in other significant sales transactions that have been consummated in the past. See, e.g., In re Maxide Acquisition, Inc., Case No. 05-10429 (MFW) (Bankr. D. Del. Mar. 15, 2005) (approving break-up fee of 3%, or \$2.5 million, in connection with a \$75 million sale); In re Ameriserve Food Distrib., Inc., Case No. 00-00358 (PJW) (Bankr. D. Del. June 15, 2000) (approving break-up fee of 3.6%, or \$4 million, in connection with \$110 million sale).

26. For these reasons, and given the benefits to the Debtors’ estates conferred by the Buyer, the Debtors submit that extending the Bid Protections to the Buyer as proposed in the Purchase Agreement is an exercise of sound business judgment. Accordingly, the Debtors respectfully request that this Court approve the Bid Protections, subject to the terms and conditions described herein.

B. ASSUMPTION AND ASSIGNMENT; CURE AMOUNTS

27. Pursuant to the Sale Motion, the Debtors seek to assume and assign, pursuant to section 365 of the Bankruptcy Code, those Assumed Contracts identified by the Buyer in the Purchase Agreement or identified by such other Successful Bidder as may be selected in accordance with the Bidding Procedures in the Modified Purchase Agreement, as applicable. Within ten (10) business days after entry of the Bidding Procedures Order, the Debtors shall serve a notice (the “Assignment Schedule Notice”) on all counterparties to all executory contracts and leases to which the Selling Debtors are a party, which shall include (i) a schedule

(the "**Assignment Schedule**") identifying all executory contracts and leases to which the Selling Debtors are a party and specifying the cure amounts (the "**Cure Amounts**") necessary to assume and assign such executory contracts and leases, and (ii) a written notification that such executory contracts and leases may be assumed and assigned by the Debtors and that failure to file a timely objection to such Assignment Schedule Notice shall constitute deemed consent to such assumption and assignment of such party's executory contract or lease, as may be selected and identified by the Buyer or other Successful Bidder. The Debtors and the Buyer, or such other Successful Bidder, reserve the right to add or delete contracts or leases from the Assignment Schedule. The assumption and assignment of any Assumed Contract shall not be binding on the Debtors or the Buyer or other Successful Bidder until the Debtors file a notice of occurrence of the Closing, which shall be filed within two business days after completion of the Closing and shall be served on all counter-parties to the Assumed Contracts.

28. Except as may otherwise be agreed to by the parties to an Assumed Contract, at the Closing of the Sale, the Selling Debtors and/or the Buyer or other Successful Bidder shall cure those defaults under the Assumed Contracts that need to be cured in accordance with section 365(b) of the Bankruptcy Code, by payment of the Cure Amounts. The Bid Procedures set out proposed objection deadlines to assumption/assignment and cure, as well as providing that such objections will be heard at the Sale Hearing or such other time as may be determined.

C. REQUEST TO SCHEDULE AUCTION

29. The Debtors propose that the Auction be scheduled at 10:00 a.m. (Eastern Time), on the date that is one (1) business day prior to the Sale Hearing, at the offices of Klehr, Harrison, Harvey, Branzburg LLP, 919 N. Market St., Ste. 1000, Wilmington, Delaware 19801, (which time, date and location may be modified in accordance with the Bidding Procedures).

The Debtors believe this is sufficient time for the potential purchasers to conclude due diligence, comply with other requirements of the Bidding Procedures and determine whether to participate in the Auction.

D. REQUEST TO SCHEDULE SALE HEARING AND OBJECTION DEADLINE

30. The Debtors request that this Court schedule the hearing on the Sale Motion (the “Sale Hearing”) for a date which is approximately 40 days following entry of the Bid Procedures Order, in order to prevent any failure of a condition under the Purchase Agreement.

31. The Debtors request that objections, if any, to the relief requested in the Sale Motion must: (a) be in writing and filed with the Court; (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules; (c) set forth the names of the objecting party and the nature and the amount of any claim or interest alleged by such objecting party against the Debtors’ estates or property; and (d) be served upon (such as to be **received** by) the following parties **on or before 12:00 p.m. (Eastern Time) five (5) business days prior to the Sale Hearing**: (i) Cosmolab, Inc., Attn: Michael J. Musso, 1100 Garrett Parkway, Lewisburg, Tennessee 37091; (ii) counsel for the Debtors, Frost Brown Todd LLC, Attn: Robert A. Guy, Jr., Esq., 424 Church Street, Suite 1600, Nashville, Tennessee 37219-2308; (iii) local counsel for the Debtors, Domenic E. Pacitti, Klehr Harrison Harvey Branzburg LLP, 919 N. Market St., Ste. 1000, Wilmington, Delaware 19801, (iv) counsel for Bank of America, Mayer Brown LLP , Attn: Thomas S. Kiriakos, Esq., 71 South Wacker Drive, Chicago, Illinois 60606-4637; (v) local counsel for Bank of America, Edwards Angell Palmer & Dodge LLP, Attn: Stuart M. Brown, 919 North Market Street, 15th Floor, Wilmington, Delaware 19801; (vi) counsel for the Buyer, Timothy T. Brock, Esq., Satterlee Stephens Burke & Burke, LLP, 230 Park Avenue, Suite 1130, New York, NY 10169; (v) counsel for the Committee; and, (vii) the Office of the United States

Trustee for District of Delaware, Attn: Thomas Patrick Tinker, 844 King Street, Room 2313, Wilmington, DE 19801.

VII. THE SALE:

NECESSITY OF AND AUTHORITY TO APPROVE SALE OF THE PURCHASED ASSETS; THE SALE IS IN THE BEST INTERESTS OF THE DEBTORS

32. Entry of the Sale Order approving the final Sale of the Purchased Assets at the conclusion of the Sale Hearing is authorized and appropriate under the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides that “the trustee, after notice and a hearing, may use, sell, or lease other than in the ordinary course of business, property of the estate.” Section 1107(a) of the Bankruptcy Code grants a debtor-in-possession the powers of a trustee in respect to various matters including sales under section 363(b) of the Bankruptcy Code.

33. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts in this district and elsewhere have found that a debtor’s sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. See, e.g., *In re Eagle Picher Holdings, Inc.*, 2005 Bankr. LEXIS 2894, at 3 (Bankr. S.D. Ohio 2005); *In re Martin*, 91 F.3d 389, 395 (3rd Cir. 1996); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143 (3rd Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983).

34. The key consideration is the Court’s finding that a good business reason exists for the sale. *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); see also, *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp.*, (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (Bankr. D. Del. 1999).

Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in Lionel, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike. He might, for example, look to such relevant factors as the proportionate value of the assets of the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

In re Walter, 83 B.R. 14, 19-20 (9th Cir. Bankr. 1988), citing In re Lionel Corporation, 722 F.2d 1063, 1070-71 (2nd Cir. 1983).

35. Once the Debtors articulate a valid business justification, “[t]he business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” In re S.N.A. Nut Co., 186 B.R. 98 (Bonier. N.D. Ill. 1995); see also In re Integrated Res., Inc., 147 B.R. 650, 656 (Bonier. S.D.N.Y. 1992); In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a Debtor's management decisions”).

36. In light of circumstances that precipitated the commencement of these chapter 11 proceedings and in view of the constraints of the Post-Petition Lending Facility, the Debtors, in their business judgment, believe that a prompt sale of the Purchased Assets, pursuant to section 363(b) of the Bankruptcy Code, will maximize the value of the Purchased Assets for the benefit

of the Debtors' creditors and bankruptcy estates. Several sound business reasons support the Debtors' position.

37. Based on the results of their analysis of the Debtors' ongoing and future business prospects, the Debtors' management and team of financial advisors have concluded that a Sale of all of the substantially all of the Selling Debtors' assets as a going concern in accordance with the procedures set forth in the Bidding Procedures may be the best method to maximize recoveries and ensure that the value of the Debtors' assets is maintained for the benefit of creditors and their estates. Maximization of asset value is a sound business purpose, warranting authorization of the Sale.

38. The Debtors have proposed a fair and open process for achieving the objective of obtaining the highest or best offer for the Purchased Assets. The Bidding Procedures provide potential bidders an opportunity to perform due diligence and determine a reasonable price at which they would be interested in acquiring the Purchased Assets. Competing bidders will have the opportunity to bid at the Auction (if they become Qualified Bidders, as defined in the Bidding Procedures Motion), thus ensuring that the sale of the Purchased Assets will be effected through an arm's-length transaction. Accordingly, the proposed auction procedure will allow the highest and best bidder to purchase the Purchased Assets, thereby maximizing the return to the Debtors' estates.

39. The Debtors believe that the Bidding Procedures for the Auction are commercially reasonable and are in the best interest of the Debtors, their estates and creditors and will maximize the value obtained from the sale of the Purchased Assets. The Sale of the Purchased Assets will be subject to competing bids, enhancing the Debtors' ability to receive the highest or otherwise best value for the Purchased Assets. An auction is sufficient to establish that one has

paid "value" for assets of a bankruptcy estate, where the auction sale has itself been conducted in good faith. In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3rd Cir. 1986). Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a "market check" through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid.

40. In addition, all creditors and parties-in-interest will receive adequate notice of the Bidding Procedures and Sale Hearing as set forth in the Bidding Procedures Motion. Such notice is reasonably calculated to provide timely and adequate notice to the Debtors' major creditor constituencies, those parties most interested in these Chapter 11 cases, those parties potentially interested in bidding on the Purchased Assets and others whose interests are potentially implicated by a proposed Sale. Accordingly, consummating the Sale as soon as possible is in the best interests of the Debtors and their creditors.

41. Finally, the timing of the Sale is critical. The Buyer's Purchase Agreement provides that the Sale must be approved, and an order entered, by (i) fifty (50) days after entry of the Bid Procedures Order, or (ii) April 15, 2010, whichever is earlier. Further, the Closing of the Sale is to occur, at the very latest, by May 1, 2010. In order to avoid the loss of the Buyer's offer and to maximize the benefit to the Debtors' creditors and bankruptcy estates, it is important that the Debtors proceed with the sale process as quickly as possible.

42. The Debtors are also operating under limited funding, and have insufficient cash flow to continue to the Debtors' operations without the Post-Petition Lending Facility, which is premised on a successful culmination of the sale process per this general time frame. Without financing to continue operations, the only alternative to a going concern sale is to liquidate the Debtors' assets. The Debtors believe that the proposed Sale will provide a greater return to the

Debtors' estates and their creditors than the liquidation of the Debtors' assets. For each of the foregoing reasons, the Debtors, in their business judgment, believe that a prompt sale of the Purchased Assets, pursuant to section 363(b) of the Bankruptcy Code, is in the best interest of the Debtors, their estates, creditors and other parties in interest.

A. REQUESTED PROTECTION PURSUANT TO SECTION 363(m) OF THE BANKRUPTCY CODE AS A GOOD FAITH PURCHASER

43. The Debtors seek the protections afforded under section 363(m) of the Bankruptcy Code, which provide in pertinent part:

(m) The reversal or modification on appeal of an authorization under section (b) or (b) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. 363(m).

44. The Debtors submit that the Sale of the Purchased Assets to such Successful Bidder as may be selected in accordance with the Bidding Procedures, warrants a finding that the Purchased Assets were acquired in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Debtors' have and will continue to aggressively market the Sale of the Purchased Assets. Any parties who have expressed any meaningful interest in the acquiring the business and assets of the Selling Debtors will be given notice of the Sale and have an opportunity to bid at the Auction. No subjectivity in evaluating bids will be at issue. The highest bidder will purchase the Purchased Assets. No "special treatment" will be afforded any purchaser. The Third Circuit has recognized that the type of misconduct that would destroy a purchaser's good faith status involves "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." In re Abbotts

Dairies of Pa., Inc., 788 F.2d 143, 147 (3rd Cir. 1986) (remanding case involving insider transaction back to the bankruptcy court for further consideration of good faith where there was evidence that the sale had been orchestrated between insiders and some of the sale conditions were not disclosed to the debtor's creditors) (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)).

45. Accordingly, the Sale Order will include a provision that the Successful Bidder for the Purchased Assets, is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors believe that providing any Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Purchased Assets and closing of the Sale will occur promptly.

B. THE SALE FREE AND CLEAR OF ALL LIENS IS APPROPRIATE

46. The Debtors also request that the Sale Order provide that the sale of the Purchased Assets is free and clear of any interest held by any third party in any of the assets to be sold. Specifically, it is contemplated that upon the Closing, the Buyer or to such other Successful Bidder as may be selected in accordance with the Bidding Procedures will take title to and possession of the Purchased Assets, except as otherwise provided herein, in the Purchase Agreement and the Sale Order, free and clear of all liens, claims, interests and encumbrances, provided however, that the Buyer or to such other Successful Bidder shall not be relieved of the Assumed Liabilities or any liability with respect to obligations accruing under the Assumed Contracts from and after the Closing.

47. Section 363(f) of the Bankruptcy Code authorizes the sale of property under section 363(b) of the Bankruptcy Code to be free and clear of interests in such property held by an entity if:

- (a) Applicable non-bankruptcy law permits a sale of such property free and clear of such interests;
- (b) Such entity consents;
- (c) Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) Such interest is in bona fide dispute; or
- (e) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11. U.S.C. § 363(f).

48. Bank of America holds a first priority lien upon substantially all of the Debtors' assets not otherwise subject to a validly perfected unavoidable lien of a third party other than Bank of America and first priority senior priming perfected liens on all property of the Debtors on which Bank of America presently holds a first lien, including the Purchased Assets. The liens of Bank of America and any other third parties will attach to the sales proceeds with the same validity and priority as exist under state law pursuant to section 363(e) of the Bankruptcy Code and the net sale proceeds will be paid to Bank of America upon the consummation of the sale in satisfaction first of the DIP Facility Obligations and then, of the Prior Bank Obligations.

49. The Sale of the Purchased Assets pursuant to the Bid Procedures will satisfy section 363(f) of the Bankruptcy Code because any entities holding liens, claims, interests or encumbrances against the Purchased Assets will have received notice of the Sale. Upon information and belief, the Debtors believe that Bank of America will consent to the sale of the Purchased Assets. All parties in interest, including Bank of America, will be given sufficient opportunity to object to the relief requested herein and any such entity that does not object to the Sale of the Purchased Assets should be deemed to have consented. See *Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) ("It is true that the Bankruptcy Code limits

the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt's assets had to execute a formal consent before they could be sold.") (internal citations omitted); Hargrave v. Township of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (ED. Pa. 1988) (same); see also In re Enron Corp., 2003 WL 21755006, at *2 (Bankr. S.D.N.Y. 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)). As such, to the extent that no parties holding liens, claims, interests or encumbrances object to the relief requested in the Sale Order, the Sale of the Purchased Assets free and clear of all liens, claims, interests and encumbrances except any liabilities expressly assumed by the Buyer or other Successful Bidder satisfies section 363(f)(2) of the Bankruptcy Code.

50. Moreover, a sale of the Purchased Assets free and clear may proceed pursuant to section 363(f) of the Bankruptcy Code because creditors with an interest in the sale assets can be compelled to accept money satisfaction of their claims pursuant to section 363(f)(5) of the Bankruptcy Code. See Scherer v. Fed. Nat'l Mortgage Assoc. (In re Terrace Chalet Apartments, Ltd.), 159 B.R. 821, 829 (N.D. Ill. 1993) (holding that pursuant to section 363(f)(5) of the Bankruptcy Code courts may authorize sales free and clear of a secured creditor's lien if such creditor's interest could be crammed down pursuant to section 1129(b)(2) of the Bankruptcy Code); In re Healthco Int'l, Inc., 174 B.R. 174, 176 (Bankr. D. Mass. 1994) (same); In re WPRV-TV, Inc., 143 B.R. 315, 321 (D. P.R. 1991), vacated on other grounds, 165 B.R. 1

(1995), rev'd on other grounds, 983 F.2s 336 (1st Cir. 1993) (same). These courts have also held that, for purposes of section 363(f)(5), a “cram down” proceeding under section 1129(b) of the Bankruptcy Code is a “typical legal proceeding which compels a creditor to receive less than full money satisfaction” because a secured creditor may be compelled to accept payments equal only to the value of the collateral rather than the creditor’s entire claim. Healthco, 174 B.R. at 176; WPRV-TV, 143 B.R. at 315. Therefore, the Court may authorize the Sale pursuant to section 363(f)(5) of the Bankruptcy Code.

51. The Debtors also believe that other provisions of section 363(f) of the Bankruptcy Code may be applicable to and would permit the sale of the Purchased Assets. Thus, the sale of the Purchased Assets is appropriately free and clear of all liens, claims, interests or encumbrances pursuant to section 363(f) of the Bankruptcy Code.

C. ASSUMPTION AND ASSIGNMENT, CURE AMOUNTS AND ADEQUATE ASSURANCE

52. Section 365(a) of the Bankruptcy Code provides as follows:

Except as provided in section 765 and 766 of this title and in subsections (b), (c) and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.

11 U.S.C. § 365(a).

53. Section 365 of the Bankruptcy Code authorizes the assumption or rejection of any executory contract or unexpired lease of a debtor except for open contracts of commodity brokers that are covered by Bankruptcy Code sections 765 and 766.

54. The Bankruptcy Code provides little guidance as to the standards to be applied by the Court in approving an assumption or rejection. Drawing on pre-Code law, the predominant

test is described as the “business judgment” rule or business judgment test. In re Kong, 162 B.R. 86, 94 (Bankr. E.D.N.Y. 1993); In re Minges, 602 F.2d 38 (2nd Cir. 1979); In re Child World, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); In re Stable Mews Assocs., 41 B.R. 594 (Bankr. S.D.N.Y. 1984). The business judgment test is the same test applied to judicial review of corporate decisions outside bankruptcy. Johnson v. Fairco Corp., 61 B.R. 317 (N.D. Ill. 1986). This test analyzes the impact that continued performance under the executory contract or unexpired lease will have on the estate. Assumption or rejection of the contract or lease will be approved upon a mere showing that the action will benefit the estate. In re Chestnut Ridge Plaza Assocs., L.P., 156 B.R. 477 (Bankr. W.D. Pa. 1993) (test is best interest of the estate); Bezanson v. Metropolitan Ins. & Annuity Co., 952 F.2d 1 (1st Cir. 1991).

55. In addition to the business judgment test, section 365(b)(1) of the Bankruptcy Code further provides that the debtor may not assume an executory contract or unexpired lease unless, at the time of assumption, the debtor: (a) cures defaults; (b) compensates the non-debtor party to the lease or contract for any actual pecuniary loss resulting from defaults; and (c) provides adequate assurance of future performance. See 11 U.S.C § 365(b)(1).

56. In the present case, the Debtors seek not only to assume the Assumed Contracts, but also to assign the identified Assumed Contracts to the Buyer or such other Successful Bidder as may be selected in accordance with the Bidding Procedures. Section 365(f) of the Bankruptcy Code addresses assumption and assignment of executory contracts and unexpired leases and provides, in pertinent part:

(1) Except as provided in subsection (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection

.....

(2) The trustee may assign an executory contract or unexpired lease of the debtor only if—

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(1)-(2).

57. Section 365(f) of the Bankruptcy Code provides that the assignment of a properly assumed contract or lease is to be permitted by the Court only if the debtor has assumed the contract or lease in compliance with all of the terms of section 365 of the Bankruptcy Code and if the debtor provides the other party to the contract or lease with adequate assurance of future performance by the assignee of the contract or lease. 11 U.S.C. § 365(f)(2). The words “adequate assurance of future performance” must be given a “practical a pragmatic construction” in “light of the proposed assumption.” In re Fleming Cos., 499 F.3d 300 (3d Cir. 2007) (quoting Cinicola v. Scharffenberger, 248 F.3d 110, 120, n.10 (3d Cir. 2001). See also Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989) (same); In re Nalco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

58. As part of this Motion, the Debtors seek authority to assume and assign the identified Assumed Contracts to the Buyer or such other Successful Bidder as may be selected in

accordance with the Bidding Procedures. With respect to any other contracts and leases of the Debtors, the Debtors will file a motion to assume or reject such contracts and leases at the appropriate point in these Chapter 11 cases. The assumption and assignment of the Assumed Contracts shall not be binding on the Debtors or the Buyer or other Successful Bidder until the Debtors file a notice of occurrence of the Closing, which shall be filed within two business days after completion of the Closing and shall be served on all counter-parties to the Assumed Contracts.

