

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K** **Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the year ended December 31, 2004 or

**Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 1-87

**EASTMAN KODAK COMPANY**

(Exact name of registrant as specified in its charter)

**NEW JERSEY**

(State of incorporation)

**16-0417150**

(IRS Employer Identification No.)

**343 STATE STREET, ROCHESTER, NEW YORK**

(Address of principal executive offices)

**14650**

(Zip Code)

Registrant's telephone number, including area code: **585-724-4000**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, \$2.50 par value	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days.

Yes  No Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. 

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act).

Yes  No

The aggregate market value of the voting stock held by non-affiliates of the registrant, computed by reference to the closing price as of the last business day of the registrant's most recently completed second fiscal quarter, June 30, 2004, was approximately \$7.7 billion. The registrant has no non-voting common stock.

The number of shares outstanding of the registrant's common stock as of March 31, 2005 was 287,093,986 shares of common stock.

### **DOCUMENTS INCORPORATED BY REFERENCE**

#### **PART III OF FORM 10-K**

The following items in Part III of this Form 10-K incorporate by reference information from the 2005 Annual Meeting and Proxy Statement:

- Item 10 - DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT
- Item 11 - EXECUTIVE COMPENSATION
- Item 12 - SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT
- Item 13 - CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS
- Item 14 - PRINCIPAL AUDITOR FEES AND SERVICES

## PART I

## ITEM 1. BUSINESS

Kodak is the leader in helping people take, share, print and view images – for memories, for information, for entertainment. With sales of \$13.5 billion in 2004, the Company is committed to a digitally oriented growth strategy focused on the following businesses: Health -- supplying the medical and dental industries with traditional and digital imaging-information products and services, as well as healthcare IT solutions and services; Graphic Communications - offering on-demand color and black and white printing, wide-format inkjet printing, high-speed, high-volume continuous inkjet printing, as well as document scanning, archiving and multi-vendor IT services; Digital & Film Imaging Systems - providing consumers, professionals and cinematographers with digital and traditional products and services; and Display & Components - which designs and manufactures state-of-the-art organic light-emitting diode displays as well as other specialty materials, and delivers imaging sensors to original equipment manufacturers.

## RESTATEMENT OF PREVIOUSLY ISSUED FINANCIAL STATEMENTS

The Company restated its consolidated financial statements as of and for the year ended December 31, 2003. In addition, the Company restated its quarterly consolidated financial statements for each of the quarterly periods in 2003 and for the first three quarters of 2004. The restatement reflects adjustments to correct errors in the Company's accounting for income taxes, accounting for pensions and other postretirement benefits as well as other miscellaneous adjustments. The restatement resulted in the Company adjusting its previously reported 2003 net income of \$265 million (\$.92 per share) to net income of \$253 million (\$.88 per share). The nature and impact of these adjustments are described in Note 1: "Significant Accounting Policies and Restatement." Also see Note 24: "Quarterly Sales and Earnings Data - Unaudited" for the impact of these adjustments on each of the quarterly periods.

## REPORTABLE SEGMENTS

As of and for the year ended December 31, 2004, the Company reported financial information for four reportable segments (Digital & Film Imaging Systems, Health, Commercial Imaging, and Graphic Communications). The balance of the Company's operations, which individually and in the aggregate do not meet the criteria of a reportable segment, are reported in All Other. However, in September of 2004, the Company announced the realignment of its operations to accelerate growth in the commercial, consumer and health markets. In connection with the realignment, the Company's new reporting structure will be implemented beginning in the first quarter of 2005 as outlined below:

**Digital & Film Imaging Systems (D&FIS) Segment:** The D&FIS segment comprises the same products and services as the current D&FIS segment, with the addition of aerial and industrial films. This segment provides consumers, professionals and cinematographers with digital and traditional products and services.

**Health Segment:** There were no changes to the Health segment. This segment supplies the healthcare industry with traditional and digital image capture and output products and services.

**Graphic Communications Segment:** As of January 1, 2005, the Graphic Communications segment consists of Encad, Inc., a maker of wide-format inkjet printers, inks and media; Kodak Versamark, Inc., a world leader in high-speed, 100% variable data printing; and NexPress Solutions, Inc., a leader in on-demand digital color and monochrome image printing systems. Kodak's Document Products and Services organization, which includes market-leading production and desktop document scanners, microfilm, worldwide service and support and business process services operations, is also part of this segment, along with Kodak's 50 percent interest in Kodak Polychrome Graphics LLC (KPG), a joint venture with Sun Chemical.

The Graphic Communications segment serves a variety of customers in the in-plant, data center, commercial printing and digital service bureau markets with a range of equipment that spans large-format inkjet printing and digital monochrome printing to on-demand digital image-rich color printing and transactional communications.

On January 12, 2005, the Company announced that it had entered into a Redemption Agreement with Sun Chemical Corporation and Sun Chemical Group B.V. (collectively, "Sun"), pursuant to which the parties have agreed to consummate certain transactions that will result in Kodak owning 100% of the equity interests in Kodak Polychrome Graphics LLC and Kodak Polychrome Graphics Company Ltd (KPG). The Company completed its acquisition of KPG on April 1, 2005.

On January 31, 2005, the Company announced that it has entered into a definitive agreement to acquire all of the outstanding common shares of Creo Inc., a premier supplier of prepress systems used by commercial printers worldwide. The closing of the transactions contemplated by the Agreement is scheduled to take place three business days following the satisfaction or waiver of the closing conditions. Either party may terminate the Agreement if the closing does not occur on or before September 30, 2005.

**All Other:** All Other is composed of Kodak's display and components business for image sensors, and other small, miscellaneous businesses. It also includes development initiatives in consumer inkjet technologies. These businesses offer imaging sensors to original equipment manufacturers (OEMs) and other specialty materials including organic light emitting diode (OLED) products to commercial customers.

In 2003, Kodak announced a comprehensive strategy to be implemented through 2006 to complete its transformation as the leader of the traditional photographic industry to a leadership position in emerging digital imaging markets.

Solid progress was achieved during 2004 in each area of this strategy. Kodak holds a leading position in key digital product categories where we participate.

For 2005, the Company's strategy has been reaffirmed to include the following priorities:

- Drive digital revenue growth
- Astutely manage our traditional businesses to stay ahead of market realities, and meet earnings goals
- Effectively execute the cost structure changes demanded by our transformation
- Relentlessly control costs associated with every aspect of our business
- Maintain excellence in delivering customer-centric innovations and imaging solutions with the industry's highest quality and focused - as always - on ease of use

By the end of 2005, Kodak expects to have achieved a level of digital revenues that exceeds traditional revenues and a balanced portfolio with three profitably growing digital segments and significant investments in new technologies.

As previously mentioned, the realignment and the new reporting structure are effective for the first quarter of 2005. Accordingly, the following business discussion is based on the four reportable segments and All Other as they were structured as of and for the year ended December 31, 2004. Kodak's sales, earnings and assets by reportable segment for these four reportable segments and All Other for the past three years are shown in Note 23, "Segment Information."

#### **DIGITAL & FILM IMAGING SYSTEMS (D&FIS) SEGMENT**

Sales from continuing operations of the D&FIS segment for 2004, 2003 and 2002 were (in millions) \$9,186, \$9,248, and \$9,002, respectively.

This segment includes digital and traditional products for consumers, professional photographers and the entertainment industry. This segment combines digital and traditional photography and photographic services in all its forms, including consumer, advanced amateur, professional and motion picture. Kodak manufactures and markets films (consumer, professional and motion picture), photographic papers, processing services, photofinishing equipment, photographic chemicals, and cameras (including one-time-use, traditional and digital). Kodak has also developed products that bridge traditional silver halide and digital products. Products and services include kiosks, printer docks, consumer digital services and inkjet media. Other digitization options have been created to stimulate more printing of images, adding to the consumption of film and paper. These products serve amateur photographers, as well as professional, motion picture and television customers. In addition, Kodak EasyShare gallery (formerly Ofoto.com) has accelerated Kodak's growth in the online photography market and helped to drive more rapid adoption of digital and online services. Kodak EasyShare gallery, which has 20 million members, offers digital processing of digital images and traditional film, top-quality prints, private online image storage, sharing, editing and creative tools, frames, cards, photo calendars and other merchandise.

Digital product offerings are replacing some of the traditional film and output products at varying rates. For example, the workflow improvements offered by digital are having relatively more significant effects in the professional markets, while digital is having little impact in the entertainment markets. The future impact of digital substitution on these film markets is difficult to predict due to a number of factors, including the pace of digital technology adoption, the underlying economic strength or weakness in major world markets, household film and media usage following a digital camera purchase, and the timing of digital infrastructure installation. Additionally, digital substitution is happening at varying rates depending on geography. For example, the pace of digital substitution in the consumer film market is more rapid in Japan, followed by the U.S. and Western Europe. For 2005, the Company estimates that consumer film industry volumes could decline worldwide as much as 20% and in the U.S. as much as 30% primarily due to digital substitution.

**Marketing and Competition:** The key elements of the Company's strategy with respect to the digital and traditional products and services in this segment include growth in digital capture, expansion of online services and mobile imaging, leadership in professional lab solutions, leadership in distributed output at retail and in the home, and intelligent management of the traditional film and paper products and services.

Traditional products and services for the consumer are sold direct to retailers and through distributors throughout the world. Price competition continues to exist in all marketplaces. To be more cost competitive with its traditional product offerings, the Company is continuing to move manufacturing operations to lower cost markets and to rationalize capacity. As previously outlined, digital product offerings are substituting for some of the traditional film and output products, primarily in the U.S., Japan and Western Europe, as a large number of consumers actively use digital cameras. While this substitution to date has had an impact primarily on the Company's film and paper sales, and processing services in the U.S., Japan and Western Europe, the Company's strategy is to partially mitigate this by providing its own digital products, digitization services and output services. The Company continues to realize growth in the sale of sensitized products -- including film and paper -- outside the U.S., particularly in emerging markets including Russia, India and China, where the Company has expanded the number of outlets for Kodak products. To further accelerate the market for photography in China, the Company entered into an agreement with China Lucky Film Corporation in 2003 to work together in this regard. The final cooperative agreement became effective on February 10, 2004, when the Chinese government approved Kodak's acquisition of 20% of Lucky Film Co. Ltd. The Company also has photofinishing laboratories in many parts of the world and supplies photographic papers and chemicals to other entities that provide photofinishing services. The Company's primary laboratories provide consumers the opportunity to receive film images in traditional formats or digital form, either through Kodak Picture CD or the Company's retail online partners.

The Company's strategies in its consumer digital business are to drive image output and sharing in all forms and make digital easier to use. Consumer digital products, including digital cameras, self-contained printer docks, which use thermal media to print pictures from digital cameras without the need for a personal computer, and inkjet media, are sold direct to retailers or distributors. Products are also available to customers through the Internet via online digital services like Kodak EasyShare gallery. Products such as the Company's EasyShare digital camera system with the camera docks are intended to simplify digital imaging for consumers and thereby increase the popularity for sharing and printing digital photo files. The Company faces competition from other electronics manufacturers in this market, particularly on price and technological advances. Rapid price declines shortly after product introduction in this environment are common, as producers are continually introducing new models with enhanced capabilities, such as improved resolution and/or optical systems. Kodak EasyShare gallery, the Company's online printing business, continues to demonstrate strong growth and began the establishment of a customer base in selected overseas markets in 2003. Late in 2003, the Company announced Kodak Mobile Service, which allows consumers with image-enabled mobile phones to store, share and print their images.

Traditional and digital professional products and services are sold direct to professional photographers and laboratories, or through dealers throughout the world. Although the Company continues to provide better performing and innovative traditional films and papers, the focus has shifted towards new products, systems and solutions focused on improving the digital workflow for professional photographers and laboratories. These solutions range from digital capture devices (digital cameras and scanners) designed to improve the image acquisition or digitalization process, software products designed to enhance and simplify the digital workflow, output devices (thermal printers and digital silver halide writers) designed to produce high quality images, and media (thermal and silver halide) optimized for digital workflows.

Throughout the world, almost all entertainment imaging products are sold direct to studios, laboratories, independent filmmakers, or production companies. Quality and availability are important factors for these products, which are sold in a price-competitive environment. When the entertainment industry adopts digital formats, the Company anticipates that it will face new competitors, including some of its current customers and other electronics manufacturers.

Kodak's advertising programs actively promote the segment's products and services in its various markets, and its principal trademarks, trade dress and corporate symbol are widely used and recognized. Kodak is frequently noted by trade and business publications as one of the most recognized and respected brands in the world.

## **HEALTH SEGMENT**

Sales from continuing operations of the Health segment for 2004, 2003 and 2002 were (in millions) \$2,686, \$2,431, and \$2,274, respectively.

Products and services of the Health segment enable healthcare customers (e.g., hospitals, imaging centers, etc.) to capture, process, integrate, archive and display images and information in a variety of forms. These products and services provide intelligent decision support through the entire patient pathway from research to detection to diagnosis to treatment. The Health segment also provides products and services that help customers improve workflow in their facilities, which in turn helps them enhance the quality and productivity of healthcare delivery.

Products of the Health segment include traditional analog medical films, chemicals, and processing equipment. Kodak's history in traditional analog imaging has made it a leader in this area and has served as the foundation for building its important digital imaging business. The segment provides digital medical imaging and information products, systems and solutions, which are key components of sales and earnings growth. These include laser imagers, digital print films, computed and digital radiography systems, and healthcare information systems (HCIS). The Health segment serves the general radiology market and specialty health markets, including dental, mammography, orthopedics and oncology. The segment also provides molecular imaging for the biotechnology research market.

In October 2003, the Company completed the acquisition of all of the outstanding shares of PracticeWorks, Inc., a leading provider of dental practice management software. In the purchase, Kodak also acquired PracticeWorks' subsidiary, Trophy Radiologie, S.A., a leading provider of dental digital radiographic imaging systems in Paris, France. This acquisition enables Kodak to offer its customers a full spectrum of dental imaging products and services from traditional film to digital radiography and photography and moved the Health segment into the leading position in the dental practice management and dental radiographic markets.

In November 2003, the Company completed the acquisition of Algotec Systems, Ltd., a leading developer of advanced picture-archiving-and-communications systems (PACS), which is part of HCIS, in a move that improves Kodak's competitive position in the growing market for PACS, which enable radiology departments worldwide to digitally manage and store medical images and information.

**Marketing and Competition:** In the U.S., Canada and Latin America, health imaging consumables and analog equipment are sold through distributors. A significant portion of digital equipment and solutions is sold direct to end users, with the balance sold through distributors and OEMs. In the U.S., individual hospitals or groups of hospitals represented by, as buying agents, group purchasing organizations (GPOs), account for a significant portion of consumables and equipment sales industry-wide. The Health segment has secured long-term contracts with many of the major GPOs and, thus, has positioned itself well against competitors. In Europe, consumables and analog equipment are sold through distributors and value added service providers (VASPs) as well as direct to end users. Hospitals in Europe, which are a mix of private and government-funded types, employ a highly regimented tender process in acquiring medical imaging products. In addition to creating a competitive pricing environment, this process can result in a delay of up to 6 to 18 months between the time the tender is delivered to the hospital and the time the hospital makes a decision on the vendor. Additionally, the government-funded hospitals' budgets tend to be limited and restricted. Government reimbursement policies often drive the use of particular types of equipment and influence the transition from analog to digital imaging. These policies vary widely among European countries. In Asia and Japan, sales of all products are split between distributors and end users. In Europe, Asia and Japan, consumables and analog equipment are often sold as part of a media/equipment bundle. Digital equipment and solutions are sold direct to end-users and through OEMs in these three geographic areas.

Worldwide, the medical imaging market is crowded with a range of strong competitors. To compete aggressively, Kodak's Health segment has developed a full portfolio of value-adding products and services. Some competitors offer digital solutions similar to those of Kodak, and other competitors offer similar analog solutions or a mix of analog and digital. Health has a wide range of solutions from analog to digital as well as solutions combining both analog and digital technologies. Moreover, the segment's portfolio is expanding into new areas, including enterprise information management solutions, thus enabling the segment to offer solutions that combine medical images and information, such as patient reports, into one unified package for medical practitioners. Kodak will continue to innovate products and services to meet the changing needs and preferences of the marketplace.

## COMMERCIAL IMAGING SEGMENT

Sales from continuing operations of the Commercial Imaging segment for 2004, 2003 and 2002 were (in millions) \$803, \$791, and \$791, respectively.

As of and for the year ended December 31, 2004, the Commercial Imaging segment encompassed Kodak's expertise in imaging solutions, providing image capture, analysis, printing and archiving. Markets for the segment include industrial, banking and insurance applications. Products include high-speed production document scanners, micrographic peripherals, and aerial, industrial and micrographic films, and optics and optical systems. The Company also provides maintenance and professional services for Kodak and other manufacturers' products, as well as providing imaging services to customers.

In August 2004, the Company completed the sale of the assets and business of the Remote Sensing Systems operation, including the stock of Kodak's wholly owned subsidiary, Research Systems, Inc. (collectively known as RSS), to ITT Industries, Inc. The Company's RSS operation had sales for the period January 1, 2004 through August 13, 2004 of approximately \$312 million and sales in 2003 of approximately \$424 million. The results of RSS are included in discontinued operations in the Company's financial statements.

**Marketing and Competition:** Throughout the world, document imaging products are sold primarily through distributors and value added resellers. The end users of these products include businesses in the banking and insurance sectors. While there is price competition, the Company has been able to maintain price by adding more attractive features to its products through technological advances. The Company has developed a wide range of digital products to meet the needs of customers who are interested in converting from traditional analog technology to new enterprise digital workflow solutions. Maintenance and professional services for Kodak and other manufacturer's products are sold either through the product distribution channel or directly to the end users of equipment. The Company provides imaging services in Asia which are sold directly to its customers and include both commercial and government customers.

## GRAPHIC COMMUNICATIONS

Sales from continuing operations comprising Graphic Communications for 2004, 2003 and 2002 were (in millions) \$724, \$346 and \$402, respectively.

As of and for the year ended December 31, 2004, Graphic Communications consists of subsidiaries Encad, Inc., Kodak Versamark, Inc., and NexPress Solutions. Additionally, the segment includes Kodak's equity interest in Kodak Polychrome Graphics LLC (KPG). Products include high-speed, high-volume continuous inkjet printing systems, digital on-demand color and monochrome printing equipment, wide-format inkjet printers, inks, media and services. These businesses market graphic communications products, inkjet products, and digital color and monochrome printing solutions.

In January 2004, Kodak acquired Scitex Digital Printing, renamed Kodak Versamark. This entity is a wholly owned subsidiary of Kodak focused on high-speed, high-volume printing applications, including those in transaction and industrial market segments. Kodak Versamark provides a full set of high-speed, variable-data inkjet printers, inks, service and other consumables.

In May 2004, Kodak acquired Heidelberger Druckmaschinen AG's (Heidelberg) 50 percent interest in NexPress Solutions LLC, a 50/50 joint venture of Kodak and Heidelberg that makes high-end, on-demand digital color printing systems, and the equity of Heidelberg Digital LLC, a leading maker of digital black-and-white variable-data printing systems. Kodak also acquired NexPress GmbH, a German subsidiary of Heidelberg that provides engineering and development support, and certain inventory, assets, and employees of Heidelberg's regional operations or market centers.

KPG is an unconsolidated joint venture between Kodak and Sun Chemical Corporation in which Kodak owns a 50% interest. This joint venture is responsible for the photographic plate business, as well as for marketing Kodak graphic arts film, proofing materials and equipment. The Company's equity in the income or loss of this interest is reflected in other income (charges), net.

On January 12, 2005, the Company announced that it had entered into a Redemption Agreement with Sun Chemical Corporation and Sun Chemical Group B.V. (collectively, "Sun"), pursuant to which the parties have agreed to consummate certain transactions that will result in Kodak owning 100% of the equity interests in Kodak Polychrome Graphics LLC and Kodak Polychrome Graphics Company Ltd (KPG). The Company completed its acquisition of KPG on April 1, 2005.

On January 31, 2005, the Company announced that it has entered into a definitive agreement to acquire all of the outstanding common shares of Creo Inc., a premier supplier of prepress systems used by commercial printers worldwide. The closing of the transactions contemplated by the Agreement is scheduled to take place three business days following the satisfaction or waiver of the closing conditions. Either party may terminate the Agreement if the closing does not occur on or before September 30, 2005.

**Marketing and Competition:** Throughout the world, graphic communications products are sold primarily through a variety of direct and indirect channels. The end users of these products include businesses in the commercial printing, data center, in-plant and digital service provider market segments. While there is price competition, the Company has been able to maintain price by adding more attractive features to its products through technological advances. The Company has developed a wide-range portfolio of digital products to meet the needs of customers who are interested in converting from traditional analog technology to new enterprise digital workflow solutions. Maintenance and professional services for Kodak products are sold either through the product distribution channel or directly to the end users of equipment.

Graphic products, primarily consisting of graphic films and chemistry, are sold directly by the Company to KPG. The growth in digital printing workflows has negatively affected the sale of graphic films. The Company announced its intentions to become more active in digital printing products and services to participate in this growth segment. The acquisitions of Scitex Digital Printing, renamed Kodak Versamark, and the NexPress-related entities were an important step in this direction, as are the planned acquisitions noted above.



Inkjet products are sold primarily through a two-tiered distribution channel. The Company remains competitive by focusing on developing new ink and media formulations, new printer technologies, new software and training enhancements.

#### **ALL OTHER**

Sales from continuing operations comprising All Other for 2004, 2003 and 2002 were (in millions) \$118, \$93, and \$80, respectively.

All Other consists primarily of the Kodak components group, which represents an effort by Kodak to diversify into high-growth product areas that are consistent with the Company's historical strengths in imaging science. As of and for the year ended December 31, 2004, the Kodak components group was comprised of the imaging sensor solutions business and Kodak display business. Products of this group include imaging sensor solutions and OLED displays.

In September 2004, Kodak completed the purchase of the imaging business of National Semiconductor Corporation, which develops and manufactures complimentary metal oxide semiconductor image sensor (CIS) devices. This acquisition has added resources and technologies that will further strengthen the Company's ability to design next generation CIS devices that promise to deliver improved image quality with complex on-chip image processing circuitry.

OLED technology, pioneered by Kodak, enables full-color, full-motion flat-panel displays. Kodak has a leading intellectual property position in this field. Unique from traditional liquid crystal displays, OLEDs are self-luminous and do not require backlighting. Their imaging performance, together with extremely fast response time, makes them well suited for video and other image intensive applications.

In 2001, the Company and SANYO Electric Co., Ltd. established a global business venture, the SK Display Corporation, to manufacture OLED displays for consumer devices such as cameras, and portable entertainment devices. Kodak holds a 34% ownership interest and SANYO holds a 66% interest in the business venture.

#### **FINANCIAL INFORMATION BY GEOGRAPHIC AREA**

Financial information by geographic area for the past three years is shown in Note 23, "Segment Information."

#### **RAW MATERIALS**

The raw materials used by the Company are many and varied, and are generally available. Silver is one of the essential materials used in the manufacture of films and papers. The Company purchases silver from numerous suppliers under annual agreements or on a spot basis. Raw base paper is an essential material in the manufacture of photographic papers. The Company has contracts to acquire raw base paper from certified photographic paper suppliers during the next several years. Electronic components are prevalent in the Company's equipment and digital product offerings. The Company has entered into contracts with numerous vendors to supply these components over the next one to two years.

#### **SEASONALITY OF BUSINESS**

Sales and earnings of the D&FIS segment are linked to the timing of vacations, holidays and other leisure activities. The digital capture and home printing products have experienced peak sales in the fourth quarter as a result of the December holidays. Sales are normally lowest in the first quarter due to the absence of holidays and fewer people taking vacations during that time. Sales and earnings of traditional products of this segment are normally strongest in the second and third quarter as demand for the products of this segment is high due to heavy vacation activity, and events such as weddings and graduations. During the latter part of the third quarter, demand for the products is high as dealers prepare for the holiday seasons. Demand for photofinishing services is also high during this heavy vacation period.

With respect to the Health, Commercial Imaging and Graphic Communications segments, the sales of consumable products, which generate the major portion of the earnings of these segments, tend to occur uniformly throughout the year. Sales of the lower margin equipment products in these segments tend to be highest in the fourth quarter as purchases by commercial and healthcare customers are linked to their year-end capital budget process. This pattern is also reflected in the third month of each quarter.

## RESEARCH AND DEVELOPMENT

Through the years, Kodak has engaged in extensive and productive efforts in research and development.

Research and development expenditures for the Company's four reportable segments and All Other for 2004, 2003 and 2002 were as follows:

(in millions)	2004	2003	2002
		(Restated)	
D&FIS	\$ 368	\$ 481	\$ 513
Health	208	178	152
Commercial Imaging	13	23	30
Graphic Communications	111	23	29
All Other	154	71	33
<b>Total</b>	<b>\$ 854</b>	<b>\$ 776</b>	<b>\$ 757</b>

The downward trend in research and development expenditures in the D&FIS and Commercial Imaging segments and upward trend in the Health and Graphic Communications segments and All Other reflects the shift in strategic focus from traditional products, such as color negative film and paper and color reversal films, to digital product areas, such as display technology, digital medical imaging, software, and digital printing.

Research and development is headquartered in Rochester, New York. Other U.S. groups are located in Boston, Massachusetts; Dallas, Texas; Oakdale, Minnesota; New Haven, Connecticut; and San Jose and San Diego, California. Outside the U.S., groups are located in England, France, Israel, Germany, Japan, China, Singapore and Canada. These groups work in close cooperation with manufacturing units and marketing organizations to develop new products and applications to serve both existing and new markets.

It has been Kodak's general practice to protect its investment in research and development and its freedom to use its inventions by obtaining patents. The ownership of these patents contributes to Kodak's ability to provide leadership products and to generate revenue from licensing. The Company holds portfolios of patents in several areas important to its business, including color negative films, processing and papers; digital cameras; network photo fulfillment; x-ray films, mammography systems, computed radiography, digital radiography, photothermographic technology for high quality dry printing, picture archive and communication systems, radiology information systems and organic light-emitting diodes. Each of these areas is important to existing and emerging business opportunities that bear directly on the Company's overall business performance.

The Company's major products are not dependent upon one single, material patent. Rather, the technologies that underlie the Company's products are supported by an aggregation of patents having various remaining lives and expiration dates. There are no individual patents or group of patents the expiration of which is expected to have a material impact on the Company's results of operations.

## ENVIRONMENTAL PROTECTION

Kodak is subject to various laws and governmental regulations concerning environmental matters. The U.S. federal environmental legislation and state regulatory programs having an impact on Kodak include the Toxic Substances Control Act, the Resource Conservation and Recovery Act (RCRA), the Clean Air Act, the Clean Water Act, the NY State Chemical Bulk Storage Regulations and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (the Superfund Law).

It is the Company's policy to carry out its business activities in a manner consistent with sound health, safety and environmental management practices, and to comply with applicable health, safety and environmental laws and regulations. Kodak continues to engage in a program for environmental protection and control.

Based upon information presently available, future costs associated with environmental compliance are not expected to have a material effect on the Company's capital expenditures, earnings or competitive position. However, such costs could be material to results of operations in a particular future quarter or year.

Environmental protection is further discussed in the Management Discussion and Analysis of Financial Condition and Results of Operations, and Notes to Financial Statements.

## **EMPLOYMENT**

At the end of 2004, the Company employed approximately 54,800 full time equivalent people, of whom approximately 29,200 full time equivalents were employed in the U.S. The actual number of employees may be greater because some individuals work part time.

The current employment amounts are expected to decline significantly (before acquisitions) over the next few years as a result of the headcount reductions yet to be made under the 2004-2006 cost reduction program, which contemplated a 25 percent reduction in headcount below 2003 levels.

## **AVAILABLE INFORMATION**

The Company files many reports with the Securities and Exchange Commission (SEC), including annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K. These reports, and amendments to these reports, are made available free of charge as soon as reasonably practicable after being electronically filed with or furnished to the SEC. They are available through the Company's website at [www.Kodak.com](http://www.Kodak.com). To reach the SEC filings, follow the links to Corporate, and then Investor Center. The Company also makes available free of charge through its website, at [www.Kodak.com/go/annualreport](http://www.Kodak.com/go/annualreport), its summary annual report to shareholders and proxy statement.

The public may also read and copy any materials the Company files with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet site, at [www.sec.gov](http://www.sec.gov), that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

We have included the CEO and CFO certifications required by Section 302 of the Sarbanes-Oxley Act of 2002 as exhibits to this report. We have also included these certifications with the Form 10-K filed on March 15, 2004. Additionally, we filed with the New York Stock Exchange (NYSE) the CEO certification, dated May 28, 2004, regarding our compliance with the NYSE's corporate governance listing standards pursuant to Section 303A.12(a) of the listing standards, and indicated that the CEO was not aware of any violations of the listing standards by the Company.

## **ITEM 2. PROPERTIES**

The D&FIS segment of Kodak's business in the United States is centered in Rochester, New York, where photographic goods are manufactured. Another manufacturing facility in Windsor, Colorado, also produces sensitized photographic goods. Kodak EasyShare gallery's operations are located in Emeryville, California. D&FIS segment manufacturing facilities outside the United States are located in Brazil, Canada, China, England, France, India, Indonesia, Mexico and Russia. Kodak maintains marketing and distribution facilities in many parts of the world. There are also several photofinishing laboratories located across the United States and certain countries in Europe.

Products in the Health segment are manufactured in the United States, primarily in Rochester, New York; Windsor, Colorado; Oakdale, Minnesota; and White City, Oregon. Manufacturing facilities outside the United States are located in Brazil, China, France, Germany, India, Israel and Mexico.

Products in the Commercial Imaging segment are manufactured in the United States, primarily in Rochester, New York. Manufacturing facilities outside the United States are located in Brazil, Canada, China, England, Japan and Mexico.

Products in the Graphic Communications segment are manufactured in the United States, primarily in Rochester, New York; Dayton, Ohio; and San Diego, California. Manufacturing facilities outside the United States are located in England, France, Germany, China, Japan and Mexico.

Properties within a country are generally shared by all segments operating within that country.

Regional distribution centers are located in various places within and outside of the United States. The Company owns or leases administrative, manufacturing, marketing and processing facilities in various parts of the world. The leases are for various periods and are generally renewable.

The Company anticipates that its property portfolio will be reduced significantly over the next few years as a result of the 2004-2006 cost reduction program. Under this program, the Company plans to reduce its worldwide facility square footage by approximately one-third.

### **ITEM 3. LEGAL PROCEEDINGS**

On March 8, 2004, the Company filed a complaint against Sony Corporation in federal district court in Rochester, New York, for digital camera patent infringement. Several weeks later, on March 31, 2004, Sony sued the Company for digital camera patent infringement in federal district court in Newark, New Jersey. Sony subsequently filed a second lawsuit against the Company in Newark, New Jersey, alleging infringement of a variety of other Sony patents. The Company filed a counterclaim in the New Jersey action, asserting infringement by Sony of the Company's kiosk patents. The Company successfully moved to transfer Sony's New Jersey digital camera patent infringement case to Rochester, New York, and the two digital camera patent infringement cases are now consolidated for purposes of discovery. Based on the current discovery schedule, the Company expects that claims construction hearings in the digital camera cases will take place in 2006. Both the Company and Sony Corporation seek unspecified damages and other relief.