59. Any assumption and assignment of the Assumed Contracts will be subject to any applicable provisions of the Bankruptcy Code. The proposed terms and conditions set forth herein and in the Bidding Procedures Motion are designed to ensure that the assignees, if any, are financially able and prepared to undertake all of the obligations of the Assumed Contracts. In addition, the availability of the Sale Hearing gives the Court and other parties in interest an appropriate opportunity to evaluate any assignment issues.

60. The Debtors assert that under the circumstances, the Assumed Contracts can be properly assumed in compliance with section 365 of the Bankruptcy Code. First, the assumption of the Assumed Contracts by the Debtors complies with the requirements of section 365 because assumption clearly satisfies the "business judgment test". The Debtors' satisfaction of the business judgment test is demonstrated by the benefit to the Debtors' estates which will accrue as a result of the Debtors' ability to close the Sale on the terms to be set forth in the Purchase Agreement and from the savings realized as a result of: (a) the Buyer's assumption of the Debtors' obligations under the Assumed Contracts; and (b) the avoidance of a potential rejection damages claims and possible administrative expense claims.

61. Second, defaults under the Assumed Contracts will be cured by payment of the Cure Amounts at the time of assumption.

62. Third, it is contemplated that the Buyer or such other Successful Bidder as may be selected in accordance with the Bidding Procedures will be capable of satisfying the adequate assurance conditions of sections 365(b)(i)(c) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts. Adequate assurance of future performance is to be determined on a case by case basis to insure that the other party to the contract or lease gets the benefit of the bargain for which he has contracted. Chera v. 991 Blvd. Realty Corp. (In re National Shoes, Inc.), 20 B.R. 55,59 (Bankr. S.D.N.Y. 1982); See In re Bygaph, 56 B.R. 596, 605 (Bankr. S.D.N.Y. 1986) (“Congress intended that the words ‘adequate assurance’ be given a practical, pragmatic construction, and is to be determined under the facts of each particular case”). A landlord or a party to a contract, however, is not entitled to greater rights than are given by the lease or contract. In re Lafayette Radio Electronics Corp., 9 B.R. 993 (Bankr. E.D.N.Y. 1981). The Debtors submit, and will demonstrate at the Sale Hearing, that there are adequate business justifications for the assumption and assignment of the Assumed Contracts and that all requirements to assumption and assignment, including adequate assurance of future performance by any Successful Bidder(s), have been met.

**D. RELATED RELIEF: REQUEST TO CHANGE NAME OF DEBTORS
COSMOLAB, INC. AND COSMOLAB NEW YORK, INC.**

63. Debtors Cosmolab, Inc. and Cosmolab New York, Inc. are corporations organized under the laws of the state of Delaware. Pursuant to the Purchase Agreement, the Selling Debtors must, within three (3) business days after the termination of the Interim Management Agreement or earlier following Closing upon Buyer’s request, file an amendment to their

organizational or constituting documents changing its name to a name that shall not include the word "Cosmolab" or any confusingly similar word. See Section 7.6 of the Purchase Agreement.

64. Accordingly, in compliance with the terms of the Purchase Agreement and in furtherance of the Sale, the Debtors hereby requests authority to change the names of "Cosmolab, Inc." and "Cosmolab New York, Inc." respectively and to execute and file any documents and take any actions as may be necessary and appropriate to implement the change of the Debtors' names. Proposed new names for these entities will be provided at the Sale Hearing.

65. Section 105(a) of the Bankruptcy Code states, in pertinent part, that this Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

66. The Debtors submit that the proposed name change will have no substantive effect on the Debtors' estates in these chapter 11 cases and the Debtors do not believe that any parties in interest will be prejudiced, confused or misled by the proposed name change since these cases are filed under the lead caption of Specialty Packaging Holdings, Inc., and as all future pleadings and notices from the Debtors will refer to the Debtors' former name (e.g., "_____ " f/k/a "Cosmolab, Inc." and "_____ " f/k/a Cosmolab New York, Inc.")). Accordingly, the Debtors request entry of an order, pursuant to this Court's equitable authority under section 105(a) of the Bankruptcy Code, authorizing "Cosmolab, Inc." and "Cosmolab New York, Inc." to change their names as indicated.

E. REQUEST TO WAIVE THE FOURTEEN DAY STAY PERIODS REQUIRED BY RULES 6004(H) AND 6006(D) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

67. Pursuant to Bankruptcy Rule 6004(h), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are

automatically stayed for 14 days after entry of the order, see FED. R. BANKR. P. 6004(h). Similarly, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory contract or unexpired lease pursuant to section 365(f) of the Bankruptcy Code for fourteen days, unless the court orders otherwise.

68. To preserve the value of the Purchased Assets and limit the costs of administering and preserving such assets, and, indeed for the parties to comply with the express terms of the Purchase Agreement, it is critical that the Debtors close the Sale as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtors hereby request that the Court waive the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d). The Debtors submit that the relief requested is necessary and appropriate, is in the best interests of the Debtors and their estates, and should be granted in all respects.

VIII. NOTICE OF MOTION; OPPORTUNITY TO OBJECT

69. No trustee or examiner has been appointed in these cases. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors' 40 largest unsecured creditors on a consolidated basis; (iii) counsel for Bank of America; and, (iv) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors. Because of the exigencies of the circumstances and the irreparable harm to the Debtors that will ensue if the relief requested herein is not granted, the Debtors submit that no other notice need be given.

70. Objections, if any, to the proposed relief requested related to approval of the Bid Procedures and entry of the Bid Procedures Order must: (a) be in writing and filed with this Court; (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules; (c) set forth the names of the objecting party and the nature and the amount of any claim

or interest alleged by such objecting party against the Debtors' estates or property; and (d) be served upon (such as to be **received** by) the following parties **within ten (10) days of service of this Motion**: (i) Cosmolab, Inc., Attn: Michael J. Musso, 1100 Garrett Parkway, Lewisburg, Tennessee 37091; (ii) counsel for the Debtors, Frost Brown Todd LLC, Attn: Robert A. Guy, Jr., Esq., 424 Church Street, Suite 1600, Nashville, Tennessee 37219-2308; (iii) local counsel for the Debtors, Domenic E. Pacitti, Klehr Harrison Harvey Branzburg LLP, 919 N. Market St., Ste. 1000, Wilmington, Delaware 19801, (iv) counsel for Bank of America, Mayer Brown LLP, Attn: Thomas S. Kiriakos, Esq., 71 South Wacker Drive, Chicago, Illinois 60606-4637; (v) local counsel for Bank of America, Edwards Angell Palmer & Dodge LLP, Attn: Stuart M. Brown, 919 North Market Street, 15th Floor, Wilmington, Delaware 19801; (vi) counsel for the Buyer, Timothy T. Brock, Esq., Satterlee Stephens Burke & Burke, LLP, 230 Park Avenue, Suite 1130, New York, NY 10169; (v) counsel for the Committee; and, (vii) the Office of the United States Trustee for District of Delaware, Attn: Thomas Patrick Tinker, 844 King Street, Room 2313, Wilmington, DE 19801.

71. Objections, if any, to the proposed relief related to entry of the Sale Approval Order, assignment or assumption of any executory contracts or unexpired leases, or cure amounts, shall be handled as set out in the Bid Procedures Order and the Sale Notice.

IX. NO PRIOR RELIEF REQUESTED

72. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

X. CONCLUSION

73. The Debtors submit that the approval of the Bidding Procedures, as proposed herein, will allow the Debtors to sell the Purchased Assets and assume and assign the Assumed

Contracts for the maximum benefit of the Debtors' estates and creditors. The Debtors believe that the procedures for authorizing the Sale of the Purchased Assets and the assumption and assignment of the Assumed Contracts described herein are in the best interests of their creditors and other interested parties and will facilitate and expedite the sale process for the benefit of all creditors in these cases.

WHEREFORE, the Debtors respectfully request that this Court immediately enter an order (i) approving the Bidding Procedures set forth herein; (ii) approving the Bid Protections; (iii) scheduling the Auction as requested; (iv) scheduling the Sale Hearing; (v) approving the form and matter of notice of the Sale. Further, Debtors respectfully request that, at the conclusion of Sale Hearing, this Court enter the Sale Approval Order in substantially the form attached hereto as **Exhibit D**, granting the Debtors authority to sell the Purchased Assets to the Buyer or such other Successful Bidder as may be selected in accordance with the Bidding Procedures. Debtors request such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: January 20, 2010

Respectfully submitted,

By: /s/ Domenic E. Pacitti

Domenic E. Pacitti (Bar No. 3989)
Michael Yurkewicz (Bar No. 4165)
KLEHR HARRISON HARVEY BRANZBURG LLP
919 North Market Street, Suite 1000
Wilmington, Delaware 19801-3062
Telephone: 302.426.1189
Facsimile: 302.426.9193
E-mail: dpacitti@klehr.com
E-mail: myurkewicz@klehr.com

- and -

Robert A. Guy, Jr.*
J. Matthew Kroplin*
FROST BROWN TODD LLC
424 Church Street, Suite 1600
Nashville, Tennessee 37219
Telephone: 615.251.5550
Facsimile: 615.251.5551
E-mail: bguy@fbtlaw.com
E-mail: mkroplin@fbtlaw.com

- and -

Ronald E. Gold*
Beth A. Buchanan*
Lindsey F. Baker*
FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
Telephone: 513.651.6800
Facsimile: 513.651.6981
E-mail: rgold@fbtlaw.com
E-mail: bbuchanan@fbtlaw.com
E-mail: lbaker@fbtlaw.com
*Pro Hac Vice Motion Pending

**PROPOSED CO-COUNSEL FOR
DEBTORS AND DEBTORS-IN-
POSSESSION**

EXHIBIT A

AGREEMENT FOR THE SALE AND PURCHASE OF ASSETS

Among

**ALL4 COSMETICS, INC.
AS BUYER**

and

**COSMOLAB, INC.,
COSMETICS SPECIALTIES, INC.
and
COSMOLAB NEW YORK, INC.
AS SELLERS**

Dated January 15, 2010

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THIS ASSET PURCHASE AGREEMENT (together with all Schedules, Exhibits, amendments and supplements thereto, the "Agreement") is made as of January 15, 2010 by and between All4 Cosmetics, Inc., a Tennessee corporation ("Buyer"), Cosmolab, Inc., a Delaware corporation ("Cosmolab"), Cosmetics Specialties, Inc., a California corporation ("CSI") and Cosmolab New York, Inc., a Delaware corporation ("CNY").

RECITALS:

WHEREAS, Sellers own certain assets used by Sellers in the business of manufacturing and selling cosmetic products (the "Business"); and

WHEREAS, the Sellers desire to sell to Buyer, and Buyer desires to purchase from Sellers the assets of Sellers that are used by Sellers in connection with the Business, and Sellers are willing to sell the same to Buyer, upon the terms and conditions hereinafter set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and of the respective representations and warranties hereinafter set forth, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Sellers hereby agree as follows:

ARTICLE I DEFINITIONS

For purposes of this Agreement, the following terms have the meanings specified or referred to in this Article I:

1.1 "Accounts" -- shall mean the Sellers' trade accounts receivable from the Business as of the Closing Date.

1.2 "Accounts Shortfall" -- means the amount, if any, by which the sum of all Eligible Accounts as of the Closing Date is less than Three Million Dollars (\$3,000,000).

1.3 "Accounts Threshold" -- means the lesser of (x) the sum of all Eligible Accounts as of the Closing Date and (y) Three Million Dollars (\$3,000,000).

1.4 "Affiliate" -- of any Person means any Person that controls, is controlled by, or is under common control with such Person. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities or other interests, by contract or otherwise.

1.5 "Agreement" -- as defined in the introductory paragraph above.

1.6 "Ancillary Agreements" -- shall mean all the agreements and other documents required to be executed and delivered by the Sellers under this Agreement.

EXECUTION VERSION

- 1.7 "Assignment and Assumption Agreement" -- as defined in Section 4.3(b) below.
- 1.8 "Assumed Contracts" -- shall mean those Contracts and Leases listed on Schedule 3.1 as the same may be amended from time to time before the Sale Approval Date with the consent of Buyer that are assigned to and assumed by Buyer at the Closing under Section 3.1.
- 1.9 "Assumed Liabilities" -- as defined in Section 3.1 below.
- 1.10 "Bankruptcy Case" -- as defined in Section 7.10(a) below.
- 1.11 "Bankruptcy Code" -- as defined in Section 7.10(a) below.
- 1.12 "Bankruptcy Court" -- as defined in Section 7.10(a) below.
- 1.13 "Bid Deadline" -- as defined in Section 7.10(d) below.
- 1.14 "Bidding Order" -- as defined in Section 7.10(d) below.
- 1.15 "Break-Up Fee" -- as defined in Section 7.10(d) below.
- 1.16 "Business" -- as defined in the first recital.
- 1.17 "Business Day" -- any day (other than a Saturday, Sunday or public holiday in the Borough of Manhattan, City of New York) on which banking institutions in New York City are not required or permitted by law to close.
- 1.18 "Buyer" -- as defined in the introductory paragraph above.
- 1.19 "CNY" -- as defined in the introductory paragraph above.
- 1.20 "Claim" -- any claim (including any "claim" as defined by section 101(5) of the Bankruptcy Code), interest (as set forth in section 363 of the Bankruptcy Code), demand, action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal), or other proceeding.
- 1.21 "Closing" -- as defined in Section 4.1 below.
- 1.22 "Closing Date" -- as defined in Section 4.1 below.
- 1.23 "Consent" -- any consent, approval, authorization (including any Governmental Authorization) from, or notification to, any Person.
- 1.24 "Contemplated Transactions" -- all of the transactions contemplated by this Agreement and the Ancillary Agreements, including, without limitation, the performance by the parties hereto of their respective covenants, agreements and obligations hereunder and thereunder.
- 1.25 "Contracts" -- all agreements, contracts, undertakings, and obligations of Sellers (written or oral) relating to the Business.

EXECUTION VERSION

1.26 "Cosmolab" -- as defined in the introductory paragraph above.

1.27 "CSI" -- as defined in the introductory paragraph above.

1.28 "Cure Cost" means the amount necessary to cure any default under any Contract pursuant to Section 365 of the Bankruptcy Code and to allow such Contract to be assumed by the applicable Seller and assigned to Buyer in accordance with the provisions of Sections 365 and 1123 of the Bankruptcy Code.

1.29 "Deposit" -- shall equal and not exceed the sum of One Million Dollars (\$1,000,000).

1.30 "Eligible Accounts" -- shall mean all Accounts other than any Account:

(a) which (i) is unpaid more than 90 days after the date of the original invoice therefor or more than 60 days after the original due date, or (ii) has been written off the books of a Seller or otherwise designated as uncollectible;

(b) which (i) does not arise from the sale of goods or performance of services in the Ordinary Course of Business, (ii) is not evidenced by an invoice or other documentation which has been sent to the Account debtor, (iii) represents a progress billing, (iv) is contingent upon a Seller's completion of any further performance, or (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis;

(c) for which the goods giving rise to such Account have not been shipped to the Account debtor or for which the services giving rise to such Account have not been performed or if such Account was invoiced more than once;

(d) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(e) which is owed by an Account debtor which has become insolvent or ceased operation of its business; or

(f) which is subject to any counterclaim, deduction, defense, setoff or dispute but only to the extent of any such counterclaim, deduction, defense, setoff or dispute.

1.31 "Employee Benefit Plan" -- shall mean any "employee benefit plan" as such term is defined in Section 3(3) of ERISA and any other employee benefit plan, program or arrangement of any kind.

1.32 "Encumbrance"--any charge, Claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

EXECUTION VERSION

1.33 “Environment” -- soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

1.34 “Environmental Laws” -- means all Legal Requirements, common law, guidelines, Governmental Authorizations, agreements, licenses, by-laws and restrictions by any Governmental Body relating to pollution or protection of human health or the Environment, including all Occupational Health and Safety Laws and Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, transport or handling of Hazardous Materials or the clean-up thereof.

1.35 “Equipment” -- shall mean all of Sellers’ equipment, machinery, furniture, fixtures, motor vehicles or rolling stock and other tangible personal property (other than Inventory) owned by the Sellers, and all spare parts for the above described machinery and equipment, including, for this purpose, spare parts for leased machinery and equipment, including all such items listed on Schedule 1.35.

1.36 “ERISA” -- 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.

1.37 “ERISA Affiliate” -- any corporation or other trade or business treated as a single employer with a Seller under Section 414 of the IRC or Section 4001(a)(14) or 4001(b) of ERISA.

1.38 “Escrow Agent” -- Wells Fargo Bank, National Association, a national banking association, or its successors under the Escrow Agreement or such other escrow agent as may be mutually agreed by Buyer and Sellers.

1.39 “Escrow Agreement” -- the Escrow Agreement between Buyer, Sellers and the Escrow Agent of even date herewith.

1.40 “Escrow Fund” -- as defined in the Escrow Agreement.

1.41 “Excluded Assets” -- shall mean all properties and assets owned by Sellers identified on Schedule 1.41.

1.42 “Excluded Liabilities” -- as defined in Section 3.2 below.

1.43 “Facilities” -- any real property, or other interests owned by any Seller and any buildings, plants, and structures owned by any Seller as described in Schedule 1.43.

1.44 “Filing Date” -- as defined in Section 7.10(b) below.

1.45 “Final Order” -- as defined in Section 7.10(f) below.

1.46 “Foreign Plans” -- as defined in Section 5.1.6(a) below.

EXECUTION VERSION

1.47 “GAAP”-- generally accepted United States accounting principles consistently applied.

1.48 “Governmental Authorization” -- any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

1.49 “Governmental Body” -- any nation, state, county, city, town, village, district, or other jurisdiction of any nature; federal, state, local, municipal, foreign, or other government; governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

1.50 “Hazardous Materials”-- means (i) all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. 300.5, or defined as such by, or regulated as such under, any Environmental Law or (ii) wastes, pollutants, contaminants and substances listed, classified or regulated as such and that form the basis for a Claim under any Environmental Law.

1.51 “Intangible Assets” -- shall mean (a) all Governmental Authorizations utilized by Sellers in connection with the Business, (b) all Intellectual Property of Sellers, and (c) all other intangible assets of Sellers used in the Business that are not included in the Excluded Assets.

1.52 “Intellectual Property” -- means all domestic and foreign intellectual property and proprietary rights, including all (i) inventions (whether or not patentable and whether or not reduced to practice), and all improvements thereto, (ii) all patents, patent applications, and patent disclosures, together with all provisionals, reissues, continuations, continuations-in-part, divisions, revisions, extensions, and reexaminations thereof (“Patents”); (iii) trademarks, service marks, trade names, domain names, trade dress, logos, corporate names, brand names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith (“Trademarks”); (iv) works of authorship (whether or not published), and all copyrights, designs and mask works, and all registrations, applications and renewals in connection therewith (“Copyrights”); (v) Software; (vi) domain names and URL sites and website content (“Net Names”); (vii) trade secrets and rights in confidential and proprietary business information (including ideas, know-how, formulas, compositions, processes and techniques, research and development information, technical data, designs, drawings, specifications, research records, records of inventions, test information, financial, marketing and business data, pricing and cost information, business and marketing plans and proposals and customer and supplier lists and information, including all databases and related information and profiles) (“Trade Secrets”); (viii) all good will and Claims arising out of or related to infringement or misappropriation of any of the foregoing; and (ix) other proprietary or intellectual property rights now known or hereafter recognized in any jurisdiction.

1.53 “Interim Management Agreement” -- as defined in Section 7.11 below.

EXECUTION VERSION

1.54 “Inventory” -- shall mean all of Sellers’ finished goods products, raw materials, work-in-process, pallets and supplies on hand, in transit or on order as of the Closing Date.

1.55 “IRC” -- the Internal Revenue Code of 1986, as amended to the date hereof and regulations issued by the IRS pursuant to the IRC.

1.56 “IRS” -- the United States Internal Revenue Service or any successor agency, and, to the extent relevant, the United States Department of the Treasury.

1.57 “Knowledge” – means (with respect to any Person other than an individual) the actual awareness of a particular fact or circumstance by any individual who is serving as a director or officer. An individual shall be deemed to have “Knowledge” of a particular fact or circumstance if such individual is actually aware of such fact or circumstance or has possession of documents (including emails) describing such fact or circumstance (regardless of whether such individual has read such documents) or such fact or circumstance has been verbally communicated to such individual.

1.58 “Leased Real Property” means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property held by Sellers.

1.59 “Leases” means all leases, subleases, licenses, concessions and other agreements (written or oral), including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, pursuant to which any Seller holds any Leased Real Property, including the right to all security deposits and other amounts and instruments deposited by or on behalf of Sellers.

1.60 “Legal Requirement” -- any federal, state, provincial, territorial, local, municipal, foreign, international, multinational, or other administrative Order, constitution, law, ordinance, principle of common law, regulation, rule, statute, or treaty.

1.61 “Limited Power of Attorney” – as defined in Section 7.11 below.

1.62 “Material Adverse Effect” -- shall mean (a) a material adverse effect on (i) the ability of the Sellers to consummate the Contemplated Transactions or to perform their obligations under this Agreement or any Ancillary Agreement, (ii) the Purchased Assets in the hands of Buyer, or (iii) the operation of the Business by Buyer as operated by Sellers prior to the Closing, or (b) the imposition of a material liability or obligation on Buyer as a result of its purchase of the Purchased Assets.

1.63 “Minimum Upset Bid” – as defined in Section 7.10(d) below.

1.64 “Miscellaneous Assets” -- shall mean all of Sellers’ Technology, promotion and advertising materials and literature, business records and books of account relating to the Business, personnel records, records relating to the research and development of products sold or being developed for sale..

EXECUTION VERSION

1.65 “Pre-petition” -- shall mean the period before the day of filing a voluntary petition for relief under the Bankruptcy Code

1.66 “Post-petition” -- shall mean the period on and after the day of filing a voluntary petition for relief under the Bankruptcy Code.

1.67 “Occupational Safety and Health Laws” -- any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

1.68 “Order” -- any assessment, decree, citation, award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any Governmental Body or by any arbitrator.

1.69 “Ordinary Course of Business” -- an action taken by any Seller will be deemed to have been taken in the “Ordinary Course of Business” only if (a) such action is consistent with the past practices of such Seller and is taken in the ordinary course of its normal day-to-day operations; and (b) such action is similar in nature and magnitude to actions customarily taken, without any authorization by the board of directors or stockholders, in the ordinary course of the normal day-to-day operations of other Persons that are in the same line of business as such Seller; *provided*, however, that no action shall be considered outside the Ordinary Course of Business if such action is (i) required by the Bankruptcy Code, (ii) ordered by the Bankruptcy Court or (iii) customary in a case under Chapter 11 of the Bankruptcy Code.

1.70 “Person” -- 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.

1.71 “Proceeding” -- Any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body.

1.72 “Purchase Price” -- as defined in Section 2.2 below.

1.73 “Purchased Assets” -- shall mean all assets of Sellers owned on the Closing Date other than the Excluded Assets, including, without limitation:

- (g) the Facilities;
- (h) the Assumed Contracts;
- (i) the Equipment;
- (j) the Intangible Assets;

- (k) the Inventory;
- (l) the Miscellaneous Assets;
- (m) all Accounts (subject to Section 7.12 below);
- (n) all goodwill associated with Sellers, the Business and the Purchased Assets;

and

(o) all other property, other than the Excluded Assets, of every kind, character or description owned by Sellers and used in connection with the Business, whether or not reflected on the Sellers' financial statements, wherever located and whether or not similar to the items specifically set forth above.

1.74 "Recall" -- as defined in Section 5.1.10 below.

1.75 "Qualifying Bid" -- a bid that meets the requirements of Section 7.10(d) below

1.76 "Release" -- means any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the Environment or into or out of any property, including the movement of Hazardous Materials through or in the Environment.

1.77 "Representative" -- with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

1.78 "Sale" -- as defined in Section 7.10(b) below.

1.79 "Sale Approval Deadline" -- as defined in Section 7.10(c) below.

1.80 "Sale Approval Order" -- as defined in Section 7.10(b) below.

1.81 "Sale Motion" -- as defined in Section 7.10(b) below.

1.82 "Secured Lenders" -- means Bank of America, N.A., as agent, and any lender party to the Second Amended and Restated Credit Agreement dated as of December 1, 2008 (as amended, supplemented or otherwise modified from time to time) with The Specialty Packaging Group, Inc., in respect of which the Sellers are guarantors, all holders of hedging obligations or cash management obligations secured by the collateral securing such credit agreement, and/or any lender providing a debtor-in-possession lending facility pursuant to the 11 U.S.C. Section 364.

1.83 "Seller" -- means each of Cosmolab, CSI or CNY individually and "Sellers" means Cosmolab, CSI and CNY collectively.

1.84 "Seller Cure Cost Limit" -- defined in Section 3.1(d) below.

1.85 "Software" -- means (i) software, firmware, middleware, and computer programs, including software implementations of algorithms, models and methodologies, whether in source

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code, object code, executable or binary code, (ii) databases and compilations, including data and collections of data, whether machine readable or otherwise, and (iii) documentation, such as user manuals and training materials relating to any of the foregoing.

1.86 "Successor Taxes" -- as defined in Section 7.1(i) below.

1.87 "Tax" or "Taxes" -- means all (i) United States federal, state or local or non-United States taxes, assessments, charges, duties, levies or other similar governmental charges of any nature, including all income, gross receipts, employment, franchise, profits, capital gains, capital stock, Transfer Tax, sales, use, occupation, property, excise, severance, windfall profits, stamp, stamp duty reserve, license, payroll, withholding, ad valorem, value added, alternative minimum, environmental, customs, social security (or similar), unemployment, sick pay, disability, registration and other taxes, assessments, charges, duties, fees, levies or other similar governmental charges of any kind whatsoever, whether disputed or not, together with all estimated taxes, deficiency assessments, additions to tax, penalties and interest; (ii) any liability for the payment of any amount of a type described in clause (i) arising as a result of being or having been a member of any consolidated, combined, unitary or other group or being or having been included or required to be included in any Tax Return related thereto; and (iii) any liability for the payment of any amount of a type described in clause (i) or clause (ii) as a result of any obligation to indemnify or otherwise assume or succeed to the liability of any other Person.

1.88 "Tax Return" -- means any return, declaration, report, estimate, statement, form, information return or other document filed with or supplied to or required to be provided to a Governmental Body with respect to Taxes, including any schedule or attachment thereto and any amendment thereof.

1.89 "Technology" -- means tangible embodiments of Intellectual Property, whether in electronic, magnetic, optical, written or other media, including Software, technical documentation, specifications, designs, bills of material, build instructions, test reports, schematics, databases, lab notebooks, processes, prototypes, samples, studies, or other know-how and other works of authorship.

1.90 "Termination Date" -- as defined in Section 7.10(f) below.

1.91 "Transfer Tax" -- means all transfer, real property transfer, stock transfer, documentary, sales, use, stamp, registration and other similar Taxes (including penalties and interest).

1.92 "Treasury Regulations" -- means the income tax regulations, including temporary regulations, promulgated under the IRC, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

ARTICLE II PURCHASE AND SALE OF PURCHASED ASSETS

2.1 **Purchase of Assets.** Subject to the terms and conditions herein set forth, on the Closing Date, Buyer will purchase and acquire, and Sellers will sell, assign, convey and transfer

to Buyer, the Purchased Assets. To the extent that any Assumed Contract hereunder is not assignable without the Consent of another Person that has not been obtained, this Agreement shall not constitute an assignment or an attempted assignment thereof to Buyer or an assumption of Sellers' obligations thereunder by Buyer if such assignment or attempted assignment and assumption would constitute a breach thereof. If any such Consent cannot be obtained, Sellers will cooperate with Buyer in any commercially reasonable effort designed to secure for Buyer the benefits heretofore available to Sellers under the relevant Assumed Contract.

2.2 Consideration. The consideration for the purchase of the Purchased Assets and the Business as provided herein and Sellers' other obligations under this Agreement is Thirteen Million Dollars (\$13,000,000) in cash minus any Accounts Shortfall plus Buyer's obligations under Article III below plus Buyer's obligation under 4.2(c) below (collectively, the "Purchase Price").

2.3 Expenses and Taxes of Transfer. All Taxes and recording fees arising out of or relating to the Purchased Assets shall be borne and paid for by the party who pursuant to applicable Legal Requirements bears (or who is deemed to bear) the cost, fee or Tax. Nothing contained in this Agreement shall be construed to obligate or require the Buyer to pay, or be liable for, any business, occupation, real or personal property, use, withholding, income or similar Taxes or any Tax of any kind related to any period prior to the Closing Date.

2.4 Deposit.

Within one (1) Business Day of the date hereof, Buyer has deposited the Deposit with the Escrow Agent pursuant to the Escrow Agreement.

2.5 Allocation of Purchase Price.

Sellers and Buyer shall use reasonable efforts to mutually agree on an allocation of the Purchase Price and the Assumed Liabilities among the Purchased Assets according to the relative fair market values of such assets on the Closing Date in compliance with the requirements of Section 1060 of the Code. If Sellers and Buyer are unable to agree on such fair market values within twenty (20) days after the Closing Date, Sellers and Buyer shall select a mutually acceptable qualified independent appraisal firm to determine such fair market values. The conclusions of such appraisal firm shall be conclusive and binding. The fees and expenses of such appraisal firm shall be shared equally by Sellers and Buyer. If Sellers and Buyer are unable to select any such appraisal firm within such twenty (20) day period, either Sellers or Buyer may apply to the Bankruptcy Court for the appointment of such firm and the decision of such Court shall be final and binding on the parties. Any adjustments to the Purchase Price and the Assumed Liabilities shall be reflected in a manner consistent with Section 1060 of the Code. Sellers and Buyer agree that they shall (a) cooperate in good faith in preparing Internal Revenue Service Form 8594; (b) furnish a copy of such Form 8594 to the other in draft form within a reasonable period of time prior to its filing due date, (c) file all Tax Returns in a manner consistent with such allocation and (d) not take any position inconsistent with such allocation on any of their Tax Returns, in any refund claim, in any litigation or otherwise.

**ARTICLE III
ASSUMED LIABILITIES**

3.1 Assumed Contracts.

(a) Subject to the terms and conditions of this Agreement, and except as set forth in Section 3.1(d), Sellers shall assign or cause to be assigned, and Buyer shall assume, pay, perform and discharge all of Sellers' undischarged obligations incurred or arising under the Assumed Contracts listed in Schedule 3.1, with respect to the period commencing on the day following the Closing Date (such undischarged obligations hereinafter referred to as the "Assumed Liabilities").

(b) Schedule 3.1 may, at Buyer's sole discretion, be amended to delete any item set forth therein by written notice to Sellers at any time up to two (2) days before issuance of the Sale Approval Order.

(c) Schedule 3.1 may, at Buyer's sole discretion, be amended to add items thereto by written notice to Sellers at any time up to two (2) days before issuance of the Sale Approval Order.

(d) At Closing, Sellers will pay (i) all Cure Costs for Assumed Contracts set forth on the initial Schedule 3.1 prepared on the date hereof, and (ii) Cure Costs of up to an aggregate total of \$25,000 (the "Seller Cure Cost Limit") for any Assumed Contracts added to Schedule 3.1 at Buyer's direction or with Buyer's consent after the date hereof and Buyer will pay any such Cure Costs in excess of the Seller Cure Cost Limit.

(e) Buyer shall not be liable for (i) any Claims arising from Sellers' assignment and Buyer's assumption of the Assumed Contracts; and/or (ii) rights or remedies claimed by third parties under any of the Assumed Contracts which broaden or vary the rights and remedies such third parties would have had against Sellers if the sale and purchase of the Purchased Assets were not to occur.

3.2 Excluded Liabilities. Except for the Assumed Contracts, Buyer shall not assume and under no circumstances shall Buyer be obligated to pay or assume, and none of the assets of Buyer or any Affiliate shall be or become liable for or subject to, any liability, cost, damage, expense, indebtedness, commitment, or obligation of Sellers or any of their Affiliates, whether known or unknown, fixed or contingent, recorded or unrecorded, currently existing or hereafter arising or otherwise (collectively, the "Excluded Liabilities").

**ARTICLE IV
THE CLOSING**

4.1 Time and Place. The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place after all conditions in ARTICLE VIII below have been satisfied or waived on the date provided in Section 7.10(f) below at the offices of Cosmolab's local counsel in Wilmington, Delaware or at such other time and place as may be mutually agreed upon in writing between Buyer and Cosmolab. The date on which the Closing

occurs is referred to herein as the "Closing Date". The transactions contemplated by this Agreement shall be effective as of at 12:01 a.m. local time on the Closing Date.

4.2 Deliveries at Closing by Buyer. At the Closing, unless otherwise waived in writing by Seller, Buyer shall deliver to Sellers the following:

(a) The cash portion of the Purchase Price, less the Escrow Fund, by wire transfer of immediately available funds to Cosmolab (or to or on behalf of the Secured Lenders as set forth in the Sale Approval Order);

(b) Release of the Escrow Fund to Sellers;

(c) Reimbursement for Post-petition payments of Pre-petition debts owed by a Seller to essential suppliers (which essential suppliers will be pre-approved by Buyer) in a total aggregate amount not to exceed One Million Dollars (\$1,000,000), with such reimbursement to be made by wire transfer of immediately available funds to Cosmolab (or to or on behalf of the Secured Lenders as set forth in the Sale Approval Order) upon written request therefor delivered at least three (3) Business Days prior to Closing, which request shall be accompanied with a description in reasonable detail including suppliers' names, total paid amount and date of all such payments, and all relevant back-up documentation, including a written statement of the respective supplier confirming that no Pre-petition debts will be claimed against the Buyer (it being understood and agreed that a lack of documentation for a specific supplier will only relieve Buyer of its reimbursement obligation with respect to that supplier);

(d) The Assignment and Assumption Agreement (as defined below), fully executed by Buyer;

(e) Copies of resolutions duly adopted by the Board of Directors of Buyer, authorizing and approving its performance of the transactions contemplated hereby and the execution and delivery of this Agreement and the documents described herein, certified as true and of full force as of the Closing, by an appropriate officer of Buyer;

(f) A certificate of the President or a Vice President of Buyer certifying the satisfaction of the conditions in Sections 9.1 and 9.2 below;

(g) A certificate of incumbency for the officers of Buyer executing this Agreement or making certifications for the Closing;

(h) A certificate of existence and good standing of Buyer from the state of Tennessee, dated the most recent practical date prior to the Closing; and

(i) Such other instruments and documents as Sellers reasonably deem necessary to effect the Contemplated Transactions.

4.3 Deliveries at Closing by Sellers. At the Closing and unless otherwise waived in writing by Buyer, Sellers shall deliver to Buyer the following:

(a) A General Assignment, Conveyance and Bill of Sale, in the form attached as Exhibit A (the "General Assignment, Conveyance and Bill of Sale"), fully executed by each Seller;

(b) An Assignment and Assumption Agreement, in the form attached as Exhibit B (the "Assignment and Assumption Agreement"), fully executed by each Seller;

(c) An Assignment of Trademarks and Trademark Rights in the form attached as Exhibit C (the "Assignment of Trademarks and Trademark Rights") fully executed by each Seller;

(d) An Assignment of Patents and Patent Rights in the form attached as Exhibit D (the "Assignment of Patents, Design Patents, Patent and Design Rights") fully executed by each Seller;

(e) An Assignment of General Intangibles in the form attached as Exhibit E (the "General Assignment of Intangibles") fully executed by each Seller;

(f) An Assignment of Internet Domain Names in the form attached as Exhibit F (the "Assignment of Internet Domain Names") fully executed by each Seller;

(g) A Copyright Assignment in the form attached as Exhibit G (the "Copyright Assignment")

(h) A letter agreement in the form attached as Exhibit H (the "Letter Agreement") executed by each of Specialty Packaging Corporation, a Cayman Islands company, Cosmolab Europe AG, a Swiss company, Cosmolab Asia, Ltd., a Cayman Islands company, Cosmolab (Far East) Limited, a Hong Kong company and Cosmolab (Suzhou) Cosmetics Co. Ltd., a Suzhou PRC WOFE.

(i) If required pursuant to Section 7.11 below, the Limited Power of Attorney fully executed by each Seller;

(j) If required pursuant to Section 7.11 below, the Interim Management Agreement fully executed by each Seller;

(k) Copies of resolutions duly adopted by the Board of Directors of each Seller, authorizing and approving its performance of the Contemplated Transactions and the execution, delivery and performance of this Agreement, the Ancillary Agreements and the documents described herein, certified as true and of full force as of the Closing, by the appropriate officers of such Seller;

(l) Certificates of the President or a Vice President of each Seller, certifying the satisfaction of the conditions in Sections 8.1 and 8.2 below;

(m) A certificate of the President or a Vice President of Cosmolab, certifying (i) the aggregate amount of Eligible Accounts as of a date within two (2) Business Days prior to the Closing Date and (ii) the pro rations required to be paid by Sellers at Closing pursuant to Section 7.9 below, i.e., the estimated prorated Sellers' share of any Successor Taxes that are due and payable on or after the Closing Date and all Post-petition costs, including for salaries, electricity, employee

benefits and/or rents relating to Assumed Contracts, with respect to periods encompassing before the Closing Date;

(n) Certificates of incumbency for the officers of each Seller executing this Agreement or making certifications for the Closing;

(o) Certificates of existence and good standing of each Seller from the state in which it is incorporated, dated the most recent practical date prior to the Closing;

(p) All certificates of title and other documents evidencing an ownership interest conveyed as part of the Purchased Assets;

(q) A copy of the Sale Approval Order;

(r) Proof that all cure amounts owing under the Assumed Contracts up to the Seller Cure Cost Limit have been paid, or instructions providing for the wiring of funds at Closing to make payment of such cure amounts up to the Seller Cure Cost Limit; and

(s) Such other instruments and documents as Buyer reasonably deems necessary to effect the Contemplated Transactions.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

5.1 Representations And Warranties As To The Sellers. The Sellers hereby jointly and severally represent and warrant to Buyer as follows:

5.1.1 Organization And Good Standing. Each Seller is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation, with full corporate power and authority to conduct its business as it is now being conducted. Each Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdiction where the failure so to qualify would have a material adverse effect on the financial condition, business, assets or results of operations of such Seller. Each Seller has made available to Buyer copies of its charter and bylaws, as currently in effect.

5.1.2 Authority; No Conflict.

(a) This Agreement has been duly executed and delivered by the Sellers.

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time or both):

(i) contravene, conflict with, or result in a violation of (A) any provision of the charter and bylaws of any of the Sellers, or (B) any resolution adopted by the board of directors or the stockholders of any of the Sellers; or

(ii) contravene, conflict with, or result in a violation of, any Legal Requirement or any Order to which any Seller, or any of the Purchased Assets, is subject;

(c) Except as set forth in Schedule 5.1.2(c) and subject to Bankruptcy Court approval, no Seller is or will be required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions in all material respects which has not been previously given or obtained.

5.1.3 Powers. The execution, delivery, and performance of this Agreement by Sellers and all Ancillary Agreements to which Sellers are party, and the consummation of the Contemplated Transactions by Sellers have been duly authorized by all appropriate corporate action.

5.1.4 Binding Agreement. This Agreement and all Ancillary Agreements are and will constitute the valid and legally binding obligations of Sellers, and are and will be enforceable against Sellers, in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights and general equitable principles.