On October 7, 2004, the Company and Sun Microsystems Inc. reached a tentative agreement to settle a lawsuit filed by Kodak on February 11, 2002 in Federal District Court, Western District of New York, for infringement of three Kodak patents covering a software architecture used in Sun's Java product. The settlement followed an October 1, 2004 verdict in which a federal court jury found that the Kodak patents in issue were valid, that Sun infringed the patents, and that Sun's affirmative defense was without merit.

On October 12, 2004, a final settlement agreement was signed. Pursuant to the terms of the settlement agreement, Sun paid Kodak \$92 million in cash on October 12, 2004.

Kodak provided to Sun a non-exclusive license under the Kodak patents at issue. In addition, Kodak licensed to Sun certain other Kodak patents for existing and future versions of Sun's Java technology. The other licensed Kodak patents are limited to those Kodak patents infringed on October 12, 2004 by the current version of Sun's Java technology.

Kodak also released Sun from any past infringement of Kodak's patents by the Java technology.

The license and the release relative to Java technology extend to Sun's licensees, customers, developers, suppliers, manufacturers, and distributors.

Sun released Kodak from all counterclaims that it had asserted in the litigation.

The case was dismissed with prejudice.

In February 2005, Kodak and the New York State Department of Environmental Conservation (“DEC”) negotiated a multimedia Order on Consent in settlement of the following activities by Kodak at its Kodak Park facility in Rochester, New York: (i) all alleged violations of the Clean Water Act and the Resource Conservation and Recovery Act (hazardous waste program); (ii) unauthorized spills and releases under the New York Navigation Law and the Chemical Bulk Storage Program reported to or discovered by the DEC through September 30, 2004; and (iii) deviations or violations under the Clean Air Act reported to the DEC through June 30, 2004 (based on the semi-annual reporting cycle). Kodak completely settled this order of consent for \$140,000. Kodak paid \$100,000 to the DEC in February 2005. The remaining \$40,000 will be paid to the Audubon Society during 2005 to fund, as an Environmental Benefit Project, a Birds-of-Prey Satellite Telemetry Program designed to support, and stimulate public interest in, the resident peregrine falcon and active bald eagle programs in the Rochester, New York area.

#### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

#### EXECUTIVE OFFICERS OF THE REGISTRANT

Pursuant to General Instructions G (3) of Form 10-K, the following list is included as an unnumbered item in Part I of this report in lieu of being included in the Proxy Statement for the Annual Meeting of Shareholders.

Name	Age	Positions Held	Date First Elected	
			an Executive Officer	to Present Office
Michael P. Benard	57	Vice President	1994	1994
Robert L. Berman	47	Senior Vice President	2002	2005
Charles S. Brown, Jr.	54	Senior Vice President	2000	2000
Richard G. Brown, Jr.	56	Chief Accounting Officer and Controller	2003	2003
Robert H. Brust	61	Chief Financial Officer and Executive Vice President	2000	2000
Daniel A. Carp	56	Chairman of the Board, Chief Executive Officer	1995	2000
Carl E. Gustin, Jr.	53	Senior Vice President	1995	1995
Mary Jane Hellyar	51	Senior Vice President	2005	2004
Kevin J. Hobert	40	Senior Vice President	2005	2005
James T. Langley	54	Senior Vice President	2003	2003
William J. Lloyd	65	Senior Vice President	2005	2005
Bernard Masson	57	Senior Vice President	2002	2002
Daniel T. Meek	53	Senior Vice President	2004	1998
Antonio M. Perez	58	President and Chief Operating Officer	2003	2003
Karen A. Smith-Pilkington	46	Senior Vice President	2002	2002
Gary P. Van Graafeiland	58	General Counsel and Senior Vice President	1992	1992

Executive officers are elected annually in February.

All of the executive officers have been employed by Kodak in various executive and managerial positions for at least five years, except Mr. Hobert, who joined the Company in 2002; Mr. Masson, who joined the Company on December 12, 2002; Mr. Perez, who joined the Company on April 2, 2003; Mr. Lloyd, who joined the Company in June of 2003; Mr. Langley, who joined the Company on August 18, 2003; and Mr. Richard Brown, Jr., who joined the Company on December 17, 2003.

The executive officers biographies follow:

**Michael P. Benard**

Michael Benard, Eastman Kodak Company's Director of Communications & Public Affairs, has worldwide responsibility for internal and external communications, government affairs, community relations, corporate contributions, and management communications.

Mr. Benard joined Kodak in 1986 as a senior speechwriter, and took charge of the speechwriting team in 1987. He progressed through a series of management responsibilities including employee communications, KBTV (Kodak Business TeleVision network), and corporate communications. He was appointed director, Communications & Public Affairs in May 1994 and elected vice president, Eastman Kodak Company in November 1994.

**Robert L. Berman**

Mr. Berman was appointed to his present position as Director, Human Resources in January 2002 and was elected Senior Vice President, Eastman Kodak Company in February 2005. Prior to this position, Mr. Berman was a Vice President and the Associate Director of Human Resources and the Director and divisional vice president of Human Resources for Global Operations. His responsibility in that role included leadership in the delivery of strategic and operational human resources services to Kodak's global manufacturing, supply chain and regional infrastructure operations around the world. He has held a variety of key human resources positions for Kodak over his 22 year career, including the Director and divisional vice president of Human Resources for the Consumer Imaging business and the Human Resources Director for Kodak Colorado Division.

**Charles S. Brown, Jr.**

Mr. Brown began his Kodak career as a process engineer in the Synthetic Chemicals Division in 1973 and served in various technical and supervisory capacities until 1982. In addition, he has served in various managerial positions primarily in manufacturing.

On November 1, 1995 he was named Chief Operating Officer, Consumer Imaging and Vice President, Eastman Kodak Company. His primary responsibilities included Consumer Imaging's film, paper and camera businesses. Mr. Brown was then named the Assistant Director, Imaging Materials Manufacturing beginning September 1, 1997.

Mr. Brown was named Director, Global Manufacturing and Logistics, and Vice President, Eastman Kodak Company, effective February 1, 1999. In this position, he provided leadership for Kodak's global operations for film, photographic paper, chemical products and equipment.

On April 14, 2000, Eastman Kodak Company's Board of Directors elected Mr. Brown a Senior Vice President. In June 2004, Mr. Brown was promoted to Chief Administrative Officer and is responsible for such corporate functions as Health, Safety & Environment, Communications & Public Affairs, Human Resources, Corporate Security, Information Security and the Legal department. He also oversees the company's international regions.

**Richard G. Brown, Jr.**

Richard joined Eastman Kodak Company in December 2003 as Chief Accounting Officer and Controller.

Mr. Brown previously was a partner at Ernst & Young LLP, serving SEC registrants and privately held companies in such industries as consumer products, manufacturing and services. During his 32-year career at Ernst & Young, he had significant experience in dealing with matters governed by the U.S. Securities and Exchange Commission, and participated for the last 15 years of his career there in the firm's National Accounting and Auditing Control Program.

**Robert H. Brust**

Mr. Brust was named Chief Financial Officer and Executive Vice President of Eastman Kodak Company, effective January 3, 2000. Prior to joining Kodak, Mr. Brust was Senior Vice President and Chief Financial Officer of Unisys Corporation, a global information services and technology company with \$8 billion in revenues, located in Blue Bell, Pennsylvania. He joined Unisys in 1997, where he directed the company's financial organization, including treasury, control, tax, information systems, mergers and acquisitions, strategy, procurement, and investor relations. He is largely credited for strengthening Unisys' balance sheet and achieving a significant upgrade in the company's credit ratings.

Mr. Brust went to Unisys following a distinguished 31-year career at General Electric Co., where he last ran the finance operations of that company's plastics division as it grew from \$900 million in revenues to about \$8 billion. He joined General Electric in 1965, working in a variety of financial and financial management positions in businesses as diverse as motors, capacitors, steam turbines and generators, and engineering services. He joined the plastics division in 1983, directing the financial operation of that business through its dramatic period of growth.

**Daniel A. Carp**

Daniel A. Carp began his Kodak career in 1970 as a statistical analyst and held a variety of increasingly responsible positions in market research, business planning, marketing management and line-of-business management, including general manager of Sales for Kodak Canada and general manager of Consumer Electronics Division.

In 1986, Mr. Carp was named assistant general manager of the Latin American Region. In September 1988, he was elected a vice president and named general manager of that organization. Two years later, Carp moved to London to take up the position of general manager of the European Marketing Companies. He was appointed general manager, European, African, and Middle Eastern Region in October 1991. Mr. Carp was elected executive vice president and named assistant chief operating officer effective November 1, 1995. On January 1, 1997, he was elected president and chief operating officer.

He was elected to the Company's Board of Directors on December 12, 1997. Before serving in his current position as chairman and chief executive officer, Mr. Carp was president and chief executive officer (from January 1, 2000 through December 8, 2000); chairman, president, and chief executive officer (from December 8, 2000 through April 16, 2001); and chairman and chief executive officer (from April 16, 2001 through January 4, 2002); chairman and chief executive officer and president and chief operating officer (from January 4, 2002 until April 2, 2003).

**Carl E. Gustin, Jr.**

Carl Gustin joined Kodak as vice president and general manager of the Digital and Applied Imaging Division in August 1994. In October 1995, he was appointed to his present position as chief marketing officer and senior vice president, Eastman Kodak Company, in addition to his role as acting president and general manager of Digital and Applied Imaging, which he did through 1996.

As chief marketing officer, Mr. Gustin has been breaking new ground in the areas of advertising and marketing in an effort to fuel new market growth while further enhancing and broadening the reach of the brand. His areas of responsibility include: corporate-wide general marketing, internet marketing, customer relationship marketing, presence marketing, corporate branding, new business incubation, multicultural marketing, business research, corporate design, as well as providing leadership and direction for the marketing functions across the Company.

**Mary Jane Hellyar**

Mary Jane Hellyar joined Eastman Kodak Company in 1982 as a research scientist in the Kodak Research Laboratories. She held a variety of positions within R&D and in 1988 she joined Film Manufacturing as a product engineer for motion picture films. In 1992 Ms. Hellyar was named director of the Chemicals Development Division, responsible for process development of chemical components for Kodak. Following a one-year program at the Sloan School, she joined Consumer Imaging in the Strategic Planning function in 1994. In 1995 Ms. Hellyar was named director of the Color Product Platform, responsible for development and commercialization of color negative films, papers and chemicals. In 1998 she assumed the additional responsibility of R&D manager for the Consumer Imaging Film Business.

Effective May 1999, Ms. Hellyar was named general manager, Consumer Film Business, Consumer Imaging and was elected a corporate vice president.

In October 2001, Ms. Hellyar's responsibilities were expanded and in 2003 she added responsibilities for professional films in her role as General Manager Film Capture, Digital & Film Imaging Systems. In November 2004, she was named President, Display and Components Group. In January 2005, the Board of Directors elected her a senior vice president.

**Kevin J. Hobert**

Kevin Hobert was appointed President of Kodak's Health Group and a senior vice president of the Company in February 2005.

Prior to his current position, Mr. Hobert was General Manager, Digital Capture Systems and vice president of Kodak's Health Group. He drove significant process and product improvements that delivered revenue growth and improved margins. Under his leadership, the computed radiography business achieved the number two position worldwide, a digital radiography business was established and breast cancer computer aided detection, Kodak's first FDA PMA product, was introduced to the market.

Mr. Hobert joined Kodak in 2002 from General Electric Medical Systems (GEMS), a division of General Electric Co., with 11 years experience in the medical imaging market. At GE he was responsible for leading GEMS' global business comprised of digital, analog and mobile radiography market segments and remote, classical and multipurpose fluoroscopy market segments.



**James T. Langley**

James Langley joined Kodak as President, Commercial Printing, in August 2003. The Commercial Printing Group was renamed Graphic Communications Group in May 2004. In September he was elected a senior vice president of the Company. His responsibilities include leveraging Kodak's intellectual property to create new streams of revenue from the commercial printing market, as well as managing the Company's Encad, NexPress and Versamark subsidiaries. Mr. Langley also is responsible for managing Kodak's participation in the Kodak Polychrome Graphics joint ventures. Mr. Langley has extensive expertise in printing technologies and both low-volume and high-volume manufacturing, stemming from a 30-year career at Hewlett-Packard Company. Most recently, he was vice president of Commercial Printing at HP from March 2000 to August 2002, where he created a business plan, built a team and successfully moved the Company into that market.

Prior to that assignment, Mr. Langley served for three years as vice president of Inkjet Worldwide Office Printers, responsible for expanding the presence of HP's inkjet products in new, higher-end markets. This included all-in-one office printing devices, large format printing, photofinishing and commercial printing. During his tenure, revenue and earnings at the business grew annually at a double-digit pace.

**William J. Lloyd**

Bill Lloyd joined Kodak in June 2003 as Director, Portfolio Planning and Analysis. In October 2003, he was named director, Inkjet Systems Program, and was elected a vice president of the Company. In February 2005, he was elected a senior vice president. His current title became effective March 1, 2005.

Prior to Kodak, Mr. Lloyd was president of the consulting firm, Inwit, Inc. focused on imaging technology. From November 2000 until March 2002, he served as executive vice president and chief technology officer of Gemplus International, the leading provider of Smart Card-based secure solutions for the wireless and financial markets.

In 2000, Mr. Lloyd served as the Co-CEO during the startup phase of Phogenix Imaging, a joint venture between Eastman Kodak and Hewlett-Packard.

Mr. Lloyd has extensive expertise in imaging and printing technologies, stemming from his 31-year career at Hewlett-Packard Company where he was group vice president and CTO for consumer imaging and printing. In his career at HP, Mr. Lloyd held a variety of positions in product development and research both in the US and Japan. During his tenure in Japan (from 1990 until 1993) he directed the establishment of a branch of HP Laboratories.

**Bernard Masson**

Bernard Masson is President, Digital & Film Imaging Systems. He oversees the consumer, professional, digital and entertainment imaging products and services. Prior to this position, which became effective in August 2003, he was president of the Company's Display Group, a position he assumed in December 2002. He joined Kodak in May 2002, as a consultant to the Company's Photography Group, with an emphasis on output – or the delivery of hardcopy images and photographs. On December 13, 2002, he was elected senior vice president of the Company.

Prior to Kodak, Mr. Masson was an executive vice president at Lexmark International Inc. and president of the company's Consumer Printer Division between 1997 and 2001. He joined Lexmark in 1995. From 1992 until 1995, Masson was vice president and general manager of DH Print, a subsidiary of DH Technology, based in San Diego. The company designs, manufactures and markets specialty printers worldwide.

**Daniel T. Meek**

Daniel Meek was named Director, Global Manufacturing & Logistics effective June 2004. In this position he provides leadership for Kodak's global operations for film, photographic paper, chemical products and equipment, as well as global logistics. In April 2004, he was elected a senior vice president of the Company by the board of directors. In October 2003, he was named Corporate KOS (Kodak Operating System) Director on a full time basis reporting to Antonio Perez. Since January 2003, he was both the Director of the Global Capture Flow, part of Global Manufacturing & Logistics and the Corporate KOS Director, which reported to Dan Carp. In November 2002, he was named Director of the Global Capture Flow, Global Manufacturing and Logistics, which included the merger of the Color Film, Graphics, and Document Imaging Flows, as well as Estar Manufacturing. In December 1999, he was named Director of Worldwide Color Film Flow, Imaging Materials Manufacturing. Previously, in October 1998, he was named director of Worldwide Manufacturing Services, Imaging Materials Manufacturing, and elected a vice president, Eastman Kodak Company.

**Antonio M. Perez**

Antonio M. Perez joined Kodak as President and Chief Operating Officer on April 2, 2003. His responsibilities include overseeing Kodak's day-to-day operations, including the activities of Digital & Film Imaging Systems, Graphic Communications Group, Display & Components, Health Group, Inkjet Systems Program, Global Manufacturing & Logistics, Chief Marketing Office, Research & Development and Corporate Kodak Operating System (KOS). In October 2004, he was elected to the Company's Board of Directors.

Mr. Perez has extensive expertise in digital imaging technologies, stemming from a 25-year career at Hewlett-Packard Company, where he was a corporate vice president and a member of the company's Executive Council. He was president of the Consumer Business there, with responsibility for Digital Media Solutions and corporate marketing. In this role, he spearheaded the company's efforts to build a business in digital imaging and electronic publishing, and was responsible for all activities affecting the total customer experience in the consumer marketplace. This activity spanned a line of consumer products that had worldwide revenue of more than \$16 billion. Mr. Perez also oversaw contract manufacturing, distribution, marketing, order fulfillment, support and services, and HP's worldwide retail sales force.

Prior to that assignment, Mr. Perez served as President and CEO of HP's inkjet imaging business. During the five years in which Perez led the business, the installed base of inkjet printers grew from 17 million to 100 million worldwide, with total revenue of more than \$10 billion.

From June 2000 to December 2001, Mr. Perez was President and Chief Executive Officer of Gemplus International, where he led the effort to take the company public both on the Premier Marche in Paris and NASDAQ in December 2000. While at Gemplus, he transformed the company into the leading Smart Card-based solution provider in the fast-growing wireless and financial markets. In the first fiscal year, revenue at Gemplus grew 70%, from \$700 million to \$1.2 billion.

**Karen A. Smith-Pilkington**

In 2004, Karen A. Smith-Pilkington was appointed Chairman and President, Greater Asia Region. In this role, she manages Kodak's strategic and operational presence across Asia, ensuring coordinated Company "voice" and "actions". Located in Shanghai, she ensures integrated business growth, effectiveness and efficiency for Kodak in Asia.

Prior to this role in Asia, she served as the Operating Manager for Consumer and Professional Imaging, Kodak's largest business. She focused on repositioning, restructuring and enhancing the business' competitiveness. Ms. Smith-Pilkington was also President, Kodak Professional. In this responsibility, she managed Kodak's business serving the needs of professional photographers and labs engaged in image capture, digital workflow and output solutions.

Ms. Smith-Pilkington has held many significant positions in General Management, Marketing, Product Management and Human Resources. She has managed numerous strategic product groups holding global profit and loss responsibility. She has built and leveraged multiple global alliances in product development, manufacturing and customer development, particularly in Asia. She has been a Senior Vice President since 2002 and Corporate Vice President since 1999.

#### **Gary P. Van Graafeiland**

Mr. Van Graafeiland was elected a senior vice president and named general counsel of Eastman Kodak Company effective February 14, 1992. He is also the Company's Chief Compliance Officer. Mr. Van Graafeiland joined the Kodak Legal Department as a member of the Corporate Legal Staff in 1979. He was named assistant general counsel and director of the Corporate Legal Staff in January 1989, and was elected corporate secretary effective January 1990. Prior to joining Kodak, Mr. Van Graafeiland was associated with the Rochester law firm of Harter, Secrest & Emery.

There have been no events under any bankruptcy act, no criminal proceedings, and no judgments or injunctions material to the evaluation of the ability and integrity of any executive officer during the past five years.

## **PART II**

### **ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

Eastman Kodak Company common stock is principally traded on the New York Stock Exchange. There are 80,426 shareholders of record of common stock as of December 31, 2004. See Liquidity and Capital Resources in Management's Discussion and Analysis of Financial Condition and Results of Operations.

#### **MARKET PRICE DATA**

Price per share:

	2004		2003	
	High	Low	High	Low
1st Quarter	\$ 31.55	\$ 24.25	\$ 41.08	\$ 26.88
2nd Quarter	27.44	24.55	32.46	26.99
3rd Quarter	33.50	24.75	30.10	20.39
4th Quarter	34.74	28.93	25.83	20.43

### **ITEM 6. SELECTED FINANCIAL DATA**

Refer to Summary of Operating Data on page 159.

**ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS****CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

The accompanying consolidated financial statements and notes to consolidated financial statements contain information that is pertinent to management's discussion and analysis of the financial condition and results of operations. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and the related disclosure of contingent assets and liabilities.

The Company believes that the critical accounting policies and estimates discussed below involve the most complex management judgments due to the sensitivity of the methods and assumptions necessary in determining the related asset, liability, revenue and expense amounts.

**REVENUE RECOGNITION**

Kodak recognizes revenue when it is realized or realizable and earned. For the sale of multiple-element arrangements whereby equipment is combined with services, including maintenance and training, and other elements, including software and products, the Company allocates to, and recognizes revenue from, the various elements based on verifiable objective evidence of fair value (if software is not included or is incidental to the transaction) or Kodak-specific objective evidence of fair value if software is included and is other than incidental to the sales transaction as a whole. For full service solutions sales, which consist of the sale of equipment and software which may or may not require significant production, modification or customization, there are two acceptable methods of accounting: percentage of completion accounting and completed contract accounting. For certain of the Company's full service solutions, the completed contract method of accounting is being followed by the Company. This is due to insufficient historical experience resulting in the inability to provide reasonably dependable estimates of the revenues and costs applicable to the various stages of such contracts as would be necessary under the percentage of completion methodology. When the Company does have sufficient historical experience and the ability to provide reasonably dependable estimates of the revenues and the costs applicable to the various stages of these contracts, the Company will account for these full service solutions under the percentage of completion methodology.

At the time revenue is recognized, the Company also records reductions to revenue for customer incentive programs in accordance with the provisions of Emerging Issues Task Force (EITF) Issue No. 01-09, "Accounting for Consideration Given from a Vendor to a Customer (Including a Reseller of the Vendor's Products)." Such incentive programs include cash and volume discounts, price protection, promotional, cooperative and other advertising allowances, and coupons. For those incentives that require the estimation of sales volumes or redemption rates, such as for volume rebates or coupons, the Company uses historical experience and internal and customer data to estimate the sales incentive at the time revenue is recognized. In the event that the actual results of these items differ from the estimates, adjustments to the sales incentive accruals would be recorded.

**ALLOWANCE FOR DOUBTFUL ACCOUNTS**

The Company records and maintains a provision for doubtful accounts for customers based on a variety of factors including the Company's historical experience, the length of time the receivable has been outstanding and the financial condition of the customer. In addition, Kodak regularly analyzes its customer accounts and, when it becomes aware of a specific customer's inability to meet its financial obligations to the Company, such as in the case of bankruptcy filings or deterioration in the customer's overall financial condition, records a specific provision for uncollectible accounts to increase the allowance to the amount that is estimated to be uncollectible. If circumstances related to specific customers were to change, the Company's estimates with respect to the collectibility of the related receivables could be further adjusted. However, losses in the aggregate have not exceeded management's expectations.

## INVENTORIES

Kodak reduces the carrying value of its inventory based on estimates of what is excess, slow-moving and obsolete, as well as inventory whose carrying value is in excess of net realizable value. These write-downs are based on current assessments about future demands, market conditions and related management initiatives. If, in the future, the Company determined that market conditions and actual demands are less favorable than those projected and, therefore, inventory was overvalued, the Company would be required to further reduce the carrying value of the inventory and record a charge to earnings at the time such determination was made. If, in the future, the Company determined that inventory write-downs were overstated and, therefore, inventory was undervalued, the Company would recognize the increase to earnings through higher gross profit at the time the related undervalued inventory was sold. However, actual results have not differed materially from management's estimates.

## VALUATION OF LONG-LIVED ASSETS, INCLUDING GOODWILL AND PURCHASED INTANGIBLE ASSETS

The Company reviews the carrying value of its long-lived assets, including goodwill and purchased intangible assets, for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. The Company assesses the recoverability of the carrying value of long-lived assets, other than goodwill and purchased intangible assets with indefinite useful lives, by first grouping its long-lived assets with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities (the asset group) and, secondly, estimating the undiscounted future cash flows that are directly associated with and expected to arise from the use of and eventual disposition of such asset group. The Company estimates the undiscounted cash flows over the remaining useful life of the primary asset within the asset group. If the carrying value of the asset group exceeds the estimated undiscounted cash flows, the Company records an impairment charge to the extent the carrying value of the long-lived asset exceeds its fair value. The Company determines fair value through quoted market prices in active markets or, if quoted market prices are unavailable, through the performance of internal analyses of discounted cash flows or external appraisals. The undiscounted and discounted cash flow analyses are based on a number of estimates and assumptions, including the expected period over which the asset will be utilized, projected future operating results of the asset group, discount rate and long-term growth rate.

To assess goodwill for impairment, the Company performs an assessment of the carrying value of its reporting units on an annual basis or when events and changes in circumstances occur that would more likely than not reduce the fair value of the Company's reporting units below their carrying value. If the carrying value of a reporting unit exceeds its fair value, the Company would record an impairment charge to earnings to the extent the carrying amount of the reporting unit goodwill exceeds its implied fair value. The Company estimates the fair value of its reporting units through internal analyses and external valuations, which utilize income and market valuation approaches through the application of capitalized earnings, discounted cash flow and market comparable methods. These valuation techniques are based on a number of estimates and assumptions, including the projected future operating results of the reporting unit, discount rate, long-term growth rate and appropriate market comparables.

The Company's assessments of impairment of long-lived assets, including goodwill and purchased intangible assets, and its periodic review of the remaining useful lives of its long-lived assets are an integral part of the Company's ongoing strategic review of the business and operations, and are also performed in conjunction with the Company's periodic restructuring actions. Therefore, future changes in the Company's strategy, the ongoing digital substitution, the continuing shift from overnight photofinishing to onsite processing and other changes in the operations of the Company could impact the projected future operating results that are inherent in the Company's estimates of fair value, resulting in impairments in the future. Additionally, other changes in the estimates and assumptions, including the discount rate and expected long-term growth rate, which drive the valuation techniques employed to estimate the fair value of long-lived assets and goodwill could change and, therefore, impact the assessments of impairment in the future.

In performing the annual assessment of goodwill for impairment, the Company determined that no material reporting units' carrying values were close to exceeding their respective fair values. See "Goodwill" under Note 1, "Significant Accounting Policies."

## INVESTMENTS IN EQUITY SECURITIES

Kodak holds minority interests in certain publicly traded and privately held companies having operations or technology within its strategic areas of focus. The Company's policy is to record an impairment charge on these investments when they experience declines in value that are considered to be other-than-temporary. Poor operating results of the investees or adverse changes in market conditions in the future may cause losses or an inability of the Company to recover its carrying value in these underlying investments. As of December 31, 2004, the amount related to the above investments recorded in the Company's Consolidated Statement of Financial Position was \$44 million.

## INCOME TAXES

The Company records a valuation allowance to reduce its net deferred tax assets to the amount that is more likely than not to be realized. At December 31, 2004, the Company has deferred tax assets for its net operating loss and foreign tax credit carryforwards of \$234 million and \$189 million, respectively, relating to which the Company has a valuation allowance of \$131 million and \$0 million, respectively. The Company has considered future market growth, forecasted earnings, future taxable income, the mix of earnings in the jurisdictions in which the Company operates, and prudent and feasible tax planning strategies in determining the need for these valuation allowances. If Kodak were to determine that it would not be able to realize a portion of its net deferred tax asset in the future for which there is currently no valuation allowance, an adjustment to the net deferred tax assets would be charged to earnings in the period such determination was made. Conversely, if the Company were to make a determination that it is more likely than not that the deferred tax assets for which there is currently a valuation allowance would be realized, the related valuation allowance would be reduced and a benefit to earnings would be recorded.

The Company's effective tax rate considers the impact of undistributed earnings of subsidiary companies outside of the U.S. Deferred taxes have not been provided for the potential remittance of such undistributed earnings, as it is the Company's policy to permanently reinvest its retained earnings. However, from time to time and to the extent that the Company can repatriate overseas earnings on essentially a tax-free basis, the Company's foreign subsidiaries will pay dividends to the U.S. Material changes in the Company's working capital and long-term investment requirements could impact the decisions made by management with respect to the level and source of future remittances and, as a result, the Company's effective tax rate. See Note 15, "Income Taxes."

The Company operates within multiple taxing jurisdictions worldwide and is subject to audit in these jurisdictions. These audits can involve complex issues, which may require an extended period of time for resolution. Although management believes that adequate provision has been made for such issues, there is the possibility that the ultimate resolution of such issues could have an adverse effect on the earnings of the Company. Conversely, if these issues are resolved favorably in the future, the related provisions would be reduced, thus having a positive impact on earnings.

## WARRANTY OBLIGATIONS

Management estimates expected product failure rates, material usage and service costs in the development of its warranty obligations. At the time revenue is recognized, the Company provides for the estimated costs of its warranties as a reduction of revenue. Actual results have not differed materially from management's estimates. In the event that the actual results of these items differ from the estimates, an adjustment to the warranty obligation would be recorded.

## PENSION AND POSTRETIREMENT BENEFITS

Kodak's defined benefit pension and other postretirement benefit costs and obligations are dependent on assumptions used by actuaries in calculating such amounts. These assumptions, which are reviewed annually by the Company, include the discount rate, long-term expected rate of return on plan assets, salary growth, healthcare cost trend rate and other economic and demographic factors. The Company bases the discount rate assumption for its significant plans on the estimated rate at which annuity contracts could be purchased to discharge the pension benefit obligation. In estimating that rate, the Company looks to the AA-rated corporate long-term bond yield rate in the respective country as of the last day of the year in the Company's reporting period as a guide. The long-term expected rate of return on plan assets is based on a combination of formal asset and liability studies, historical results of the portfolio, and management's expectation as to future returns that are expected to be realized over the estimated remaining life of the plan liabilities that will be funded with the plan assets. The salary growth assumptions are determined based on the Company's long-term actual experience and future and near-term outlook. The healthcare cost trend rate assumptions are based on historical cost and payment data, the near-term outlook, and an assessment of the likely long-term trends.

The Company reviews its expected long-term rate of return on plan asset (EROA) assumption annually for the Kodak Retirement Income Plan (KRIP). To facilitate this review, every three years, or when market conditions change materially, the Company undertakes a new asset and liability study to reaffirm the current asset allocation and the related EROA assumption. The Company's investment consulting firm completed a study (the Study) in September 2002, which led to several asset allocation shifts and a decrease in the EROA from 9.5% for the year ended December 31, 2002 to 9.0% for the years ended December 31, 2003 and 2004. In March 2005, a new asset and liability modeling study has been completed and the EROA for 2005 will remain at 9.0%. Given the decrease in the discount rate of 25 basis points from 6.0% for 2004 to 5.75% for 2005 and increased recognition of unrecognized losses in accordance with Statement of Financial Accounting Standards (SFAS) No. 87, "Employers' Accounting for Pensions," total pension income from continuing operations for the major funded and unfunded defined benefit plans in the U.S. is expected to decrease from \$3 million in 2004 to reflect an expense of \$1 million in 2005. Pension expense from continuing operations in the Company's non-U.S. plans is projected to increase from \$98 million in 2004 to \$104 million in 2005. Additionally, due in part to the decrease in the discount rate from 6.0% for 2004 to 5.75% for 2005 and increased amortization expense relating to the unrecognized actuarial loss, the Company expects the cost of its most significant postretirement benefit plan, the U.S. plan, to approximate \$200 million in 2005, as compared with \$103 million and \$238 million for 2004 and 2003, respectively. These estimates have been incorporated into the Company's earnings outlook for 2005.

Actual results that differ from our assumptions are recorded as unrecognized gains and losses and are amortized to earnings over the estimated future service period of the plan participants to the extent such total net recognized gains and losses exceed 10% of the greater of the plan's projected benefit obligation or the market-related value of assets. Significant differences in actual experience or significant changes in future assumptions would affect the Company's pension and postretirement benefit costs and obligations.

In accordance with the guidance under SFAS No. 87, the Company is required to record an additional minimum pension liability in its Consolidated Statement of Financial Position that is at least equal to the unfunded accumulated benefit obligation of its defined benefit pension plans. During 2004, due to the performance of the global equity markets, combined with decreasing discount rates in 2004, the Company increased its additional minimum pension liability for its major defined benefit plans by \$90 million and recorded a corresponding charge to accumulated other comprehensive income (a component of shareholders' equity) of \$61 million, net of taxes of \$29 million. If the global equity markets' performance improves and discount rates stabilize or improve in future periods, the Company may be in a position to reduce its additional minimum pension liability and reverse the corresponding charges to shareholders' equity. Conversely, if the global equity markets' performance and discount rates continue to decline in future periods, the Company may be required to increase its additional minimum pension liability and record additional charges to shareholders' equity. To mitigate the increase in its additional minimum pension liability and additional charges to shareholders' equity, the Company may elect to fund a particular plan or plans on a case-by-case basis.

## ENVIRONMENTAL COMMITMENTS

Environmental liabilities are accrued based on estimates of known environmental remediation exposures. The liabilities include accruals for sites owned by Kodak, sites formerly owned by Kodak, and other third party sites where Kodak was designated as a potentially responsible party (PRP). The amounts accrued for such sites are based on these estimates, which are determined using the ASTM Standard E 2137-01, "Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters." The overall method includes the use of a probabilistic model that forecasts a range of cost estimates for the remediation required at individual sites. The Company's estimate includes equipment and operating costs for remediation and long-term monitoring of the sites. Such estimates may be affected by changing determinations of what constitutes an environmental liability or an acceptable level of remediation. Kodak's estimate of its environmental liabilities may also change if the proposals to regulatory agencies for desired methods and outcomes of remediation are viewed as not acceptable, or additional exposures are identified. The Company has an ongoing monitoring and identification process to assess how activities, with respect to the known exposures, are progressing against the accrued cost estimates, as well as to identify other potential remediation sites that are presently unknown.

## STOCK-BASED COMPENSATION

The Company accounts for its employee stock incentive plans under Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees" and the related interpretations under Financial Accounting Standards Board (FASB) Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation." Accordingly, no stock-based employee compensation cost is reflected in net earnings for the years ended December 31, 2004, 2003 and 2002, as all options granted had an exercise price equal to the market value of the underlying common stock on the date of grant. On February 18, 2004, the Company announced that it would begin expensing stock options starting January 1, 2005 using the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation." In December 2004, the FASB issued SFAS No. 123R, a new accounting standard that will require the expensing of stock options and affect the accounting for the Company's restricted stock and stock appreciation rights as of the beginning of interim or annual reporting periods that begin after June 15, 2005. Early adoption is permitted for all companies; consequently, on January 1, 2005, the Company early adopted the stock option expensing rules of the new standard.

## KODAK OPERATING MODEL AND REPORTING STRUCTURE

The Company has four reportable segments: Digital & Film Imaging Systems (D&FIS), Health, Commercial Imaging, and Graphic Communications. The balance of the Company's operations, which individually and in the aggregate do not meet the criteria of a reportable segment, are reported in All Other. A description of the segments is as follows:

**Digital & Film Imaging Systems Segment:** The D&FIS segment derives revenues from consumer film products, sales of origination and print film to the entertainment industry, sales of professional film products, thermal, traditional and inkjet photo paper, chemicals, traditional and digital cameras, digital printers, photoprocessing equipment and services, and digitization services, including online services.

**Health Segment:** The Health segment derives revenues from the sale of digital products, including laser imagers, media, computed and direct radiography equipment and healthcare information systems, as well as traditional medical products, including analog film, equipment, chemistry, services and specialty products for the mammography, oncology and dental fields.

**Commercial Imaging Segment:** The Commercial Imaging segment is composed of document imaging products and services, commercial and government systems products and services, and optics. The Remote Sensing Systems business, which was sold to ITT Industries in August 2004, is accounted for as a discontinued operation in prior periods and the current period up through the date of sale.



**Graphic Communications Segment:** The Graphic Communications segment is composed of the Company's equity investments in Kodak Polychrome Graphics (Kodak's 50/50 joint venture with Sun Chemical) and NexPress (Kodak's 50/50 joint venture with Heidelberg) prior to its acquisition in May 2004, and the graphics and wide-format inkjet businesses. This segment also includes the results of Scitex Digital Printing, which was acquired in January 2004 and has since been renamed Kodak Versamark, as well as the results of the NexPress-related entities subsequent to the acquisition in May 2004.

**All Other:** All Other is composed of Kodak's display and components business for image sensors and other small, miscellaneous businesses. It also includes development initiatives in consumer inkjet technologies.

## DETAILED RESULTS OF OPERATIONS

### Net Sales from Continuing Operations by Reportable Segment and All Other (1)

(in millions)	2004	Change	2003	Change	2002
			(Restated)		
<b>D&amp;FIS</b>					
Inside the U.S.	\$ 3,823	0%	\$ 3,828	-5%	\$ 4,034
Outside the U.S.	5,363	-1	5,420	+9	4,968
<b>Total D&amp;FIS</b>	<b>9,186</b>	<b>-1</b>	<b>9,248</b>	<b>+3</b>	<b>9,002</b>
<b>Health</b>					
Inside the U.S.	1,114	+5	1,061	-2	1,088
Outside the U.S.	1,572	+15	1,370	+16	1,186
<b>Total Health</b>	<b>2,686</b>	<b>+10</b>	<b>2,431</b>	<b>+7</b>	<b>2,274</b>
<b>Commercial Imaging</b>					
Inside the U.S.	318	-5	334	-9	366
Outside the U.S.	485	+6	457	+8	425
<b>Total Commercial Imaging</b>	<b>803</b>	<b>+2</b>	<b>791</b>	<b>0</b>	<b>791</b>
<b>Graphic Communications</b>					
Inside the U.S.	350	+124	156	-10	174
Outside the U.S.	374	+97	190	-17	228
<b>Total Graphic Communications</b>	<b>724</b>	<b>+109</b>	<b>346</b>	<b>-14</b>	<b>402</b>
<b>All Other</b>					
Inside the U.S.	53	+26	42	-7	45
Outside the U.S.	65	+27	51	+46	35
<b>Total All Other</b>	<b>118</b>	<b>+27</b>	<b>93</b>	<b>+16</b>	<b>80</b>
<b>Total Net Sales</b>	<b>\$ 13,517</b>	<b>+5%</b>	<b>\$ 12,909</b>	<b>+3%</b>	<b>\$ 12,549</b>

(1) Sales are reported based on the geographic area of destination.

**Earnings (Loss) from Continuing Operations Before Interest, Other (Income) Charges, Net, and Income Taxes by Reportable Segment and All Other**

(in millions)	2004	Change	2003	Change	2002
			(Restated)		
D&FIS	\$ 580	+39%	\$ 416	-46%	\$ 771
Health	435	-9	476	+10	431
Commercial Imaging	127	+17	109	-8	118
Graphic Communications	(140)	-1173	(11)	-152	21
All Other	(182)	-136	(77)	-185	(27)
<b>Total of segments</b>	<b>820</b>	<b>-10</b>	<b>913</b>	<b>-31</b>	<b>1,314</b>
Strategic asset impairments	—		(3)		(32)
Impairment of Burrell Companies' net assets	—		(9)		—
Restructuring costs and other	(901)		(552)		(114)
Donation to technology enterprise	—		(8)		—
TouchPoint settlement	(6)		—		—
GE settlement	—		(12)		—
Patent infringement claim settlement	—		(14)		—
Prior year acquisition settlement	—		(14)		—
Legal settlement	—		(8)		—
Environmental reserve reversal	—		9		—
<b>Consolidated total</b>	<b>\$ (87)</b>	<b>-129%</b>	<b>\$ 302</b>	<b>-74%</b>	<b>\$ 1,168</b>

## Earnings (Loss) From Continuing Operations by Reportable Segment and All Other

(in millions)	2004	Change	2003	Change	2002
			(Restated)		
D&FIS	\$ 504	+39%	\$ 363	-34%	\$ 554
Health	352	-11	397	+26	315
Commercial Imaging	102	+19	86	+1	85
Graphic Communications	(88)	-115	(41)	-8	(38)
All Other	(155)	-94	(80)	-220	(25)
<b>Total of segments</b>	<b>715</b>	<b>-1</b>	<b>725</b>	<b>-19</b>	<b>891</b>
Strategic asset and venture investment impairments	—		(7)		(50)
Impairment of Burrell Companies' net assets held for sale	—		(9)		—
Restructuring costs and other	(901)		(552)		(114)
Donation to technology enterprise	—		(8)		—
TouchPoint settlement	(6)		—		—
Sun Microsystems settlement	92		—		—
BIGT settlement	9		—		—
GE settlement	—		(12)		—
Patent infringement claim settlement	—		(14)		—
Prior year acquisition settlement	—		(14)		—
Legal settlements	—		(8)		—
Environmental reserve reversal	—		9		—
Interest expense	(168)		(147)		(173)
Other corporate items	12		11		14
Tax benefit - contribution of patents	—		13		—
Tax benefit - PictureVision subsidiary closure	—		—		45
Tax benefit - Kodak Imagex Japan	—		—		46
Income tax effects on above items and taxes not allocated to segments	328		202		102
<b>Consolidated total</b>	<b>\$ 81</b>	<b>-57%</b>	<b>\$ 189</b>	<b>-75%</b>	<b>\$ 761</b>

**2004 COMPARED WITH 2003  
(2003 Restated)****RESULTS OF OPERATIONS - CONTINUING OPERATIONS****CONSOLIDATED****Worldwide Revenues**

Net worldwide sales were \$13,517 million for 2004 as compared with \$12,909 million for 2003, representing an increase of \$608 million, or 5% as reported, or an increase of 1% excluding the favorable impact from exchange. The increase in net sales was primarily due to increased volumes, acquisitions and favorable exchange, which increased sales for 2004 by 0.8, 4.3 and 3.3 percentage points, respectively. The increase in volumes was primarily driven by consumer digital cameras, printer dock products, and the picture maker kiosk portion of the consumer output SPG in the Digital & Film Imaging Systems (D&FIS) segment, digital products in the Health segment, partially offset by decreased volumes for traditional consumer film products. Favorable exchange resulted from an increased level of sales in non-U.S. countries as the U.S. dollar weakened throughout 2004 in relation to most foreign currencies. In addition, the acquisition of PracticeWorks, Inc. (PracticeWorks), Versamark, Laser-Pacific and the NexPress-related entities accounted for an additional 4.3 percentage points of the increase in net sales. These increases were partially offset by decreases attributable to price/mix, which reduced sales for 2004 by approximately 3.5 percentage points. These decreases were driven primarily by price/mix declines in traditional products and services, and consumer digital cameras in the D&FIS segment and film capture and output products in the Health segment.

Net sales in the U.S. were \$5,658 million for the current year as compared with \$5,421 million for the prior year, representing an increase of \$237 million, or 4%. Net sales outside the U.S. were \$7,859 million for the current year as compared with \$7,488 million for the prior year, representing an increase of \$371 million, or 5% as reported, or a decrease of 1% excluding the favorable impact of exchange.

**Digital Strategic Product Groups' Revenues**

The Company's digital product sales, excluding New Technologies product sales, were \$5,303 million for the current year as compared with \$3,736 million for the prior year, representing an increase of \$1,567 million, or 42%, primarily driven by the consumer digital capture Strategic Product Group (SPG), the kiosks/media portion of the consumer output SPG, the home printing SPG, and digital acquisitions.

### **Traditional Strategic Product Groups' Revenues**

Net sales of the Company's traditional products were \$8,191 million for the current period as compared with \$9,156 million for the prior year period, representing a decrease of \$965 million, or 11%, primarily driven by declines in the film capture SPG and the wholesale photofinishing portion of the consumer output SPG.

### **Foreign Revenues**

The Company's operations outside the U.S. are reported in three regions: (1) the Europe, Africa and Middle East region (EAMER), (2) the Asia Pacific region, and (3) the Canada and Latin America region. Net sales in EAMER for 2004 were \$4,041 million as compared with \$3,880 million for 2003, representing an increase of 4% as reported, or a decrease of 3% excluding the favorable impact of exchange. Net sales in the Asia Pacific region for 2004 were \$2,546 million compared with \$2,368 million for 2003, representing an increase of 8% as reported, or an increase of 3% excluding the favorable impact of exchange. Net sales in the Canada and Latin America region for 2004 were \$1,272 million as compared with \$1,240 million for 2003, representing an increase of 3% as reported, or an increase of 1% excluding the favorable impact of exchange.

The Company's major emerging markets include China, Brazil, Mexico, India, Russia, Korea, Hong Kong and Taiwan. Net sales in emerging markets were \$2,878 million for 2004 as compared with \$2,591 million for 2003, representing an increase of \$287 million, or 11% as reported, or an increase of 10% excluding the favorable impact of exchange. The emerging market portfolio accounted for approximately 21% and 37% of the Company's worldwide and foreign sales, respectively, in 2004.

Sales growth in China, India, Russia and Brazil of 28%, 9%, 7% and 6%, respectively, were the primary drivers of the increase in emerging market sales, partially offset by decreased sales in Hong Kong of 9%. Sales growth in China resulted from strong business performance for Kodak's Health, Graphic Communications and entertainment imaging products and services in 2004 as compared with 2003, when the Severe Acute Respiratory Syndrome (SARS) situation negatively impacted operations in that country, particularly for consumer and professional products and services.

### **Gross Profit**

Gross profit was \$3,969 million for 2004 as compared with \$4,175 million for 2003, representing a decrease of \$206 million, or 5%. The gross profit margin was 29.4% in the current year as compared with 32.3% in the prior year. The decrease of 2.9 percentage points was attributable to declines in price/mix, which reduced gross profit margins by approximately 4.2 percentage points. This decrease was driven primarily by price/mix declines in traditional consumer film products, photofinishing, consumer digital cameras, and entertainment print films in the D&FIS segment, analog medical film and digital capture equipment in the Health segment, and graphic arts products in the Graphic Communications segment. The decline in price/mix was partially offset by favorable exchange, which increased gross margins by approximately 0.5 percentage points, and decreases in manufacturing cost, which favorably impacted gross profit margins by approximately 0.4 percentage points year-over-year primarily due to reduced labor expense. The acquisition of PracticeWorks, Versamark and the NexPress-related entities favorably impacted gross profit margin by 0.4 percentage points.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses (SG&A) were \$2,507 million for 2004 as compared with \$2,618 million for 2003, representing a decrease of \$111 million, or 4%. SG&A decreased as a percentage of sales from 20% for the prior year to 19% for the current year. The net decrease in SG&A is primarily attributable to cost savings in the current year period realized from position eliminations resulting from focused cost reduction programs, a decrease in advertising expense of \$83 million compared with the prior year, and \$58 million in one-time charges incurred in 2003 relating to four legal settlements, an asset impairment, a strategic investment write-down, and a technology contribution, offset by the reversal of an environmental reserve. Such charges amounted to approximately \$6 million in the current year. These decreases were partially offset by unfavorable exchange of \$69 million and SG&A expense of acquisitions of \$192 million.

**Research and Development Costs**

Research and development (R&D) costs were \$854 million for 2004 as compared with \$776 million for 2003, representing an increase of \$78 million, or 10%. The increase in R&D is primarily due to increased spending to drive growth in digital product areas as well as acquisition-related R&D, partially offset by reductions in spending on traditional products. Write-offs for in-process R&D associated with acquisitions made in the current year were \$15 million compared with \$31 million in the prior year. As a percentage of sales, R&D costs remained flat at 6% for both the current and prior years.

**Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Losses from continuing operations before interest, other income (charges), net, and income taxes for 2004 were \$87 million as compared with earnings of \$302 million for 2003, representing a decrease of \$389 million, or 129%. The decrease is primarily attributable to the reasons described above.

**Interest Expense**

Interest expense for 2004 was \$168 million as compared with \$147 million for 2003, representing an increase of \$21 million, or 14%. The increase in interest expense is almost entirely attributable to higher average interest rates resulting from the replacement of commercial paper debt with the Senior Notes and Convertible Senior Notes issued in October 2003.

**Other Income (Charges), Net**

The other income (charges), net component includes investment income, income and losses from equity investments, gains and losses on foreign exchange and on the sales of assets and investments, and other miscellaneous income and expense items. Other income for the current year was \$161 million as compared with a net charge of \$51 million for 2003. The increase in income is primarily attributable to the proceeds from two favorable legal settlements, increased income from the Company's equity investment in Kodak Polychrome Graphics, and in the prior year, the NexPress investments were accounted for under the equity method and included in other income (charges), net. As a result of the Company's purchase of the Heidelberg's 50 percent interest in the NexPress joint venture, which closed in May 2004, NexPress is consolidated in the Company's Statement of Earnings for the remaining portion of the year and included in the Graphic Communications segment.

**Income Tax Provision (Benefit)**

The Company's effective tax benefit from continuing operations was \$175 million for the year ended December 31, 2004, representing an effective tax rate benefit from continuing operations of 186%. The effective tax rate benefit from continuing operations of 186% differs from the U.S. statutory tax rate of 35% primarily due to earnings from operations in certain lower-taxed jurisdictions outside the U.S., coupled with losses incurred in certain jurisdictions that are benefited at a rate equal to or greater than the U.S. federal income tax rate.

The Company's effective tax rate benefit from continuing operations was \$85 million for the year ended December 31, 2003, representing an effective tax rate benefit from continuing operations of 82%, despite the fact that the Company had positive earnings from continuing operations before income taxes. The effective tax rate benefit from continuing operations of 82% differs from the U.S. statutory tax rate of 35% primarily due to earnings from operations in certain lower-taxed jurisdictions outside the U.S., coupled with losses incurred in certain jurisdictions that are benefited at a rate equal to or greater than the U.S. federal income tax rate.

Excluding the effect of discrete period items, the effective tax rate from continuing operations was 18% and 15.5% in 2004 and 2003, respectively. The increase from 15.5% in 2003 to 18% in 2004 is primarily due to an increase in interest expense on tax reserves and an increase in valuation allowances.

### **Earnings From Continuing Operations**

Net earnings from continuing operations for 2004 were \$81 million, or \$.28 per basic and diluted share, as compared with net earnings from continuing operations for 2003 of \$189 million, or \$.66 per basic and diluted share, representing a decrease of \$108 million, or 57%. The decrease in net earnings from continuing operations is primarily attributable to the reasons outlined above.

### **DIGITAL & FILM IMAGING SYSTEMS**

#### **Worldwide Revenues**

Net worldwide sales for the D&FIS segment were \$9,186 million for 2004 as compared with \$9,248 million for 2003, representing a decrease of \$62 million, or a decrease of 1% as reported, or a decrease of 4% excluding the favorable impact of exchange. Approximately 4.1 percentage points of the decrease in net sales was attributable to price/mix declines driven primarily by declines in traditional film products as well as consumer digital cameras and inkjet media. This decrease was partially offset by favorable exchange, which increased revenues by approximately 3.2 percentage points.

D&FIS segment net sales in the U.S. were \$3,823 million for the current year as compared with \$3,828 million for the prior year, representing a decrease of \$5 million. D&FIS segment net sales outside the U.S. were \$5,363 million for the current year as compared with \$5,420 million for the prior year, representing a decrease of \$57 million, or 1% as reported, or a decrease of 6% excluding the favorable impact of exchange.

#### **Digital Strategic Product Groups' Revenues**

D&FIS segment digital product sales were \$2,677 million for the current year as compared with \$1,802 million for the prior year, representing an increase of \$875 million, or 49%, primarily driven by the consumer digital capture SPG. Net worldwide sales of consumer digital capture products, which include consumer digital cameras, accessories, memory products, and royalties, increased 61% in 2004 as compared with 2003, primarily reflecting strong volume increases and favorable exchange, partially offset by negative price/mix. Sales continue to be driven by strong consumer acceptance of the EasyShare digital camera system and the success of new digital camera product introductions during the current year.

The Company gained worldwide digital camera unit market share when compared with the prior year. According to market research firm IDC's full year 2004 digital camera study, Kodak leads the industry in the U.S. with a 21.9 percent market share. Digital camera market share has also improved internationally, giving Kodak the number one market share in Australia, Argentina, Peru and Chile as well as putting it among the top three positions in Germany, United Kingdom, Mexico and Brazil.

Net worldwide sales of picture maker kiosks and related media increased 58% in 2004 as compared with 2003, primarily due to strong volume increases and favorable exchange. Sales continue to be driven by strong market acceptance of Kodak's new generation of kiosks as well as an increase in consumer demand for digital printing at retail.

Net worldwide sales from the home printing solutions SPG, which includes inkjet photo paper and printer docks/media, increased 47% in the current year as compared with the prior year. For inkjet paper, 2004 was marked by increased competition from store brands and the mix shift associated with consumer's preference for smaller format papers. Kodak's printer dock products continued to experience strong sales growth during 2004.

### **Traditional Strategic Product Groups' Revenues**

D&FIS segment traditional product sales were \$6,509 million for the current year as compared with \$7,446 million for the prior year, representing a decrease of \$937 million, or 13%, primarily driven by declines in the film capture SPG and the consumer output SPG. Net worldwide sales of the film capture SPG, including consumer roll film (35mm film and Advantix film), one-time-use cameras (OTUC), professional films, reloadable traditional film cameras and batteries/videotape, decreased 16% in 2004 as compared with 2003, primarily reflecting volume declines and negative price/mix experienced for all significant film capture product categories. These declines were partially offset by favorable exchange.

U.S. consumer film industry sell-through volumes decreased approximately 18% in 2004 as compared with 2003. Kodak's sell-in consumer film volumes declined 21% as compared with the prior year, reflecting a decrease in U.S. retailers' inventories.

As previously announced, the Company's current estimate of worldwide consumer film industry volumes for 2005 could decline as much as 20%, with U.S. volumes declining as much as 30%.

Net worldwide sales for the retail photofinishing SPG, which includes color negative paper, equipment and services, chemistry, and photofinishing services at retail, decreased 6% in 2004 as compared with 2003, primarily reflecting lower volumes of Qualex retail photofinishing services, partially offset by favorable exchange.

Net worldwide sales for the wholesale photofinishing SPG, which includes color negative paper, equipment, chemistry, and photofinishing services at Qualex in the U.S. and Consumer Imaging Services (CIS) outside the U.S., decreased 31% in 2004 as compared with 2003, primarily reflecting lower volumes, partially offset by favorable exchange. The lower volumes reflect the effects of digital replacement.

Net worldwide sales for the entertainment films SPG, including origination and print films to the entertainment industry increased 12% in 2004 as compared with 2003, reflecting volume increases and favorable exchange that was partially offset by negative price/mix.

### **Gross Profit**

Gross profit for the D&FIS segment was \$2,612 million for 2004 as compared with \$2,864 million for 2003, representing a decrease of \$252 million or 9%. The gross profit margin was 28.4% in the current year as compared with 31.0% in the prior year. The 2.6 percentage point decrease was primarily attributable to decreases in price/mix that impacted gross profit margins by approximately 5.3 percentage points, partially offset by manufacturing cost improvements, which favorably impacted gross margins by approximately 2.4 percentage points. The decrease in price/mix was primarily due to the impact of digital substitution, resulting in a decrease in sales of higher margin traditional products, the impact of which was only partially offset by increased sales of lower margin digital products.

### **Selling, General and Administrative Expenses**

SG&A expenses for the D&FIS segment were \$1,665 million for 2004 as compared with \$1,967 million for 2003, representing a decrease of \$302 million or 15%. The net decrease in SG&A spending is primarily attributable to cost savings realized from position eliminations associated with ongoing focused cost reduction programs and reductions in advertising expense, partially offset by unfavorable exchange of \$50 million. As a percentage of sales, SG&A expense decreased from 21% in the prior year to 18% in the current year.



### Research and Development Costs

R&D costs for the D&FIS segment decreased \$113 million or 23% from \$481 million in 2003 to \$368 million in 2004. As a percentage of sales, R&D costs decreased from 5% in the prior year to 4% in the current year. The decrease in R&D is primarily due to a decline in spending related to consumer and professional imaging traditional products and services. In addition, the decline was partly attributable to a \$21 million write-off for purchased in-process R&D in 2003, with no such charge incurred in the current year.

### Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes

Earnings from continuing operations before interest, other income (charges), net, and income taxes for the D&FIS segment increased \$164 million, or 39%, from \$416 million in 2003 to \$580 million in 2004, primarily as a result of the factors described above.

### HEALTH

On October 7, 2003, the Company completed the acquisition of all of the outstanding shares of PracticeWorks, Inc., a leading provider of dental practice management software. As part of this transaction, Kodak also acquired 100% of PracticeWorks' Paris-based subsidiary, Trophy Radiologie, S.A., a developer and manufacturer of dental digital radiographic equipment, which PracticeWorks purchased in December 2002. The acquisition of PracticeWorks and Trophy was expected to contribute approximately \$200 million in sales to the Health segment during the first full year. Full year 2004 net sales for PracticeWorks (acquired in October 2003) were \$212 million, which resulted in incremental net sales of \$164 million for the Health segment.

It is anticipated that this transaction will be slightly dilutive to earnings from the date of acquisition through the end of 2005 and accretive to earnings thereafter. This acquisition enables Kodak to offer its customers a full spectrum of dental imaging products and services from traditional film to digital radiography and photography, and moved the Health segment into the leading position in the dental practice management and dental digital radiographic markets.

### Worldwide Revenues

Net worldwide sales for the Health segment were \$2,686 million for 2004 as compared with \$2,431 million for 2003, representing an increase of \$255 million, or 10% as reported, or an increase of 7% excluding the favorable impact of exchange. The increase in sales was comprised of: (1) an increase from favorable exchange of approximately 3.5 percentage points, (2) the acquisition of PracticeWorks Inc. in October 2003, which accounted for approximately 5.4 percentage points of the sales increase, and (3) an increase in volume of approximately 4.1 percentage points, driven primarily by volume increases in digital products. These increases were partially offset by declines in price/mix of approximately 3.1 percentage points, which were related to both digital and traditional products.

Net sales in the U.S. were \$1,114 million for the current year as compared with \$1,061 for the prior year, representing an increase of \$53 million, or 5%. Net sales outside the U.S. were \$1,572 million for 2004 as compared with \$1,370 million for 2003, representing an increase of \$202 million, or 15% as reported, or an increase of 8% excluding the favorable impact of exchange.

### Digital Strategic Product Groups' Revenues

Health segment digital sales, which include laser printers (DryView imagers and wet laser printers), digital media (DryView and wet laser media), digital capture equipment (computed radiography capture equipment and digital radiography equipment), services, dental practice management software and Picture Archiving and Communications Systems (PACS), were \$1,719 for the current year compared with \$1,438 million for 2003, representing an increase of \$281 million, or 20%. The increase in digital product sales was primarily attributable to the PracticeWorks acquisition and higher volumes of digital capture equipment, digital media and services.

### **Traditional Strategic Product Groups' Revenues**

Health segment traditional product sales, including analog film, equipment, chemistry and services, were \$967 million for the current year as compared with \$993 million for 2003, representing a decrease of \$26 million or 3%, with the decrease mainly attributable to decreases in volume and negative price/mix from analog medical film, partially offset by favorable exchange.

### **Gross Profit**

Gross profit for the Health segment was \$1,129 million for 2004 as compared with \$1,045 million for 2003, representing an increase of \$84 million, or 8%. The gross profit margin was 42.0% in 2004 as compared with 43.0% in 2003. The decrease in the gross profit margin of 1.0 percentage points was primarily attributable to: (1) price/mix which negatively impacted gross profit margins by 2.0 percentage points due to digital media, digital capture equipment and analog medical film, and (2) an increase in manufacturing cost, which decreased gross profit margins by 0.9 percentage points primarily due to increases in silver prices and petroleum based materials during the current year. These decreases were partially offset by increases attributable to favorable exchange, which contributed approximately 0.8 percentage points to the gross profit margin, and the acquisition of PracticeWorks in the fourth quarter of 2003, which increased gross profit margins by approximately 1.1 percentage points for the current year.

### **Selling, General and Administrative Expenses**

SG&A expenses for the Health segment increased \$95 million, or 24%, from \$391 million for 2003 to \$486 million for 2004. Although the dollar increase in SG&A expenses was significant, the increase as a percent of sales was only 2.0 percentage points from 16% in 2003 to 18% in 2004. The increase in SG&A expenses is primarily due to the acquisition of PracticeWorks, which accounted for \$65 million of the increase in SG&A expenses in 2004, increased spending on growth initiatives and the unfavorable impact of exchange, which accounted for \$12 million of the increase.

### **Research and Development Costs**

R&D costs for the Health segment increased \$30 million, or 17%, from \$178 million in 2003 to \$208 million in 2004, and increased as a percentage of sales from 7% in 2003 to 8% in 2004. The increase is primarily attributable to increased spending to drive growth in selected areas of the product portfolio.

### **Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Earnings from continuing operations before interest, other income (charges), net, and income taxes for the Health segment decreased \$41 million, or 9%, from \$476 million for 2003 to \$435 million for 2004 due primarily to the reasons described above.

### **COMMERCIAL IMAGING**

On February 9, 2004 Kodak announced its intention to sell the Remote Sensing Systems operation to ITT Industries for \$725 million in cash. This transaction closed during the third quarter of 2004. The Remote Sensing Systems business was part of Kodak's commercial and government systems operation. The Commercial Imaging segment results for 2004 and 2003 exclude the financial performance of Kodak's Remote Sensing Systems business, which is accounted for in discontinued operations. Certain overhead costs that were previously allocated to the RSS business that were not eliminated as a result of the sale are still being reported within the Commercial Imaging segment up through the completion of the divestiture, as the Commercial Imaging segment managed the RSS business until the completion of the divestiture. Subsequent overhead costs have been allocated to all of the existing segments.

**Worldwide Revenues**

Net worldwide sales for the Commercial Imaging segment were \$803 million for 2004 as compared with \$791 million for 2003, representing an increase of \$12 million, or 2% as reported, or a decrease of 3% excluding the favorable impact of exchange. The increase in net sales was primarily comprised of an increase of approximately 4.7 percentage points due to favorable exchange, which was partially offset by declines due to volume of approximately 3.1 percentage points, primarily driven by declines in the micrographics equipment and media SPG.