5.1.5 Taxes. Except as set forth in Schedule 5.1.5:

(a) Each of the Sellers has timely filed all Tax Returns that it was required to file either separately or as a member of a group of corporations pursuant to applicable Legal Requirements. All such Tax Returns were correct and complete in all respects and were prepared in substantial compliance with all applicable Legal Requirements. All Taxes owed by each Seller (whether or not shown or required to be shown on any Tax Return) have been paid. None of the Sellers currently is the beneficiary of any extension of time within which to file any Tax Return. No Claim has ever been made by an authority in a jurisdiction where any Seller does not file Tax Returns that any Seller is or may be subject to taxation by that jurisdiction. There are no existing, or to Sellers' Knowledge threatened, Encumbrances on any of the Purchased Assets that arose in connection with any failure (or alleged failure) to pay any Tax.

(b) Each Seller has withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party, and all Forms W-2 and 1099 (or similar forms under any foreign Legal Requirements) required with respect thereto have been properly completed and timely filed.

(c) No director or officer (or employee responsible for Tax matters) of any Seller expects any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax liability of any Seller either (A) claimed or raised by any authority in writing or (B) as to which any Seller has Knowledge based upon personal contact with any agent of such authority. Schedule 5.1.5(c) lists all federal, state, local, and foreign income Tax Returns filed with respect to each Seller for taxable periods ended on or after December 31, 2006, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. Sellers have delivered or made available to Buyer correct and

complete copies of all income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by Sellers since December 31, 2006.

(d) No Seller has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) The unpaid Taxes of each Seller (i) did not, as of the most recent fiscal month end, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Sellers balance sheet (rather than in any notes thereto), and (ii) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of each Seller in filing its Tax Returns.

(f) None of the Assumed Liabilities is an obligation to make a payment that is not deductible under IRC § 280G or similar provision of foreign Legal Requirement. Each Seller has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of IRC § 6662. No Seller is a party to any Tax allocation or sharing agreement. No Seller (i) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was Specialty Packaging Holdings, Inc. and (ii) has any liability for the Taxes of any Person under Treasury Regulations § 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise.

(g) No Seller has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by IRC § 355 or IRC § 361.

5.1.6 Employee Benefits.

(a) Schedule 5.1.6 sets forth a correct and complete list of all Employee Benefit Plans that are maintained by each Seller and identifies all Employee Benefit Plans that are maintained in a jurisdiction outside the United States (the "Foreign Plans"). Neither the Sellers nor any ERISA Affiliate has maintained or contributed to any plans subject to Title IV of ERISA, including any "multiemployer plan" as defined in Section 3(37) of ERISA.

(b) Correct and complete copies of the following documents with respect to each of the Employee Benefit Plans have been made available to Buyer by the Sellers, to the extent applicable: (i) any plan documents and related trust documents, insurance contracts or other funding arrangements, and all amendments thereto; (ii) the Forms 5500 (or similar annual report) and all schedules thereto for the three most recent years; (iii) the most recent actuarial report, if any; (iv) the most recent IRS determination letter (or similar determination letter or ruling issued by any Governmental Body with respect to any Foreign Plan); (v) the most recent summary plan descriptions; and (vi) written descriptions of all non-written agreements relating to the Employee Benefit Plans.

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(c) The Employee Benefit Plans have been maintained, funded and administered in accordance with their terms and comply in all material respects with all applicable provisions of ERISA, the IRC and all other Legal Requirements.

(d) Each Employee Benefit Plan that is intended to meet the requirements for tax-favored treatment under Subchapter B of Chapter 1 of Subtitle A of the IRC meets such requirements. Each Foreign Plan that is intended to have tax-favored status under any applicable foreign Law meets the requirements of such foreign Law. No event has occurred with respect to the operation of the Employee Benefit Plans that would cause the imposition of any material liability, penalty or tax under ERISA, the IRC or any other applicable law, excluding any benefits properly payable under or any income or employment taxes properly withheld or properly accrued or paid with respect to any Employee Benefit Plan.

(e) Each Employee Benefit Plan that is intended to be a qualified plan under Section 401(a) of the IRC meets the requirements for such qualification and the related trusts are exempt under Section 501(a) of the IRC. Each Foreign Plan has obtained from the Governmental Body having jurisdiction over such plan any required determinations that such plans are in compliance with the Legal Requirements of such Governmental Body.

(f) All contributions (including all employer contributions and employee contributions) required to have been made under any of the Employee Benefit Plans (including workers compensation) or by Legal Requirement have been timely made.

(g) None of the Sellers, any ERISA Affiliate nor any organization to which any of the Sellers or any ERISA Affiliate is a successor or parent corporation within the meaning of Section 4069(b) of ERISA has engaged in any transaction within the meaning of Section 4069 or 4212(c) of ERISA.

(h) There are no pending investigations, actions, Claims or lawsuits that have been asserted in writing or instituted against the Employee Benefit Plans, the assets of any of the trusts under the Employee Benefit Plans or the sponsor or administrator of any of the Employee Benefit Plans, or against any fiduciary of the Employee Benefit Plans with respect to the operation of any of the Employee Benefit Plans (other than benefit claims).

(i) There have been no "prohibited transactions" (within the meaning of section 406 of ERISA and section 4975 of the IRC) with respect to any Employee Benefit Plan. No fiduciary has any liability for material breach of fiduciary duty or any other material failure to act or comply in connection with the administration or investment of the assets of any such Employee Benefit Plan. No action, suit, proceeding, hearing or investigation with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending or, to the Knowledge of the Sellers, threatened.

(j) None of the Employee Benefit Plans provides for post-employment life insurance or health benefits coverage, except as may be required under Part 6 of Subtitle B of Title I of ERISA (or any similar requirement of any other Legal Requirements) at the expense of the

participant or the participant's beneficiary, or coverage through the last day of the month following the date of termination of employment.

(k) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment becoming due to any employee under any Employee Benefit Plan; (ii) increase any benefits otherwise payable under any Employee Benefit Plan; or (iii) result in the acceleration of the time of payment or vesting of any such benefits under any Employee Benefit Plan.

(l) Each Employee Benefit Plan which is a "group health plan" as defined in Section 5000(b)(1) of the IRC has been operated in compliance with the requirements of Section 4980B of the IRC and Sections 601 through 608 of ERISA ("COBRA"), and each Employee Benefit Plan, to the extent applicable, is in compliance with the privacy, security and other provisions of the Health Insurance Portability and Accountability Act of 1996.

(m) Each Employee Benefit Plan which is a nonqualified deferred compensation plan, within the meaning of Section 409A of the IRC has been operated in good faith compliance with the requirements of Section 409A (or an available exemption therefrom) and has been amended to comply with Section 409A such that amounts of compensation deferred or payable thereunder will not be includible in gross income under Section 409A prior to the distribution of benefits in accordance with the terms of the plan and will not be subject to the interest and additional tax under Section 409A(a)(1)(B) of the IRC.

5.1.7 Compliance With Legal Requirements. Subject to the Bankruptcy Code:

(a) each Seller is, and at all times since December 31, 2008 has been, in compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets;

(b) no event has occurred or circumstance exists that (with or without notice or lapse of time or both) (A) constitutes or resulted in a violation by any Seller of, or a failure on the part of any Seller to comply with, any Legal Requirement or Governmental Authorization, or (B) will give rise to any obligation on the part of any Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(c) none of the Sellers has received any notice or other communication from any Governmental Body or any other Person regarding (A) any violation of, or failure to comply with, any Legal Requirement, or (B) any obligation on the part of the Sellers to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

5.1.8 No Collective Bargaining Agreements, etc.

(a) No Seller is, and no Seller has been since December 31, 2008, a party to any collective bargaining agreement; and

(b) (i) since December 31, 2008, there has not been, there is not presently pending or existing, and to Sellers' Knowledge, there is not threatened, any strike, slowdown, sick out,

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picketing, work stoppage or employee grievance process involving any Seller; (ii) to Sellers' Knowledge, no event has occurred or circumstance exists that could provide the basis for any material work stoppage, slowdown or other labor dispute; (iii) there is not pending or, to Sellers' Knowledge, any organizational activity or other labor dispute against or affecting any Seller or the Facilities; (iv) no application or petition for an election of or for certification of a collective bargaining agent is pending; (v) no material grievance or arbitration Proceeding exists that might have a Material Adverse Effect; (v) there is no lockout of any employees by any Seller, and no such action is contemplated by any Seller; and (vi) there has been no material charge of discrimination filed against or, to Sellers' Knowledge, threatened against any Seller with the Equal Employment Opportunity Commission, the Department of Labor or similar Governmental Body.

5.1.9 Environmental Matters. To the Knowledge of Sellers, and except as described on Schedule 5.1.9:

(a) Each of the Sellers is in compliance with all applicable Environmental Laws in all material respects;

(b) Each of the Sellers is in material compliance with all Governmental Authorizations that are required pursuant to Environmental Laws for the ownership and use of the Purchased Assets and the operation of the Business as currently being conducted;

(c) There has been no Release of any Hazardous Materials into the Environment by any Seller or any Person for whom any Seller may be legally responsible since December 31, 2008 which would reasonably be expected to result in liability to the Seller under any applicable Environmental Law;

(d) None of the Sellers is in default under, or in violation of, any binding Order pursuant to any applicable Environmental Law; and

(e) The Sellers have not entered into any consent decree or other written agreement with any Governmental Body in settlement of any alleged violation of or liability under any applicable Environmental Law, under which decree or agreement the Sellers have any unfulfilled material obligations.

The representations and warranties in this Section 5.1.9 are the sole and exclusive representations and warranties of the Sellers concerning environmental matters, including, without limitation, any matters arising under any Environmental Laws.

5.1.10 Product Warranty; Products Liability.

(a) Each product designed, developed, manufactured, distributed, shipped, delivered, sold, serviced or supported by or on behalf of the Sellers (i) has been designed, developed, manufactured, distributed, shipped, delivered, sold, serviced or supported, as applicable, in material conformity with all applicable contractual commitments (including all applicable warranties and representations), and (ii) is free from material defects in design, material and workmanship.

(b) There are not presently pending, or to Sellers' Knowledge threatened, any Proceedings or Claims relating to any alleged hazard or alleged defect in design or manufacture relating to any product designed or manufactured by any Seller included in the Purchased Assets, excluding warranty claims made in the Ordinary Course of Business. Schedule 5.1.10 sets forth a true and complete list of all product recalls or written post-sales warnings involving any product designed or manufactured by any Seller since December 31, 2008 included in the Purchased Assets, excluding warranty claims in the Ordinary Course of Business (each, a "Recall") and any pending investigations being conducted by any Seller or, to the Sellers' Knowledge, by any other Person or Governmental Body concerning a Recall relating to any product designed or manufactured by any Seller included in the Purchased Assets. To Sellers' Knowledge, no Seller has any liability (and to Sellers' Knowledge there is no basis for any present or future action against it giving rise to any liability) arising out of any injury to individuals or property as a result of the ownership, possession or use of any service or product delivered by any Seller included in the Purchased Assets.

5.1.11 Title to and Sufficiency of Assets and Equipment, etc. Except as set forth in Schedule 5.1.11 and except with respect to the Excluded Assets, (i) the Sellers have good and marketable title to the Purchased Assets which constitute all of the assets necessary to operate the Business in all material respects in the manner presently operated by Sellers, (ii) the Assumed Contracts are in full force and effect and, subject to the effects of the Bankruptcy Case, to Sellers' Knowledge none of the other parties thereto are in breach or have threatened termination of any thereof, and (iii) all of the Equipment included in the Purchased Assets is in good repair and condition consistent with the requirements and normal conduct of the Business, ordinary wear and tear excepted.

5.1.12 Certain Claims. There is no pending, or to Sellers' Knowledge threatened, Claim or Proceeding against Buyer by a Governmental Authority or other Person that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers as follows:

6.1.1 Organization And Good Standing. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Tennessee.

6.1.2 Authority; No Conflict; Competing Business.

(a) This Agreement has been duly executed and delivered by Buyer. This Agreement and all Ancillary Agreements are and will constitute a legal, valid, and binding obligation of Buyer, and are and will be enforceable against Buyer in accordance with their terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights and general equitable principles. Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and all Ancillary Agreements and to perform its obligations hereunder and

thereunder and the entry into this Agreement and each Ancillary Agreement has been duly authorized by all necessary action on the part of Buyer.

(b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay, or otherwise interfere with any of the Contemplated Transactions pursuant to:

- (i) any provision of Buyer's organizational documents;
- (ii) any resolution adopted by the board of directors or the stockholders of Buyer;
- (iii) any Legal Requirement or Order to which Buyer may be subject; or
- (iv) any contract to which Buyer is a party or by which Buyer may be bound.

(c) Except as set forth in Schedule 6.1.2, Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

6.1.3 Certain Claims. There is no pending, or to Buyer's Knowledge threatened, Claim or Proceeding against Buyer by a Governmental Authority or other Person that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions.

ARTICLE VII ADDITIONAL COVENANTS AND AGREEMENTS

7.1 **Conduct of the Business.** During the period from the date hereof through the Closing Date, except as otherwise consented to by Buyer, except if prohibited by the Bankruptcy Code or an Order of the Bankruptcy Court and except as otherwise contemplated herein, Sellers will:

- (a) conduct the Business in the Ordinary Course of Business;
- (b) without making any commitment on Buyer's behalf, use commercially reasonable efforts to preserve the Business and Purchased Assets substantially intact and maintain existing relations and goodwill with all customers, suppliers and distributors, provided that Sellers shall not be required to make any payments of Pre-petition amounts due which Seller is not permitted to pay under the Bankruptcy Code, except as required or permitted by an Order of the Bankruptcy Court or a confirmed plan of reorganization, or make material changes to their rights or obligations, in order to maintain such relations and goodwill;
- (c) pay all required Post-petition payments through the Closing Date and pay all Cure Costs up to the Seller Cure Cost Limit pursuant to Section 3.1(d) above;

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(d) maintain for the benefit of Sellers the insurance policies in effect on the date hereof until the Closing Date;

(e) not sell or dispose of any material Purchased Assets other than sales of Inventory in the Ordinary Course of Business;

(f) maintain the Purchased Assets in a state of good repair and condition consistent with the requirements and normal conduct of the Business, ordinary wear and tear excepted;

(g) comply with all Legal Requirements and contractual obligations applicable to the operation of the Business and the ownership and use of the Purchased Assets;

(h) cooperate with Buyer and assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the Business from and after the Closing Date and, if required, either transferring existing Governmental Authorizations of the Sellers to Buyer, where permissible, or aiding Buyer in obtaining new Governmental Authorizations for Buyer;

(i) account for, make appropriate filing of Tax Returns with respect to, and pay when due all Taxes, assessments and other governmental charges that are due and payable before the Closing Date and that (i) could impose a lien on the Purchased Assets or (ii) result in successor liability on the Buyer, including real property Taxes or the Tennessee Franchise and Excise Tax, or (iii) are not dischargeable in bankruptcy (collectively, "Successor Taxes");

(j) pay all Post-petition trade accounts payable as required by the Bankruptcy Code; and

(k) pay all fees which are due as of the date hereof or become due prior to Closing and which are necessary to maintain or renew, and take all necessary actions to maintain or renew, each item of Intellectual Property.

7.2 Investigation by Buyer. During the period from the date hereof through the Closing Date, Buyer and its Representatives shall, upon reasonable notice, (i) have full and complete access during normal business hours to all Facilities, other properties, assets, books, financial and operating data, records, Governmental Authorizations, Contracts and documents related to the Business, the Assumed Contracts, the Assumed Liabilities or included in the Purchased Assets, (b) be furnished with copies of all such Contracts, Governmental Authorizations, books, files and records and other existing documents and data as Buyer may reasonably request, and (c) be furnished with such additional financial, operating and other relevant data and information as Buyer may reasonably request. Sellers shall otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the Business, Facilities, other properties, Purchased Assets, Assumed Contracts, Assumed Liabilities, assets and financial condition related to each Seller. In addition, Buyer shall have the right to have the Facilities, Equipment and Inventory inspected by Buyer and its Representatives, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal

characteristics of the Facilities, Equipment and Inventory. For avoidance of doubt, any such inspection shall not involve any invasive, destructive or subsurface testing.

7.3 Consents. As soon as practicable after the date hereof, Sellers and Buyer shall use commercially reasonable efforts to obtain all Consents, in form and substance reasonably acceptable to Buyer, as are or may be necessary to permit the assignment of the Contracts and the transfer of the Purchased Assets to the Buyer and the consummation of the Contemplated Transactions and to enable Buyer to conduct the Business from and after the Closing as currently conducted by Sellers, provided that Sellers shall not be required to make any material payments or material changes to their rights or obligations in order to obtain any such Consents.

7.4 Fulfillment of Conditions. Each of Sellers and Buyer shall take all commercially reasonable actions within its control to fulfill as soon as practicable the conditions set forth in Articles VIII and IX hereof, respectively.

7.5 Announcements. Sellers and Buyer agree that no announcement or press release shall be made by either Sellers or Buyer relating to the transactions contemplated hereby unless approved in writing in advance by the other party hereto, except that any party hereto may, upon not less than three (3) Business Days prior written notice to the other party hereto, make such announcement, press release or other report as may be required by any applicable Legal Requirement.

7.6 Change of Cosmolab, Inc. Name. Each Seller covenants and agrees that, within three (3) Business Days after the termination of the Interim Management Agreement or earlier following Closing upon Buyer's request, such Seller will file with appropriate Governmental Bodies an amendment to its organizational or constituting documents changing its name to a name that shall not include the word "Cosmolab" or any confusingly similar word. Certified copies of all such filed amendments shall be promptly furnished to Buyer.

7.7 Further Assurances; Access to Records.

(a) Sellers hereby agree that they will at any time and from time to time following the Closing Date, upon the reasonable request of Buyer, execute, acknowledge and deliver, or will cause to be executed, acknowledged and delivered, all such further acknowledgments, deeds, assignments, transfers, conveyances and assurances as may be reasonable and necessary for the better assigning, conveying and transferring to Buyer and to its successors and assigns, or for aiding and assisting in collecting and reducing to possession, any and all of the Purchased Assets to be conveyed to Buyer as provided herein. Sellers shall also furnish Buyer with such information and documents in its possession or under its control, or which Sellers can execute or cause to be executed, as will enable Buyer to prosecute any and all petitions, applications, claims, and demands relating to or constituting a part of the Business or the Purchased Assets.

(b) Buyer hereby agrees that from and after the Closing, Sellers, their Representatives, any Official Committee of Unsecured Creditors, any trustee or Representative acting on behalf of the Debtors' estates or any trusts created therefrom (upon agreeing to be bound by the provisions of Section 12.14 below) and representatives of federal and state Taxing authorities

shall have access during normal business hours and upon reasonable advance notice to all books, records and documents delivered to Buyer by Sellers at Closing or which otherwise concern transactions related to the Business prior to the Closing for purposes of inspection and copying thereof.

7.8 Additional Financial Information. Within two (2) Business Days after they are created (but in any event no later than thirty (30) days following the end of each calendar month prior to Closing), Sellers shall deliver to Buyer true and complete copies of their consolidated unaudited balance sheets and the related unaudited statements of income (collectively, the "Interim Statements") for each month then ended, together with a year-to-date compilation and the notes, if any, related thereto, which presentation shall be true, correct and complete in all material respects, shall have been prepared from and in accordance with the books and records of Sellers, and shall fairly present the financial position and results of operations of Sellers as of the date and for the period indicated, all in accordance with GAAP.

7.9 Prorations.

(a) Real and personal property and use Taxes attributable to the Purchased Assets shall be allocated between Sellers and Buyers on the basis of the number of days in the applicable Tax period of Sellers elapsed to the Closing Date (which portion shall be allocated to Sellers) as compared with the number of days in such tax period elapsing on and after the Closing Date (which portion shall be allocated to Buyer). At Closing, Sellers shall pay their estimated prorated share of any Successor Taxes that are due and payable on or after the Closing Date.

(b) All Post-petition costs, including for salaries, electricity, employee benefits and/or rents relating to Assumed Contracts with respect to periods encompassing before and after the Closing Date shall be prorated between the parties in relation and on the basis of the number of Business Days for each party in the applicable period. Any such prorations shall be estimated as of the Closing Date and any net amount due to or due from Sellers or Buyer, as applicable, shall be added to or subtracted from the cash portion of the Purchase Price.

7.10 Bankruptcy Filing; Bankruptcy Court Approval; Break-Up Fee and Bidding Procedures.

(a) On or before January 22, 2010, Sellers shall commence a bankruptcy case (the "Bankruptcy Case") by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), in the Bankruptcy Court for the District of Delaware or for the Middle District of Tennessee (as applicable, the "Bankruptcy Court");

(b) Within one (1) day of the date of commencement of the Bankruptcy Case (the "Filing Date") Sellers shall file a motion or application (the "Sale Motion") with the Bankruptcy Court pursuant to inter alia, Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006, in form and substance satisfactory to Buyer and Sellers in their reasonable discretion, seeking entry of an order, in form and substance satisfactory to Buyer in its reasonable discretion, incorporating the following provisions (the "Sale Approval Order");

(i) pursuant to Bankruptcy Code sections 105(a) and 363(b), (f) and (m), (A) approving the terms and conditions of this Agreement, and (B) authorizing and empowering the Sellers to enter into this Agreement and to sell to Buyer (or any other successful bidder) all of the Purchased Assets, free and clear of any and all Claims and Encumbrances, with all such Claims and Encumbrances which are to attach to the net proceeds of the sale of the Purchased Assets in the order of their priority and having the same validity, force and effect (if any) which they now have against the Purchased Assets (the "Sale");

(ii) finding that (A) due and proper notice has been afforded in accordance with the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court and the Orders of the Bankruptcy Court and all aspects of the Contemplated Transactions have been adequately disclosed; (B) the Purchase Price under this Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code for the Purchased Assets; (C) Buyer is a good faith purchaser as that term is used in Section 363(m) of the Bankruptcy Code; (D) the Sale has not been entered into fraudulently and Buyer has not engaged in collusive bidding or otherwise violated the provisions of Section 363(n) of the Bankruptcy Code; (E) title to the Purchased Assets shall vest in Buyer free and clear of all Claims and Encumbrances of any type or nature including any Claims against Sellers and all Encumbrances on the Purchased Assets for, and Buyer shall not be liable for, any and all liabilities or Claims related to Sellers' pre-closing operations of any type or nature whatsoever, except for the Assumed Liabilities, to the maximum extent permitted by applicable law; (F) Buyer shall not be liable for any claims or debts of Sellers, except the Assumed Liabilities; (G) the Bankruptcy Court will retain jurisdiction over enforcement of the Sale Approval Order and to determine any disputes arising out of the Sale Approval Order; and (H) Buyer is not intended to be and shall not be deemed to be a successor to any Seller; and

(iii) granting other and related relief reasonably consistent with the Sale Motion.

(c) Sellers shall request that the Bankruptcy Court enter the Sale Approval Order as soon as practicable but in no event after the earlier of (i) fifty (50) days after the date of entry of the Bidding Order (as defined below) or (ii) April 15, 2010 (the "Sale Approval Deadline"), it being expressly agreed that this Agreement will not be binding upon the Buyer if the Sale Approval Order is not entered prior to the Sale Approval Deadline;

(d) In connection with the filing of the Sale Motion and any hearing thereon, Sellers shall request the Bankruptcy Court hold an expedited hearing within 15 days, and enter, as soon as practicable but in no event later than 30 days after the filing of the Sale Motion, an order (the "Bidding Order"), in form and substance acceptable to Buyer in its reasonable discretion, (x) setting forth a date on which any claims in respect of Sellers' leases and executory contracts will be heard and adjudicated and thereafter be barred of assertion and (y) approving a break-up fee (the "Break-Up Fee") of \$400,000 that shall become due and payable by wire transfer of immediately available

funds to an account designated by Buyer, without further order of the Bankruptcy Court, in the event that all or any significant part of the Purchased Assets are sold to a party or parties other than the Buyer as well as setting forth the following bidding procedures:

(i) All bids for the Purchased Assets must offer an aggregate price for the Purchased Assets of not less than the sum of (a) the value of the consideration to be provided by the Buyer under this Agreement, plus (b) the Break-Up Fee, plus (c) \$200,000.00 (the "Minimum Upset Bid").

(ii) The Bidding Order shall provide that, on the Auction Date, competing bids must be for substantially all of the Purchased Assets, and not for any individual parts. Competing bids by third parties must be submitted prior to the Auction by not later than two (2) Business Days (and potentially earlier in Seller's discretion, the "Bid Deadline"), must be accompanied by a cash deposit in an amount of at least the greater of (x) \$1,000,000 or (y) 7.5% of the competing bid and an asset purchase agreement with substantially the same terms and conditions as this Agreement and showing any proposed changes from this Agreement, and the bidder must provide sufficient information to Sellers to satisfy Sellers of the potential bidder's ability to consummate a purchase of the Purchased Assets upon becoming the successful bidder (as defined below).

(iii) All competing bidders for the Purchased Assets shall complete their due diligence on the Purchased Assets by no later than the Bid Deadline. After the Bid Deadline, any and all due diligence with respect to the Purchased Assets shall be deemed waived by all bidders, and all bids shall be non-contingent and unconditional.

(iv) If the Sellers receive bids from one or more qualified bidders for all of the Purchased Assets, the Sellers will conduct the Auction for the Purchased Assets on the Auction Date.

(e) Pursuant to the terms set out in Section 11.2(c) below, Sellers shall pay Buyer the Break-Up Fee if all or any significant part of the Purchased Assets are sold hereunder to any Person other than the Buyer or an Affiliate of Buyer, and Buyer is not in material breach of this Agreement.

(f) Provided that the Sale Approval Order contains a finding of fact by the Bankruptcy Court that Buyer is a "good faith purchaser" as that term is used in Section 363(m) of the Bankruptcy Code, and the Sale Approval Order is not stayed, then at the discretion of Buyer, the closing of a Sale to Buyer will occur at any time up to twenty (20) calendar days after entry of the Sale Approval Order in favor of Buyer but in no event later than May 15, 2010 (as used herein, the "Termination Date"). In the event that the Sale Approval Order does not contain a finding of fact by the Bankruptcy Court that Buyer is a "good faith purchaser" as that term is used in Section 363(m) of the Bankruptcy Code, or in the event of a stay which prevents the Closing, then the Buyer's obligation to consummate the Closing shall terminate as of the Termination Date and Buyer shall be entitled to the return of the Deposit, unless Buyer opts to extend the Termination Date during the stay

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(a “Stay Extension”). If the Buyer chooses a Stay Extension, then Buyer shall close within five (5) business days of any cessation of the stay. Buyer shall have the right to terminate any Stay Extension and get the return of the Deposit at any time upon five (5) business days notice, except after entry of an Order terminating the stay, in which event Buyer shall be obligated to consummate the Closing (unless the Sale Approval Order has been overturned).

(g) Sellers shall send notices, in form and substance reasonably satisfactory to Buyer, regarding the proposed Sale and the actual Sale of the Purchased Assets to such parties as Buyer may designate, in addition to all Persons who are entitled to receive notice of the Bankruptcy Case by virtue of the Bankruptcy Code, the local rules of the Bankruptcy Court, any order of the Bankruptcy Court or any other applicable Legal Requirement, or which Sellers reasonably believe have or may assert a Claim or Encumbrance against or related to the Purchased Assets (collectively, the “Notice Parties”), in each case, within the time periods required by, and otherwise in accordance with the provisions of applicable Legal Requirements. Sellers shall take such further action in its Bankruptcy Case, as Buyer may reasonably request, in order to (i) reduce the risk of any successor liability to Buyer relating to Sellers’ or their Affiliates’ conduct or action or inaction (including providing notice of the sale of Sellers’ assets to any known potential claimants, with Buyer to pay the costs of any additional noticing or publication notice), and (ii) otherwise effect the sale of the Purchased Assets to Buyer. Sellers shall provide notice of (x) the Sale Motion (including the form of the proposed Sale Approval Order to be included therein) and the Bidding Order to all of the Notice Parties, and (y) entry of the Sale Approval Order to all Notice Parties. Sellers shall use their best efforts to obtain the Consent of any and all parties to Contracts to the assignment of such Contracts to Buyer, to the extent such Consent is required under the Bankruptcy Code (including Section 365(c) thereof). Sellers shall not include in any plan of reorganization (or in any order confirming any such plan) which it seeks to confirm in the Bankruptcy Case any provision or term which would limit, prejudice or modify any rights of Buyer hereunder or any obligations of Sellers hereunder.

(h) Buyer acknowledges that this Agreement and the sale of the Purchased Assets under this Agreement is subject the terms and conditions of the Bidding Order and approval by the Bankruptcy Court.

(i) Sellers and Buyer reserve the right to seek a bond from any third-party attempting to stay the sale for an objection or appeal, with such bond to be in the full amount of the sales price and any and all other damages, costs, fees, and amounts otherwise allowable for such bond.

(j) Sellers shall provide Buyer or its counsel (with CM/ECF court electronic notices to be sufficient) with all pleadings and notices in the Bankruptcy Case.

7.11 Limited Power of Attorney and Interim Management Agreement. In the event that Buyer has not obtained all Governmental Authorizations required to operate the Business by the Closing Date, Buyer and Sellers agree to enter into a Limited Power of Attorney (the “Limited Power of Attorney”) and Interim Management Agreement (the “Interim Management Agreement”) in a form to be reasonably agreed and in accordance with all Legal Requirements for the purpose of allowing Buyer to operate the Business for its benefit under the Governmental Authorizations of Sellers and to receive all the economic benefits associated therewith. Sellers

agree that following Closing, during any time that the Limited Power of Attorney and Interim Management Agreement are in effect, Sellers will not convert the Bankruptcy Case to Chapter 7 without the consent of Buyer, and further agree that the Limited Power of Attorney and Interim Management Agreement shall remain in place and shall not be subject to rejection in the event of any Chapter 7 conversion until Buyer has obtained all such Governmental Authorizations.

7.12 Collection of Accounts.

(a) Following the Closing, Buyer shall use commercially reasonable efforts in the ordinary course of its business to collect all Accounts. Upon request and provision of completed forms by Buyer, Sellers will execute and deliver to Buyer notices to Account debtors in form reasonably acceptable to Sellers informing such Account debtors of the sale of the Accounts to Buyer and directing them to remit payment as directed by Buyer.

(b) Buyer shall remit all collections of Accounts in excess of the Accounts Threshold to Cosmolab. Any such amounts will be transferred at least once per month within five (5) days after the end of the preceding month. For purposes of this Section 7.12, all amounts received by Buyer from an Account debtor shall be applied to the oldest Accounts of such account debtor first (regardless of whether such Account debtor has accounts receivable owing to Buyer for post-Closing transactions) unless such Account debtor specifically directs a different application in writing due to a good faith dispute over the validity or amount of an Account.

(c) Buyer shall not grant or agree to any reduction, discount, concession, forgiveness or other modification of an Account without Cosmolab's express written consent.

(d) Six months after the Closing Date, Buyer and Cosmolab will review any uncollected Accounts. At the request of Cosmolab, Buyer shall turn over any uncollected Accounts to a collection agency designated by Cosmolab.

(e) If any Seller receives proceeds from an Account prior to Buyer having collected the Accounts Threshold, such Seller shall remit such proceeds to Buyer within one (1) Business Day.

7.13 Certain Actions. Sellers shall use commercially reasonable efforts to complete the actions described on Schedule 7.13 to Buyer's reasonable satisfaction.

**ARTICLE VIII
CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE**

Buyer's obligation to purchase the Purchased Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

8.1 Accuracy of Representations. All of Sellers' representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate as of the date of this Agreement, and must be

accurate as of the Closing Date as if made on the Closing Date, except for such inaccuracies as would not be reasonably likely to cause a Material Adverse Effect.

8.2 Sellers' Performance. All of the covenants and obligations that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

8.3 Consents; Authorizations. Each of the Consents identified in Schedule 8.3, must have been obtained and must be in full force and effect. Buyer either (i) shall have obtained documentation or other evidence satisfactory to Buyer in its reasonable discretion that Buyer has received confirmation from all applicable Governmental Bodies that upon the Closing all Governmental Authorizations required to operate the Business as currently operated will be transferred to, or issued or reissued in the name of, Buyer, or (ii) shall be able to operate the Business in all material respects and in compliance with all Legal Requirements (including all Environmental Laws) pursuant to the Limited Power of Attorney and the Interim Management Agreement.

8.4 No Claims. There must not have been commenced and be continuing against Buyer or any Seller, or against any Affiliate of Buyer or any Seller, any Claim or Proceeding (other than the Bankruptcy Case and any objections or proceedings pending therein which have been overruled or denied) (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

8.5 No Prohibition. Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a violation of, or cause Buyer or any Affiliate of Buyer to suffer any material adverse consequence under, any applicable Legal Requirement or Order.

8.6 Bankruptcy Case. Sellers shall have successfully commenced the Bankruptcy Case and the Sale Approval Order directing the sale of the Purchased Assets to Buyer in accordance with the provisions of this Agreement shall have been duly entered and shall not be subject to any stay. At Buyer's option, such order shall also be a Final Order, but Buyer shall be entitled to close in the event of entry of the Sale Approval Order which is unstayed unless in its sole discretion it determines to require fulfillment of these other conditions as well.

8.7 Contracts. Any and all defaults arising prior to the Closing with respect to any Assumed Contract shall have been cured or waived without any material modifications to the subject Assumed Contract unless expressly authorized by Buyer in its absolute discretion to the full extent required by Section 365(b)(1)(A) and other applicable provisions of the Bankruptcy Code and any order of the Bankruptcy Court, *provided*, however, that this condition shall be

deemed satisfied in full if Sellers have satisfied or provided for the satisfaction at Closing of their obligation in Section 3.1(d) above.

8.8 Seller Deliverables. Buyer shall have received copies of all of the documents required to be delivered to Buyer pursuant to Section 4.3 of this Agreement which shall have been duly completed, dated and executed as contemplated by Section 4.3.

8.9 Certain Actions. Sellers shall have completed the actions described on Schedule 7.13 to Buyer's reasonable satisfaction.

ARTICLE IX CONDITIONS PRECEDENT TO SELLERS' OBLIGATION TO CLOSE

Sellers' obligation to sell the Purchased Assets, and to take the other actions required to be taken by them at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Sellers, in whole or in part):

9.1 Accuracy of Representations. All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

9.2 Buyer's Performance.

(a) All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

(b) Buyer must have delivered each of the documents required to be delivered by Buyer pursuant to Section 4.2 and must have made the cash payments required to be made by Buyer pursuant to Section 4.2.

9.3 Consents. Each of the Consents identified in Schedule 9.3 must have been obtained and must be in full force and effect.

9.4 No Injunction. Since the date of this Agreement, there shall not have been adopted or issued, and there shall not otherwise be in effect, any injunction, Order or other Legal Requirement that prohibits the sale of the Purchased Assets by Sellers to Buyer, or the consummation of any of the other Contemplated Transactions hereunder.

9.5 Sale Approval Order. The Sale Approval Order directing the sale of the Purchased Assets to Buyer in accordance with the provisions of this Agreement shall have been duly entered and shall not be subject to any stay.

**ARTICLE X
SURVIVAL OF REPRESENTATIONS AND COVENANTS**

10.1 Nonsurvival of Representations and Warranties. All representations and warranties in this Agreement and any other certificate or document delivered pursuant to this Agreement will not survive the Closing and will terminate as of the Closing Date.

10.2 Survival of Covenants Requiring Post-Closing Activity. The respective covenants of the parties hereto will survive the Closing in accordance with their respective terms, but only with respect to the obligation to perform specific actions post-Closing (such as, without limitation, further assurances, management agreements and the like).

**ARTICLE XI
TERMINATION**

11.1 Termination. Notwithstanding anything herein to the contrary, this Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Closing:

- (a) by the mutual written consent of Sellers and Buyer;
- (b) (i) by Buyer, if through no fault of Buyer, (x) there has been a breach of any representation, warranty, covenant or agreement made by Sellers in this Agreement, or (y) any such representation and warranty shall have become untrue after the date of this Agreement, in either case such that the conditions set forth in Section 8.1 or Section 8.2 would not be satisfied and such breach or condition is not curable or, if curable, is not cured to Buyer's reasonable satisfaction prior to the earlier of (A) thirty (30) days after written notice thereof is given by Buyer to Cosmolab or (B) two Business Days prior to the Termination Date or (ii) by Cosmolab, if through no fault of Cosmolab, (x) there has been a breach of any representation, warranty, covenant or agreement made by Buyer in this Agreement, or (y) any such representation and warranty shall have become untrue after the date of this Agreement, in either case such that the conditions set forth in Section 9.1 or Section 9.2 would not be satisfied and such breach or condition is not curable or, if curable, is not cured prior to the earlier of (A) thirty (30) days after written notice thereof is given by Cosmolab to Buyer or (B) two Business Days prior to the Termination Date;
- (c) by Buyer or Cosmolab, if (i) the transactions contemplated by this Agreement have not been consummated by the Termination Date, (ii) the Bidding Order has not been entered within thirty (30) days of the filing of the Sale Motion, (iii) the Sale Approval Order has not been entered by the Sale Approval Deadline, or (iv) any Order permanently enjoining or otherwise prohibiting consummation of the transactions contemplated by this Agreement shall become final and non-appealable; provided, that, in each of the foregoing cases, the right to terminate this

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Agreement pursuant to this clause (c) of Section 11.1 shall not be available to any party that is responsible for a breach of its obligations under this Agreement in any manner that has proximately contributed to the occurrence of the failure of a condition to the consummation of the transactions contemplated by this Agreement on or prior to the Termination Date; or

(d) by Cosmolab if the Bankruptcy Court enters an order approving a Qualifying Bid other than a bid submitted by Buyer as the winning bid at auction.

The party desiring to terminate this Agreement pursuant to clause (b), (c) or (d) of this Section 11.1 shall give written notice of such termination to the other party, which in the case of a termination by Sellers under clause (d) must be accompanied by written instructions signed by Sellers to the Escrow Agent to distribute the Escrow Fund to Buyer.

11.2 Effect of Termination and Abandonment. In the event of termination of this Agreement and the abandonment of the transactions contemplated hereby pursuant to Section 11.1, this Agreement shall become void and of no effect with no liability to any Person on the part of any party (or of any of its affiliates); provided, that:

(a) if Buyer terminates this Agreement pursuant to Section 11.1(b)(i)(x) above, then Sellers shall be obligated, jointly and severally, to pay not later than three Business Days after the termination date to Buyer the Break-Up Fee without any further action of the Bankruptcy Court;

(b) if Buyer terminates this Agreement pursuant to Section 11.1(b)(i)(y) above and if within three (3) months of such termination, Sellers sell all or any significant part of the Purchased Assets to a Person that is not an Affiliate of Buyer, then Sellers shall be obligated, jointly and severally, to pay to Buyer the Breakup Fee not later than three Business Days after the completion of such sale without any further action of the Bankruptcy Court;

(c) if Cosmolab terminates this Agreement pursuant to Section 11.1(d) above and within three (3) months of such termination, Sellers shall sell all or any significant part of the Purchased Assets to a Person that is not an Affiliate of Buyer, then Sellers shall be obligated, jointly and severally, to pay to Buyer the Breakup Fee not later than three Business Days after the completion of such sale without any further action of the Bankruptcy Court;

(d) if (i) Buyer and Cosmolab terminate this Agreement pursuant to Section 11.1(a) above, (ii) Buyer terminates this Agreement pursuant to Section 11.1(b)(i) above, (iii) Buyer or Cosmolab terminate this Agreement pursuant to Section 11.1(c) above, or (iv) Cosmolab terminates this Agreement pursuant to Section 11.1(d) above, then Buyer shall be entitled to receive the Escrow Fund and Sellers will execute immediately and deliver without undue delay written instructions to the Escrow Agent to distribute the Escrow Fund to Buyer without any further action of the Bankruptcy Court;

(e) if Cosmolab terminates this Agreement pursuant to Section 11.1(b)(ii)(x), then Sellers shall be entitled to receive the Escrow Fund and Buyer will execute immediately and deliver without undue delay written instructions to the Escrow Agent to distribute the Escrow Fund to Sellers without any further action of the Bankruptcy Court;

(f) ARTICLE XII, this Section 11.2 and Section 11.3 below shall survive the termination of this Agreement; and

(g) Sellers shall provide the information required by Section 7.10(j) above.