Net sales in the U.S. were \$318 million for 2004 as compared with \$334 million for 2003, representing a decrease of \$16 million, or 5%. Net sales outside the U.S. were \$485 million in the current year as compared with \$457 million in the prior year, representing an increase of \$28 million, or 6%, or a decrease of 2% excluding the favorable impact of exchange.

**Digital and Traditional Strategic Product Groups' Revenues**

Commercial Imaging segment digital product sales were \$384 million for the current year as compared with \$367 million for 2003, representing an increase of \$17 million, or 5%. Segment traditional product sales were \$419 million for the current year as compared with \$424 million for 2003, representing a decrease of \$5 million, or 1%. The primary driver was an increase in sales from the aerial and industrial materials SPG and the imaging services SPG, offset by declines in the equipment and media SPG.

**Gross Profit**

Gross profit for the Commercial Imaging segment for 2004 increased \$4 million, or 1%, from \$267 million for 2003 to \$271 million for 2004. The gross profit margin was 33.7% for 2004 as compared with 33.8% for 2003. The decrease in the gross profit margin of 0.1 percentage points was attributable to an increase in manufacturing cost, which negatively impacted gross profit margins by approximately 0.2 percentage points, and unfavorable price/mix of 0.5 percentage points, partially offset by exchange, which favorably impacted gross profit margins by 0.8 percentage points.

**Selling, General and Administrative Expenses**

SG&A expenses for the Commercial Imaging segment decreased \$5 million, or 4%, from \$135 million for 2003 to \$130 million for 2004. As a percentage of sales, SG&A expenses decreased from 17% for 2003 to 16% for 2004. The decrease in SG&A expenses is primarily due to cost savings realized from ongoing focused cost reduction programs and reduced advertising costs, partially offset by the unfavorable impact of exchange.

**Research and Development Costs**

R&D costs for the Commercial Imaging segment decreased \$10 million, or 43%, from \$23 million for 2003 to \$13 million for 2004. As a percentage of sales, R&D costs decreased from 3% in 2003 to 2% in 2004.

**Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Earnings from continuing operations before interest, other income (charges), net, and income taxes for the Commercial Imaging segment increased \$18 million, or 17%, from \$109 million in 2003 to \$127 million in 2004. The increase in earnings from operations is primarily attributable to the reasons outlined above.

## GRAPHIC COMMUNICATIONS

On May 1, 2004, Kodak completed the acquisition of the NexPress-related entities, which included the following:

- Heidelberg's 50% interest in NexPress Solutions LLC (Kodak and Heidelberg formed the NexPress 50/50 JV in 1997 to develop high quality, on-demand, digital color printing systems)
- 100% of the stock of Heidelberg Digital LLC (Hdi), a manufacturer of digital black & white printing systems
- 100% of the stock of NexPress GMBH – a R&D center located in Kiel, Germany
- Certain sales and service employees, inventory and related assets and liabilities of Heidelberg's sales and service units located throughout the world

There was no consideration paid to Heidelberg at closing. Under the terms of the acquisition, Kodak and Heidelberg agreed to use a performance-based earn-out formula whereby Kodak will make periodic payments to Heidelberg over a two-year period, if certain sales goals are met. If all sales goals are met during the two calendar years ending December 31, 2005, the Company will pay a maximum of \$150 million in cash. During the first calendar year, no amounts were paid. Additional payments may also be made relating to the incremental sales of certain products in excess of a stated minimum number of units sold during a five-year period following the closing of the transaction. The acquisition is expected to become accretive by 2007. During the eight months since closing, the NexPress-related entities contributed \$177 million in sales to the Graphic Communications segment.

On January 5, 2004, Kodak announced the completion of its acquisition of Scitex Digital Printing, the world leader in high-speed, variable data inkjet printing systems. Kodak acquired the business for \$239 million in net cash. This acquisition was expected to contribute approximately \$200 million to Graphic Communications segment sales in 2004. Scitex Digital Printing now operates under the name Kodak Versamark, Inc. During 2004, Kodak Versamark contributed \$198 million in sales to the Graphic Communications segment.

### Worldwide Revenues

Net worldwide sales for the Graphic Communications segment were \$724 million for 2004 as compared with \$346 million for 2003, representing an increase of \$378 million, or 109% as reported, or 108% excluding the favorable impact from exchange. The increase in net sales was primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which contributed approximately \$375 million in net sales to the Graphic Communications segment.

Net sales in the U.S. were \$350 million for 2004 as compared with \$156 million for 2003, representing an increase of \$194 million, or 124%. Net sales outside the U.S. were \$374 million in the current year as compared with \$190 million in the prior year, representing an increase of \$184 million, or 97%, or 95% excluding the favorable impact from exchange.

### Digital Strategic Product Groups' Revenues

Graphic Communications segment digital product sales, which are comprised of Kodak Versamark, the NexPress-related entities, and Encad, Inc. products and services, were \$456 million for the current year as compared with \$75 million for the prior year, representing an increase of \$381 million, or 508%. The increase is primarily attributable to the acquisitions of Versamark and the NexPress-related entities.

Kodak Versamark experienced strong sales performance driven by increased placements of color printing units in the transactional printing market coupled with a growing consumables business.

### **Traditional Strategic Product Groups' Revenues**

Segment traditional product sales are limited to the sales of traditional graphics products to the KPG joint venture. Net worldwide sales of graphic arts products to Kodak Polychrome Graphics (KPG), an unconsolidated joint venture affiliate in which the Company has a 50% ownership interest, of \$268 million were consistent for the current year as compared with 2003 net sales of \$271 million. Increasing volumes were offset by negative price/mix primarily attributable to graphic arts products.

### **Gross Profit**

Gross profit for the Graphic Communications segment for 2004 increased \$82 million, or 167%, from \$49 million for 2003 to \$131 million for 2004. The gross profit margin was 18.1% for 2004 as compared with 14.2% for 2003. The increase in the gross profit margin of 3.9 percentage points was primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which contributed 13.2 percentage points to gross profit margin for the current year period. This is despite the fact that Kodak Versamark's margins were negatively affected by the impact of the purchase accounting for the inventory that was acquired with Kodak Versamark at its fair value, which was sold during 2004. This negative impact was partially offset by a positive impact of purchase accounting for the inventory that was acquired with the NexPress-related entities at its fair value. Excluding the impact of purchase accounting, Kodak Versamark and the NexPress-related entities would have favorably impacted gross profit margins by approximately 14.3 percentage points during the current year period. Partially offsetting the favorable impact of acquisitions were: (1) an increase in manufacturing cost, which negatively impacted gross profit margins by approximately 7.1 percentage points, primarily due to an increase in silver prices and additional costs incurred in relation to the relocation of manufacturing facilities for graphics products from Mexico to Great Britain and the U.S., (2) negative exchange, which reduced gross profit margins by approximately 0.9 percentage points, and (3) negative price/mix of 1.0 percentage points.

### **Selling, General and Administrative Expenses**

SG&A expenses for the Graphic Communications segment were \$160 million for 2004 as compared with \$37 million in the prior year, representing an increase of \$123 million, or 332%, and increased as a percentage of sales from 11% in the prior year to 22% in the current year. The increase in SG&A expenses is primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which together accounted for \$120 million of SG&A expenses in the current year period.

### **Research and Development Costs**

R&D costs for the Graphic Communications segment increased \$88 million, or 383%, from \$23 million for 2003 to \$111 million for the current year, and increased as a percentage of sales from 7% in the prior year to 15% in the current year. The increase was primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which together accounted for \$90 million of R&D in the current period, and includes a \$10 million charge for purchased in-process R&D associated with the Kodak Versamark and NexPress-related entities acquisition.

### **Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Losses from continuing operations before interest, other income (charges), net, and income taxes for the Graphic Communications segment increased \$129 million from losses of \$11 million in 2003 to losses of \$140 million in 2004. This increase in losses is primarily attributable to the acquisition of the NexPress-related entities on May 1, 2004, the purchase of Scitex Digital Printing (renamed Kodak Versamark) on January 5, 2004, and the other factors described above. As noted above, the NexPress-related entities are expected to become accretive by 2007, and Kodak Versamark is expected to be slightly dilutive through 2004 and accretive thereafter.

KPG's earnings performance continued to improve on the strength of its leading position in digital printing plates and digital proofing, coupled with favorable operating expense management and foreign exchange. The Company's equity in the earnings of KPG contributed positive results to other income (charges), net during 2004.

On January 12, 2005, the Company announced that it had entered into a Redemption agreement with Sun Chemical Corporation (Sun Chemical) to purchase Sun Chemical's 50 percent interest in Kodak Polychrome Graphics (KPG), a 50/50 joint venture of Kodak and Sun Chemical that was established in 1998. KPG is one of the world's leading suppliers of products and services to the graphic communications market, with operations in six continents and an extensive global sales force. Under the terms of the transaction, Kodak will redeem all of Sun Chemical's shares in KPG by providing \$317 million in cash at closing, \$200 million in cash in the third quarter of 2006 and \$50 million in cash annually from 2008 through 2013, for a total of \$817 million. Kodak will fund the acquisition through internally generated cash flow. This transaction, which is expected to close in the second quarter of 2005, will expand the Company's global distribution network for Graphic Communications digital printing systems and broaden the Company's solutions portfolio. The Company expects this acquisition to incrementally increase revenue by approximately \$1.1 billion in 2005 and be immediately accretive to earnings, adding approximately five cents to diluted earnings per share from continuing operations in 2005 and approximately 14 cents to diluted earnings per share from continuing operations in 2006. The Company completed its acquisition of KPG on April 1, 2005.

On January 31, 2005, the Company announced that it had entered into a definitive agreement with Creo Inc. (Creo) to acquire 100% of its outstanding shares. Creo is based in Vancouver, Canada and is the world's number one provider of workflow software used by printers to manage efficiently the movement of text, graphics and images from the computer screen to the printing press. Under the terms of the agreement, Kodak will pay approximately \$980 million in cash, or \$16.50 per share, for all outstanding shares of Creo, on a fully diluted basis. The transaction is subject to regulatory approvals, the approval of Creo's shareholders and court approval. The acquisition will provide Kodak with an innovative digital pre-press product portfolio and established relationships in the commercial printing segment, the largest market opportunity within the graphic communications industry. This transaction also reinforces Graphic Communications status as a leading industry participant to provide customers with all of the products and services they need to be successful in a blended product environment, where digital, traditional and hybrid print jobs are converging. This acquisition is expected to result in modest earnings dilution in 2005 and approximately \$700 million in incremental revenue in 2006. The impact on 2006 net earnings per share cannot be accurately estimated until the transaction is completed, but is expected to be accretive to earnings in 2006.

## **ALL OTHER**

### **Worldwide Revenues**

Net worldwide sales for All Other were \$118 million for 2004 as compared with \$93 million for 2003, representing an increase of \$25 million, or 27%. Net sales in the U.S. were \$53 million in 2004 as compared with \$42 million for 2003, representing an increase of \$11 million, or 26%. Net sales outside the U.S. were \$65 million in the current year as compared with \$51 million in the prior year, representing an increase of \$14 million, or 27%.

### **Losses From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Losses from continuing operations before interest, other income (charges), net, and income taxes for All Other increased \$105 million from a loss of \$77 million in 2003 to a loss of \$182 million in 2004. Increased levels of investment for the Company's display business and consumer inkjet development activities primarily drove the increase in the loss from operations.

## RESULTS OF OPERATIONS – DISCONTINUED OPERATIONS

Earnings from discontinued operations, net of income taxes, for 2004 were \$475 million, or \$1.66 per basic and diluted share primarily relating to the sale of Kodak's Remote Sensing Systems business, which contributed \$466 million to earnings from discontinued operations, including the after-tax gain on the sale of \$439 million. The 2003 earnings from discontinued operations, net of income taxes, were \$64 million, or \$.22 per basic and diluted share and reflects net of tax earnings of \$27 million primarily related to reversals of tax and environmental reserves as well as \$40 million of after-tax earnings from Kodak's Remote Sensing Systems business.

## NET EARNINGS

Net earnings for 2004 were \$565 million, or \$1.97 per basic and diluted share, as compared with net earnings for 2003 of \$253 million, or \$.88 per basic and diluted share, representing an increase of \$312 million, or 123%. This increase is primarily attributable to the reasons outlined above.

## 2003 COMPARED WITH 2002 (2003 Restated)

## RESULTS OF OPERATIONS - CONTINUING OPERATIONS

### CONSOLIDATED

#### Worldwide Revenues

Net worldwide sales were \$12,909 million for 2003 as compared with \$12,549 million for 2002, representing an increase of \$360 million, or 3% as reported, or a decrease of 2% excluding the favorable impact from exchange. The increase in net sales was primarily due to increased volumes and favorable exchange, which increased sales for 2003 by 1.4 and 5.5 percentage points, respectively. The increase in volumes was primarily driven by consumer digital cameras, printer dock products, inkjet media and entertainment print films in the Digital & Film Imaging Systems (D&FIS) segment, digital products in the Health segment, partially offset by decreased volumes for traditional consumer film products. Favorable exchange resulted from an increased level of sales in non-U.S. countries as the U.S. dollar weakened throughout 2003 in relation to most foreign currencies, particularly the Euro. In addition, the acquisition of PracticeWorks, Inc. (PracticeWorks) in the fourth quarter of 2003 accounted for an additional 0.4 percentage points of the increase in net sales. These increases were partially offset by decreases attributable to price/mix, which reduced sales for 2003 by approximately 4.2 percentage points. These decreases were driven primarily by price/mix declines in traditional products and services, and consumer digital cameras in the D&FIS segment, film and laser imaging systems in the Health segment, and graphic arts products in the Graphic Communications segment.

Net sales in the U.S. were \$5,421 million for 2003 as compared with \$5,707 million for 2002, representing a decrease of \$286 million, or 5%. Net sales outside the U.S. were \$7,488 million for 2003 as compared with \$6,842 million for 2002, representing an increase of \$646 million, or 9% as reported, or no change excluding the favorable impact of exchange.

#### Digital Strategic Product Groups' Revenues

The Company's digital product sales, excluding New Technologies product sales, were \$3,736 million for 2003 as compared with \$2,963 million for 2002, representing an increase of \$773 million, or 26%, primarily driven by the consumer digital capture SPG, the home printing SPG, and the digital capture and applications SPG of the Health segment.

### **Traditional Strategic Product Groups' Revenues**

Net sales of the Company's traditional products were \$9,156 million for 2003 as compared with \$9,564 million for 2002, representing a decrease of \$408 million, or 4%, primarily driven by declines in the film capture SPG and the consumer output SPG.

### **Foreign Revenues**

The Company's operations outside the U.S. are reported in three regions: (1) the Europe, Africa and Middle East region (EAMER), (2) the Asia Pacific region, and (3) the Canada and Latin America region. Net sales in EAMER for 2003 were \$3,880 million as compared with \$3,484 million for 2002, representing an increase of 11% as reported, or a decrease of 2% excluding the favorable impact of exchange. Net sales in the Asia Pacific region for 2003 were \$2,368 million compared with \$2,240 million for 2002, representing an increase of 6% as reported, or a decrease of 1% excluding the favorable impact of exchange. Net sales in the Canada and Latin America region for 2003 were \$1,240 million as compared with \$1,118 million for 2002, representing an increase of 11% as reported, or an increase of 5% excluding the favorable impact of exchange.

The Company's major emerging markets include China, Brazil, Mexico, India, Russia, Korea, Hong Kong and Taiwan. Net sales in emerging markets were \$2,591 million for 2003 as compared with \$2,425 million for 2002, representing an increase of \$166 million, or 7% as reported, or an increase of 4% excluding the favorable impact of exchange. The emerging market portfolio accounted for approximately 20% and 35% of the Company's worldwide and non-U.S. sales, respectively, in 2003.

Sales growth in Russia, India and China of 26%, 17% and 12%, respectively, were the primary drivers of the increase in emerging market sales, partially offset by decreased sales in Taiwan, Hong Kong and Brazil of 19%, 10% and 7%, respectively. The increase in sales in Russia was a result of continued growth in the number of Kodak Express stores, which represent independently owned photo specialty retail outlets, and the Company's efforts to expand the distribution channels for Kodak products and services. Sales increases in India were driven by the continued success from the Company's efforts to increase the level of camera ownership and from the continued success of independently owned Photoshop retail stores. Sales growth in China resulted from strong business performance for all Kodak's operations in that region in the first, third and fourth quarters of 2003; however, this growth was partially offset by the impact of the Severe Acute Respiratory Syndrome (SARS) situation, particularly for consumer and professional products and services, which negatively impacted sales in China during the second quarter. The sales declines experienced in Hong Kong and Taiwan during 2003 are also a result of the impact of SARS. The sales decline in Brazil is reflective of the continued economic weakness experienced there.

### **Gross Profit**

Gross profit was \$4,175 million for 2003 as compared with \$4,527 million for 2002, representing a decrease of \$352 million, or 8%. The gross profit margin was 32.3% in 2003 as compared with 36.1% in 2002. The decrease of 3.8 percentage points was attributable to declines in price/mix, which reduced gross profit margins by approximately 5.1 percentage points. This decrease was driven primarily by price/mix declines in traditional consumer film products, photofinishing, consumer digital cameras, and entertainment print films in the D&FIS segment, analog medical film and digital capture equipment in the Health segment, and graphic arts products in the Graphic Communications segment. The decline in price/mix was partially offset by favorable exchange, which increased gross margins by approximately 0.8 percentage points, and decreases in manufacturing cost, which favorably impacted gross profit margins by approximately 0.3 percentage points year-over-year due to reduced labor expense, favorable materials pricing and improved product yields. The acquisition of PracticeWorks in the fourth quarter of 2003 did not have a significant impact on the gross profit margin.



**Selling, General and Administrative Expenses**

Selling, general and administrative expenses (SG&A) were \$2,618 million for 2003 as compared with \$2,504 million for 2002, representing an increase of \$114 million, or 5%. SG&A remained consistent as a percentage of sales at 20% for both years. The net increase in SG&A is primarily attributable to an increase in the benefit rate and the occurrence of the following one-time charges: intellectual property settlement of \$12 million; patent infringement claim of \$14 million; settlement of outstanding issues relating to a prior year acquisition of \$14 million; write-down of the Burrell Companies' net assets held for sale of \$9 million; donation to a technology enterprise for research purposes amounting to \$8 million; legal settlement of \$8 million; strategic asset impairments of \$3 million; and unfavorable exchange of \$118 million due to an increased level of SG&A costs incurred in non-U.S. countries as most foreign currencies strengthened against the U.S. dollar in 2003. These items were partially offset by a reversal of environmental reserves of \$9 million and cost savings realized from position eliminations associated with ongoing focused cost reduction programs.

**Research and Development Costs**

Research and development (R&D) costs were \$776 million for 2003 as compared with \$757 million for 2002, representing an increase of \$19 million, or 3%. The increase in R&D is primarily due to \$31 million of write-offs for purchased in-process R&D associated with two acquisitions made in 2003. These charges were partially offset by cost savings realized from position eliminations associated with ongoing focused cost reduction programs. As a percentage of sales, R&D costs remained flat at 6.0% for both 2003 and 2002.

**Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Earnings from continuing operations before interest, other income (charges), net, and income taxes for 2003 were \$302 million as compared with \$1,168 million for 2002, representing a decrease of \$866 million, or 74%. The decrease is primarily the result of (1) the decline in gross profit margin and an increase in SG&A, and (2) net focused cost reduction charges of \$479 million incurred during 2003 as compared with \$98 million for 2002, an increase of \$381 million which was primarily due to the costs incurred under the Third Quarter, 2003 Restructuring Program.

**Interest Expense**

Interest expense for 2003 was \$147 million as compared with \$173 million for 2002, representing a decrease of \$26 million, or 15%. The decrease in interest expense is almost entirely attributable to lower average interest rates in 2003 relative to 2002, which was driven mainly by the refinancing of the Company's \$144 million 9.38% Notes due March 2003 and the \$110 million 7.36% Notes due April 2003 with lower interest rate medium term notes and lower average interest rates on commercial paper during 2003.

**Other Income (Charges), Net**

The other income (charges), net component includes principally investment income, income and losses from equity investments, foreign exchange, and gains and losses on the sales of assets and investments. Other income (charges), net for 2003 were a net charge of \$51 million as compared with a net charge of \$101 million for 2002. The decrease in other income (charges), net is primarily attributable to increased income from the Company's equity investment in Kodak Polychrome Graphics, reduced losses from the Company's NexPress joint venture, the elimination of losses from the Company's equity investment in the Phoenix joint venture due to its dissolution in the second quarter of 2003, and lower non-strategic venture investment impairments.

### **Income Tax Provision (Benefit)**

The Company's effective tax rate benefit from continuing operations was \$85 million for the year ended December 31, 2003, representing an effective tax rate benefit from continuing operations of 82%, despite the fact that the Company had positive earnings from continuing operations before income taxes. The effective tax rate benefit from continuing operations of 82% differs from the U.S. statutory tax rate of 35% primarily due to earnings from operations in certain lower-taxed jurisdictions outside the U.S., coupled with losses incurred in certain jurisdictions that are benefited at a rate equal to or greater than the U.S. federal income tax rate.

The Company's effective tax rate from continuing operations was 15% for the year ended December 31, 2002. The effective tax rate from continuing operations of 15% is less than the U.S. statutory rate of 35% primarily due to the charges for the focused cost reductions and asset impairments being deducted in jurisdictions that have a higher tax rate than the U.S. federal income tax rate, and also due to discrete period tax benefits of \$45 million in connection with the closure of the Company's PictureVision subsidiary and \$46 million relating to the consolidation of the Company's photofinishing operations in Japan and the loss realized from the liquidation of a subsidiary as part of that consolidation. These benefits were partially offset by the impact of recording a valuation allowance to provide for certain tax benefits that the Company would be required to forgo in order to fully realize the benefits of its foreign tax credit carryforwards.

Excluding the effect of discrete period items, the effective tax rate from continuing operations was 15.5% and 26.5% in 2003 and 2002, respectively. The decrease from 26.5% in 2002 to 15.5% in 2003 is primarily due to increased earnings in certain lower-taxed jurisdictions outside the U.S. relative to total consolidated earnings.

### **Earnings From Continuing Operations**

Net earnings from continuing operations for 2003 were \$189 million, or \$.66 per basic and diluted share, as compared with net earnings from continuing operations for 2002 of \$761 million, or \$2.61 per basic and diluted share, representing a decrease of \$572 million, or 75%. The decrease in net earnings from continuing operations is primarily attributable to the reasons outlined above.

## **DIGITAL & FILM IMAGING SYSTEMS**

### **Worldwide Revenues**

Net worldwide sales for the D&FIS segment were \$9,248 million for 2003 as compared with \$9,002 million for 2002, representing an increase of \$246 million, or 3% as reported, or a decrease of 3% excluding the favorable impact of exchange. Approximately 1.9 percentage points of the increase in net sales was attributable to increases related to volume, driven primarily by consumer digital cameras, printer dock products, inkjet media and entertainment print films, partially offset by volume declines for traditional consumer film products, and approximately 5.9 percentage points of the increase was attributable to favorable exchange. These increases were partially offset by price/mix declines, primarily driven by consumer digital cameras and traditional products and services, which reduced net sales by approximately 4.8 percentage points.

D&FIS segment net sales in the U.S. were \$3,828 million for 2003 as compared with \$4,034 million for 2002, representing a decrease of \$206 million, or 5%. D&FIS segment net sales outside the U.S. were \$5,420 million for 2003 as compared with \$4,968 million for 2002, representing an increase of \$452 million, or 9% as reported, or a decrease of 1% excluding the favorable impact of exchange.

### **Digital Strategic Product Groups' Revenues**

D&FIS segment digital product sales were \$1,802 million for 2003 as compared with \$1,199 million for 2002, representing an increase of \$603 million, or 50%, primarily driven by the consumer digital capture SPG and the home printing SPG.

Net worldwide sales of consumer digital cameras increased 79% in 2003 as compared with 2002, driven almost entirely by strong increases in volume, which were partially offset by declines in price/mix. Sales continue to be driven by strong consumer acceptance of the EasyShare digital camera system, as reflected in increased market share in a rapidly growing market.

Although some of Kodak's largest channels do not report share data, Kodak continued to hold one of the top U.S. digital camera market share positions in channels reporting share data, attaining the number three share position for the full year, after attaining the top spot for the fourth quarter alone. Outside of the U.S., Kodak placed in the top four market share positions in 6 out of 9 key markets in the fourth quarter, and in the top four in 5 out of 9 key markets for the full year. Consumer digital cameras were profitable on a fully allocated basis for the second half of 2003.

Kodak's new printer dock products, initially launched in the spring of 2003, experienced strong sales growth in the fourth quarter of 2003, strengthening their number two share position in the U.S. snapshot printer market and putting them on track to be a \$100 million business in the first full year of sales.

Net worldwide sales from the Company's consumer digital products and services, which include picture maker kiosks/media and retail consumer digital services revenue primarily from Picture CD and Retail.com, increased 6% in 2003 as compared with 2002, driven primarily by an increase in sales of kiosks and consumer digital services.

Net worldwide sales of inkjet photo paper increased 32% in 2003 as compared with 2002, primarily due to higher volumes. Kodak continued to maintain its shared leader market share position in the U.S. in 2003. The double-digit revenue growth and the maintenance of market share are primarily attributable to strong underlying market growth and the continued growth and acceptance of a new line of small format inkjet papers.

### **Traditional Strategic Product Groups' Revenues**

D&FIS segment traditional product sales were \$7,446 million for 2003 as compared with \$7,803 million for 2002, representing a decrease of \$357 million, or 5%, primarily driven by declines in the film capture SPG and the consumer output SPG. Net worldwide sales of the film capture SPG, including consumer roll film (35mm and APS), one-time-use cameras (OTUC), decreased 9% in 2003 as compared with 2002, reflecting declines due to lower volumes of 12% and price/mix declines of 3%, partially offset by favorable exchange of 6%. Sales of the Company's consumer film products within the U.S. decreased 18% in 2003 as compared with 2002, reflecting declines due to lower volumes of 17% and price/mix declines of 1%. Sales of the Company's consumer film products outside the U.S. decreased 2% in 2003 compared with 2002, reflecting declines in volume of 9% and price/mix declines of 2%, partially offset by favorable exchange of 9%. The lower film product sales are attributable to a declining industry demand driven primarily by the impact of digital substitution and retailer inventory reductions.

The U.S. film industry sell-through volumes decreased approximately 8% in 2003 as compared with 2002 primarily due to the impact of digital substitution. The Company maintained approximately flat year-over-year blended U.S. consumer film share as it has done for the past several consecutive years.

Net worldwide sales for photofinishing services (excluding equipment), including Qualex in the U.S. and Consumer Imaging Services (CIS) outside the U.S., decreased 15% in 2003 as compared with 2002, reflecting lower volumes and declines in price/mix, partially offset by favorable exchange. In the U.S., Qualex's sales for photofinishing services decreased 19% in 2003 as compared with 2002, and outside of the U.S., CIS sales decreased 8%.

Net worldwide sales of origination and print film to the entertainment industry increased 11% in 2003 as compared with 2002, primarily reflecting higher print film volumes and favorable exchange, partially offset by negative price/mix.

Net worldwide sales of professional film capture products, including color negative, color reversal and commercial black and white films, decreased 13% in 2003 as compared with 2002, primarily reflecting declines in volume and negative price/mix, partially offset by favorable exchange. Sales declines of professional film capture products resulted primarily from the ongoing impact of digital substitution. Net worldwide sales of professional sensitized output, including color negative paper and display materials, increased 2% in 2003 as compared with 2002, primarily reflecting an increase related to favorable exchange, partially offset by declines in volume and negative price/mix.

### **Gross Profit**

Gross profit for the D&FIS segment was \$2,864 million for 2003 as compared with \$3,219 million for 2002, representing a decrease of \$355 million or 11%. The gross profit margin was 31.0% in the current year as compared with 35.8% in the prior year. The 4.8 percentage point decrease was primarily attributable to decreases in price/mix that impacted gross profit margins by approximately 6.3 percentage points, partially offset by manufacturing cost improvements and favorable exchange, which impacted gross margins by approximately 0.5 and 1.1 percentage points, respectively. The decrease in price/mix was primarily due to the impact of digital substitution, resulting in a decrease in sales of higher margin traditional products, the impact of which was only partially offset by increased sales of lower margin digital products.

### **Selling, General and Administrative Expenses**

SG&A expenses for the D&FIS segment were \$1,967 million for 2003 as compared with \$1,935 million for 2002, representing an increase of \$32 million or 2%. The net increase in SG&A spending is primarily attributable to unfavorable exchange of \$96 million and an increase in the benefit rate, partially offset by cost savings realized from position eliminations associated with ongoing focused cost reduction programs. As a percentage of sales, SG&A expense remained constant at 21% for both years.

### **Research and Development Costs**

R&D costs for the D&FIS segment decreased \$32 million or 6% from \$513 million in 2002 to \$481 million in 2003. As a percentage of sales, R&D costs decreased slightly from 6% in 2002 to 5% in 2003. The decrease in R&D was primarily due to cost savings realized from position eliminations associated with ongoing focused cost reduction programs. These cost savings were partially offset by \$21 million of write-offs for purchased in-process R&D associated with an acquisition made in 2003.

### **Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Earnings from continuing operations before interest, other income (charges), net, and income taxes for the D&FIS segment decreased \$355 million, or 46%, from \$771 million in 2002 to \$416 million in 2003, primarily as a result of the factors described above.

### **HEALTH**

On October 7, 2003, the Company completed the acquisition of all of the outstanding shares of PracticeWorks, Inc., a leading provider of dental practice management software and digital radiographic imaging systems for approximately \$475 million in cash, inclusive of transaction costs, and assumed net debt of approximately \$20 million. This acquisition enables Kodak to offer its customers a full spectrum of dental imaging products and services from traditional film to digital radiography and photography.

## Worldwide Revenues

Net worldwide sales for the Health segment were \$2,431 million for 2003 as compared with \$2,274 million for 2002, representing an increase of \$157 million, or 7% as reported, or an increase of 2% excluding the favorable impact of exchange. The increase in sales was comprised of: (1) an increase from favorable exchange of approximately 5.4 percentage points, (2) the acquisition of PracticeWorks Inc. in October 2003, which accounted for approximately 2.1 percentage points of the sales increase as it contributed \$48 million to 2003 sales of dental systems, and (3) an increase in volume of approximately 2.9 percentage points, driven primarily by volume increases in digital products. These increases were partially offset by declines in price/mix of approximately 3.3 percentage points, which were related to both digital and traditional products.

Net sales in the U.S. were \$1,061 million for 2003 as compared with \$1,088 for 2002, representing a decrease of \$27 million, or 2%. Net sales outside the U.S. were \$1,370 million for 2003 as compared with \$1,186 million for 2002, representing an increase of \$184 million, or 16% as reported, or an increase of 5% excluding the favorable impact of exchange.