11.3 Damages.

(a) The parties agree that the amount of Sellers' and Buyer's damages for a breach by the other would be difficult and inordinately expensive to calculate and that liquidated damages are therefore appropriate for this scenario. In the event of an uncured material breach of this Agreement by Buyer, and Sellers determine not to Close the Sale under this Agreement, then absent fraud Sellers' sole remedy shall be to retain the Escrow Fund as full and liquidated damages. In the event of an uncured material breach of this Agreement by Sellers, and Buyer determines not to Close the Sale under this Agreement, then in all cases, absent fraud Sellers' maximum obligation shall be the Break-Up Fee as liquidated damages and the return of the Escrow Fund. In the event of a Closing, Buyer and Sellers shall be deemed to waive any claims for prior breaches of any kind.

(b) In no event shall any director, officer, employee or Representative of a party or any Affiliate of any party have any liability for any acts or omissions in connection with or arising out of or under this Agreement or any Ancillary Agreement, or the performance or negotiation thereof.

ARTICLE XII GENERAL PROVISIONS

12.1 Expenses. Except as otherwise provided in this Agreement, each of the parties hereto will bear the expenses incurred by them in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of Representatives.

12.2 Notices. All notices, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered by hand or by Federal Express or a similar internationally recognized overnight courier, in either case if delivered by 5:00 pm local time on a Business Day, otherwise the next Business Day; (b) five days after being deposited in any United States Post Office enclosed in a postage prepaid, registered or certified envelope addressed; or (c) when successfully transmitted by facsimile or by e-mail (with a confirming copy of such communication to be sent as provided in clauses (a) or (b) above), if delivered by 05:00 pm local time on a Business Day, otherwise the next Business Day, in each case, to the party for whom intended, at the address, e-mail address or facsimile number for such party set forth below (or at such other address, e-mail address or facsimile number for a party as shall be specified by like notice, provided, however, that any notice of change of address, e-mail address or facsimile number shall be effective only upon deemed receipt):

If to the Sellers:

Cosmolab, Inc.
1100 Garrett Road
Lewisburg, TN 37091
United States of America
Attn: Michael J. Musso
Facsimile No.:
Email: MMusso@MorrisAnderson.com

with a required copy to:

Frost Brown Todd LLC
424 Church Street, Suite 1600
Nashville, TN 37219-2308
United States of America
Attention: Robert A. Guy, Esq.
Facsimile No.: (615) 251-5551
Email: BGuy@fbtlaw.com

If to Buyer:

All4 Cosmetics, Inc.
c/o Schwan-STABILO Cosmetics GmbH & Co. KG
Schwanweg 1 - 90562 Heroldsberg - Germany
Attention Ulrich Griebel
Facsimile No 0049-911- 567.2011
Email: Ulrich.Griebel@schwancosmetics.com

with a required copy to:

Satterlee Stephens Burke & Burke LLP
230 Park Avenue, Suite 1130
New York, NY 10169
Attention: Timothy B. Brock, Esq.
Facsimile No.: (212) 818-9606
Email: tbrock@ssbb.com

12.3 Further Assurances. Each of the parties agrees that it shall, and shall cause its Affiliates to (a) furnish upon request to each other party such further information, (b) execute, acknowledge, seal, file, record and deliver to each other party such other acknowledgements, deeds, assignments, transfers, conveyances or other documents, and (c) do such other acts and things, all as the other party may reasonably request for the purpose of better assigning, conveying and transferring any of the Purchased Assets to Buyer and otherwise carrying out the intent of this Agreement, the Ancillary Agreements and the documents referred to herein and therein.

12.4 Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be waived except by an express waiver in a written instrument delivered pursuant to Section 12.2 above executed by the party to be charged with such waiver; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement, any Ancillary Agreements or the documents referred to herein or therein.

12.5 Entire Agreement And Modification. This Agreement together with the Ancillary Agreements and the documents referred to herein and therein supersedes all prior agreements among the parties with respect to the subject matter thereof and constitutes (along with the Ancillary Agreements and the documents referred to herein and therein) a complete and exclusive statement of the terms of the agreement between the parties with respect to the subject matter thereof. This Agreement may not be amended except by a written instrument executed by the party to be charged with the amendment delivered to the other parties hereto.

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

12.7 Assignments, Successors, And Third-party Rights. None of the parties may assign any of their rights under this Agreement without the prior consent of the other parties, except that (a) Buyer may assign all of its rights under this Agreement to an Affiliate of Buyer, provided that (i) Buyer also assigns its rights under the Escrow Agreement to such Affiliate, (ii) such Affiliate assumes all of Buyer's obligations under this Agreement and the Escrow Agreement, and (iii) any such assignment shall not release Buyer from any of its obligations hereunder or under the Escrow Agreement, and (b) Sellers may assign their rights but not their obligations hereunder to the Secured Lenders. This Agreement will apply to, be binding in all respects upon the parties hereto and their assigns and inure to the benefit of the successors and permitted assigns of the parties hereto. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement or their successors and permitted assignees any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and permitted assigns.

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12.8 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

12.9 Section Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" shall mean "including, without limitation" and does not limit the preceding words or terms. The words "hereof," "hereunder" and "herein" shall refer to the entire Agreement. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

12.10 Governing Law. THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

12.11 Jurisdiction; Court Proceedings; Waiver of Jury Trial. ANY CLAIM AGAINST EITHER PARTY TO THIS AGREEMENT ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT AND EACH PARTY HEREBY SUBMITS TO THE JURISDICTION OF SUCH COURT FOR THE PURPOSE OF ANY SUCH CLAIM. A FINAL JUDGMENT IN ANY SUCH CLAIM SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. TO THE EXTENT THAT SERVICE OF PROCESS BY MAIL IS PERMITTED BY APPLICABLE LAW, EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS IN ANY SUCH CLAIM IN SUCH COURTS BY THE MAILING OF SUCH PROCESS BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, AT ITS ADDRESS FOR NOTICES PROVIDED FOR HEREIN. EACH PARTY IRREVOCABLY AGREES NOT TO ASSERT (A) ANY OBJECTION WHICH IT MAY EVER HAVE TO THE LAYING OF VENUE OF ANY SUCH CLAIM IN THE BANKRUPTCY COURT AND (B) ANY CLAIM THAT ANY SUCH CLAIM BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY WAIVES ANY RIGHT TO A TRIAL BY JURY, TO THE EXTENT LAWFUL, AND AGREES THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY IN ANY CLAIM WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.12 No Presumption Against Drafting party. Each party acknowledges that each party has been represented by counsel in connection with this Agreement and the transactions contemplated herein. Accordingly, any rule of law or any legal decision that would require

interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

12.13 Counterparts. This Agreement may be executed and delivered in counterparts with facsimile or .pdf copies of signatures (provided, originally executed copies are couriered to the parties as soon as practicable thereafter), each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

12.14 Confidentiality. Subject to any disclosures required or reasonable in connection with the Bankruptcy Case, it is understood by the parties hereto that the information, documents, and instruments delivered to Buyer by Sellers and its Representatives and the information, documents, and instruments delivered to Sellers by Buyer and its Representatives are of a confidential and proprietary nature. Each of the parties hereto agrees that prior to the Closing it will, and post-Closing Sellers and their Affiliates will, maintain the confidentiality of all such confidential information, documents, or instruments in their possession or control regarding the Business, the Purchased Assets and the Assumed Liabilities or delivered to it by each of the other parties hereto or their agents in connection with the negotiation of this Agreement or in compliance with the terms, conditions, and covenants hereof and will only disclose such information, documents, and instruments to its duly authorized Representatives and applicable Governmental Bodies in connection with any required notification or application for consent therefrom. Each of the parties hereto further agrees that if the Contemplated Transactions are not consummated, it will return (or certify the destruction of) all such documents and instruments and all copies thereof in its possession to the other parties to this Agreement. Each of the parties hereto recognizes that any breach of this Section 12.14 would result in irreparable harm to the other party to this Agreement and its Affiliates and that therefore either Sellers or Buyer shall be entitled to an injunction to prohibit any such breach or anticipated breach, without the necessity of posting a bond, cash, or otherwise, in addition to all of its other legal and equitable remedies. Nothing in this Section 12.14, however, shall prohibit the use of such confidential information, documents, or information for such filings with any Governmental Body as in the opinion of Sellers' counsel or Buyer's counsel are required to be disclosed pursuant to applicable Legal Requirements.

[The next page is the signature page.]

[Signature page to Asset Purchase Agreement dated as of January 15, 2010 by and between the undersigned]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

BUYER:

ALL4 COSMETICS, INC.

By: _____
Title: _____

THE SELLERS:

COSMOLAB, INC.

By: _____
Title: _____

COSMETICS SPECIALTIES, INC.

By: _____
Title: _____

COSMOLAB NEW YORK, INC.

By: _____
Title: _____

[Signature page to Asset Purchase Agreement dated as of January 15, 2010 by and between the undersigned]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

BUYER:

ALLI COSMETICS, INC.

By: M. Bell
Title: Managing Director

THE SELLERS:

COSMOLAB, INC.

By: Michael J. Musso
Title: Chief Executive Officer - Interim

COSMETICS SPECIALTIES, INC.

By: Michael J. Musso
Title: Chief Executive Officer - Interim

COSMOLAB NEW YORK, INC.

By: Michael J. Musso
Title: Chief Executive Officer - Interim

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
)	Case No. 10-10142 (KG)
SPECIALTY PACKAGING HOLDINGS, INC., et al.,¹)	(Joint Administration Requested)
)	
Debtors.)	
)	

**ORDER: (A) APPROVING AUCTION PROCEDURES TO SELL
SUBSTANTIALLY ALL ASSETS OF CERTAIN DEBTORS AND TO ASSUME AND
ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (B)
APPROVING BID PROTECTIONS; (C) SETTING DATE OF AUCTION; (D) SETTING
SALE HEARING; AND (E) APPROVING FORM OF NOTICE**

THIS MATTER is before the Court on the motion (the “**Motion**”)² of Specialty Packaging Holdings, Inc. (“**SPH**”), together with its direct and indirect debtor subsidiaries, The Specialty Packaging Group, Inc. (“**SPG**”), Cosmetics Specialties, Inc. (“**CSI**”), Cosmolab, Inc. (“**Cosmolab**”), Cosmetics Specialties East, LLC (“**CSE**”), and Cosmolab New York, Inc. (“**CNY**”) as debtors and debtors-in-possession in the above-captioned chapter 11 cases; for entry of an order, pursuant to 11 U.S.C. §§ 105(a), 363(b), (f) and (m), 365, 503, 507(b), 364(c)(1) and (d), 1107 and 1108 (the “**Bankruptcy Code**”), and Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”): (i) authorizing the sale of substantially all of the assets of CSI, Cosmolab, and CNY (collectively, the “**Selling**

¹ The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Specialty Packaging Holdings, Inc. (7942), The Specialty Packaging Group, Inc. (6668), Cosmetics Specialties, Inc. (0826), Cosmolab, Inc. (1367), Cosmetics Specialties East, LLC (0313), and Cosmolab New York, Inc. (2222). The primary mailing address for the Debtors is: 1100 Garrett Parkway, Lewisburg, TN 37091.

² Unless otherwise stated, all capitalized terms not defined herein shall have the same meaning as set forth in the Motion.

Debtors”), free and clear of liens, claims, interests and encumbrances, and authorizing the assumption and assignment of certain of the Selling Debtors’ executory contracts and unexpired leases (the “**Sale**”), (ii) establishing auction procedures (the “**Bidding Procedures**”) for the Sale, (iii) establishing certain bid protections (the “**Bid Protections**”) in connection therewith; (iv) approving the form of notice and related relief (the “**Sale Motion**”); (v) scheduling an auction (the “**Auction**”) in connection with the Sale; (vi) scheduling the Sale Hearing (as defined below); and (vi) granting other related relief. After due deliberation having determined that the relief requested in the Motion related to the approval of Bidding Procedures, the Bid Protections, notices, and setting deadlines and other dates, among other things, is in the best interests of the Debtors, their estates, creditors and equity security holders,

THE COURT HEREBY FINDS THAT:

A. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Notice of the Motion, having been given to (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors’ 40 largest unsecured creditors on a consolidated basis; (iii) counsel for Bank of America; and, (iv) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors, is sufficient in light of the circumstances and the nature of the relief requested.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Debtors Motion is granted with respect to the establishment of proposed Bidding Procedures, and the Notice of Bidding Procedures (the “**Sale Notice**”) attached to the Sale Motion as Exhibit C is hereby approved.

2. **The Auction:** Subject to the terms of the Sale Notice and this Order, Debtors shall conduct an auction (the "Auction") at the offices of Klehr, Harrison, Harvey, Branzburg LLP, 919 N. Market St., Ste. 1000, Wilmington, Delaware 19801, or such other location as designated by the Debtors, at 10:00 a.m. (Eastern Time) on _____, 2010. The Debtors shall conduct the auction, and any activities related to the sale, pursuant to the terms and conditions set out in the Sale Notice.

3. **The Sale Hearing:** The Court hereby sets _____, 2010 at ____:____. m. (Eastern Time), as the date for the Sale Approval Hearing. The place of the hearing shall be the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801. The Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the Sale Hearing.

4. **Back-Up Bids:** All Qualified Bids submitted by potential purchasers who are not the Successful Purchaser shall be binding as Back-Up Bids pursuant to the terms of the Sale Notice. Debtors shall return Earnest Money Deposits to bidders as required by the Sale Notice.

5. **Notice of Sale:** The Sale Notice shall be served within three (3) business days of entry of this Order, upon: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel for Bank of America; (iii) counsel for the Committee; (iv) counsel for the Buyer; (v) all parties who have filed a notice of appearance or otherwise requested notice in these chapter 11 proceedings in accordance with local rules and procedures or orders of this Court; (vi) all persons or entities with a lien on, or security interest in, any of the Purchased Assets known to the Debtors; (vii) the counterparty to each executory contract and unexpired lease of the Selling Debtors; (viii) all taxing authorities having jurisdiction over any of the Purchased Assets,

including the Internal Revenue Service; (ix) all potential buyers known by the Debtors, (x) Attorneys General in the States where the Purchased Assets are located; (xi) federal and applicable state environmental protection agencies; (xii) the Office of the United States Attorney; (xiii) any department, agency or instrumentality of the United States to which the Selling Debtors are indebted; and, (xiv) those entities listed on the Debtors' Creditor Matrix and the list of the Debtors' equity interest holders of record submitted to this Court. The Sale Notice, Bidding Procedures Motion, Sale Motion and Purchase Agreement will also be available on www.kccllc.net/sph.

6. **Bid Protections:** Further, the following Bid Protections are hereby approved:

(a) **Break-Up Fee:** The Selling Debtors shall be jointly and severally obligated to pay the Buyer a break-up fee in the amount of Four-Hundred Thousand Dollars (\$400,000) (the "**Break-Up Fee**"): (1) if Buyer terminates the Purchase Agreement pursuant to Section 11.1(b)(i)(x); (2) if Buyer terminates the Purchase Agreement pursuant to Section 11.1(b)(i)(y) and if within three (3) months of such termination, Sellers sell all or any significant part of the Purchased Assets to a Person that is not an Affiliate of Buyer; (3) if Cosmolab terminates the Purchase Agreement pursuant to Section 11.1(d) and within three (3) months of such termination, Sellers shall sell all or any significant part of the Purchased Assets to a Person that is not an Affiliate of Buyer. Payment of the Break-Up Fee shall not require any further order of the Court, and the Break-Up Fee will be paid within three (3) Business Days of the event giving rise to payment, as provided in the Purchase Agreement.

(b) **Overbid Protection:** In order to be qualifying topping bids, any competing bids must include a Minimum Overbid of at least the amount of (i) the Purchase Price offered by the Buyer plus (ii) cash in the amount of the Break-Up Fee plus (iii) an additional cash overbid of at least \$200,000. At this Auction, the overbid increment will then be \$200,000.

7. **Assumed Contracts and Leases:** Within ten (10) business days after entry of **this Order**, the Debtors shall serve a notice (the "**Assignment Schedule Notice**") on all counterparties to all executory contracts and leases to which the Selling Debtors are a party, which shall include (i) a schedule (the "**Assignment Schedule**") identifying all executory

contracts and leases to which the Selling Debtors are a party and specifying the cure amounts (the "**Cure Amounts**") necessary to assume and assign such executory contracts and leases, and (ii) a written notification that such executory contracts and leases may be assumed and assigned by the Debtors and that failure to file a timely objection to such Assignment Schedule Notice shall constitute deemed consent to such assumption and assignment of such party's executory contract or lease, as may be selected and identified by the Buyer or other Successful Bidder. The Debtors and the Buyer, or such other Successful Bidder, have reserved the right to add or delete contracts or leases from the Assignment Schedule up to the Closing Date. The assumption and assignment of any Assumed Contract shall not be binding on the Debtors or the Buyer or other Successful Bidder until the Debtors file a Notice of Closing, which shall be filed within two business days after completion of the Closing and shall be served on all counter-parties to the Assumed Contracts.

8. **Objection Deadlines for Assumption/Assignment:** Objections, if any, to the proposed assumption and assignment of the Assumed Contracts, including, but not limited to, objections relating to adequate assurances of future performance or the Cure Amounts, must (a) be in writing and filed with this Court and served upon the following **on or before** _____, **2010**: (i) Cosmolab, Inc., Attn: Michael J. Musso, 1100 Garrett Parkway, Lewisburg, Tennessee 37091; (ii) counsel for the Debtors, Frost Brown Todd LLC, Attn: Robert A. Guy, Jr., Esq., 424 Church Street, Suite 1600, Nashville, Tennessee 37219-2308; (iii) local counsel for the Debtors, Domenic E. Pacitti, Klehr Harrison Harvey Branzburg LLP, 919 N. Market St., Ste. 1000, Wilmington, Delaware 19801, (iv) counsel for Bank of America, Mayer Brown LLP, Attn: Thomas S. Kiriakos, Esq., 71 South Wacker Drive, Chicago, Illinois 60606-4637; (v) local counsel for Bank of America, Edwards Angell Palmer & Dodge LLP, Attn: Stuart

M. Brown, 919 North Market Street, 15th Floor, Wilmington, Delaware 19801; (vi) counsel for the Buyer, Timothy T. Brock, Esq., Satterlee Stephens Burke & Burke, LLP, 230 Park Avenue, Suite 1130, New York, NY 10169; (v) counsel for the Committee; and, (vii) the Office of the United States Trustee for District of Delaware, Attn: Thomas Patrick Tinker, 844 King Street, Room 2313, Wilmington, DE 19801; and (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court. Any counterparty to a contract or lease that is added to the Assignment Schedule shall have five (5) business days from the date of service of the notice of any supplemental Assignment Schedule Notice to object to the proposed assumption and assignment such contract or lease. Further:

- (a) Any party failing to timely file an objection to the Cure Amounts set forth on the Assignment Schedules or to the proposed assumption and assignment of the Assumed Contracts, shall be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts against the Debtors, their estates, and the Buyer or other Successful Bidder with respect to its executory contract(s) or unexpired lease(s) and will be deemed to consent to the proposed assumption and assignment of its executory contract(s) or unexpired lease(s).
- (b) Where a party to an Assumed Contract files a timely objection asserting a higher cure amount than the Cure Amount and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such objection will be determined at the Sale Hearing or such other date and time as may be fixed by this Court, including such later date as may be set for Assumed Contracts which are added to the Assignment Schedule after the Sale Hearing but before the Closing. All other objections to the proposed assumption and assignment of the Assumed Contracts will be heard at the Sale Hearing, unless otherwise ordered by the Court.

9. **Objection Deadlines for the Sale/Sale Motion:** Objections, if any, to the relief requested in the Sale Motion must: (a) be in writing and filed with the Court; (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules; (c) set forth the names of the objecting party and the nature and the amount of any claim or interest alleged by such objecting party against the Debtors' estates or property; and (d) be served upon (such as to

be received by) the following parties **on or before 12:00 p.m. (Eastern Time)** _____, **2010**: (i) Cosmolab, Inc., Attn: Michael J. Musso, 1100 Garrett Parkway, Lewisburg, Tennessee 37091; (ii) counsel for the Debtors, Frost Brown Todd LLC, Attn: Robert A. Guy, Jr., Esq., 424 Church Street, Suite 1600, Nashville, Tennessee 37219-2308; (iii) local counsel for the Debtors, Domenic E. Pacitti, Klehr Harrison Harvey Branzburg LLP, 919 N. Market St., Ste. 1000, Wilmington, Delaware 19801, (iv) counsel for Bank of America, Mayer Brown LLP , Attn: Thomas S. Kiriakos, Esq., 71 South Wacker Drive, Chicago, Illinois 60606-4637; (v) local counsel for Bank of America, Edwards Angell Palmer & Dodge LLP, Attn: Stuart M. Brown, 919 North Market Street, 15th Floor, Wilmington, Delaware 19801; (vi) counsel for the Buyer, Timothy T. Brock, Esq., Satterlee Stephens Burke & Burke, LLP, 230 Park Avenue, Suite 1130, New York, NY 10169; (v) counsel for the Committee; and, (vii) the Office of the United States Trustee for District of Delaware, Attn: Thomas Patrick Tinker, 844 King Street, Room 2313, Wilmington, DE 19801.

10. **Jurisdiction of Court:** The Court hereby retains jurisdiction for all matters related to the Sale.

Dated: _____
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

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Exhibit C



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
)	Case No. 10-10142 (KG)
SPECIALTY PACKAGING HOLDINGS, INC., et)	(Joint Administration Requested)
al., ¹)	
)	
Debtors.)	
)	

NOTICE OF: (A) PUBLIC AUCTION TO SOLICIT BIDS FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF CERTAIN DEBTORS AND TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (B) PROCEDURES FOR SUBMISSION OF QUALIFYING BIDS; AND (C) SALE HEARING

PLEASE TAKE NOTICE that, upon the Motion of Debtors for Order: (A) Authorizing the Sale of Substantially All Assets of Certain Debtors Pursuant to 11 U.S.C. § 363, (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365, (C) Establishing Auction Procedures For Sale and Assignment/Assumption, (D) Approving Bid Protections; (E) Setting Date of Auction and Date of Sale Hearing; and (F) Approving Form of Notice and Related Relief (the "Sale Motion")² filed by Specialty Packaging Holdings, Inc. ("SPH"), together with its direct and indirect debtor subsidiaries, The Specialty Packaging Group, Inc. ("SPG"), Cosmetics Specialties, Inc. ("CSI"), Cosmolab, Inc. ("Cosmolab"), Cosmetics Specialties East, LLC ("CSE"), and Cosmolab New York, Inc. ("CNY") (collectively, the "Debtors"), as debtors and debtors-in-possession in the above-captioned chapter 11 cases, a hearing (the "Sale Hearing" or the "Sale Approval Hearing") to approve the sale described below (the "Sale") has been scheduled before the Honorable _____, United States Bankruptcy Judge, on _____, 2010 at ____:____ m. (Eastern Time), at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801. The Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the Sale Hearing.

PLEASE TAKE NOTICE that, if no Auction (as such term is defined below) has taken place due to the absence of any other Qualified Bids (as such term is defined below), the Debtors at the Sale Hearing will seek approval of the Sale to the Buyer (as such term is defined below) on the terms and conditions described below.

PLEASE TAKE FURTHER NOTICE that, at the Sale Hearing, and if one or more Qualified Bids (as such term is defined below) have been received by the deadline set forth below, the Debtors will be requesting the Bankruptcy Court's approval of the results of the auction (the "Auction") that the Debtors will conduct at the offices of Klehr, Harrison, Harvey, Branzburg LLP, 919 N. Market St., Ste. 1000, Wilmington, Delaware 19801, or such other location as designated by the Debtors, at 10:00 a.m. (Eastern Time) on _____, 2010 pursuant to the following terms and conditions:

1. Asset Purchase Agreement. CSI, Cosmolab and CNY (collectively, the "Selling Debtors") entered into an asset purchase agreement (the "Purchase Agreement") with All4 Cosmetics, Inc. (the "Buyer"). Pursuant to the terms of the Purchase Agreement, the Buyer proposes to purchase the Purchased Assets from the Selling Debtors, free and clear of all liens, claims and encumbrances. The Purchased Assets, as defined in the Purchase Agreement, include the executory contracts and

¹ The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Specialty Packaging Holdings, Inc. (7942), The Specialty Packaging Group, Inc. (6668), Cosmetics Specialties, Inc. (0826), Cosmolab, Inc. (1367), Cosmetics Specialties East, LLC (0313), and Cosmolab New York, Inc. (2222). The primary mailing address for the Debtors is: 1100 Garrett Parkway, Lewisburg, TN 37091.

² Unless otherwise defined herein, capitalized terms used in this Notice shall have the meaning ascribed to them in the Bidding Procedures Order and/or the Purchase Agreement.

unexpired leases, which the Selling Debtors seek to assume and assign to the Buyer (the "**Assumed Contracts**"). The Purchase Agreement is subject to higher or otherwise better offers and approval of the Bankruptcy Court.

2. **Purchase Price.** The Purchase Price is (i) Thirteen Million Dollars (\$13,000,000) in cash minus (ii) any Accounts Shortfall plus (iii) Buyer's obligations to pay up to One Million Dollars (\$1,000,000) under Article III of the Purchase Agreement relating to certain payments to suppliers, plus (iv) any Assumed Liabilities.

3. **DISCLAIMER.** Other potential bids are subject to the requirements, limitations and procedures (the "**Bidding Procedures**") set forth in the Bidding Procedures Order, a copy of which is available on www.kccllc.net/sph or may be obtained upon written request to Debtors' counsel. To the extent there are any inconsistencies between the Bidding Procedures Order and the summary description contained in this Notice, the Bidding Procedures Order shall control.

4. **Confidentiality Agreement/Due Diligence.** Upon execution of a confidentiality agreement in form and substance reasonably satisfactory to the Debtors, any party that wishes to conduct due diligence on the Purchased Assets may be granted access to all material information that has been or will be provided to the Buyer or other bidders. Additionally, to the extent practicable, the Debtors will provide such parties with access to their management and to all other information reasonably requested.

5. **Qualified Bidders/Bid Deadline/Bid Requirements.** Any competing bid for the Purchased Assets must:

(A) be in **writing**;

(B) no later than 5:00 p.m. (Eastern Time) on the day that is three (3) business days prior to the Auction (such date or the date of the last extension as provided below, the "**Bid Deadline**"), deliver written copies of its bid so that they are received by the deadline, to: (a) Cosmolab, Inc., Attn: Michael J. Musso, 1100 Garrett Parkway, Lewisburg, Tennessee 37091, (404) 547-6023, facsimile (678) 538-6501, mmusso@morrisanderson.com; and (b) Frost Brown Todd LLC, Attn: Robert A. Guy, Jr., Esq., 424 Church Street, Suite 1600, Nashville, Tennessee 37219-2308; (615) 251-5557, facsimile (615) 251-5551, bguy@fbtlaw.com. The Debtors then will promptly distribute a copy of each bid received to the respective counsel for Bank of America and the any Official Committee of Unsecured Creditors that may be appointed in these cases (the "**Committee**"). By notice to all Qualified Bidders, the Debtors may extend the Bid Deadline once or successively, but they are not required to do so; provided, however, that the Debtors not extend such deadline beyond any deadline set forth in the Purchase Agreement without Buyer's written consent or further order of the Court;

(C) be **accompanied** by a clean duly executed asset purchase agreement (the "**Modified Purchase Agreement**") and a marked Modified Purchase Agreement reflecting the variations from the Purchase Agreement;

(D) be accompanied by a cash deposit (i.e., bank or certified check payable to Cosmolab, Inc.) equal to at least the greater of One Million Dollars (\$1,000,000.00) or 7.5% of the amount of the competing bid (the "**Earnest Money Deposit**"), with such funds to be paid into an escrow agreement substantially similar to that executed by Buyer or to be paid into Debtor's counsel's escrow account;

(E) identify the assets that the bidder offers to purchase and the liabilities the bidder proposes to assume at the purchase price and upon the terms and conditions set forth in the Modified Purchase Agreement;

(F) not contain any due diligence or financing contingencies;

(G) demonstrate that the bidder is able to consummate the transaction (financially and otherwise) on the terms of the Modified Purchase Agreement;

(H) include evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Modified Purchase Agreement;

(I) identify with particularity each and every executory contract or unexpired lease, the assumption and assignment of which is a condition to closing; and,

(J) be for substantially all the Purchased Assets and contain a proposed cash purchase price at least in the amount of (i) the Purchase Price offered by the Buyer plus (ii) cash in the amount of the Break-Up Fee (hereafter defined) plus (iii) an additional cash overbid of at least \$200,000 (the "**Minimum Overbid**").

A competing bid meeting the outlined requirements shall constitute a "**Qualified Bid.**" Any person submitting a Qualified Bid shall be a "**Qualified Bidder.**" The Debtors, in consultation with Bank of America and the Committee, shall have discretion to make any determination regarding whether a bid is a Qualified, and any non-qualifying bid may be modified to become a Qualifying Bid prior to the Auction in the event Debtors, in consultation with Bank of America and the Committee, determine to extend the deadline for submission for bids.

6. **Auction Participation/Bidding at the Auction.**

- (A) The Auction shall be conducted openly and all creditors of the Debtors' estates shall be permitted to attend.
- (B) Only the Buyer and the other Qualified Bidders shall be permitted to participate at the Auction.
- (C) All bidders shall appear at the Auction in person or through a duly authorized representative who shall appear in person.
- (D) Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.
- (E) The bidding at the Auction will be transcribed or videotaped.
- (F) The opening bid at the Auction shall not be less than the Qualified Bid designated by the Debtors as the then highest or best bid (the "**Opening Bid**").

(G) After the Opening Bid, all subsequent bids at the Auction shall be in additional increments of at least \$200,000. The Buyer shall be entitled to include as part of any subsequent bid a credit for the amount of the Break-Up Fee. For purposes of determining the net benefit to the estate of any bid made by the Buyer, the value attributable to any such bid shall be at least equal to the sum of (1) the dollar amount of the cash consideration contained in such bid, (2) the dollar value of any additional consideration contained in such bid, including any assumed liabilities, and (3) the dollar value of the Break-Up Fee.

(H) The Buyer shall not be deemed to have waived its entitlement to receive the Break-Up Fee under the terms of the Purchase Agreement as a result of submitting a higher or otherwise better bid than its initial bid at the Auction.

(I) The Buyer and the other Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Purchase Agreement, as applicable, at the Auction.

(J) Bidding at the Auction shall continue until such time as the Debtors, in consultation with Bank of America and the Committee, determine in their business judgment the highest and best offer (the "**Successful Bid**") and the party that submitted such bid, the "**Successful Bidder**"). The Debtors shall seek approval from this Court of the Successful Bid at the Sale Hearing, subject to objections, if any, that may be raised in a timely manner by a party-in-interest. The Debtors' presentation to this Court for approval of any selected bid as the Successful Bid does not constitute the Debtors' acceptance of the bid. The Debtors will be deemed to have accepted a Qualified Bid only when such Qualified Bid has been approved by this Court.

7. **Back-Up Bidder.** The final bid made by any Qualified Bidder (who is not the Successful Bidder) shall be binding on such Qualified Bidder until the earlier of (i) 24 hours after the Closing of the Sale transaction or (ii) 30 days after the Auction. Each such bid shall serve as a back-up bid (a "**Back-Up Bid**") and such Qualified Bidders as back-up bidders (each a "**Back-Up Bidder**"; collectively, the "**Back-Up Bidders**"), in order of highest value to lowest value, as determined by the Debtors in the exercise of their business judgment, in consultation with Bank of America and the Committee. If, following entry of the Sale Order, the Successful Bidder fails to consummate an approved Sale, the Back-Up Bidder with the highest and best back-up bid will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Court; provided, however, that in the event that the Back-Up Bidder is the Buyer, then the Debtors will be obligated to consummate the sale as set forth in the Purchase Agreement. Should the Back-Up Bidder fail to close, the Debtors will be authorized, but not required, to consummate the sale to the next Back-Up Bidder without further order of the Court, and so on until the sale has closed or all Back-Up Bidders have failed to close; provided, however, that in the event that the Back-Up Bidder is the Buyer, then the Debtors will be obligated to consummate the sale as set forth in the Purchase Agreement.

8. **Earnest Money Deposit.**

(A) All Earnest Money Deposits shall be placed into an interest-bearing escrow account pursuant to documentation in form and substance reasonably acceptable to the Debtors in accordance with the terms of the escrow agreement to be provided with the Purchase Agreement, or will be placed in Debtors' counsel's escrow account, at the particular bidders' option.

(B) If the sale proposed by the Successful Bidder or any Back-Up Bidder (as applicable) closes, the Earnest Money Deposit of the Successful Bidder or the Back-Up Bidder (as applicable) shall be applied to the cash component of such bidder's purchase price.

(C) If the sale proposed by the Successful Bidder or the Back-Up Bidder (as applicable) does not close due to the breach by the Successful Bidder or any Back-Up Bidder (as applicable) of its Purchase Agreement, then the Earnest Money Deposit shall be paid to the Debtors. No such Earnest Money Deposit paid to Debtors shall be credited against the obligations of any Back-Up Bidder.

(D) All Earnest Money Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder by the earlier of (i) two (2) business days after the Closing of the Sale transaction or (ii) thirty-two (32) days after the Auction, unless such bidder is obligated to Close as a Back-Up Bidder. If the Successful Bidder's or any Back-Up Bidder's (as applicable) proposed sale does not close for any reason other than a breach by the Successful Bidder or such Back-Up Bidder (as applicable), then the Earnest Money Deposit shall be released to the Successful Bidder or the Back-Up Bidder (as applicable) within five (5) business days after termination of such party's Purchase Agreement, if earlier than the period set-out in the first sentence of this subsection.

9. Modifications. After consultation with Bank of America and the Committee, the Debtors may: (a) determine, in their business judgment, which bid or bids, if any, constitute the highest and best offer for the Purchased Assets; and (b) reject, at any time before entry of the Sale Order by this Court approving any bid as the Successful Bid, any bid that, in the Debtors' sole discretion, is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures or the terms and conditions of the Sale set forth in the Purchase Agreement; or (iii) contrary to the best interests of the Debtors and their estates and creditors. The Debtors may extend or alter any requirement or deadline contained herein that the Debtors determine, in their business judgment, will better promote the goals of the Bidding Process; provided, however, that no extension or alteration shall be made to any such requirement or deadline that conflicts with the provisions set forth in the Purchase Agreement without the written consent of Buyer or further order of the Court.

10. "As Is, Where Is" Sale Free and Clear of Liens and Claims. The Sale shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtors, their agents or their estates, except to the extent expressly set forth in the Purchase Agreement or any Modified Purchase Agreement, as the case may be. Buyer shall not be liable for any liabilities or Claims related to Debtors' pre-closing operations of any type or nature whatsoever, except for the Assumed Liabilities, to the maximum extent permitted by applicable law. Buyer is not intended to be and shall not be deemed to be a successor to any Debtor. Except as otherwise provided in the Purchase Agreement or any Modified Purchase Agreement, as the case may be, and to the maximum extent permitted by applicable law, all of the Debtors' right, title and interest in the Purchased Assets together with the Assumed Liabilities shall be sold free and clear of (a) all mortgages, deeds of trust, security interests, security agreements, conditional sale or other title retention agreements, pledges, liens, hypothecations, charges, obligations, judgments, orders or decrees of any court or government entity, rights of setoff of any nature and kind whatsoever, recoupment, demands, encumbrances, easements, rights, encroachments, equities, imperfections of title, leases, licenses, shares, covenants, purchase or sale options, conditions, restrictions or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership including all "interests" in the Purchased Assets held by third parties within the meaning of section 363(f) of the Bankruptcy Code (the foregoing collectively referred to herein as "Liens") and (b)(i) all debts arising in any way in connection with any acts or omissions of any of the Debtors, (ii) any and all claims (as that term is defined in section 101(5) of the Bankruptcy Code) against the Debtors or the Purchased Assets arising on or prior to the date of the Closing of the Sale under the Purchase Agreement or Modified Purchase Agreement, as the case may be, and (iii) any and all obligations, demands, liabilities, guaranties, options, rights, contractual commitments, restrictions, interests and matters of or against the Debtors or the Purchased Assets of any kind and nature (including without limitation, any options or rights to purchase such assets, any mechanics' and tax liens or claims, tort claims, employee wages or benefits, including but not limited to COBRA and health care rights, including the Debtors' claim experience, any fines, penalties or assessments imposed by any governmental entity, whether monetary or otherwise, any successor liability, products liability, environmental liability, tax or other liabilities against the Debtors, the Purchased Assets, or any other property of the Debtors), whether arising prior to or subsequent to the commencement of these cases, whether choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, whether known or unknown and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, those of the kind specified in sections 502(g), 502(h) and 502(i) of the Bankruptcy Code (the foregoing collectively referred to herein as "Claims"), except with respect to clauses (a) and (b) for the Assumed Liabilities and as expressly provided otherwise in the Purchase Agreement or Modified Purchase Agreement, as the case may be. Such Liens and Claims, if any, shall attach to the net proceeds of the Sale. The net proceeds from the Sale are expected to be paid to Bank of America for application against pre- and post-petition financing extended by Bank of America to the Debtors.

11. Jurisdiction of Court. Prospective purchasers are deemed to (i) have submitted to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters related to the Auction and the Sale and the terms and conditions of the transfer of the Purchased Assets and the Assumed Contracts, (ii) have consented to the sale at the time of the Approval Hearing, and (iii) to have waived any right to a jury trial in connection with any disputes relating to the Auction and the sale of the Assets.

12. Assumption and Assignment of Executory Contracts and Unexpired Leases; Cure Amounts; Objections.

(A) On or before _____, 2010, the Debtors shall serve a notice (the "**Assignment Schedule Notice**") on all counterparties to all executory contracts and leases to which the Selling Debtors are a party, which shall include (i) a schedule (the "**Assignment Schedule**") identifying all executory contracts and leases to which the Selling Debtors are a party and specifying the cure amounts (the "**Cure Amounts**") necessary to assume and assign such executory contracts and leases, and (ii) a written notification that such executory contracts and leases may be assumed and assigned by the Debtors and that failure to file a timely objection to such Assignment Schedule Notice shall constitute deemed consent to such assumption and assignment of such party's executory contract or lease, as may be selected and identified by the Buyer or other Successful Bidder. The Debtors and the Buyer, or such other Successful Bidder, reserve the right to add or delete contracts or leases from the Assignment Schedule up to the Closing Date. The assumption and assignment of any Assumed Contract shall not be binding on the Debtors or the Buyer or other Successful Bidder, and shall be subject to modification by the Debtors and the Buyer or other Successful Bidder until the Closing and the filing by Debtors of a Notice of Closing with the Court, with such Notice of Closing to be filed within two business days after completion of the Closing.

(B) Except as may otherwise be agreed to by the parties to an Assumed Contract, at or within 10 days after the Closing of the Sale, the Selling Debtors and/or the Buyer or other Successful Bidder shall cure those defaults under the Assumed Contracts that need to be cured in accordance with section 365(b) of the Bankruptcy Code, by payment of the Cure Amounts.