## Digital Strategic Product Groups' Revenues

Health segment digital sales, which include laser printers (DryView imagers and wet laser printers), digital media (DryView and wet laser media), digital capture equipment (computed radiography capture equipment and digital radiography equipment), services, dental practice management software, and Healthcare Information Systems (HCIS) including Picture Archiving and Communications Systems (PACS), were \$1,438 million for 2003 compared with \$1,269 million for 2002, representing an increase of \$169 million or 13%. The increase in digital product sales was primarily attributable to favorable exchange, higher volumes of digital media, digital capture equipment and services, and the PracticeWorks acquisition. Service revenues increased due to an increase in digital equipment service contracts during 2003 as compared with 2002. These increases were partially offset by declines in price/mix for digital media and digital capture equipment.

## Traditional Strategic Product Groups' Revenues

Health segment traditional products, including analog film, equipment, chemistry and services, were \$993 million for 2003 compared with \$1,005 million for 2002, representing a decrease of \$12 million or 1%, reflecting declines in volume and negative price/mix almost entirely offset by favorable exchange.

## Gross Profit

Gross profit for the Health segment was \$1,045 million for 2003 as compared with \$930 million for 2002, representing an increase of \$115 million, or 12%. The gross profit margin was 43.0% in 2003 as compared with 40.9% in 2002. The increase in the gross profit margin of 2.1 percentage points was primarily attributable to: (1) a decrease in manufacturing cost, which increased gross profit margins by approximately 3.1 percentage points, primarily due to favorable media and equipment manufacturing cost led by DryView digital media and digital capture equipment, complemented by lower service costs, (2) favorable exchange, which contributed approximately 1.1 percentage points to the gross profit margin, and (3) the acquisition of PracticeWorks in the fourth quarter of 2003, which increased gross profit margins by approximately 0.4 percentage points for the current year. These increases were partially offset by decreases attributable to price/mix, which negatively impacted gross profit margins by 2.5 percentage points due to lower prices for digital media, digital capture equipment and analog medical film.

## Selling, General and Administrative Expenses

SG&A expenses for the Health segment increased \$44 million, or 13%, from \$347 million for 2002 to \$391 million for 2003. As a percentage of sales, SG&A expenses increased from 15% for 2002 to 16% for 2003. The increase in SG&A expenses is primarily due to the acquisition of PracticeWorks, which had \$21 million of SG&A expenses in 2003, an increase in the benefit rate, and the unfavorable impact of exchange, which accounted for \$16 million of the increase.

### Research and Development Costs

R&D costs for the Health segment increased \$26 million, or 17%, from \$152 million in 2002 to \$178 million in 2003. As a percentage of sales, R&D costs remained unchanged at 7% in both years. The increase was primarily due to \$12 million of R&D costs associated with the acquisition of PracticeWorks, \$10 million of which was a one-time write-off of purchased in-process R&D. The remainder of the increase was due to increased spending to drive growth in selected areas of the product portfolio.

### Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes

Earnings from continuing operations before interest, other income (charges), net, and income taxes for the Health segment increased \$45 million, or 10%, from \$431 million for 2002 to \$476 million for 2003 due primarily to the reasons described above.

## COMMERCIAL IMAGING

### Worldwide Revenues

Net worldwide sales for the Commercial Imaging segment remained constant at \$791 million for both 2003 and 2002, or a decrease of 6% excluding the favorable impact of exchange. Favorable exchange and price/mix, which contributed approximately 6.1 and 0.3 percentage points, respectively, to 2003 sales was entirely offset by decreases due to volume of approximately 6.4 percentage points, primarily driven by declines in document imaging products and services.

Net sales in the U.S. were \$334 million for 2003 as compared with \$366 million for 2002, representing a decrease of \$32 million, or 9%. Net sales outside the U.S. were \$457 million in 2003 as compared with \$425 million in 2002, representing an increase of \$32 million, or 8%, or a decrease of 4% excluding the favorable impact of exchange.

### Digital and Traditional Strategic Product Groups' Revenues

Commercial Imaging segment digital product sales remained constant at \$367 million for both 2003 and 2002. Segment traditional product sales were constant at \$424 million for both 2003 and 2002.

### Gross Profit

Gross profit for the Commercial Imaging segment for 2003 decreased \$15 million, or 5%, from \$282 million for 2002 to \$267 million for 2003. The gross profit margin was 33.8% for 2003 as compared with 35.7% for 2002. The decrease in the gross profit margin of 1.9 percentage points was attributable to an increase in manufacturing cost, which negatively impacted gross profit margins by approximately 2.2 percentage points, partially offset by exchange, which favorably impacted gross profit margins by 0.5 percentage points.

### Selling, General and Administrative Expenses

SG&A expenses for the Commercial Imaging segment increased \$1 million, or 1%, from \$134 million for 2002 to \$135 million for 2003. As a percentage of sales, SG&A expenses also remained constant at 17% for both years.

### Research and Development Costs

R&D costs for the Commercial Imaging segment decreased \$7 million, or 23%, from \$30 million for 2002 to \$23 million for 2003. As a percentage of sales, R&D costs decreased from 4% in 2002 to 3% in 2003.

**Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Earnings from continuing operations before interest, other income (charges), net, and income taxes for the Commercial Imaging segment decreased \$9 million, or 8%, from \$118 million in 2002 to \$109 million in 2003. The decrease in earnings from operations is primarily attributable to the reasons outlined above.

**GRAPHIC COMMUNICATIONS****Worldwide Revenues**

Net worldwide sales for the Graphic Communications segment were \$346 million for 2003 as compared with \$402 million for 2002, representing a decrease of \$56 million, or 14% as reported, with no impact from exchange. The decrease in net sales was due to: (1) declines in volume of approximately 9.4 percentage points, which was primarily attributable to graphics products, and (2) declines due to price/mix of approximately 5.2 percentage points, which was also driven by graphics products.

Net sales in the U.S. were \$156 million for 2003 as compared with \$174 million for 2002, representing a decrease of \$18 million, or 10%. Net sales outside the U.S. were \$190 million for 2003 as compared with \$228 million for 2002, representing a decrease of \$38 million, or 17%, with no impact from exchange.

**Digital and Traditional Strategic Product Groups' Revenues**

Graphic Communications segment 2003 and 2002 digital product sales are comprised of Encad, Inc. products and services. Segment traditional product sales are limited to the sales of traditional graphics products to the KPG joint venture.

Net worldwide sales of graphic arts products to Kodak Polychrome Graphics (KPG), an unconsolidated joint venture affiliate in which the Company has a 50% ownership interest, decreased 14% in 2003 as compared with 2002, reflecting declines in both volume and price/mix in graphic arts film. This reduction was primarily due to the effects of digital substitution.

### **Gross Profit**

Gross profit for the Graphic Communications segment for 2003 decreased \$38 million, or 44%, from \$87 million for 2002 to \$49 million for 2003. The gross profit margin was 14.2% for 2003 as compared with 21.6% for 2002. The decrease in the gross profit margin of 7.4 percentage points was attributable to: (1) declines attributable to price/mix, which reduced gross profit margins by approximately 4.2 percentage points primarily due to declining contributions from traditional graphic arts products for the reasons outlined above, (2) unfavorable exchange, which negatively impacted gross profit margins by 2.8 percentage points, and (3) an increase in manufacturing cost, which negatively impacted gross profit margins by approximately 0.9 percentage points.

### **Selling, General and Administrative Expenses**

SG&A expenses for the Graphic Communications segment remained constant at \$37 million for both 2003 and 2002. As a percentage of sales, SG&A expenses increased from 9% for 2002 to 11% for 2003, primarily due to the impact of unfavorable exchange and an increase in the benefit rate.

### **Research and Development Costs**

R&D costs for the Graphic Communications segment decreased \$6 million, or 21%, from \$29 million for 2002 to \$23 million for 2003. As a percentage of sales, R&D costs remained constant at 7% for both years.

### **Earnings (Losses) From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Earnings or losses from continuing operations before interest, other income (charges), net, and income taxes for the Graphic Communications segment decreased \$32 million, or 152%, from earnings of \$21 million in 2002 to losses of \$11 million in 2003. The decrease in earnings from operations is primarily attributable to the reasons outlined above.

KPG's earnings performance continued to improve driven primarily by its world-leading position in the growth segments of digital proofing and digital printing plates, coupled with favorable foreign exchange. The Company's equity in the earnings of KPG contributed positive results to other income (charges), net during 2003.

NexPress, the unconsolidated joint venture between Kodak and Heidelberg in which the Company had a 50% ownership interest, continued to increase unit placements of the NexPress 2100 Digital Production Color Press despite a weak printing market, with good customer acceptance.

### **ALL OTHER**

#### **Worldwide Revenues**

Net worldwide sales for All Other were \$93 million for 2003 as compared with \$80 million for 2002, representing an increase of \$13 million, or 16%. Net sales in the U.S. were \$42 million in 2003 as compared with \$45 million for 2002, representing a decrease of \$3 million, or 7%. Net sales outside the U.S. were \$51 million in 2003 as compared with \$35 million in 2002, representing an increase of \$16 million, or 46%.

#### **Losses From Continuing Operations Before Interest, Other Income (Charges), Net and Income Taxes**

Losses from continuing operations before interest, other income (charges), net, and income taxes for All Other increased \$50 million from a loss of \$27 million in 2002 to a loss of \$77 million in 2003. Increased levels of investment for the Company's display business primarily drove the increase in the loss from operations.



**RESULTS OF OPERATIONS – DISCONTINUED OPERATIONS**

On February 9, 2004, the Company announced its intent to sell the assets and business of the Remote Sensing Systems operation, including the stock of Kodak's wholly owned subsidiary, Research Systems, Inc., collectively known as RSS, to ITT Industries for \$725 million in cash. RSS, a leading provider of specialized imaging solutions to the aerospace and defense community, was previously presented as part of the Company's commercial & government systems' operation within the Commercial Imaging segment. Its customers include NASA, other U.S. government agencies, and aerospace and defense companies.

Earnings from discontinued operations, net of income taxes, for 2003 were \$64 million, or \$.22 per basic and diluted share, as compared with earnings from discontinued operations, net of income taxes, for 2002 of \$9 million, or \$.03 per basic and diluted share. The 2003 earnings from discontinued operations, net of income taxes, primarily reflects net of tax earnings of \$40 million related to the operations of RSS, and net of tax earnings of \$27 million primarily related to reversals of tax and environmental reserves as described below.

During the first quarter of 2003, the Company reversed a tax reserve of \$15 million through discontinued operations. The reversal of the tax reserve was triggered by the Company's repurchase of certain properties that were initially sold in connection with the 1994 divestiture of Sterling Winthrop Inc., which represented a portion of the Company's non-imaging health businesses. The repurchase of these properties will allow the Company to directly manage the environmental remediation that the Company is required to perform in connection with those properties, which will result in better overall cost control. In addition, the repurchase eliminated the uncertainty regarding the recoverability of tax benefits associated with the indemnification payments that were previously being made to the purchaser.

During the fourth quarter of 2003, the Company recorded a net of tax credit of \$7 million through discontinued operations for the reversal of an environmental reserve, which was primarily attributable to positive developments in the Company's remediation efforts relating to a formerly owned manufacturing site in the U.S. In addition, during the fourth quarter of 2003, the Company reversed state income tax reserves of \$3 million, net of tax, through discontinued operations due to the favorable outcome of tax audits in connection with a formerly owned business.

The earnings from discontinued operations, net of income taxes, of \$9 million for 2002 reflects net of tax earnings of \$32 million related to the operations of RSS, and net of tax earnings of \$12 million related to the favorable outcome of litigation associated with the 1994 sale of Sterling Winthrop Inc. These earnings were partially offset by losses incurred from the shutdown of Kodak Global Imaging, Inc. (KGII), which amounted to \$35 million net of tax.

**NET EARNINGS**

Net earnings for 2003 were \$253 million, or \$.88 per basic and diluted share, as compared with net earnings for 2002 of \$770 million, or \$2.64 per basic and diluted share, representing a decrease of \$517 million, or 67%. This decrease is primarily attributable to the reasons outlined above.

## SUMMARY

(in millions, except per share data)	2004	Change	2003 (Restated)	Change	2002
Net sales from continuing operations	\$ 13,517	+ 5%	\$ 12,909	+ 3%	\$ 12,549
(Loss) earnings from continuing operations before interest, other income (charges), net, and income taxes	(87)	-129	302	- 74	1,168
Earnings from continuing operations	81	-57	189	- 75	761
Earnings from discontinued operations	475	+642	64	+611	9
Net earnings	556	+120	253	- 67	770
Basic earnings per share:					
Continuing operations	.28	-58	.66	- 74	2.61
Discontinued operations	1.66	+655	.22	+600	.03
Total	1.94	+120	.88	- 66	2.64
Diluted earnings per share:					
Continuing operations	.28	-58	.66	- 74	2.61
Discontinued operations	1.66	+655	.22	+600	.03
Total	1.94	+120	.88	- 66	2.64

The Company's results as noted above include certain one-time items, such as charges associated with focused cost reductions and other special charges. These one-time items, which are described below, should be considered to better understand the Company's results of operations that were generated from normal operational activities.

**2004**

The Company's results from continuing operations for the year included the following:

Charges of \$889 million (\$620 million after tax) related to focused cost reductions implemented primarily under the Third Quarter, 2003 Restructuring Program and 2004-2006 Restructuring Program. See further discussion in the Restructuring Costs and Other section of Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) and Note 16, "Restructuring Costs and Other."

Charges of \$12 million (\$7 million after tax), including \$2 million (\$1 million after tax) for inventory write-downs and \$10 million (\$6 million after tax) for the write-off of fixed assets related to Kodak's historical ownership interest in the NexPress joint venture in connection with the acquisition of the NexPress-related entities incurred in the second and fourth quarters.

Charges of \$15 million (\$10 million after tax) related to purchased in-process R&D incurred in the first and third quarters.

Charges of \$6 million (\$4 million after tax) related to a legal settlement.

Other income of \$101 million (\$63 million after tax) related to two favorable legal settlements.

Income tax charges of \$31 million related to valuation allowances for restructuring related deferred tax assets.

**2003**

The Company's results from continuing operations for the year included the following:

Charges of \$552 million (\$396 million after tax) related to focused cost reductions implemented primarily under the First Quarter, 2003 Restructuring Program and the Third Quarter, 2003 Restructuring Program. See further discussion in the Restructuring Costs and Other section of Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) and Note 16, "Restructuring Costs and Other."

Charges of \$16 million (\$10 million after tax) related to venture investment impairments and other asset write-offs incurred in the second and fourth quarters. See MD&A and Note 7, "Investments," for further discussion of venture investment impairments.

Charges of \$31 million (\$19 million after tax), including \$21 million (\$13 million after tax) in the first quarter and \$10 million (\$6 million after tax) in the fourth quarter, related to purchased in-process R&D.

Charges of \$14 million (\$9 million after tax) connected with the settlement of a patent infringement claim.

Charges of \$12 million (\$7 million after tax) related to an intellectual property settlement.

Charges of \$14 million (\$9 million after tax) connected with the settlement of certain issues relating to a prior-year acquisition.

Charges of \$8 million (\$5 million after tax) for a donation to a technology enterprise.

Charges of \$8 million (\$5 million after tax) for legal settlements.

Reversal of \$9 million (\$6 million after tax) for an environmental reserve.

Income tax benefits of \$13 million, which included tax benefits related to the donation of patents in the first and fourth quarters, amounting to \$8 million and \$5 million, respectively.

**2002**

The Company's results from continuing operations for the year included the following:

Charges of \$114 million (\$80 million after tax) related to focused cost reductions implemented in the third and fourth quarters. See further discussion in the Restructuring Costs and Other section of MD&A and Note 16, "Restructuring Costs and Other."

Charges of \$50 million (\$34 million after tax) related to venture investment impairments and other asset write-offs incurred in the second, third and fourth quarters. See MD&A and Note 7, "Investments," for further discussion of venture investment impairments.

Income tax benefits of \$121 million, including a \$45 million tax benefit related to the closure of the PictureVision subsidiary in the second quarter, a \$46 million benefit from the loss realized on the liquidation of a Japanese photofinishing operations subsidiary in the third quarter, an \$8 million benefit from a fourth quarter property donation, and a \$22 million benefit relating to the decline in the year-over-year operational effective tax rate.

**RESTRUCTURING COSTS AND OTHER**

Currently, the Company is being adversely impacted by the progressing digital substitution. As the Company continues to adjust its operating model in light of changing business conditions, it is probable that ongoing cost reduction activities will be required from time to time.

In accordance with this, the Company periodically announces planned restructuring programs (Programs), which often consist of a number of restructuring initiatives. These Program announcements provide estimated ranges relating to the number of positions to be eliminated and the total restructuring charges to be incurred. The actual charges for initiatives under a Program are recorded in the period in which the Company commits to formalized restructuring plans or executes the specific actions contemplated by the Program and all criteria for restructuring charge recognition under the applicable accounting guidance have been met.

## Restructuring Programs Summary

The activity in the accrued restructuring balances and the non-cash charges incurred in relation to all of the restructuring programs described below was as follows for fiscal 2004:

(in millions)	Balance Dec. 31, 2003	Costs Incurred	Reversals	Cash Payments	Non- cash Settlements	Other Adjustments and Reclasses (1)	Balance Dec. 31, 2004
<b>2004-2006 Program:</b>							
Severance reserve	\$ —	\$ 418	\$ (6)	\$ (169)	\$ —	\$ 24	\$ 267
Exit costs reserve	—	99	(1)	(47)	—	(15)	36
<b>Total reserve</b>	<b>\$ —</b>	<b>\$ 517</b>	<b>\$ (7)</b>	<b>\$ (216)</b>	<b>\$ —</b>	<b>\$ 9</b>	<b>\$ 303</b>
<b>Long-lived asset impairments and inventory</b>							
write-downs	\$ —	\$ 157	\$ —	\$ —	\$ (157)	\$ —	\$ —
Accelerated depreciation	—	152	—	—	(152)	—	—
<b>Q3 2003 Program:</b>							
Severance reserve	\$ 180	\$ 45	\$ (4)	\$ (208)	\$ —	\$ 17	\$ 30
Exit costs reserve	12	7	(3)	(14)	—	—	2
<b>Total reserve</b>	<b>\$ 192</b>	<b>\$ 52</b>	<b>\$ (7)</b>	<b>\$ (222)</b>	<b>\$ —</b>	<b>\$ 17</b>	<b>\$ 32</b>
<b>Long-lived asset impairments and inventory</b>							
write-downs	\$ —	\$ 6	\$ —	\$ —	\$ (6)	\$ —	\$ —
Accelerated depreciation	—	24	—	—	(24)	—	—
<b>Q1 2003 Program:</b>							
Severance reserve	\$ 23	\$ —	\$ (1)	\$ (15)	\$ —	\$ —	\$ 7
Exit costs reserve	4	—	—	(4)	—	—	—
<b>Total reserve</b>	<b>\$ 27</b>	<b>\$ —</b>	<b>\$ (1)</b>	<b>\$ (19)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 7</b>
Accelerated depreciation	\$ —	\$ 7	\$ —	\$ —	\$ (7)	\$ —	\$ —
<b>Phogenix Program:</b>							
Exit costs reserve	\$ 9	\$ —	\$ (6)	\$ (3)	\$ —	\$ —	\$ —
<b>Q4 2002 Program:</b>							
Severance reserve	\$ 12	\$ —	\$ —	\$ (11)	\$ —	\$ —	\$ 1
Exit costs reserve	8	1	(4)	(3)	—	—	2
<b>Total reserve</b>	<b>\$ 20</b>	<b>\$ 1</b>	<b>\$ (4)</b>	<b>\$ (14)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 3</b>
<b>2001 Programs:</b>							
Severance reserve	\$ 6	\$ —	\$ —	\$ (4)	\$ —	\$ —	\$ 2
Exit costs reserve	13	—	(2)	(3)	—	—	8
<b>Total reserve</b>	<b>\$ 19</b>	<b>\$ —</b>	<b>\$ (2)</b>	<b>\$ (7)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 10</b>
<b>Total of all restructuring programs</b>	<b>\$ 267</b>	<b>\$ 916</b>	<b>\$ (27)</b>	<b>\$ (481)</b>	<b>\$ (346)</b>	<b>\$ 26</b>	<b>\$ 355</b>

- (1) The Other Adjustments and Reclasses column of the table above includes reclassifications to Other long-term assets, Postretirement liabilities and Other long-term liabilities in the Consolidated Statement of Financial Position. It also includes foreign currency translation adjustments of \$19 million which are reflected in the Consolidated Statement of Earnings.

The costs incurred, net of reversals, which total \$889 million for the year ended December 31, 2004, include \$183 million and \$21 million of charges related to accelerated depreciation and inventory write-downs, respectively, which were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The remaining costs incurred, net of reversals, of \$685 million, were reported as restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The severance costs and exit costs require the outlay of cash, while long-lived asset impairments, accelerated depreciation and inventory write-downs represent non-cash items.

#### **2004-2006 Restructuring Program**

In addition to completing the remaining initiatives under the Third Quarter, 2003 Restructuring Program, the Company announced on January 22, 2004 that it planned to develop and execute a comprehensive cost reduction program throughout the 2004 to 2006 timeframe. The objective of these actions is to achieve a business model appropriate for the Company's traditional businesses, and to sharpen the Company's competitiveness in digital markets. As a result of the actions, the Company expects cost savings in the range of \$800 million to \$1 billion for full year 2007.

The Program is expected to result in total charges of \$1.3 billion to \$1.7 billion over the three-year period, of which \$700 million to \$900 million are related to severance, with the remainder relating to the disposal of buildings and equipment. Overall, Kodak's worldwide facility square footage is expected to be reduced by approximately one-third. Approximately 12,000 to 15,000 positions worldwide are expected to be eliminated through these actions primarily in global manufacturing, selected traditional businesses and corporate administration. Maximum single year cash usage under the new program is expected to be approximately \$250 million.

The Company implemented certain actions under this program during 2004. As a result of these actions, the Company recorded charges of \$674 million in 2004, which was composed of severance, long-lived asset impairments, exit costs and inventory write-downs of \$418 million, \$138 million, \$99 million and \$19 million, respectively. The severance costs related to the elimination of approximately 9,625 positions, including approximately 4,700 photofinishing, 3,575 manufacturing, 425 research and development and 925 administrative positions. The geographic composition of the positions to be eliminated includes approximately 5,075 in the United States and Canada and 4,550 throughout the rest of the world. The reduction of the 9,625 positions and the \$517 million charges for severance and exit costs are reflected in the 2004-2006 Restructuring Program table below. The \$138 million charge for long-lived asset impairments was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The charges taken for inventory write-downs of \$19 million were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004.

The following table summarizes the activity with respect to the charges recorded in connection with the focused cost reduction actions that the Company has committed to under the 2004-2006 Restructuring Program and the remaining balances in the related reserves at December 31, 2004:

(dollars in millions)	Number of Employees	Severance Reserve	Exit Costs Reserve	Total	Long-lived Asset Impairments and Inventory Write-downs	Accelerated Depreciation
Q1, 2004 charges	—	\$ —	\$ —	\$ —	\$ 1	\$ 2
Q1, 2004 utilization	—	—	—	—	(1)	(2)
Balance at 3/31/04	—	—	—	—	—	—
Q2, 2004 charges	2,700	98	17	115	28	23
Q2, 2004 utilization	(800)	(12)	(11)	(23)	(28)	(23)
Q2, 2004 other adj. & reclasses	—	(2)	—	(2)	—	—
Balance at 6/30/04	1,900	84	6	90	—	—
Q3, 2004 charges	3,200	186	20	206	27	31
Q3, 2004 reversal	—	—	(1)	(1)	—	—
Q3, 2004 utilization	(2,075)	(32)	(14)	(46)	(27)	(31)
Q3, 2004 other adj. & reclasses	—	—	(5)	(5)	—	—
Balance at 9/30/04	3,025	238	6	244	—	—
Q4, 2004 charges	3,725	134	62	196	101	96
Q4, 2004 reversal	—	(6)	—	(6)	—	—
Q4, 2004 utilization	(2,300)	(125)	(22)	(147)	(101)	(96)
Q4, 2004 other adj. & reclasses	—	26	(10)	16	—	—
Balance at 12/31/04	4,450	\$ 267	\$ 36	\$ 303	\$ —	\$ —

The severance charges of \$418 million and the exit costs of \$99 million were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. Included in the \$418 million charge taken for severance costs was a net curtailment gain of \$6 million. This net curtailment gain is disclosed in Note 17, "Retirement Plans" and Note 18, "Other Postretirement Benefits." Included in the \$99 million charge taken for exit costs was a \$16 million charge for environmental remediation associated with the closures of the manufacturing facility in Coburg, Australia and Toronto, Canada, and the closure of a Qualex wholesale photofinishing lab in the U.S. The liability related to this charge is disclosed in Note 11, "Commitments and Contingencies" under "Environmental." During 2004, the Company made \$169 million of severance payments and \$47 million of exit cost payments related to the 2004-2006 Restructuring Program. In the fourth quarter of 2004, the Company reversed \$6 million of severance reserves, as severance payments were less than originally estimated. The \$1 million exit costs reserve reversal recorded in the third quarter of 2004 resulted from the settlement of a lease obligation for an amount that was less than originally estimated. These reserve reversals were included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. As a result of the initiatives already implemented under the 2004-2006 Restructuring Program, severance payments will be paid during periods through 2007 since, in many instances, the employees whose positions were eliminated can elect or are required to receive their payments over an extended period of time. Most exit costs were paid during 2004. However, certain costs, such as long-term lease payments, will be paid over periods after 2004.

As a result of initiatives implemented under the 2004-2006 Restructuring Program, the Company recorded \$152 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. The year-to-date amount of \$152 million relates to \$49 million of photofinishing facilities and equipment, \$102 million of manufacturing facilities and equipment, and \$1 million of administrative facilities and equipment that will be used until their abandonment. The Company will record approximately \$142 million of additional accelerated depreciation in 2005 related to the initiatives implemented in 2004. Additional amounts of accelerated depreciation may be recorded in 2005 and 2006 as the Company continues to execute its 2004-2006 Restructuring Program.

The charges of \$826 million recorded in 2004 included \$435 million applicable to the D&FIS segment, \$8 million applicable to the Health segment, \$5 million applicable to the Graphic Communications segment and \$2 million applicable to the Commercial Imaging segment. The balance of \$376 million was applicable to manufacturing, research and development, and administrative functions, which are shared across all segments.

### **Third Quarter, 2003 Restructuring Program**

During the third quarter of 2003, the Company announced its intention to implement a series of cost reduction actions during the last two quarters of 2003 and the first two quarters of 2004, which were expected to result in pre-tax charges totaling \$350 million to \$450 million. It was anticipated that these actions would result in a reduction of approximately 4,500 to 6,000 positions worldwide, primarily relating to the rationalization of global manufacturing assets, reduction of corporate administration and research and development, and the consolidation of the infrastructure and administration supporting the Company's consumer imaging and professional products and services operations.

The Company implemented certain actions under this Program during 2004. As a result of these actions, the Company recorded charges of \$58 million in 2004, which was composed of severance, exit costs, long-lived asset impairments and inventory write-downs of \$45 million, \$7 million, \$4 million and \$2 million, respectively. The severance costs related to the elimination of approximately 2,000 positions, including approximately 850 photofinishing positions, 775 manufacturing positions and 375 administrative positions. The geographic composition of the positions to be eliminated includes approximately 1,100 in the United States and Canada and 900 throughout the rest of the world. The reduction of the 2,000 positions and the \$52 million charges for severance and exit costs are reflected in the Third Quarter, 2003 Restructuring Program table below. The \$4 million charge for long-lived asset impairments was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The charges taken for inventory write-downs of \$2 million were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004.



The following table summarizes the activity with respect to the charges recorded in connection with the focused cost reduction actions that the Company has committed to under the Third Quarter, 2003 Restructuring Program and the remaining balances in the related reserves at December 31, 2004:

(dollars in millions)	Number of Employees	Severance Reserve	Exit Costs Reserve	Total	Long-lived Asset Impairments and Inventory Write-downs	Accelerated Depreciation
Q3, 2003 charges	1,700	\$ 123	\$ —	\$ 123	\$ 1	\$ 14
Q3, 2003 utilization	(100)	(3)	—	(3)	(1)	(14)
Balance at 9/30/03	1,600	120	—	120	—	—
Q4, 2003 charges	2,150	103	40	143	109	7
Q4, 2003 utilization	(2,025)	(48)	(28)	(76)	(109)	(7)
Q4, 2003 other adj. & reclasses	—	5	—	5	—	—
Balance at 12/31/03	1,725	180	12	192	—	—
Q1, 2004 charges	2,000	44	7	51	6	14
Q1, 2004 utilization	(2,075)	(76)	(5)	(81)	(6)	(14)
Q1, 2004 other adj. & reclasses	—	18	—	18	—	—
Balance at 3/31/04	1,650	166	14	180	—	—
Q2, 2004 charges	—	—	—	—	—	6
Q2, 2004 reversal	—	(2)	(2)	(4)	—	—
Q2, 2004 utilization	(1,375)	(62)	(2)	(64)	—	(6)
Balance at 6/30/04	275	102	10	112	—	—
Q3, 2004 charges	—	—	—	—	—	3
Q3, 2004 reversal	—	(2)	—	(2)	—	—
Q3, 2004 utilization	(225)	(42)	(2)	(44)	—	(3)
Balance at 9/30/04	50	58	8	66	—	—
Q4, 2004 charges	—	1	—	1	—	1
Q4, 2004 reversal	—	—	(1)	(1)	—	—
Q4, 2004 utilization	(25)	(28)	(5)	(33)	—	(1)
Q4, 2004 other adj. & reclasses	—	(1)	—	(1)	—	—
	25	\$ 30	\$ 2	\$ 32	\$ —	\$ —

The severance charges of \$45 million and the exit costs of \$7 million were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. Included in the \$45 million charge taken for severance costs was a net curtailment gain of \$17 million. The net curtailment gain is disclosed in Note 17, "Retirement Plans" and Note 18, "Other Postretirement Benefits." During 2004, the Company made \$208 million of severance payments and \$14 million of exit costs payments related to the Third Quarter, 2003 Restructuring Program. In addition, the Company reversed \$4 million of severance reserves and \$3 million of exit costs reserves during 2004. The severance reserve reversals were recorded, as severance payments were less than originally estimated. The \$2 million exit costs reserve reversal recorded during the second quarter of 2004 resulted from the Company settling a lease obligation for an amount that was less than originally estimated. The additional \$1 million of exit costs reserves reversed in the fourth quarter of 2004 resulted from the Company settling certain exit cost obligations for an amount that was less than originally estimated. The severance and exit costs reserve reversals were included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The remaining severance payments relating to initiatives already implemented under the Third Quarter, 2003 Restructuring Program will be paid during 2005 since, in many instances, the employees whose positions were eliminated can elect or are required to receive their severance payments over an extended period of time. Most exit costs were paid during 2004. However, certain costs, such as long-term lease payments, will be paid over periods after 2004.

As a result of initiatives implemented under the Third Quarter, 2003 Restructuring Program, the Company recorded \$24 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. The year-to-date amount of \$24 million relates to \$17 million of manufacturing facilities and equipment and \$7 million of photofinishing facilities and equipment that will be used until their abandonment.