(C) **PLEASE TAKE FURTHER NOTICE THAT OBJECTIONS**, if any, to the proposed assumption and assignment of the Assumed Contracts, including, but not limited to, objections relating to adequate assurances of future performance or the Cure Amounts, must (a) be in writing and filed with this Court and served upon the following **on or before** _____, 2010: (i) Cosmolab, Inc., Attn: Michael J. Musso, 1100 Garrett Parkway, Lewisburg, Tennessee 37091; (ii) counsel for the Debtors, Frost Brown Todd LLC, Attn: Robert A. Guy, Jr., Esq., 424 Church Street, Suite 1600, Nashville, Tennessee 37219-2308; (iii) local counsel for the Debtors, Domenic E. Pacitti, Klehr Harrison Harvey Branzburg LLP, 919 N. Market St., Ste. 1000, Wilmington, Delaware 19801, (iv) counsel for Bank of America, Mayer Brown LLP, Attn: Thomas S. Kiriakos, Esq., 71 South Wacker Drive, Chicago, Illinois 60606-4637; (v) local counsel for Bank of America, Edwards Angell Palmer & Dodge LLP, Attn: Stuart M. Brown, 919 North Market Street, 15th Floor, Wilmington, Delaware 19801; (vi) counsel for the Buyer, Timothy T. Brock, Esq., Satterlee Stephens Burke & Burke, LLP, 230 Park Avenue, Suite 1130, New York, NY 10169; (v) counsel for the Committee; and, (vii) the Office of the United States Trustee for District of Delaware, Attn: Thomas Patrick Tinker, 844 King Street, Room 2313, Wilmington, DE 19801; and (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court. Any counterparty to a contract or lease that is added to the Assignment Schedule shall have five (5) business from the date of service of the notice of any supplemental Assignment Schedule Notice to object to the proposed assumption and assignment such contract or lease. **Any party failing to timely file an objection to the Cure Amounts set forth on the Assignment Schedules or to the proposed assumption and assignment of the Assumed Contracts, shall be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts against the Debtors, their estates, and the Buyer or other Successful Bidder with respect to its executory contract(s) or unexpired lease(s) and will be deemed to consent to the proposed assumption and assignment of its executory contract(s) or unexpired lease(s).**

(D) Where a party to an Assumed Contract files a timely objection asserting a higher cure amount than the Cure Amount and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such objection will be determined at the Sale Hearing or such other date and time as may be fixed by this Court, including such later date as may be set for Assumed Contracts which are added to the Assignment Schedule after the Sale Hearing but before the Closing. All other objections to the proposed assumption and assignment of the Assumed Contracts will be heard at the Sale Hearing, unless otherwise ordered by the Court.

13. PLEASE TAKE FURTHER NOTICE THAT OBJECTIONS, if any, to the relief requested in the Sale Motion must: (a) be in writing and filed with the Court; (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules; (c) set forth the names of the objecting party and the nature and the amount of any claim or interest alleged by such objecting party against the Debtors' estates or property; and (d) be served upon (such as to be **received**) by the following parties **on or before 12:00 p.m. (Eastern Time)** _____, 2010: (i) Cosmolab, Inc., Attn: Michael J.

Musso, 1100 Garrett Parkway, Lewisburg, Tennessee 37091; (ii) counsel for the Debtors, Frost Brown Todd LLC, Attn: Robert A. Guy, Jr., Esq., 424 Church Street, Suite 1600, Nashville, Tennessee 37219-2308; (iii) local counsel for the Debtors, Domenic E. Pacitti, Klehr Harrison Harvey Branzburg LLP, 919 N. Market St., Ste. 1000, Wilmington, Delaware 19801, (iv) counsel for Bank of America, Mayer Brown LLP, Attn: Thomas S. Kiriakos, Esq., 71 South Wacker Drive, Chicago, Illinois 60606-4637; (v) local counsel for Bank of America, Edwards Angell Palmer & Dodge LLP, Attn: Stuart M. Brown, 919 North Market Street, 15th Floor, Wilmington, Delaware 19801; (vi) counsel for the Buyer, Timothy T. Brock, Esq., Satterlee Stephens Burke & Burke, LLP, 230 Park Avenue, Suite 1130, New York, NY 10169; (v) counsel for the Committee; and, (vii) the Office of the United States Trustee for District of Delaware, Attn: Thomas Patrick Tinker, 844 King Street, Room 2313, Wilmington, DE 19801.

Dated: January 20, 2010

Respectfully submitted,

By: /s/ Domenic E. Pacitti

Domenic E. Pacitti (Bar No. 3989)
Michael Yurkewicz (Bar No. 4165)
KLEHR HARRISON HARVEY BRANZBURG LLP
919 North Market Street, Suite 1000
Wilmington, Delaware 19801-3062
Telephone: 302.426.1189
Facsimile: 302.426.9193
E-mail: dpacitti@klehr.com
E-mail: myurkewicz@klehr.com

- and -

Robert A. Guy, Jr.*
J. Matthew Kroplin*
FROST BROWN TODD LLC
424 Church Street, Suite 1600
Nashville, Tennessee 37219
Telephone: 615.251.5550
Facsimile: 615.251.5551
E-mail: bguy@fbtlaw.com
E-mail: mkroplin@fbtlaw.com

- and -

Ronald E. Gold*
Beth A. Buchanan*
Lindsey F. Baker*
FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
Telephone: 513.651.6800
Facsimile: 513.651.6981
E-mail: rgold@fbtlaw.com
E-mail: bbuchanan@fbtlaw.com
E-mail: lbaker@fbtlaw.com
*Pro Hac Vice Motion Pending

**PROPOSED CO-COUNSEL FOR DEBTORS
AND DEBTORS-IN-POSSESSION**

EXHIBIT D

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
)
)
)
 SPECIALTY PACKAGING HOLDINGS,) Case No. 10-10142 (KG)
 INC., *et al.*,¹)
)
)
 Debtors.) (Joint Administration Requested)
)
)

ORDER: (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL ASSETS OF CERTAIN DEBTORS PURSUANT TO 11 U.S.C. § 363(B), (F) AND (M); (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO 11 U.S.C. § 365; AND (C) AUTHORIZING THE CHANGE OF NAMES OF CERTAIN DEBTORS

THIS MATTER is before the Court on the motion (the "Motion")² of Specialty Packaging Holdings, Inc. ("SPH"), together with its direct and indirect debtor subsidiaries, The Specialty Packaging Group, Inc. ("SPG"), Cosmetics Specialties, Inc. ("CSI"), Cosmolab, Inc. ("Cosmolab"), Cosmetics Specialties East, LLC ("CSE"), and Cosmolab New York, Inc. ("CNY") (collectively, the "Debtors"), as debtors and debtors-in-possession in the above-captioned chapter 11 cases, for entry an order (the "Sale Order"), pursuant to 11 U.S.C. §§ 105(a), 362, 363(b), (f) and (m), 364(c)(1), 365, 1107 and 1108 (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") granting the Debtors authority to sell substantially all assets (the

¹ The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Specialty Packaging Holdings, Inc. (7942), The Specialty Packaging Group, Inc. (6668), Cosmetics Specialties, Inc. (0826), Cosmolab, Inc. (1367), Cosmetics Specialties East, LLC (0313), and Cosmolab New York, Inc. (2222). The primary mailing address for the Debtors is: 1100 Garrett Parkway, Lewisburg, TN 37091

² Unless otherwise stated, all capitalized terms not defined herein shall have the same meaning as set forth in the Motion or the Purchase Agreement.

“Purchased Assets”) of CSI, Cosmolab and CNY (collectively, the **“Selling Debtors”**), free and clear of liens, claims, interests and encumbrances, and to assume and assign certain of the Selling Debtors’ executory contracts and unexpired leases (the **“Sale”**) and to change the names of Cosmolab and CNY; the Motion having been served upon (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors’ 40 largest unsecured creditors on a consolidated basis; (iii) counsel for Bank of America; (iv) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (v) counsel for All4 Cosmetics, Inc. (the “Buyer”); (vi) the counterparty to each executory contract and unexpired lease of the Selling Debtors; (vii) all taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (viii) all potential buyers known by the Debtors; and, (ix) the Attorneys General in the States where the Purchased Assets are located; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is required; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the asset purchase agreement between the Selling Debtors and the Buyer entered into on or about January 15, 2010 (the **“Purchase Agreement”**).

C. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. (iii). This proceeding is a “core proceeding” within the meaning of 28 U.S.C. §157(b)(2)(A), (N) and (O).

D. Proper, timely, adequate and sufficient notice of, and opportunity to object to, the Motion and the Sale Hearing has been provided to all parties entitled thereto in accordance with the various provisions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of this Court, and all requirements of procedural due process and all aspects of the Sale have been adequately disclosed.

E. The provisions of Section 363(f) of the Bankruptcy Code have been satisfied, including, without limitation, consent of any lenders pursuant to Section 363(f)(2).

F. The Sale of the Assets to Buyer in accordance with the Purchase Agreement is an appropriate exercise of the Debtors’ business judgment and is in the best interests of the Debtors and their estates.

G. The Bidding Procedures approved by the Court, and complied with by the Debtor, pursuant to *The Order: (A) Approving Auction Procedures To Sell Substantially All Assets Of Certain Debtors And To Assume And Assign Certain Executory Contracts And Unexpired Leases; (B) Approving Bid Protections; (C) Setting Date Of Auction; (D) Setting Sale Hearing; And (E) Approving Form Of Notice*, entered on _____ (the “**Bidding Procedures Order**”), in conjunction with service of the Sale Notice, provided potential interested purchasers with sufficient notice of the opportunity to overbid and the procedures for overbidding, on the Assets. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein, and the right of third parties to submit higher or otherwise better offers for all or any portion of the Purchased Assets in accordance with the Bidding Procedures approved by this Court, has been afforded to all interested persons and entities.

H. The successful bidder for the Sale of the Purchased Assets, as selected in accordance with the Bidding Procedures, is the Buyer pursuant to the Purchase Agreement. The

offer of the Buyer to purchase the Purchased Assets for the Purchase Price, as described in the terms and conditions of the Purchase Agreement, is fair and reasonable under the circumstances and constitutes full, fair, and adequate consideration and reasonably equivalent value for the Assets.

I. Although ___ competing offers were submitted, the Buyer's offer was higher and better than any of such offers.

J. The Purchase Agreement was entered into in good faith, neither fraudulently nor by any means forbidden by law, and was based upon arm's length bargaining and without collusion. Neither the Debtors nor the Buyer has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of section 363(n) of the Bankruptcy Code. The Buyer is a good faith purchaser as that term is used in Section 363(m) of the Bankruptcy Code, is not affiliated with the Debtors and is not an insider of any of the Debtors.

K. The Debtors have full power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and no further authority is necessary to complete the Sale, to consummate the transactions contemplated by the Purchase Agreement, and to transfer title of the Assets to Buyer.

L. Buyer is not a successor to the Debtors and shall not be treated as any Debtor's successor.

M. There are no common incorporators, officers, directors, or material stockholders between Debtors and Buyer.

N. In connection with the Auction, the marketing of the Purchased Assets, and the prosecution of this Motion, the Debtors (and Buyer to the extent applicable) have complied with the terms of the Sale Notice and the Bidding Procedures Order.

O. The Motion should be approved as it is in the best interests of creditors and is in the best interests of the Debtors' estates, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

P. The Court further incorporates its findings of fact and conclusions of law from the Bidding Procedures Order.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Subject to the terms of this Order, the Motion is GRANTED.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, and all reservations of rights included therein, are, except as provided in other orders of the Court, are hereby overruled on the merits or the interests of such objections have been otherwise satisfied or adequately provided for.
3. The Purchase Agreement, in substantially the form attached to the Motion as Exhibit "A" and the transactions contemplated thereby are approved.
4. The Debtors and the Buyer are authorized and empowered to enter into, and to perform all of their obligations under, the Purchase Agreement and take any acts, and to execute and perform such agreements or documents, including any ancillary agreements, and take such other actions as are necessary, desirable or reasonably required to effectuate the terms of the Purchase Agreement.
5. The Purchased Assets are sold to Buyer "as is-where is" and without warranty of any kind, other than the representations and warranties set forth in the Purchase Agreement.
6. Pursuant to Section 363(f) of the Bankruptcy Code, title to the Assets shall be transferred to Buyer free and clear of any and all liens, claims, interests, encumbrances, and successor liabilities to the maximum extent permitted by law (collectively, as defined in the Purchase Agreement and including any successor liabilities, "Claims and Encumbrances"), with all such liens, claims, interests, and encumbrances to attach to the proceeds that the Selling Debtors receive under the Purchase Agreement (the "**Sale Proceeds**") in the order of their priority, and with the same validity, force and effect that they now have as against the Purchased Assets, subject to any claims and defenses that the Debtors may possess with respect thereto,

and, specifically, the net Sale Proceeds shall be paid to Bank of America, N.A. ("**BANA**") at the time of the consummation of the Sale for application against any obligations arising under any debtor-in-possession financing facility and, to the extent applicable, for provisional payment of pre-petition obligations owing to BANA, but subject in all respects to the scope of any "carve-out" set forth in any pertinent order approving any such debtor-in-possession financing. To the maximum extent permitted by law, Buyer shall have no liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Purchased Assets other than as expressly set forth in this Order and in the Purchase Agreement.

7. On the Closing Date (as that term is defined in the Purchase Agreement), each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release any Encumbrances against the Assets, as such Encumbrances may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or agreements evidencing Encumbrances on the Purchased Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens or other interests which the person or entity has with respect to the Purchased Assets, the Debtors or the Buyer, as the case may be, is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity immediately prior to the Closing.

8. This Order shall be binding upon and govern the acts of all persons and entities, including without limitation, all creditors and stakeholders, any parties in interest, the Debtors and Buyer, and their respective successors and assigns, any chapter 11 trustee hereinafter appointed for the Debtor's estate or any trustee appointed in a chapter 7 case if this case is converted from chapter 11, filing agents, recording agencies, secretaries of state and all other persons and entities who may be required by operation of law to accept, file, register or otherwise record or release any documents or instruments. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and

instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

9. Subject to the satisfaction of all conditions and the completion of all deliveries required under the Purchase Agreement, effective as of the Closing Date, the Sale shall constitute a legal, valid and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any person and shall vest the Buyer with all right, title and interest of the Debtors in and to the Purchased Assets, free and clear of all Claims and Encumbrances. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets and a bill of sale transferring good and marketable title in the Purchased Assets to Buyer free and clear of all Claims and Encumbrances.

10. All persons or entities, presently or on or after the Closing, in possession of some or all of the Assets are directed to surrender possession of the Purchased Assets to the Buyer on such Closing or at such time thereafter as the Buyer may request.

11. The Purchase Price of the Assets shall be satisfied in full pursuant to the terms of the Purchase Agreement, and shall not be subject to setoff or any other reduction on the basis of any prepetition or postpetition claim that Buyer may assert against the Debtors. There are no brokers involved in consummating the Sale and no brokers' commissions are due.

12. Neither Buyer nor its affiliates, successors or assigns shall be deemed, as a result of any action taken in connection with the Sale or post-Closing operation of the Business and use of the Purchased Assets to: (i) be a successor to the Debtors; (ii) have, de facto or otherwise, merged with or consolidated into the Debtors; (iii) be a mere continuation or substantial continuation of the Debtors or any enterprise of the Debtors; (iv) be acquiring or assuming or liable for any liability, warranty or other obligation of the Debtors.

13. Title to the Purchased Assets shall vest in Buyer free and clear of all Claims and Encumbrances of any type or nature including any Claims against Debtors and all Encumbrances on the Purchased Assets for, and Buyer shall not be liable for, any and all liabilities or Claims

related to Debtors' pre-closing operations of any type or nature whatsoever, except for the Assumed Liabilities, to the maximum extent permitted by applicable law. Buyer shall not be liable for any liabilities of the Debtors, other than the Assumed Liabilities. Further, Buyer shall have no liability for any taxes or similar charges accruing, assessed, or attributable to a period prior to the Closing Date, all of which shall be the responsibility of the Debtors.

14. Buyer is acting in "good faith" and shall be entitled to the protection of section 363(m) of the Bankruptcy Code as to all aspects of the transaction pursuant to the Purchase Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

15. All persons or entities holding any Claim against any Debtor or any Encumbrance on the Purchased Assets are enjoined, pursuant to section 105 of the Bankruptcy Code, from enforcing any such Claim against Buyer (or any of Buyer's affiliates, successors or assigns) or any such Encumbrance against the Purchased Assets after the Closing.

16. The Sale approved by this Order is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

17. The terms of the Purchase Agreement and any ancillary agreements may be waived, modified, amended, or supplemented by the written and signed agreement of the Debtors and the Buyer without further action of the Court; *provided, however*, that any such waiver, modification, amendment, or supplement is not material or is not adverse to the Debtors' estates.

18. The Debtors may assume the Assumed Contracts and assign each of them to the Buyer pursuant to section 365 of the Bankruptcy Code free and clear of all Claims and Encumbrances. The assumption and assignment of the Assumed Contracts pursuant to the terms of this Order is integral to the Purchase Agreement and is in the best interests of the Debtors and the Debtors' estates, creditors and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

19. The Cure Amounts, as determined by the Court at the Sale Hearing, or absent an objection as set out on the most recent Assignment Schedule, are the sole amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all

monetary defaults and pay all actual pecuniary losses under the Assumed Contracts (the "Cure Amounts"). The Buyer has provided adequate assurance of its future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code. All conditions for the assumption of the Assumed Contracts under section 365 of the Bankruptcy Code have been or will be satisfied prior to or at the Closing of the transactions contemplated by the Purchase Agreement.

20. After the payment of the relevant Cure Amounts, neither the Debtors nor the Buyers shall have any further liabilities to the non-Debtor parties to the Assumed Contracts other than the Buyer's obligations under the Assumed Contracts that become due and payable on or after the Closing and are based on obligations related to the period from the Closing forward. Upon assignment of the Assumed Contracts, Debtors will have no further or future liability thereunder.

21. The Debtors and the Buyer reserve the right to add or delete contracts or leases from the list of Assumed Contracts up to the Closing Date. The assumption and assignment of any Assumed Contract shall not be binding on the Debtors or the Buyer until the Debtors file a Notice of Closing, which shall be filed within two business days after completion of the Closing and shall be served on all counter-parties to the Assumed Contracts. In the event of any additions of proposed Assumed Contracts to the Assignment Schedule, any objections to assumption and assignment or to the proposed cure amount shall be filed within five (5) days of service of the revised Assignment Schedule and/or Notice of Closing, as provided in the Sale Notice. Any objections which are unresolved will be heard by the Court at a hearing to be set at a later date.

22. The Limited Power of Attorney and Interim Management Agreement, if any, shall remain in place and shall not be subject to rejection in the event of a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases until Buyer has obtained all Governmental Authorizations required to operate the Business.

23. The failure specifically to include any particular provisions of the Purchase Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement is approved in its entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to the Closing.

24. This Court retains exclusive jurisdiction to enforce the provisions of this Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects, to resolve any dispute concerning this Order, the Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement, any related agreements and this Order.

25. The provisions of this Order are nonseverable and mutually dependent. The protections given to the Buyer in this Order shall be read and interpreted in the broadest way possible to provide the maximum protections to the Purchaser. Further, any actions taken pursuant thereto shall survive entry of any order which may be entered confirming any plan of reorganization for the Debtors, converting the Debtors' cases from chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, or dismissing the Debtors' cases. Nothing in any chapter 11 plan filed in this case shall modify, in any way, without the express written consent of Buyer, any of the terms of this Order.

26. Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062 (to the extent the foregoing are applicable) or any other applicable rule, this Order is effective and enforceable immediately upon entry, no stay applies, and the Debtor may complete the Sale forthwith.

27. To the extent any provisions of this Order conflict with the terms and conditions set forth in the Motion, this Order shall govern and control.

28. Pursuant to, and to the extent necessary under, Bankruptcy Rules 5003, 6004(h), 6006(d), 7062, 9014, 9021 and 9022, this Court hereby expressly finds and concludes that there is no just cause for delay in the implementation of this Sale Order. This Sale Order therefore

shall not be stayed for fourteen days after its entry. Notwithstanding any provision of the Bankruptcy Code or Bankruptcy Rules to the contrary, this Sale Order shall be effective and enforceable immediately upon entry, and any stay thereof, including without limitation pursuant to Rule 6004(h), Rule 6006(d), and Rule 7062, is hereby abrogated.

Dated: _____
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

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