The year-to-date charges of \$82 million included \$45 million applicable to the D&FIS segment, \$6 million applicable to the Health segment and \$1 million applicable to the Commercial Imaging segment. The balance of \$30 million was applicable to manufacturing, research and development, and administrative functions, which are shared across segments. The program-to-date charges of \$479 million included \$253 million applicable to the D&FIS segment, \$26 million applicable to the Health segment and \$10 million applicable to the Commercial Imaging segment. The balance of \$190 million was applicable to manufacturing, research and development, and administrative functions, which are shared across segments.

As of the end of the first quarter of 2004, the Company had committed to all of the initiatives originally contemplated under the Third Quarter, 2003 Restructuring Program. The Company committed to the elimination of a total of 5,850 positions under the Third Quarter, 2003 Restructuring Program. The remaining 25 positions to be eliminated under the Third Quarter, 2003 Restructuring Program are expected to be completed during 2005. The Company's expected cost savings as a result of all actions contemplated under the Third Quarter, 2003 Restructuring Program were approximately \$275 million in 2004, with annual savings of \$325 million to \$350 million expected thereafter.

#### **First Quarter, 2003 Restructuring Program**

In the early part of the first quarter of 2003, as part of its continuing focused cost reduction efforts and in addition to the remaining initiatives under the Fourth Quarter, 2002 Restructuring Program, the Company announced its First Quarter, 2003 Restructuring Program that included new initiatives to further reduce employment within a range of 1,800 to 2,200 employees. A significant portion of these new initiatives related to the rationalization of the Company's photofinishing operations in the U.S. and Europe. Specifically, as a result of declining film and photofinishing volumes and in response to global economic and political conditions, the Company began to implement initiatives to: (1) close certain photofinishing operations in the U.S. and EAMER, (2) rationalize manufacturing capacity by eliminating manufacturing positions on a worldwide basis, and (3) eliminate selling, general and administrative positions, particularly in the D&FIS segment.

The following table summarizes the activity with respect to the charges recorded in connection with the focused cost reduction actions that the Company has committed to under the First Quarter, 2003 Restructuring Program and the remaining balances in the related reserves at December 31, 2004:

(dollars in millions)	Number of Employees	Severance Reserve	Exit Costs Reserve	Total	Long-lived Asset Impairments and Inventory Write-downs	Accelerated Depreciation
Q1, 2003 charges	425	\$ 31	\$ —	\$ 31	\$ —	\$ —
Q1, 2003 utilization	(150)	(2)	—	(2)	—	—
Balance at 3/31/03	275	29	—	29	—	—
Q2, 2003 charges	500	17	4	21	5	—
Q2, 2003 utilization	(500)	(13)	—	(13)	(5)	—
Balance at 6/30/03	275	33	4	37	—	—
Q3, 2003 charges	925	19	4	23	1	16
Q3, 2003 utilization	(400)	(12)	(1)	(13)	(1)	(16)
Balance at 9/30/03	800	40	7	47	—	—
Q4, 2003 charges	—	—	—	—	—	8
Q4, 2003 utilization	(625)	(17)	(3)	(20)	—	(8)
Balance at 12/31/03	175	23	4	27	—	—
Q1, 2004 charges	—	—	—	—	—	6
Q1, 2004 reversal	—	(1)	—	(1)	—	—
Q1, 2004 utilization	(150)	(11)	(3)	(14)	—	(6)
Balance at 3/31/04	25	11	1	12	—	—
Q2, 2004 charges	—	—	—	—	—	1
Q2, 2004 utilization	—	(2)	—	(2)	—	(1)
Balance at 6/30/04	25	9	1	10	—	—
Q3, 2004 utilization	(25)	(1)	(1)	(2)	—	—
Balance at 9/30/04	—	8	—	8	—	—
Q4, 2004 utilization	—	(1)	—	(1)	—	—
Balance at 12/31/04	—	\$ 7	\$ —	\$ 7	\$ —	\$ —

During 2004, the Company made severance payments of \$15 million and exit cost payments of \$4 million related to the First Quarter, 2003 Restructuring Program. In addition, the Company reversed \$1 million of severance reserves during 2004, as severance payments were less than originally estimated. This reversal was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The remaining severance payments relating to initiatives already implemented under the First Quarter, 2003 Restructuring Program will be paid during 2005 since, in many instances, the employees whose positions were eliminated can elect or are required to receive their severance payments over an extended period of time.

As a result of initiatives implemented under the First Quarter, 2003 Restructuring Program, the Company recorded \$7 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. The year-to-date amount of \$7 million relates to lab equipment used in photofinishing that was used until its abandonment.

The charges of \$7 million recorded during 2004 were applicable to the D&FIS segment. The program-to-date charges of \$112 million included \$92 million applicable to the D&FIS segment, \$4 million applicable to the Commercial Imaging segment and \$1 million applicable to the Graphic Communications segment. The balance of \$15 million was applicable to manufacturing and administrative functions, which are shared across all segments.

As of the end of the third quarter of 2003, the Company had committed to all of the initiatives originally contemplated under the First Quarter, 2003 Restructuring Program. A total of 1,850 positions were eliminated as a result of the initiatives implemented under the First Quarter, 2003 Restructuring Program. Cost savings resulting from the implementation of all First Quarter, 2003 Restructuring Program actions are expected to be \$65 million to \$85 million on an annual basis, beginning in 2004.

## LIQUIDITY AND CAPITAL RESOURCES

### 2004

The Company believes that its cash flow from operations will be sufficient to cover its working capital and capital investment needs, debt maturities and dividend payments. The Company's cash balances and financing arrangements will be used to bridge timing differences between expenditures and cash generated from operations.

The Company's cash and cash equivalents increased \$5 million, from \$1,250 million at December 31, 2003 to \$1,255 million at December 31, 2004. The increase resulted primarily from \$1,168 million of net cash provided by operating activities. This was offset by \$1,066 million of net cash used in financing activities, and \$120 million of net cash used in investing activities.

The net cash provided by operating activities of \$1,168 million was mainly attributable to the Company's net earnings for the year ended December 31, 2004, as adjusted for the earnings from discontinued operations, equity in earnings from unconsolidated affiliates, depreciation, purchased research and development, restructuring costs, asset impairments and other non-cash charges, a benefit from deferred taxes, and a gain on sales of businesses/assets. This source of cash was partially offset by \$481 million of restructuring payments and an increase in receivables of \$43 million. The increase in receivables is primarily attributable to increased sales of digital products. The net cash used in investing activities from continuing operations of \$828 million was utilized primarily for capital expenditures of \$460 million and business acquisitions of \$369 million. The net cash used in financing activities of \$1,066 million was the result of net reduction of debt of \$928 million as well as dividend payments for the year ended December 31, 2004.

The Company maintains \$2,373 million in committed bank lines of credit and \$753 million in uncommitted bank lines of credit to ensure continued access to short-term borrowing capacity. On September 5, 2003, the Company filed a shelf registration statement on Form S-3 (the new debt shelf registration) for the issuance of up to \$2,000 million of new debt securities. Pursuant to Rule 429 under the Securities Act of 1933, \$650 million of remaining unsold debt securities under a prior shelf registration statement were included in the new debt shelf registration, thus giving the Company the ability to issue up to \$2,650 million in public debt. After issuance of \$500 million in notes in October 2003 (referred to below), the remaining availability under the new debt shelf registration is currently at \$2,150 million. These funding alternatives provide the Company with sufficient flexibility and liquidity to meet its working capital and investing needs. However, the success of future public debt issuances will be dependent on market conditions at the time of such an offering.

The Company's primary uses of cash include debt maturities, acquisitions, dividend payments, and temporary working capital needs. The Company has a dividend policy whereby it makes semi-annual payments which, when declared, will be paid on the Company's 10th business day each July and December to shareholders of record on the close of the first business day of the preceding month. On May 12, 2004, the Board of Directors declared a dividend of \$.25 per share payable to shareholders of record at the close of business on June 1, 2004. This dividend was paid on July 15, 2004. On October 19, 2004, the Board of Directors declared a dividend of \$.25 per share payable to shareholders of record at the close of business on November 1, 2004. This dividend was paid on December 14, 2004.

Capital additions were \$460 million in the year ended December 31, 2004, with the majority of the spending supporting new products, manufacturing productivity and quality improvements, infrastructure improvements, and ongoing environmental and safety initiatives. For the full year 2005, the Company expects its capital spending, excluding acquisitions, to be in the range of \$575 million to \$625 million.

During the year ended December 31, 2004, the Company expended \$481 million against the related restructuring reserves, primarily for the payment of severance benefits. Employees whose positions were eliminated could elect to have their severance benefits paid over a period of up to two years following their date of termination.

The Company has \$2,225 million in committed revolving credit facilities, which are available for general corporate purposes including the support of the Company's commercial paper program. The credit facilities are comprised of the \$1,000 million 364-day committed revolving credit facility (364-Day Facility) expiring in July 2005 and a 5-year committed facility at \$1,225 million expiring in July 2006 (5-Year Facility). If unused, they have a commitment fee of \$4.5 million per year at the Company's current credit rating of Baa3 and BBB- from Moody's and Standard & Poors (S&P), respectively. Interest on amounts borrowed under these facilities is calculated at rates based on spreads above certain reference rates and the Company's credit rating. Under the 364-Day Facility and 5-Year Facility, there is a quarterly financial covenant that requires the Company to maintain a debt to EBITDA (earnings before interest, income taxes, depreciation and amortization) ratio, on a rolling four-quarter basis, of not greater than 3 to 1. In the event of violation of the covenant, the facility would not be available for borrowing until the covenant provisions were waived, amended or satisfied. The Company was in compliance with this covenant at December 31, 2004. The Company does not anticipate that a violation is likely to occur. There is no debt outstanding under either facility. Letters of credit of \$103 million have been issued under the Letter of Credit sub facility of the 5-year revolver, which reduces the borrowing availability by a corresponding amount. In February of 2005, the Company issued additional letters of credit for \$31 million under the 5-year revolver. These additional letters of credit support Workers' Compensation liabilities.

The Company has other committed and uncommitted lines of credit at December 31, 2004 totaling \$148 million and \$753 million, respectively. These lines primarily support borrowing needs of the Company's subsidiaries, which include term loans, overdraft coverage, letters of credit and revolving credit lines. Interest rates and other terms of borrowing under these lines of credit vary from country to country, depending on local market conditions. Total outstanding borrowings against these other committed and uncommitted lines of credit at December 31, 2004 were \$53 million and \$47 million, respectively. These outstanding borrowings are reflected in the short-term borrowings in the accompanying Consolidated Statement of Financial Position at December 31, 2004.

At December 31, 2004, the Company had no commercial paper outstanding. To provide additional financing flexibility, the Company has an accounts receivable securitization program, which was renewed in March 2004 at a maximum borrowing level of \$200 million. At December 31, 2004, the Company had no amounts outstanding under this program.

As part of the Company's plan to reduce debt, on July 27, 2004, the Company elected to redeem on September 1, 2004, all of its outstanding 9.5% term notes due June 15, 2008, at a redemption price of 112.9375% of the principal amount of \$34 million. The Company recorded a loss on the early extinguishment of debt, the amount of which was not material.

On October 10, 2003, the Company completed the offering and sale of \$500 million aggregate principal amount of Senior Notes due 2013 (the Notes), which was made pursuant to the Company's new debt shelf registration. The remaining unused balance under the Company's new debt shelf is \$2,150 million. Concurrent with the offering and sale of the Notes, on October 10, 2003, the Company completed the private placement of \$575 million aggregate principal amount of Convertible Senior Notes due 2033 (the Convertible Securities) to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933. Interest on the Convertible Securities will accrue at the rate of 3.375% per annum and is payable semiannually. The Convertible Securities are unsecured and rank equally with all of the Company's other unsecured and unsubordinated indebtedness. As a condition of the private placement, on January 6, 2004 the Company filed a shelf registration statement under the Securities Act of 1933 relating to the resale of the Convertible Securities and the common stock to be issued upon conversion of the Convertible Securities pursuant to a registration rights agreement, and made this shelf registration statement effective on February 6, 2004.

The Convertible Securities contain a number of conversion features that include substantive contingencies. The Convertible Securities are convertible by the holders at an initial conversion rate of 32.2373 shares of the Company's common stock for each \$1,000 principal amount of the Convertible Securities, which is equal to an initial conversion price of \$31.02 per share. The initial conversion rate of 32.2373 is subject to adjustment for: (1) stock dividends, (2) subdivisions or combinations of the Company's common stock, (3) issuance to all holders of the Company's common stock of certain rights or warrants to purchase shares of the Company's common stock at less than the market price, (4) distributions to all holders of the Company's common stock of shares of the Company's capital stock or the Company's assets or evidences of indebtedness, (5) cash dividends in excess of the Company's current cash dividends, or (6) certain payments made by the Company in connection with tender offers and exchange offers.

The holders may convert their Convertible Securities, in whole or in part, into shares of the Company's common stock under any of the following circumstances: (1) during any calendar quarter, if the price of the Company's common stock is greater than or equal to 120% of the applicable conversion price for at least 20 trading days during a 30 consecutive trading day period ending on the last trading day of the previous calendar quarter; (2) during any five consecutive trading day period following any 10 consecutive trading day period in which the trading price of the Convertible Securities for each day of such period is less than 105% of the conversion value, and the conversion value for each day of such period was less than 95% of the principal amount of the Convertible Securities (the Parity Clause); (3) if the Company has called the Convertible Securities for redemption; (4) upon the occurrence of specified corporate transactions such as a consolidation, merger or binding share exchange pursuant to which the Company's common stock would be converted into cash, property or securities; and (5) if the credit rating assigned to the Convertible Securities by either Moody's or S&P is lower than Ba2 or BB, respectively, which represents a three notch downgrade from the Company's current standing, or if the Convertible Securities are no longer rated by at least one of these services or their successors (the Credit Rating Clause).

The Company may redeem some or all of the Convertible Securities at any time on or after October 15, 2010 at a purchase price equal to 100% of the principal amount of the Convertible Securities plus any accrued and unpaid interest. Upon a call for redemption by the Company, a conversion trigger is met whereby the holder of each \$1,000 Convertible Senior Note may convert such note to shares of the Company's common stock.

The holders have the right to require the Company to purchase their Convertible Securities for cash at a purchase price equal to 100% of the principal amount of the Convertible Securities plus any accrued and unpaid interest on October 15, 2010, October 15, 2013, October 15, 2018, October 15, 2023 and October 15, 2028, or upon a fundamental change as described in the offering memorandum filed under Rule 144A in conjunction with the private placement of the Convertible Securities. As of December 31, 2004, the Company has reserved 18,536,447 shares in treasury stock to cover potential future conversions of these Convertible Securities into common stock.

Certain of the conversion features contained in the Convertible Securities are deemed to be embedded derivatives as defined under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." These embedded derivatives include the Parity Clause, the Credit Rating Clause, and any specified corporate transaction outside of the Company's control such as a hostile takeover. Based on an external valuation, these embedded derivatives were not material to the Company's financial position, results of operations or cash flows.

In November 2004, the Emerging Issues Task Force finalized the consensus in Issue No. 04-8, "The Effect of Contingently Convertible Debt on Diluted Earnings per Share" (EITF 04-8). EITF 04-8 requires that contingent convertible instruments be included in diluted earnings per share regardless of whether a market price trigger or other contingent feature has been met. EITF 04-8 is effective for reporting periods ending after December 15, 2004 and requires restatement of prior periods. See Note 1, "Significant Accounting Policies," "Earnings Per Share" for further discussion.

Long-term debt and related maturities and interest rates were as follows at December 31, 2004 and 2003 (in millions):

Country	Type	Maturity	2004		2003	
			Weighted-Average Interest Rate	Amount OutStanding	Weighted-Average Interest Rate	Amount OutStanding
U.S.	Medium-term	2004	—	\$ —	1.72%*	\$ 200
U.S.	Medium-term	2005	2.84%*	100	1.73%*	100
U.S.	Medium-term	2005	7.25%	200	7.25%	200
U.S.	Medium-term	2006	6.38%	500	6.38%	500
U.S.	Medium-term	2008	3.63%	249	3.63%	249
U.S.	Term note	2008	—	—	9.50%	34
U.S.	Term note	2013	7.25%	500	7.25%	500
U.S.	Term note	2018	9.95%	3	9.95%	3
U.S.	Term note	2021	9.20%	10	9.20%	10
U.S.	Convertible	2033	3.38%	575	3.38%	575
China	Bank loans	2004	—	—	5.50%	225
China	Bank loans	2005	5.45%	88	5.45%	106
Qualex	Notes	2004-2010	5.08%	20	5.53%	49
Other				7		8
				2,252		2,759
				(400)		(457)
				\$ 1,852		\$ 2,302

\* Represents debt with a variable interest rate.

The Company's debt ratings from each of the two major rating agencies did not change during the year ended December 31, 2004. Moody's and Standard & Poors (S&P) ratings for the Company's long-term debt (L/T) and short-term debt (S/T), including their outlooks, as of December 31, 2004 were as follows:

	L/T	S/T	Outlook
Moody's	Baa3	P-3	Negative
S&P	BBB-	A-3	Negative

On January 31, 2005, Moody's placed its Baa3 long-term and P-3 short-term credit ratings on Kodak on review for possible downgrade, prompted by the Company's announcement of its intention to acquire Creo Inc. Moody's met with the Company in March 2005 and is still in the process of completing their credit review, which may include a revision to their ratings for the Company.

On October 21, 2004, S&P placed its BBB- long-term and A-3 short-term credit ratings on Kodak on CreditWatch with negative implications. This reflects S&P's heightened concern about the Company's profit outlook given the rapid decline of the Company's traditional photography sales and an uncertain near-term profit potential for the consumer digital and graphic communications businesses and the impact of the Company's unfunded postretirement obligations. S&P met with the Company in March 2005 and is still in the process of completing their credit review, which may include a revision to their ratings for the Company.

The Company no longer retains Fitch Ratings to provide credit ratings on the Company's debt. Subsequently, on February 1, 2005, Fitch Ratings downgraded the Company's ratings to BB+ for long-term debt and withdrew their short-term debt rating. Their rating outlook remains negative.

The Company is in compliance with all covenants or other requirements set forth in its credit agreements and indentures. Further, the Company does not have any rating downgrade triggers that would accelerate the maturity dates of its debt, with the exception of the following: the outstanding borrowings, if any, under the accounts receivable securitization program if the Company's credit ratings from Moody's or S&P were to fall below Ba2 and BB, respectively, and such condition continued for a period of 30 days. Additionally, the Company could be required to increase the dollar amount of its letters of credit or other financial support up to an additional \$117 million if its Moody's or S&P long-term debt credit ratings are reduced below the current ratings of Baa3 and BBB-, respectively. Further downgrades in the Company's credit rating or disruptions in the capital markets could impact borrowing costs and the nature of its funding alternatives. However, the Company has access to \$2,225 million in committed revolving credit facilities to meet unanticipated funding needs, should it be necessary, of which \$103 million has been utilized to support issued letters of credit as of December 31, 2004.

At December 31, 2004, the Company had outstanding letters of credit totaling \$110 million and surety bonds in the amount of \$117 million primarily to ensure the completion of environmental remediations, the payment of casualty and workers' compensation claims, and to meet various customs and tax obligations.

In February 2005, the Company issued \$31 million in letters of credit in support of Workers' Compensation liabilities. These letters of credit, issued under the Company's 5-year revolver, reduce the borrowing availability under the 5-year revolver by \$31 million.

As of December 31, 2004, the impact that our contractual obligations are expected to have on our liquidity and cash flow in future periods is as follows:

(in millions)	Total	2005	2006	2007	2008	2009	2010+
Long-term debt (1)	\$ 2,252	\$ 400	\$ 509	\$ 4	\$ 250	\$ 1	\$ 1,088
Operating lease obligations	515	128	97	79	61	46	104
Purchase obligations (2)	859	182	171	155	117	75	159
<b>Total (3) (4)</b>	<b>\$ 3,626</b>	<b>\$ 710</b>	<b>\$ 777</b>	<b>\$ 238</b>	<b>\$ 428</b>	<b>\$ 122</b>	<b>\$ 1,351</b>

- (1) Represents maturities of the Company's long-term debt obligations as shown on the Consolidated Statement of Financial Position. See Note 9, "Short-Term Borrowings and Long-Term Debt."
- (2) Purchase obligations include agreements related to supplies, production and administrative services, as well as marketing and advertising, that are enforceable and legally binding on the Company and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. Purchase obligations exclude agreements that are cancelable without penalty. The terms of these agreements cover the next two to eighteen years.
- (3) Funding requirements for the Company's major defined benefit retirement plans and other postretirement benefit plans have not been determined, therefore, they have not been included. In 2004, the Company made contributions to its major defined benefit retirement plans and other postretirement benefit plans of \$196 million (\$30 million relating to its U.S. defined benefit plans) and \$254 million (\$250 million relating to its U.S. other postretirement benefits plan), respectively. The Company expects to contribute approximately \$22 million and \$282 million, respectively, to its U.S. defined benefit plans and other postretirement benefit plans in 2005.
- (4) Because their future cash outflows are uncertain, the other long-term liabilities presented in Note 10: Other Long-Term Liabilities are excluded from this table.



As a result of the cumulative impact of the ongoing position eliminations under its Third Quarter, 2003 and 2004-2006 Restructuring Programs as disclosed in Note 16, the Company incurred curtailment gains and losses with respect to certain of its retirement plans in 2004. These curtailment events, as well as the merger of two of the Company's major non-U.S. plans, resulted in the remeasurement of the respective plans' obligations, which impacted the accounting for the additional minimum pension liabilities. As a result of these remeasurements, the Company was required to increase its additional minimum pension liabilities by \$90 million during 2004. This increase is reflected in the postretirement liabilities component within the accompanying Consolidated Statement of Financial Position as of December 31, 2004. The net-of-tax amount of \$61 million relating to the recording of the additional minimum pension liabilities is reflected in the accumulated other comprehensive loss component within the accompanying Consolidated Statement of Financial Position as of December 31, 2004. The related increase in the long-term deferred tax asset of \$29 million was reflected in the other long-term assets component within the accompanying Consolidated Statement of Financial Position as of December 31, 2004.

#### **OFF-BALANCE SHEET ARRANGEMENTS**

The Company guarantees debt and other obligations under agreements with certain affiliated companies and customers. At December 31, 2004, these guarantees totaled a maximum of \$356 million, with outstanding guaranteed amounts of \$149 million. The maximum guarantee amount includes guarantees of up to: \$160 million of debt for Kodak Polychrome Graphics (KPG), an unconsolidated affiliate in which the Company has a 50% ownership interest (\$30 million outstanding); \$128 million of customer amounts due to banks in connection with various banks' financing of customers' purchase of products and equipment from Kodak (\$71 million outstanding); and \$68 million for other unconsolidated affiliates and third parties (\$48 million outstanding). The KPG debt facility and the related guarantee mature on December 31, 2005. The guarantees for the other unconsolidated affiliates and third party debt mature between 2005 and 2010. The customer financing agreements and related guarantees typically have a term of 90 days for product and short-term equipment financing arrangements, and up to five years for long-term equipment financing arrangements. These guarantees would require payment from Kodak only in the event of default on payment by the respective debtor. In some cases, particularly for guarantees related to equipment financing, the Company has collateral or recourse provisions to recover and sell the equipment to reduce any losses that might be incurred in connection with the guarantee.

Management believes the likelihood is remote that material payments will be required under any of the guarantees disclosed above. With respect to the guarantees that the Company issued in the year ended December 31, 2004, the Company assessed the fair value of its obligation to stand ready to perform under these guarantees by considering the likelihood of occurrence of the specified triggering events or conditions requiring performance as well as other assumptions and factors. The Company has determined that the fair value of the guarantees was not material to the Company's financial position, results of operations or cash flows.

The Company also guarantees debt owed to banks for some of its consolidated subsidiaries. The maximum amount guaranteed is \$306 million, and the outstanding debt under those guarantees, which is recorded within the short-term borrowings and long-term debt, net of current portion components in the accompanying Consolidated Statement of Financial Position, is \$166 million. These guarantees expire in 2005 through 2006.

The Company may provide up to \$100 million in loan guarantees to support funding needs for SK Display Corporation, an unconsolidated affiliate in which the Company has a 34% ownership interest. As of December 31, 2004, the Company has not been required to guarantee any of the SK Display Corporation's outstanding debt.

The Company issues indemnifications in certain instances when it sells businesses and real estate, and in the ordinary course of business with its customers, suppliers, service providers and business partners. Further, the Company indemnifies its directors and officers who are, or were, serving at Kodak's request in such capacities. Historically, costs incurred to settle claims related to these indemnifications have not been material to the Company's financial position, results of operations or cash flows. Additionally, the fair value of the indemnifications that the Company issued during the year ended December 31, 2004 was not material to the Company's financial position, results of operations or cash flows.

Qualex, a wholly owned subsidiary of Kodak, has a 50% ownership interest in Express Stop Financing (ESF), which is a joint venture partnership between Qualex and a subsidiary of Dana Credit Corporation (DCC), a wholly owned subsidiary of Dana Corporation. Qualex accounts for its investment in ESF under the equity method of accounting. ESF provided a long-term financing solution to Qualex's photofinishing customers in connection with Qualex's leasing of photofinishing equipment to third parties, as opposed to Qualex extending long-term credit. As part of the operations of its photofinishing services, Qualex sold equipment under a sales-type lease arrangement and recorded a long-term receivable. These long-term receivables were subsequently sold to ESF without recourse to Qualex and, therefore, these receivables were removed from Qualex's accounts. ESF incurred debt to finance the purchase of the receivables from Qualex. This debt was collateralized solely by the long-term receivables purchased from Qualex and, in part, by a \$40 million guarantee from DCC. On December 17, 2004, all outstanding debt of ESF was paid in full and the ESF guarantee was terminated. Qualex provided no guarantee or collateral to ESF's creditors in connection with the debt, and ESF's debt was non-recourse to Qualex. Qualex's only continued involvement in connection with the sale of the long-term receivables is the servicing of the related equipment under the leases. Qualex has continued revenue streams in connection with this equipment through future sales of photofinishing consumables, including paper and chemicals, and maintenance.

Although the lessees' requirement to pay ESF under the lease agreements is not contingent upon Qualex's fulfillment of its servicing obligations, under the agreement with ESF, Qualex would be responsible for any deficiency in the amount of rent not paid to ESF as a result of any lessee's claim regarding maintenance or supply services not provided by Qualex. Such lease payments would be made in accordance with the original lease terms, which generally extend over 5 to 7 years. To date, the Company has incurred no such material claims, and Qualex does not anticipate any significant situations where it would be unable to fulfill its service obligations under the arrangement with ESF. ESF's outstanding lease receivable amount was approximately \$113 million at December 31, 2004.

Effective July 20, 2004, ESF entered into an agreement amending the Receivables Purchase Agreement (RPA), which represents the financing arrangement between ESF and its banks. Under the amended RPA agreement, maximum borrowings were lowered to \$200 million. On December 17, 2004, ESF terminated the RPA upon payment in full, to its banks, of the then outstanding balance of the RPA totaling \$138 million. Pursuant to the ESF partnership agreement between Qualex and DCC, commencing October 6, 2003, Qualex no longer sells its lease receivables to ESF. Qualex currently is utilizing the services of Imaging Financial Services, Inc., a wholly owned subsidiary of General Electric Capital Corporation, as an alternative financing solution for prospective leasing activity with its U.S. customers.

## 2003

The Company's cash and cash equivalents increased \$681 million during 2003 to \$1,250 million at December 31, 2003. The increase resulted primarily from \$1,645 million of cash flows from operating activities and \$270 million of cash provided by financing activities, partially offset by \$1,267 million of cash flows used in investing activities.

The net cash provided by operating activities of \$1,645 million for the year ended December 31, 2003 was partially attributable to net earnings of \$253 million which, when adjusted for earnings from discontinued operations, equity in losses from unconsolidated affiliates, gain on sale of assets, depreciation and goodwill amortization, purchased research and development, benefit for deferred income taxes and restructuring costs, asset impairments and other charges, provided \$1,233 million of operating cash. Also contributing to net cash provided by operating activities were a decrease in inventories of \$118 million, an increase in liabilities excluding borrowings of \$103 million, the cash receipt of \$19 million in connection with the Sterling Winthrop settlement, a decrease in accounts receivable of \$15 million, and the \$98 million impact from the change in other items, net. The net cash used in investing activities of \$1,267 million was utilized primarily for business acquisitions of \$697 million, of which \$59 million related to the purchase of minority interests in China and India, capital expenditures of \$497 million, and investments in unconsolidated affiliates of \$89 million. These uses of cash were partially offset by net proceeds from the sale of assets of \$24 million. The net cash provided by financing activities of \$270 million was primarily the result of the net increase in borrowings of \$588 million and the exercise of employee stock options of \$12 million, which were partially offset by dividend payments of \$330 million.

The Company has a dividend policy whereby it makes semi-annual payments which, when declared, will be paid on the Company's 10th business day each July and December to shareholders of record on the close of the first business day of the preceding month. On April 15, 2003, the Company's Board of Directors declared a semi-annual cash dividend of \$.90 per share on the outstanding common stock of the Company. This dividend was paid on July 16, 2003 to shareholders of record at the close of business on June 2, 2003. On September 24, 2003, the Company's Board of Directors approved the reduction of the amount of the annual dividend to \$.50 per share. On that same date, the Company's Board of Directors declared a semi-annual cash dividend of \$.25 per share on the outstanding common stock of the Company. This dividend was paid on December 12, 2003 to the shareholders of record as of the close of business on November 3, 2003.

Capital additions were \$497 million in 2003, with the majority of the spending supporting new products, manufacturing productivity and quality improvements, infrastructure improvements, and ongoing environmental and safety initiatives.

During 2003, the Company expended \$250 million against the related restructuring reserves, primarily for the payment of severance benefits. Employees whose positions were eliminated could elect to receive severance payments for up to two years following their date of termination.

## **2002**

The Company's cash and cash equivalents increased \$121 million during 2002 to \$569 million at December 31, 2002. The increase resulted primarily from \$2,204 million of cash flows from operating activities, partially offset by \$758 million of cash flows used in investing activities and \$1,331 million of cash used in financing activities.

The net cash provided by operating activities of \$2,204 million for the year ended December 31, 2002 was partially attributable to (1) net earnings of \$770 million which, when adjusted for earnings from discontinued operations, equity in losses from unconsolidated affiliates, gain on sales of assets, depreciation and amortization, and restructuring costs, asset impairments and other charges, and benefit for deferred taxes provided \$1,537 million of operating cash, (2) a decrease in accounts receivable of \$276 million, (3) a decrease in inventories of \$93 million, and (4) proceeds from the surrender of its Company-owned life insurance policies of \$187 million. The net cash used in investing activities of \$758 million was utilized primarily for capital expenditures of \$571 million, investments in unconsolidated affiliates of \$123 million, business acquisitions of \$72 million, of which \$60 million related to the purchase of minority interests in China and India, and net purchases of marketable securities of \$13 million. These uses of cash were partially offset by proceeds from the sale of properties of \$27 million. The net cash used in financing activities of \$1,331 million was primarily the result of net debt repayments of \$597 million, dividend payments of \$525 million and the repurchase of 7.4 million Kodak shares held by the Kodak Retirement Income Plan (KRIP), the Company's defined benefit plan, for \$260 million. Of the \$260 million expended, \$205 million was repurchased under the 1999 stock repurchase program, which is now completed. The balance of the amount expended of \$55 million was repurchased under the 2000 stock repurchase program.

Capital additions were \$571 million in 2002, with the majority of the spending supporting new products, manufacturing productivity and quality improvements, infrastructure improvements, and ongoing environmental and safety initiatives.

The cash outflows for severance and exit costs associated with the restructuring charges recorded in 2002 were more than offset by the tax savings associated with the restructuring actions, primarily due to the tax benefit of \$46 million relating to the consolidation of its photofinishing operations in Japan recorded in the third quarter 2002 restructuring charge. During 2002, the Company expended \$216 million against the related restructuring reserves, primarily for the payment of severance benefits, which were mostly attributable to the 2001 restructuring actions. The remaining severance-related actions associated with the total 2001 restructuring charge were completed by the end of the first quarter of 2003, and the remaining severance payments of \$6 million at December 31, 2003 were made by the end of 2004. Employees whose positions were eliminated could elect to receive severance payments for up to two years following their date of termination.

## OTHER

Cash expenditures for pollution prevention and waste treatment for the Company's current facilities were as follows:

(in millions)	2004	2003	2002
Recurring costs for pollution prevention and waste treatment	\$ 75	\$ 74	\$ 67
Capital expenditures for pollution prevention and waste treatment	7	8	12
Site remediation costs	3	2	3
<b>Total</b>	<b>\$ 85</b>	<b>\$ 84</b>	<b>\$ 82</b>

At December 31, 2004 and 2003, the Company's undiscounted accrued liabilities for environmental remediation costs amounted to \$153 million and \$141 million, respectively. These amounts are reported in other long-term liabilities in the accompanying Consolidated Statement of Financial Position.

The Company is currently implementing a Corrective Action Program required by the Resource Conservation and Recovery Act (RCRA) at the Kodak Park site in Rochester, NY. As part of this program, the Company has completed the RCRA Facility Assessment (RFA), a broad-based environmental investigation of the site. The Company is currently in the process of completing, and in some cases has completed, RCRA Facility Investigations (RFI) and Corrective Measures Studies (CMS) for areas at the site. At December 31, 2004, estimated future investigation and remediation costs of \$67 million are accrued for this site and are included in the \$153 million reported in other long-term liabilities.

The Company announced the closing of three manufacturing facilities outside the United States in 2004. The Company has obligations with estimated future investigation, remediation and monitoring costs of \$21 million at two of these facilities. At December 31, 2004, these costs are accrued and included in the \$153 million reported in other long-term liabilities.

The Company has obligations relating to other operating sites and former operations with estimated future investigation, remediation and monitoring costs of \$35 million. At December 31, 2004, these costs are accrued and included in the \$153 million reported in other long-term liabilities.

The Company has retained certain obligations for environmental remediation and Superfund matters related to certain sites associated with the non-imaging health businesses sold in 1994. At December 31, 2004, estimated future remediation costs of \$30 million are accrued for these sites and are included in the \$153 million reported in other long-term liabilities.

Cash expenditures for the aforementioned investigation, remediation and monitoring activities are expected to be incurred over the next thirty years for many of the sites. For these known environmental exposures, the accrual reflects the Company's best estimate of the amount it will incur under the agreed-upon or proposed work plans. The Company's cost estimates were determined using the ASTM Standard E 2137-01, "Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters," and have not been reduced by possible recoveries from third parties. The overall method includes the use of a probabilistic model which forecasts a range of cost estimates for the remediation required at individual sites. The projects are closely monitored and the models are reviewed as significant events occur or at least once per year. The Company's estimate includes equipment and operating costs for remediation and long-term monitoring of the sites. The Company does not believe it is reasonably possible that the losses for the known exposures could exceed the current accruals by material amounts.

A Consent Decree was signed in 1994 in settlement of a civil complaint brought by the U.S. Environmental Protection Agency and the U.S. Department of Justice. In connection with the Consent Decree, the Company is subject to a Compliance Schedule, under which the Company has improved its waste characterization procedures, upgraded one of its incinerators, and is evaluating and upgrading its industrial sewer system. The total expenditures required to complete this program are currently estimated to be approximately \$15 million over the next five years. These expenditures are incurred as part of plant operations and, therefore, are not included in the environmental accrual at December 31, 2004.

The Company is presently designated as a potentially responsible party (PRP) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (the Superfund Law), or under similar state laws, for environmental assessment and cleanup costs as the result of the Company's alleged arrangements for disposal of hazardous substances at five such active sites. With respect to each of these sites, the Company's liability is minimal. In addition, the Company has been identified as a PRP in connection with the non-imaging health businesses in four active Superfund sites. Numerous other PRPs have also been designated at these sites. Although the law imposes joint and several liability on PRPs, the Company's historical experience demonstrates that these costs are shared with other PRPs. Settlements and costs paid by the Company in Superfund matters to date have not been material. Future costs are also not expected to be material to the Company's financial position, results of operations or cash flows.

The Clean Air Act Amendments were enacted in 1990. Expenditures to comply with the Clean Air Act implementing regulations issued to date have not been material and have been primarily capital in nature. In addition, future expenditures for existing regulations, which are primarily capital in nature, are not expected to be material. Many of the regulations to be promulgated pursuant to this Act have not been issued.

Uncertainties associated with environmental remediation contingencies are pervasive and often result in wide ranges of outcomes. Estimates developed in the early stages of remediation can vary significantly. A finite estimate of cost does not normally become fixed and determinable at a specific time. Rather, the costs associated with environmental remediation become estimable over a continuum of events and activities that help to frame and define a liability, and the Company continually updates its cost estimates. The Company has an ongoing monitoring and identification process to assess how the activities, with respect to the known exposures, are progressing against the accrued cost estimates, as well as to identify other potential remediation sites that are presently unknown.

Estimates of the amount and timing of future costs of environmental remediation requirements are necessarily imprecise because of the continuing evolution of environmental laws and regulatory requirements, the availability and application of technology, the identification of presently unknown remediation sites and the allocation of costs among the potentially responsible parties. Based upon information presently available, such future costs are not expected to have a material effect on the Company's competitive or financial position. However, such costs could be material to results of operations in a particular future quarter or year.

## **NEW ACCOUNTING PRONOUNCEMENTS**

In December 2004, the FASB issued Statement No. 123R, "Share-Based Payment" (SFAS No. 123R), a revision to SFAS No. 123, "Accounting for Stock-Based Compensation" (SFAS No. 123). SFAS No. 123R eliminates the alternative to use the Accounting Principles Board Opinion 25's (Opinion 25) intrinsic value method of accounting that was provided in SFAS No. 123 as originally issued.

Under Opinion 25, issuing stock options to employees generally resulted in recognition of no compensation cost. SFAS No. 123R requires companies to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award (with limited exceptions). That cost will be recognized over the period during which an employee is required to provide service, in exchange for the award - the requisite service period (usually the vesting period). No compensation cost is recognized for equity instruments for which employees do not render the requisite service.

Companies will initially measure the cost of employee services received in exchange for an award of instruments classified as liabilities (Leadership stock, Stock Appreciation Rights (SARs)) based on its current fair value; the fair value of the awards classified as a liability will be remeasured subsequently at each reporting date through the settlement date. Changes in fair value during the requisite service period will be recognized as compensation cost over that period.

The grant-date fair value of employee share options, or the Company's restricted stock and similar instruments classified in the Statement of Financial Position as equity will be estimated using option-pricing models adjusted for the unique characteristics of those instruments (unless observable market prices for the same or similar instruments are available); the fair value of awards classified as equity will not be remeasured. If an equity award is modified after the grant date, incremental compensation cost will be recognized in an amount equal to the excess of the fair value of the modified award over the fair value of the original award immediately before the modification.

Excess tax benefits, as defined by SFAS No. 123R, will be recognized as an addition to paid-in capital. Cash retained as a result of those excess tax benefits will be presented in the statement of cash flows as financing cash inflows. The write-off of deferred tax assets relating to unrealized tax benefits associated with recognized compensation cost will be recognized as income tax expense unless there are excess tax benefits from previous awards remaining in paid-in capital to which it can be offset.

SFAS No. 123R applies to all awards granted after the required effective date and to awards modified, repurchased, or cancelled after that date. As of the required effective date, companies that used the fair-value-based method for either recognition or disclosure under SFAS No. 123 will apply SFAS No. 123R using a modified version of prospective application. Under that transition method, compensation cost is recognized on or after the required effective date for the portion of outstanding awards for which the requisite service has not yet been rendered, based on the grant-date fair value of those awards calculated under SFAS No. 123 for either recognition or pro forma disclosure. The cumulative effect of initially applying SFAS No. 123R, if any, is recognized as of the required effective date. SFAS No. 123R is effective as of the beginning of the first interim or annual reporting period that begins after June 15, 2005.

Early application is encouraged; consequently, the Company adopted the modified version of prospective application of SFAS No. 123R as of January 1, 2005. The cumulative effect of initial adoption to be recognized in the first interim consolidated statement of earnings for the period ended March 31, 2005, is immaterial. Management estimates that the adoption of SFAS No. 123R will reduce EPS by approximately \$.02 per share for the year ended December 31, 2005.

In December 2004, FASB issued SFAS No. 151, "Inventory Costs" that amends the guidance in Accounting Research Bulletin No. 43, Chapter 4, "Inventory Pricing," (ARB No. 43) to clarify the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). In addition, this Statement requires that an allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. SFAS No. 151 is effective for inventory costs incurred during fiscal years beginning after June 15, 2005. Early application is permitted for inventory costs incurred during fiscal years beginning after November 23, 2004. The Company is evaluating the impact of SFAS No. 151.

In December 2004, FASB issued FASB Staff Position (FSP) No. 109-1, "Application of FASB Statement No. 109, Accounting for Income Taxes, to the Tax Deduction on Qualified Production Activities Provided by the American Jobs Creation Act of 2004 (the "Act")." The Act, which was signed into law on October 22, 2004, authorizes a tax deduction of up to 9 percent (when fully phased-in) of the lesser of (a) "qualified production activities income," as defined in the Act, or (b) taxable income (after the deduction for the utilization of any net operating loss carryforwards), limited to 50 percent of W-2 wages paid by the taxpayer. Accordingly, the FSP provides guidance on accounting for the deduction as a special deduction in accordance with Statement 109, "Accounting for Income Taxes." Further, a company should consider the special deduction in (a) measuring deferred taxes when graduated tax rates are a significant factor and (b) assessing whether a valuation allowance is necessary as required by paragraph 232 of Statement 109. The provisions of FSP 109-1 were effective in the fourth quarter of 2004. The adoption of FSP 109-1 did not have a material effect on the Company's financial position, results of operations or cash flows.

In December 2004, FASB issued FSP No. 109-2, "Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004 (the "Act")." The Act, which was signed into law on October 22, 2004, provides for a special one-time tax deduction of 85 percent of certain foreign earnings that are repatriated (as defined in the Act) in either a company's last tax year that began before the enactment date, or the first tax year that begins during the one-year period beginning on the date of enactment. Accordingly, the FSP provides guidance on accounting for income taxes that related to the accounting treatment for unremitted earnings in a foreign investment (a consolidated subsidiary or corporate joint venture that is essentially permanent in nature). Further, the FSP permits a company time beyond the financial reporting period of enactment to evaluate the effect of the Act on its plan for reinvestment or repatriation of foreign earnings for purposes of applying FASB Statement No. 109, "Accounting for Income Taxes." Accordingly, an enterprise that has not yet completed its evaluation of the repatriation provision for purposes of applying Statement 109 is required to disclose certain information, for each period for which financial statements covering periods affected by the Act are presented. Subsequently, the total effect on income tax expense (or benefit) for amounts that have been recognized under the repatriation provision must be provided in a company's financial statements for the period in which it completes its evaluation of the repatriation provision. The provisions of FSP 109-2 are effective immediately. As of and for the year ended December 31, 2004, the Company has not yet completed its evaluation; consequently, the required information is disclosed in Note 15, "Income Taxes."

## RISK FACTORS

Set forth below and elsewhere in this report and in other documents that the Company files with the Securities and Exchange Commission are risks and uncertainties that could cause the actual future results of the Company to differ from those expressed or implied in the forward-looking statements contained in this document and other public statements the Company makes. Additionally, because of the following risks and uncertainties, as well as other variables affecting our operating results, the Company's past financial performance should not be considered an indicator of future performance and investors should not use historical trends to anticipate results or trends in future periods.

### **If we do not effectively implement our new digitally oriented growth strategy, this could adversely affect our operations, revenue and ability to compete.**

Kodak is emphasizing digital technology and expanding into a range of commercial businesses in order to create a more balanced and diversified business portfolio while accelerating the implementation of its existing digital product strategies in the consumer markets. Kodak expects to incur restructuring charges in relation to these initiatives. The expected benefits from these initiatives are subject to many estimates and assumptions, including assumptions regarding: (1) the amount and timing of cost savings and cash flow that Kodak can achieve from its traditional consumer film and paper businesses; (2) the speed at which consumer transition from traditional photography to digital photography occurs; (3) Kodak's ability to develop new digital businesses in its commercial, consumer and health markets; (4) Kodak's ability to identify, complete and integrate compatible strategic acquisitions consistent with its growth timeline; and (5) the costs and timing of activities undertaken in connection with these initiatives. In addition, these estimates and assumptions are subject to significant economic, competitive and other uncertainties that are beyond Kodak's control. If these assumptions are not realized, or if other unforeseen events occur, Kodak's results of operations could be adversely affected, as it may not be able to grow its business, and its ability to compete could be negatively affected.

### **If we cannot manage our product and services transition or continue to develop and deploy new products and services, this could adversely affect our revenues.**

Unanticipated delays in implementing certain product strategies (including digital products, category expansion and digitization) could adversely affect Kodak's revenues. Kodak's ability to successfully transition its existing products and develop and deploy new products requires that Kodak make accurate predictions of the product development schedule as well as volumes, product mix, customer demand, sales channels, and configuration. The process of developing new products and services is complex and often uncertain due to the frequent introduction of new products that offer improved performance and pricing. Kodak may anticipate demand and perceived market acceptance that differs from the product's realizable customer demand and revenue stream. Further, in the face of intense industry competition, any delay in the development, production or marketing of a new product could decrease any advantage Kodak may have to be the first or among the first to market. Kodak's failure to carry out a product rollout in the time frame anticipated and in the quantities appropriate to customer demand, or at all, could adversely affect future demand for Kodak's products and services and have an adverse effect on its business.

### **Our revenue, earnings and expenses may suffer if we cannot continue to enforce our licensing agreements and intellectual property rights.**

Kodak's ability to implement its intellectual property licensing strategies could also affect the Company's revenue and earnings. Kodak has made substantial investments in technologies and needs to protect its intellectual property as well as the interests of other licensees. The establishment and enforcement of licensing agreements provides a revenue stream in the form of royalties that protects Kodak's ability to further innovate and help the marketplace grow. Kodak's failure to properly manage the development of its intellectual property could adversely affect the future of these patents and the market opportunities that could result from the use of this property. Kodak's failure to manage the costs associated with the pursuit of these licenses could adversely affect the profitability of these operations.



**Our inability to develop and implement e-commerce strategies that align with industry standards, could adversely affect our business.**

In the event Kodak were unable to develop and implement e-commerce strategies that are in alignment with the trend toward industry standards and services, the Company's business could be adversely affected. The availability of software and standards related to e-commerce strategies is of an emerging nature. Kodak's ability to successfully align with the industry standards and services and ensure timely solutions, requires the Company to make accurate predictions of the future accepted standards and services.

**System integration issues could adversely affect our revenues and earnings.**

Kodak's completion of planned information systems upgrades, including SAP, if delayed, could adversely affect its business. As Kodak continues to expand the planned information services, the Company must continue to balance the investment of the planned deployment with the need to upgrade the vendor software. Kodak's failure to successfully upgrade to the vendor-supported version could result in risks to system availability, which could adversely affect the business.

**Our inability to manage our acquisitions, divestitures and other portfolio actions could adversely impact our revenues and earnings.**

Kodak has recently completed various business acquisitions and intends to complete various other business acquisitions in the future, particularly in its Health and Graphic Communications segments, in order to strengthen and diversify its portfolio of businesses. At the same time, Kodak needs to streamline and simplify its traditional businesses, including its photofinishing operations in the United States and EAMER. In the event that Kodak fails to effectively manage the portfolio of its more traditional businesses while simultaneously integrating these acquisitions, it could fail to obtain the expected synergies and favorable impact of these acquisitions. Such a failure could cause Kodak to lose market opportunities and experience a resulting adverse impact on its revenues and earnings.

In 2005, Kodak continues to focus on reduction of inventories, improvement in receivable performance, improvement in manufacturing productivity and the completion of focused capital expenditures.

**If we do not timely implement our planned inventory reductions, this could adversely affect our cash flow.**

Unanticipated delays in the Company's plans to continue inventory reductions in 2005 could adversely impact Kodak's cash flow outlook. Planned inventory reductions could be compromised by slower sales that could result from accelerated digital replacement or continued weak global economic conditions. Purchasers' uncertainty about traditional product demand or the extent of the global economic downturn could result in lower demand for products and services. In addition, the competitive environment and the transition to digital products and services could also place pressures on Kodak's sales and market share. In the event Kodak is unable to successfully manage these issues in a timely manner, they could adversely impact the planned inventory reductions.

**Delays in our plans to continue to improve our accounts receivable collections could adversely impact our cash flow.**

Unanticipated delays in the Company's plans to continue the improvement of its accounts receivable collection could also adversely impact Kodak's cash outlook. A continued weak economy could slow customer payment patterns. In addition, competitive pressures in major segments may cause the financial condition of certain of Kodak's customers to deteriorate. These same pressures may adversely affect the Company's efforts to shorten customer payment terms. Kodak's ability to manage customer risk while maintaining a competitive market share may adversely affect continued accounts receivable improvement in 2005.

**Delays in our plans to improve manufacturing productivity and control cost of operations could negatively impact our gross margins.**

Delays in Kodak's plans to improve manufacturing productivity and control costs of operations could negatively impact the gross margins of the Company. Kodak's failure to successfully manage operational performance factors could delay or curtail planned improvements in manufacturing productivity. Accelerating digital substitution could result in lower volumes in the factory than planned, which would also negatively impact gross margins. If Kodak is unable to successfully negotiate raw material costs with its suppliers, or incurs adverse pricing on certain of its commodity-based raw materials, reduction in the gross margins could occur. Additionally, delays in the Company's execution of increasing manufacturing capabilities for certain of its products in some of its emerging markets, particularly China where it is more cost competitive, could adversely impact gross margins.

**If we fail to execute our capital spending plan, this could adversely impact our cash flow.**

If Kodak exceeds its 2005 capital spending plan, this factor could adversely impact the Company's cash flow outlook. Further, if Kodak deems it necessary to spend more on regulatory requirements or if unanticipated general maintenance obligations arise that require more capital spending than planned, the increased spending could have an adverse impact on Kodak's cash flow.

**If our planned improvements in supply chain efficiency are delayed, this could adversely affect our revenues and earnings.**

Kodak's planned improvement in supply chain efficiency, if delayed, could adversely affect its business by preventing shipments of certain products to be made in their desired quantities and in a timely manner. The planned efficiencies could be compromised if Kodak expands into new markets with new applications that are not fully understood or if the portfolio broadens beyond that anticipated when the plans were initiated. The unforeseen changes in manufacturing capacity could also compromise the supply chain efficiencies.

**The competitive pressures we face could harm our revenue, gross margins and market share.**

Competition remains intense in the imaging sector in the Digital & Film Imaging Systems, Graphic Communications and Health segments. In the D&FIS segment, price competition has been driven somewhat by consumers' conservative spending behaviors during times of a weak world economy, international tensions and the accompanying concern over war and terrorism. In the Health and Graphic Communications segments, aggressive pricing tactics intensified in the contract negotiations as competitors were vying for customers and market share domestically. If the pricing and programs are not sufficiently competitive with those offered by Kodak's current and future competitors, Kodak may lose market share, adversely affecting its revenue and gross margins.

**If we fail to manage distribution of our products and services properly, our revenue, gross margins and earnings could be adversely impacted.**

The impact of continuing customer consolidation and buying power could have an adverse impact on Kodak's revenue, gross margins, and earnings. In the competitive consumer retail environment, there is a movement from small individually owned retailers to larger and commonly known mass merchants. In the commercial environment, there is a continuing consolidation of various group purchasing organizations. The resellers and distributors may elect to use suppliers other than Kodak. Kodak's challenge is to successfully negotiate contracts that provide the most favorable conditions to the Company in the face of price and aggressive competitors.

**Economic uncertainty in developing markets could affect adversely, our revenue and earnings.**

Kodak conducts business in developing markets with economies that tend to be more volatile than those in the United States and Western Europe. The risk of doing business in developing markets like China, India, Brazil, Argentina, Mexico, Russia and other economically volatile areas could adversely affect Kodak's operations and earnings. Such risks include the financial instability among customers in these regions, political instability and potential conflicts among developing nations and other non-economic factors such as irregular trade flows that need to be managed successfully with the help of the local governments. Kodak's failure to successfully manage economic, political and other risks relating to doing business in developing countries and economically and politically volatile areas could adversely affect its business.

**Because we sell our products and services worldwide, we are subject to changes in currency exchange rates and interest rates that may adversely impact our operations and financial position.**

Kodak, as a result of its global operating and financing activities, is exposed to changes in currency exchange rates and interest rates, which may adversely affect its results of operations and financial position. Exchange rates and interest rates in certain markets in which the Company does business tend to be more volatile than those in the United States and Western Europe. For example, in early 2002, the United States dollar was eliminated as Argentina's monetary benchmark, resulting in significant currency devaluation. There can be no guarantees that the economic situation in developing markets or elsewhere will not worsen, which could result in future effects on earnings should such events occur.

**CAUTIONARY STATEMENT PURSUANT TO SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995**

Certain statements in this report may be forward-looking in nature, or "forward-looking statements" as defined in the United States Private Securities Litigation Reform Act of 1995. For example, references to expectations for the Company's growth in sales and earnings, the effects of legislation, cash generation, tax rate, and debt management are forward-looking statements.

Actual results may differ from those expressed or implied in forward-looking statements. In addition, any forward-looking statements represent the Company's estimates only as of the date they are made, and should not be relied upon as representing the Company's estimates as of any subsequent date. While the Company may elect to update forward-looking statements at some point in the future, the Company specifically disclaims any obligation to do so, even if its estimates change. The forward-looking statements contained in this report are subject to a number of factors and uncertainties, including the successful: implementation of the digitally-oriented growth strategy, including the related implementation of the three-year cost reduction program; implementation of the debt management program; implementation of product strategies (including digital products, category expansion and digitization); implementation of intellectual property licensing strategies; development and implementation of e-commerce strategies; completion of information systems upgrades, including SAP, our enterprise system software; completion of various portfolio actions; reduction of inventories; completion of focused capital expenditures; integration of newly acquired businesses; performance of accounts receivable; improvement in manufacturing productivity and techniques; improvement in supply chain efficiency; implementation of future focused cost reductions, including personnel reductions; and the development of the Company's business in emerging markets like China, India, Brazil, Mexico, and Russia. The forward-looking statements contained in this report are subject to the following additional factors and uncertainties: inherent unpredictability of currency fluctuations and raw material costs; changes in the Company's debt credit ratings and its ability to access capital markets; competitive actions, including pricing; the nature and pace of technology evolution, including the analog-to-digital transition; continuing customer consolidation and buying power; current and future proposed changes to tax laws, as well as other factors which could adversely impact our effective tax rate in the future; general economic, business, geo-political, regulatory and public health conditions; market growth predictions; and other factors and uncertainties disclosed herein and from time to time in the Company's other filings with the Securities and Exchange Commission.

Any forward-looking statements in this report should be evaluated in light of these important factors and uncertainties as well as other cautionary information contained herein.

**SUMMARY OF OPERATING DATA**

A summary of operating data for 2004 and for the four years prior is shown on page 159.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The Company, as a result of its global operating and financing activities, is exposed to changes in foreign currency exchange rates, commodity prices, and interest rates, which may adversely affect its results of operations and financial position. In seeking to minimize the risks associated with such activities, the Company may enter into derivative contracts.

Foreign currency forward contracts are used to hedge existing foreign currency denominated assets and liabilities, especially those of the Company's International Treasury Center, as well as forecasted foreign currency denominated intercompany sales. Silver forward contracts are used to mitigate the Company's risk to fluctuating silver prices. The Company's exposure to changes in interest rates results from its investing and borrowing activities used to meet its liquidity needs. Long-term debt is generally used to finance long-term investments, while short-term debt is used to meet working capital requirements. The Company does not utilize financial instruments for trading or other speculative purposes.

Using a sensitivity analysis based on estimated fair value of open forward contracts using available forward rates, if the U.S. dollar had been 10% weaker at December 31, 2004 and 2003, the fair value of open forward contracts would have increased \$62 million and \$23 million, respectively. Such gains or losses would be substantially offset by losses or gains from the revaluation or settlement of the underlying positions hedged.

Using a sensitivity analysis based on estimated fair value of open forward contracts using available forward prices, if available forward silver prices had been 10% lower at December 31, 2004 and 2003, the fair value of open forward contracts would have decreased \$1 million and \$1 million, respectively. Such losses in fair value, if realized, would be offset by lower costs of manufacturing silver-containing products.

The Company is exposed to interest rate risk primarily through its borrowing activities and, to a lesser extent, through investments in marketable securities. The Company may utilize borrowings to fund its working capital and investment needs. The majority of short-term and long-term borrowings are in fixed-rate instruments. There is inherent roll-over risk for borrowings and marketable securities as they mature and are renewed at current market rates. The extent of this risk is not predictable because of the variability of future interest rates and business financing requirements.

Using a sensitivity analysis based on estimated fair value of short-term and long-term borrowings, if available market interest rates had been 10% (about 40 basis points) higher at December 31, 2004, the fair value of short-term and long-term borrowings would have decreased \$1 million and \$59 million, respectively.

Using a sensitivity analysis based on estimated fair value of short-term and long-term borrowings, if available market interest rates had been 10% (about 43 basis points) higher at December 31, 2003, the fair value of short-term and long-term borrowings would have decreased \$2 million and \$70 million, respectively.

The Company's financial instrument counterparties are high-quality investment or commercial banks with significant experience with such instruments. The Company manages exposure to counterparty credit risk by requiring specific minimum credit standards and diversification of counterparties. The Company has procedures to monitor the credit exposure amounts. The maximum credit exposure at December 31, 2004 was not significant to the Company.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA****REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Shareholders of Eastman Kodak Company:

We have completed an integrated audit of Eastman Kodak Company's 2004 consolidated financial statements and of its internal control over financial reporting as of December 31, 2004 and audits of its 2003 and 2002 consolidated financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Our opinions, based on our audits are presented below.

Consolidated financial statements

In our opinion, the consolidated financial statements and financial statement schedule listed in the index appearing under Item 15(a)(1) and (2) on page 165 of this Annual Report on Form 10-K present fairly, in all material respects, the financial position of Eastman Kodak Company and its subsidiaries at December 31, 2004 and 2003, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2004 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As described in Note 1 to the consolidated financial statements, the Company has restated its 2003 consolidated financial statements primarily for certain income tax and pension and other postretirement benefit plans matters.

Internal control over financial reporting

Also, we have audited management's assessment, included in Management's Report on Internal Control Over Financial Reporting appearing under Item 9A, that Eastman Kodak Company did not maintain effective internal control over financial reporting as of December 31, 2004, because the Company did not maintain effective controls over the accounting for income taxes including income taxes payable, deferred income tax assets and liabilities and the related income tax provision and the valuation and recording of its pension and other postretirement benefit obligations and expenses, based on criteria established in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express opinions on management's assessment and on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit of internal control over financial reporting in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. An audit of internal control over financial reporting includes obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The following material weaknesses have been identified and included in management's assessments:

Accounting for Income Taxes:

As of December 31, 2004, the Company did not maintain effective controls over the accounting for income taxes including income taxes payable, deferred income tax assets and liabilities and the related income tax provision. Specifically, the Company had a lack of local tax law expertise or failure to engage local tax law expertise resulting in the incorrect assumption of reduced tax expense associated with restructuring charges in various foreign locations in 2004 and 2003; inadequate knowledge and application of the provisions of generally accepted accounting principles by tax personnel resulting in errors in the accounting for income taxes; lack of clarity in roles and responsibilities within the global tax organization related to income tax accounting; insufficient or ineffective review and approval practices within the global tax and finance organizations resulting in the errors not being prevented or detected in a timely manner; and a lack of processes to effectively reconcile the income tax general ledger accounts to supporting detail and adequate verification of data used in computations. This material weakness contributed to the restatement of the Company's consolidated financial statements for 2003, for each of the quarters in the year ended December 31, 2003 and for the first, second and third quarters for 2004, and in the Company recording audit adjustments to the fourth quarter 2004 financial statements. Additionally, this material weakness could result in a misstatement of income taxes payable, deferred income tax assets and liabilities and the related income tax provision that would result in a material misstatement to annual or interim financial statements that would not be prevented or detected.

Accounting for Pension and Other Postretirement Benefit Plans:

As of December 31, 2004 the Company did not maintain effective controls over the valuation and recording of its pension and other postretirement benefit obligations and expenses. Specifically, the Company has a deficiency in the design of controls to validate actual versus estimated benefit payments in the accounting for other postretirement benefits. The design deficiency was an erroneous belief that actual payment data could not be captured at the required level of detail to enable adjustment of actuarial estimates on a quarterly basis. In addition, the Company had a failure to demonstrate operating effectiveness in controls surrounding reconciliation of participant census data between source systems and the plan actuary models for various domestic and international pension and other postretirement benefit plans. While analytical procedures to validate the reasonableness of census data extracts were employed, they were not sufficiently robust to prevent or detect errors in census data. This material weakness resulted in adjustments that were included in the restatement of the Company's consolidated financial statements for 2003, for each of the quarters in the year ended December 31, 2003 and for the first, second and third quarters for 2004, and in the Company recording adjustments to the fourth quarter 2004 financial statements. Additionally, this material weakness could result in a misstatement of pension and other postretirement obligations and expenses that would result in a material misstatement to annual or interim financial statements that would not be prevented or detected.

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2004 consolidated financial statements, and our opinion regarding the effectiveness of the Company's internal control over financial reporting does not affect our opinion on those consolidated financial statements.

As described in Management's Report on Internal Control Over Financial Reporting, management has excluded the NexPress-related entities and Scitex Digital Printing (renamed Kodak Versamark) from its assessment of internal control over financial reporting as of December 31, 2004 because they were acquired by the Company in purchase business combinations during 2004. We have also excluded the NexPress-related entities and Kodak Versamark from our audit of internal control over financial reporting. The NexPress-related entities and Kodak Versamark are wholly owned subsidiaries of the Company that represent 2% and 2%, respectively, of consolidated total assets and 1% and 1%, respectively, of consolidated revenue as of and for the year ended December 31, 2004.

In our opinion, management's assessment that Eastman Kodak Company did not maintain effective internal control over financial reporting as of December 31, 2004, is fairly stated, in all material respects, based on criteria established in *Internal Control - Integrated Framework* issued by the COSO. Also, in our opinion, because of the effects of the material weaknesses described above on the achievement of the objectives of the control criteria, Eastman Kodak Company has not maintained effective internal control over financial reporting as of December 31, 2004, based on criteria established in *Internal Control - Integrated Framework* issued by the COSO.

PRICEWATERHOUSECOOPERS LLP  
Rochester, NY  
April 6, 2005

**Eastman Kodak Company**  
**CONSOLIDATED STATEMENT OF EARNINGS**

For the Year Ended December 31,

(in millions, except per share data)	For the Year Ended December 31,		
	2004	2003	2002
		(Restated)	
Net sales	\$ 13,517	\$ 12,909	\$ 12,549
Cost of goods sold	9,548	8,734	8,022
Gross profit	3,969	4,175	4,527
Selling, general and administrative expenses	2,507	2,618	2,504
Research and development costs	854	776	757
Restructuring costs and other	695	479	98
(Losses) earnings from continuing operations before interest, other income (charges), net and income taxes	(87)	302	1,168
Interest expense	168	147	173
Other income (charges), net	161	(51)	(101)
(Loss) earnings from continuing operations before income taxes	(94)	104	894
(Benefit) provision for income taxes	(175)	(85)	133
Earnings from continuing operations	\$ 81	\$ 189	\$ 761
Earnings from discontinued operations, net of income taxes	\$ 475	\$ 64	\$ 9
<b>NET EARNINGS</b>	<b>\$ 556</b>	<b>\$ 253</b>	<b>\$ 770</b>
Basic net earnings per share:			
Continuing operations	\$ .28	\$ .66	\$ 2.61
Discontinued operations	1.66	.22	.03
Total	\$ 1.94	\$ .88	\$ 2.64
Diluted net earnings per share:			
Continuing operations	\$ .28	\$ .66	\$ 2.61
Discontinued operations	1.66	.22	.03
Total	\$ 1.94	\$ .88	\$ 2.64
Cash dividends per share	\$ .50	\$ 1.15	\$ 1.80

The accompanying notes are an integral part of these consolidated financial statements.



**Eastman Kodak Company**  
**CONSOLIDATED STATEMENT OF FINANCIAL POSITION**

(in millions, except share and per share data)	At December 31,	
	2004	2003
		(Restated)
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 1,255	\$ 1,250
Receivables, net	2,544	2,327
Inventories, net	1,158	1,078
Deferred income taxes	556	596
Other current assets	105	129
Assets of discontinued operations	30	72
<b>Total current assets</b>	<b>5,648</b>	<b>5,452</b>
Property, plant and equipment, net	4,512	5,051
Goodwill	1,446	1,349
Other long-term assets	3,131	2,929
Assets of discontinued operations	—	65
<b>TOTAL ASSETS</b>	<b>\$ 14,737</b>	<b>\$ 14,846</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable and other current liabilities	\$ 3,896	\$ 3,630
Short-term borrowings	469	946
Accrued income taxes	625	643
Liabilities of discontinued operations	—	36
<b>Total current liabilities</b>	<b>4,990</b>	<b>5,255</b>
Long-term debt, net of current portion	1,852	2,302
Pension and other postretirement liabilities	3,338	3,374
Other long-term liabilities	746	662
Liabilities of discontinued operations	—	8
<b>Total liabilities</b>	<b>10,926</b>	<b>11,601</b>
Commitments and Contingencies (Note 11)		
<b>SHAREHOLDERS' EQUITY</b>		
Common stock, \$2.50 par value; 391,292,760 shares issued in 2004 and 2003; 286,696,938 and 286,580,671 shares outstanding in 2004 and 2003	978	978
Additional paid in capital	850	850
Retained earnings	7,922	7,515
Accumulated other comprehensive loss	(90)	(238)
Unearned restricted stock	(5)	(8)
	9,655	9,097
Treasury stock, at cost		
104,595,822 shares in 2004 and 104,712,089 shares in 2003	5,844	5,852
<b>Total shareholders' equity</b>	<b>3,811</b>	<b>3,245</b>
<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>	<b>\$ 14,737</b>	<b>\$ 14,846</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Eastman Kodak Company**  
**CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY**

(in millions, except share and per share data)	Common Stock*	Additional Paid In Capital	Retained Earnings	Accumulated Other Comprehensive (Loss) Income	Unearned Restricted Stock	Treasury Stock	Total
Shareholders' Equity December 31, 2001	\$ 978	\$ 849	\$ 7,431	\$ (597)	\$ —	\$ (5,767)	\$ 2,894
Net earnings	—	—	770	—	—	—	770
<b>Other comprehensive income (loss):</b>							
Unrealized gains on available-for-sale securities (\$11 million pre-tax)	—	—	—	6	—	—	6
Unrealized losses arising from hedging activity (\$27 million pre-tax)	—	—	—	(19)	—	—	(19)
Reclassification adjustment for hedging related gains included in net earnings (\$24 million pre-tax)	—	—	—	15	—	—	15
Currency translation adjustments	—	—	—	218	—	—	218
Minimum pension liability adjustment (\$577 million pre-tax)	—	—	—	(394)	—	—	(394)
Other comprehensive loss	—	—	—	(174)	—	—	(174)
Comprehensive income							596
Cash dividends declared (\$1.80 per common share)	—	—	(525)	—	—	—	(525)
Treasury stock repurchased (7,354,316 shares)	—	—	—	—	—	(260)	(260)
Treasury stock issued under employee plans (2,357,794 shares)	—	(1)	(65)	—	—	137	71
Tax reductions - employee plans	—	1	—	—	—	—	1
Shareholders' Equity December 31, 2002	\$ 978	\$ 849	\$ 7,611	\$ (771)	\$ —	\$ (5,890)	\$ 2,777

**Eastman Kodak Company**  
**CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY Cont'd.**

(in millions, except share and per share data)	Common Stock*	Additional Paid In Capital	Retained Earnings	Accumulated Other Comprehensive (Loss) Income	Unearned Restricted Stock	Treasury Stock	Total
Shareholders' Equity December 31, 2002	\$ 978	\$ 849	\$ 7,611	\$ (771)	\$ —	\$ (5,890)	\$ 2,777
Net earnings (Restated)	—	—	253	—	—	—	253
<b>Other comprehensive income (loss):</b>							
Unrealized gains on available-for-sale securities (\$18 million pre-tax)	—	—	—	11	—	—	11
Unrealized losses arising from hedging activity (\$42 million pre-tax)	—	—	—	(25)	—	—	(25)
Reclassification adjustment for hedging related gains included in net earnings (\$29 million pre-tax)	—	—	—	19	—	—	19
Currency translation adjustments	—	—	—	406	—	—	406
Minimum pension liability adjustment (\$167 million pre-tax)	—	—	—	122	—	—	122
Other comprehensive income	—	—	—	533	—	—	533
Comprehensive income							786
Cash dividends declared (\$1.15 per common share)	—	—	(330)	—	—	—	(330)
Treasury stock issued for stock option exercises (337,940 shares)	—	—	(10)	—	—	21	11
Unearned restricted stock issuances (309,552 shares)	—	—	(9)	—	(8)	17	—
Tax reductions - employee plans	—	1	—	—	—	—	1
Shareholders' Equity December 31, 2003 (Restated)	\$ 978	\$ 850	\$ 7,515	\$ (238)	\$ (8)	\$ (5,852)	\$ 3,245

**Eastman Kodak Company**  
**CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY Cont'd.**

(in millions, except share and per share data)	Common Stock*	Additional Paid In Capital	Retained Earnings	Accumulated Other Comprehensive (Loss) Income	Unearned Restricted Stock	Treasury Stock	Total
Shareholders' Equity December 31, 2003 (Restated)	\$ 978	\$ 850	\$ 7,515	\$ (238)	\$ (8)	\$ (5,852)	\$ 3,245
Net earnings	—	—	556	—	—	—	556
Other comprehensive income (loss):							
Unrealized losses on available-for-sale securities (\$18 million pre-tax)	—	—	—	(11)	—	—	(11)
Unrealized gains arising from hedging activity (\$8 million pre-tax)	—	—	—	5	—	—	5
Reclassification adjustment for hedging related gains included in net earnings (\$11 million pre-tax)	—	—	—	8	—	—	8
Currency translation adjustments	—	—	—	228	—	—	228
Minimum pension liability adjustment (\$126 million pre-tax)	—	—	—	(82)	—	—	(82)
Other comprehensive income	—	—	—	148	—	—	148
Comprehensive income							704
Cash dividends declared (\$.50 per common share)	—	—	(143)	—	—	—	(143)
Treasury stock issued for stock option exercises (105,323 shares)	—	—	(5)	—	—	7	2
Unearned restricted stock issuances (10,944 shares)	—	—	(1)	—	3	1	3
Tax reductions - employee plans	—	—	—	—	—	—	—
Shareholders' Equity December 31, 2004	\$ 978	\$ 850	\$ 7,922	\$ (90)	\$ (5)	\$ (5,844)	\$ 3,811

\* There are 100 million shares of \$10 par value preferred stock authorized, none of which have been issued.

The accompanying notes are an integral part of these consolidated financial statements.

**Eastman Kodak Company**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**

(in millions)	For the Year Ended December 31,		
	2004	2003	2002
		(Restated)	
Cash flows from operating activities:			
Net earnings	\$ 556	\$ 253	\$ 770
Adjustments to reconcile to net cash provided by operating activities:			
Earnings from discontinued operations, net of income taxes	(475)	(64)	(9)
Equity in (earnings) losses from unconsolidated affiliates	(20)	52	105
Depreciation and amortization	1,030	864	834
Gain on sales of businesses/assets	(13)	(11)	(24)
Purchased research and development	16	32	—
Restructuring costs, asset impairments and other charges	130	156	85
Benefit for deferred income taxes	(37)	(49)	(224)
(Increase) decrease in receivables	(43)	15	276
Decrease in inventories	83	118	93
(Decrease) increase in liabilities excluding borrowings	(283)	103	(1)
Other items, net	202	98	264
Total adjustments	590	1,314	1,399
Net cash provided by continuing operations	1,146	1,567	2,169
Net cash provided by discontinued operations	22	78	35
Net cash provided by operating activities	1,168	1,645	2,204
Cash flows from investing activities:			
Additions to properties	(460)	(497)	(571)
Net proceeds from sales of businesses/assets	24	24	27
Acquisitions, net of cash acquired	(369)	(697)	(72)
Investments in unconsolidated affiliates	(31)	(89)	(123)
Marketable securities - sales	124	86	88
Marketable securities - purchases	(116)	(87)	(101)
Net cash used in continuing operations	(828)	(1,260)	(752)
Net cash provided by (used in) discontinued operations	708	(7)	(6)
Net cash used in investing activities	(120)	(1,267)	(758)
Cash flows from financing activities:			
Net decrease in borrowings with maturities of 90 days or less	(308)	(574)	(210)
Proceeds from other borrowings	147	1,693	759
Repayment of other borrowings	(767)	(531)	(1,146)
Dividends to shareholders	(143)	(330)	(525)
Exercise of employee stock options	5	12	51
Stock repurchase programs	—	—	(260)
Net cash (used in) provided by financing activities	(1,066)	270	(1,331)
Effect of exchange rate changes on cash	23	33	6
Net increase in cash and cash equivalents	5	681	121
Cash and cash equivalents, beginning of year	1,250	569	448
Cash and cash equivalents, end of year	\$ 1,255	\$ 1,250	\$ 569

**Eastman Kodak Company**  
**CONSOLIDATED STATEMENT OF CASH FLOWS (Continued)**

**SUPPLEMENTAL CASH FLOW INFORMATION**

(in millions)

Cash paid for interest and income taxes was:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Interest, net of portion capitalized of \$2, \$2 and \$3	\$ 169	\$ 137	\$ 173
Income taxes	72	66	201

The following non-cash transactions are not reflected in the Consolidated Statement of Cash Flows:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Minimum pension liability adjustment	\$ 82	\$ 122	\$ 394
Liabilities assumed in acquisitions	123	109	30
Issuance of restricted stock, net of forfeitures	—	13	1
Issuance of stock related to an acquisition	—	—	25

The accompanying notes are an integral part of these consolidated financial statements.

**Eastman Kodak Company**  
**NOTES TO FINANCIAL STATEMENTS**

**NOTE 1: SIGNIFICANT ACCOUNTING POLICIES AND RESTATEMENT**

**COMPANY OPERATIONS**

Eastman Kodak Company (the Company or Kodak) is engaged primarily in developing, manufacturing, and marketing traditional and digital imaging products, services and solutions to consumers, the entertainment industry, professionals, healthcare providers and other customers. The Company's products are manufactured in a number of countries in North and South America, Europe and Asia. The Company's products are marketed and sold in many countries throughout the world.

**BASIS OF CONSOLIDATION**

The consolidated financial statements include the accounts of Kodak and its majority owned subsidiary companies. Intercompany transactions are eliminated and net earnings are reduced by the portion of the net earnings of subsidiaries applicable to minority interests. The equity method of accounting is used for joint ventures and investments in associated companies over which Kodak has significant influence, but does not have effective control. Significant influence is generally deemed to exist when the Company has an ownership interest in the voting stock of the investee of between 20% and 50%, although other factors, such as representation on the investee's Board of Directors, voting rights and the impact of commercial arrangements, are considered in determining whether the equity method of accounting is appropriate. Income and losses of investments accounted for using the equity method are reported in other income (charges), net, in the accompanying Consolidated Statement of Earnings. See Note 7, "Investments," and Note 14, "Other Income (Charges), Net."

The cost method of accounting is used for investments in equity securities that do not have a readily determined market value and when the Company does not have the ability to exercise significant influence. These investments are carried at cost and are adjusted only for other-than-temporary declines in fair value. The carrying value of these investments is reported in other long-term assets in the accompanying Consolidated Statement of Financial Position.

**RESTATEMENT OF PREVIOUSLY ISSUED FINANCIAL STATEMENTS**

The Company restated its consolidated financial statements as of and for the year ended December 31, 2003. In addition, the Company restated its quarterly consolidated financial statements for each of the quarterly periods in 2003 and for the first three quarters of 2004. The restatement reflects adjustments to correct errors in the Company's accounting for income taxes, accounting for pensions and other postretirement benefits as well as other miscellaneous adjustments. The restatement resulted in the Company adjusting its previously reported 2003 net income of \$265 million (\$.92 per share) to net income of \$253 million (\$.88 per share). The nature and impact of these adjustments are described below. Also see Note 24: "Quarterly Sales and Earnings Data - Unaudited" for the impact of these adjustments on each of the quarterly periods.

**Income Taxes**

During the year-end closing process, errors were discovered relating to the Company's accounting for income taxes, the majority of which related to the Company's foreign operations. The more significant errors that were discovered related to matters surrounding 1) inappropriately recognizing tax benefits, including the timing of the recognition of valuation allowances, associated with net operating loss carry forwards, 2) the recording of benefits for certain restructuring charges that were not deductible for income tax purposes, 3) correcting deferred income tax accounts in certain foreign subsidiaries, and 4) accruing interest expense on potential tax settlements with the Internal Revenue Service (more fully discussed in Note 15). Excluding the impact of income tax adjustments relating to periods prior to 2003, which are discussed below, the impact of these adjustments on previously reported 2003 net income amounted to a reduction of \$1 million.

**Pensions and Other Postretirement Benefits**

During the year-end testing of the effectiveness of the Company's internal controls over financial reporting, the Company identified ineffective controls surrounding the reconciliation of participant census data between the Company's source systems and the information provided to the actuary in performing the actuarial valuation of the liabilities and net periodic benefits cost for the various domestic and international pension and other postretirement benefit plans. This control weakness resulted in incorrect participant data being utilized in the actuarial calculations. In addition, the Company had identified an error in the recorded amounts of its postretirement benefits expense. The Company has quantified the effect of these errors and, excluding the impact of pension and other postretirement benefit adjustments relating to periods prior to 2003 which are discussed below, the Company has reduced its previously reported 2003 net income by \$6.1 million.

**Other Adjustments**

During 2004, the Company determined that its general ledger accounting system was inappropriately translating depreciation expense from its foreign operations, using an historical exchange rate rather than a current exchange rate for purposes of translating periodic depreciation expense. Excluding amounts relating to periods prior to 2003, which are discussed below, the impact of this adjustment on previously reported 2003 net income amounted to a reduction of \$ 14.8 million.

During 2003, the Company recorded a charge to write-off an exclusivity payment made to a customer that had previously been recorded as an asset based on the Company's ability to recover a pro-rata portion of the payment in the event of a customer breach. The Company determined that this payment should have been written off prior to January 1, 2003. Excluding amounts relating to periods prior to 2003, which are discussed below, the impact of this adjustment on previously reported 2003 net income amounted to an increase of \$ 13.3 million.

In addition, the Company also determined that a number of individually immaterial adjustments were recorded in 2003 that more appropriately belonged in periods prior to January 1, 2003. Excluding amounts relating to periods prior to 2003, which are discussed below, the impact of this adjustment on previously reported 2003 net income amounted to a decrease of \$2.5 million.

### Adjustments relating to periods prior to 2003

As discussed above, certain of the adjustments, or portions thereof, made to restate the Company's 2003 financial statements relate to periods prior to January 1, 2003. The following table summarizes these:

(In millions)	Income/(Loss)
Income Tax	\$ 35.6
Pension and other postretirement benefits	(34.6)
Translation of depreciation expense	27.5
Exclusivity asset write-off	(21.4)
Other, miscellaneous	(8.3)
Net adjustment	\$ (1.2)

The Company has assessed the impact of the above items on each annual period prior to January 1, 2003 and determined that the impact of such errors is immaterial to each prior period. In addition, the Company has concluded that the net \$1.2 million adjustment is immaterial to the net income, as adjusted, for the first quarter of and for the full year ended December 31, 2003. Accordingly, the Company has recorded this net adjustment of \$1.2 million as an addition to Selling, General and Administrative expenses for the quarter ended March 31, 2003.



The impact on the Consolidated Statement of Earnings is presented below (in millions, except per share data). The impact of the above adjustments on the Consolidated Statement of Financial Position and Consolidated Statement of Cash Flows is not presented as it is immaterial.

	For the Year Ended December 31, 2003	
	As Previously Reported	Restated
<b>Consolidated Statement of Earnings:</b>		
Net sales	\$ 12,893	\$ 12,909
Cost of goods sold	8,715	8,734
Gross profit	4,178	4,175
Selling, general and administrative expenses	2,612	2,618
Research and development costs	775	776
Restructuring costs and other	484	479
Earnings from continuing operations, before interest, other income (charges), net and income taxes	307	302
Interest expense	147	147
Other income (charges), net	(51)	(51)
Earnings from continuing operations before income taxes	109	104
(Benefit) provision from income taxes	(90)	(85)
Earnings from continuing operations	\$ 199	\$ 189
Earnings from discontinued operations, net of income taxes	\$ 66	\$ 64
<b>NET EARNINGS</b>	<b>\$ 265</b>	<b>\$ 253</b>
Basic net earnings per share:		
Continuing	\$ .69	\$ .66
Discontinued	.23	.22
Total	\$ .92	\$ .88
Diluted net earnings per share:		
Continuing	\$ .69	\$ .66
Discontinued	.23	.22
Total	\$ .92	\$ .88

The following table reflects the impact of the aforementioned adjustments on selected components of the Company's 2003 consolidated income statement:

(In millions)	As Originally Reported	Pensions and Other Postretirement Benefits	Other	Adjustments Relating to Prior Periods	Tax	As Adjusted
Income from continuing operations	\$ 109	\$ (9)	\$ 5	\$ (1)	\$ —	\$ 104
Provision (benefit) for income taxes	(90)	(3)	7	—	1	(85)
Income (loss) from continuing operations	199	(6)	(2)	(1)	(1)	189
Income (loss) from discontinued operations	77	—	(3)	—	—	74
Provision (benefit) for income taxes	11	—	(1)	—	—	10
Income (loss) from discontinued operations	66	—	(2)	—	—	64
Net income (loss)	\$ 265	\$ (6)	\$ (4)	\$ (1)	\$ (1)	\$ 253

**USE OF ESTIMATES**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at year end, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**FOREIGN CURRENCY**

For most subsidiaries and branches outside the U.S., the local currency is the functional currency. In accordance with the Statement of Financial Accounting Standards (SFAS) No. 52, "Foreign Currency Translation," the financial statements of these subsidiaries and branches are translated into U.S. dollars as follows: assets and liabilities at year-end exchange rates; income, expenses and cash flows at average exchange rates; and shareholders' equity at historical exchange rates. For those subsidiaries for which the local currency is the functional currency, the resulting translation adjustment is recorded as a component of accumulated other comprehensive income in the accompanying Consolidated Statement of Financial Position. Translation adjustments are not tax-effected since they relate to investments, which are permanent in nature.

For certain other subsidiaries and branches, operations are conducted primarily in U.S. dollars, which is therefore the functional currency. Monetary assets and liabilities, and the related revenue, expense, gain and loss accounts, of these foreign subsidiaries and branches are remeasured at year-end exchange rates. Non-monetary assets and liabilities, and the related revenue, expense, gain and loss accounts, are remeasured at historical rates. Adjustments, which result from the remeasurement of the assets and liabilities of these subsidiaries, are included in net income.

Foreign exchange gains and losses arising from transactions denominated in a currency other than the functional currency of the entity involved are included in net income. The effects of foreign currency transactions, including related hedging activities, were losses of \$10 million, \$10 million, and \$19 million in the years 2004, 2003, and 2002, respectively, and are included in other income (charges), net, in the accompanying Consolidated Statement of Earnings. Refer to the "Derivative Financial Instruments" section of Note 1, "Significant Accounting Policies," for a description of how hedging activities are reflected in the Company's Consolidated Statement of Earnings.

### **CONCENTRATION OF CREDIT RISK**

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents, receivables, foreign currency forward contracts and commodity forward contracts. The Company places its cash and cash equivalents with high-quality financial institutions and limits the amount of credit exposure to any one institution. With respect to receivables, such receivables arise from sales to numerous customers in a variety of industries, markets, and geographies around the world. Receivables arising from these sales are generally not collateralized. The Company performs ongoing credit evaluations of its customers' financial conditions and no single customer accounts for greater than 10% of the sales of the Company. The Company maintains reserves for potential credit losses and such losses, in the aggregate, have not exceeded management's expectations. With respect to the foreign currency forward contracts and commodity forward contracts, the counterparties to these contracts are major financial institutions. The Company has not experienced non-performance by any of its counterparties.

Additionally, the Company guarantees debt and other obligations with certain unconsolidated affiliates and customers, which could potentially subject the Company to significant concentrations of credit risk. However, with the exception of the Company's total debt guarantees for which there is a concentration with one of Kodak's unconsolidated affiliate companies, these guarantees relate to numerous customers in a variety of industries, markets and geographies around the world. The Company does not believe that material payments will be required under any of its guarantee arrangements. See Note 12, "Guarantees."

### **CASH EQUIVALENTS**

All highly liquid investments with a remaining maturity of three months or less at date of purchase are considered to be cash equivalents.

### **MARKETABLE SECURITIES AND NONCURRENT INVESTMENTS**

The Company classifies its investment securities as either held-to-maturity, available-for-sale or trading. The Company's debt and equity investment securities are classified as held-to-maturity and available-for-sale, respectively. Held-to-maturity investments are carried at amortized cost and available-for-sale securities are carried at fair value, with the unrealized gains and losses reported in shareholders' equity under the caption accumulated other comprehensive (loss) income. The Company records losses that are other than temporary to earnings.

At December 31, 2004 and 2003, the Company had short-term investments classified as held-to-maturity of \$3 million and \$11 million, respectively. These investments were included in other current assets in the accompanying Consolidated Statement of Financial Position. In addition, at December 31, 2004 and 2003, the Company had available-for-sale equity securities of \$25 million and \$34 million, respectively, included in other long-term assets in the accompanying Consolidated Statement of Financial Position.

## INVENTORIES

Inventories are stated at the lower of cost or market. The cost of most inventories in the U.S. is determined by the “last-in, first-out” (LIFO) method. The cost of all of the Company’s remaining inventories in and outside the U.S. is determined by the “first-in, first-out” (FIFO) or average cost method, which approximates current cost. The Company provides inventory reserves for excess, obsolete or slow-moving inventory based on changes in customer demand, technology developments or other economic factors.

## PROPERTIES

Properties are recorded at cost, net of accumulated depreciation. The Company principally calculates depreciation expense using the straight-line method over the assets’ estimated useful lives, which are as follows:

	<u>Years</u>
Buildings and building equipment	10-40
Land improvements	10-20
Leasehold improvements	3-10
Machinery and production equipment	3-20
Power plant equipment	5-20
Transportation equipment	3-5
Tooling	3
Office equipment, including computers	3-7
Furniture and fixtures	3-15

Maintenance and repairs are charged to expense as incurred. Upon sale or other disposition, the applicable amounts of asset cost and accumulated depreciation are removed from the accounts and the net amount, less proceeds from disposal, is charged or credited to income.

## GOODWILL

Goodwill represents the excess of purchase price over the fair value of net assets acquired. The Company applies the provisions of SFAS No. 142, “Goodwill and Other Intangible Assets.” In accordance with SFAS No. 142, goodwill is not amortized, but is required to be assessed for impairment at least annually. The Company has elected to make September 30 the annual impairment assessment date for all of its reporting units, and will perform additional impairment tests when events or changes in circumstances occur that would more likely than not reduce the fair value of the reporting unit below its carrying amount. SFAS No. 142 defines a reporting unit as an operating segment or one level below an operating segment. The Company estimates the fair value of its reporting units through internal analyses and external valuations, which utilize income and market approaches through the application of capitalized earnings, discounted cash flow and market comparable methods. The assessment is required to be performed in two steps, step one to test for a potential impairment of goodwill and, if potential losses are identified, step two to measure the impairment loss. The Company completed step one in its fourth quarter and determined that there were no such impairments. Accordingly, the performance of step two was not required.

## REVENUE

The Company’s revenue transactions include sales of the following: products; equipment; software; services; equipment bundled with products and/or services; and integrated solutions. The Company recognizes revenue when realized or realizable and earned, which is when the following criteria are met: persuasive evidence of an arrangement exists; delivery has occurred; the sales price is fixed or determinable; and collectibility is reasonably assured. At the time revenue is recognized, the Company provides for the estimated costs of customer incentive programs, warranties and estimated returns and reduces revenue accordingly.

For product sales, the recognition criteria are generally met when title and risk of loss have transferred from the Company to the buyer, which may be upon shipment or upon delivery to the customer site, based on contract terms or legal requirements in foreign jurisdictions. Service revenues are recognized as such services are rendered.

For equipment sales, the recognition criteria are generally met when the equipment is delivered and installed at the customer site. Revenue is recognized for equipment upon delivery as opposed to upon installation when there is objective and reliable evidence of fair value for the installation, and the amount of revenue allocable to the equipment is not legally contingent upon the completion of the installation. In instances in which the agreement with the customer contains a customer acceptance clause, revenue is deferred until customer acceptance is obtained, provided the customer acceptance clause is considered to be substantive. For certain agreements, the Company does not consider these customer acceptance clauses to be substantive because the Company can and does replicate the customer acceptance test environment and performs the agreed upon product testing prior to shipment. In these instances, revenue is recognized upon installation of the equipment.

Revenue for the sale of software licenses is recognized when: (1) the Company enters into a legally binding arrangement with a customer for the license of software; (2) the Company delivers the software; (3) customer payment is deemed fixed or determinable and free of contingencies or significant uncertainties; and (4) collection from the customer is probable. If the Company determines that collection of a fee is not reasonably assured, the fee is deferred and revenue is recognized at the time collection becomes reasonably assured, which is generally upon receipt of payment. Software maintenance and support revenue is recognized ratably over the term of the related maintenance period.

The Company's transactions may involve the sale of equipment, software, and related services under multiple element arrangements. The Company allocates revenue to the various elements based on verifiable objective evidence of fair value (if software is not included or is incidental to the transaction) or Kodak-specific objective evidence of fair value if software is included and is other than incidental to the sales transaction as a whole. Revenue allocated to an individual element is recognized when all other revenue recognition criteria are met for that element.

Revenue from the sale of integrated solutions, which includes transactions that require significant production, modification or customization of software, is recognized in accordance with contract accounting. Under contract accounting, revenue is recognized by utilizing either the percentage-of-completion or completed-contract method. The Company currently utilizes the completed-contract method for all solution sales, as sufficient history does not currently exist to allow the Company to accurately estimate total costs to complete these transactions. Revenue from other long-term contracts, primarily government contracts, is generally recognized using the percentage-of-completion method.

At the time revenue is recognized, the Company also records reductions to revenue for customer incentive programs in accordance with the provisions of Emerging Issues Task Force (EITF) Issue No. 01-09, "Accounting for Consideration Given from a Vendor to a Customer (Including a Reseller of the Vendor's Products)." Such incentive programs include cash and volume discounts, price protection, promotional, cooperative and other advertising allowances, and coupons. For those incentives that require the estimation of sales volumes or redemption rates, such as for volume rebates or coupons, the Company uses historical experience and internal and customer data to estimate the sales incentive at the time revenue is recognized.

In instances where the Company provides slotting fees or similar arrangements, this incentive is recognized as a reduction in revenue when payment is made to the customer (or at the time the Company has incurred the obligation, if earlier) unless the Company receives a benefit over a period of time, in which case the incentive is recorded as an asset and is amortized as a reduction of revenue over the term of the arrangement. Arrangements in which the Company receives an identifiable benefit include arrangements that have enforceable exclusivity provisions and those that provide a clawback provision entitling the Company to a pro rata reimbursement if the customer does not fulfill its obligations under the contract.

The Company may offer customer financing to assist customers in their acquisition of Kodak's products. At the time a financing transaction is consummated, which qualifies as a sales-type lease, the Company records equipment revenue equal to the total lease receivable net of unearned income. Unearned income is recognized as finance income using the effective interest method over the term of the lease. Leases not qualifying as sales-type leases are accounted for as operating leases. The Company recognizes revenue from operating leases on an accrual basis as the rental payments become due.

The Company's sales of tangible products are the only class of revenues that exceeds 10% of total consolidated net sales. All other sales classes are individually less than 10%, and therefore, have been combined with the sales of tangible products on the same line in accordance with Regulation S-X.

Incremental direct acquisition costs such as commissions (i.e. costs that vary with and are directly related to the acquisition of a contract which would not have been incurred but for the acquisition of the contract) are expensed as incurred and included in cost of goods sold in the accompanying Consolidated Statement of Earnings.

#### **RESEARCH AND DEVELOPMENT COSTS**

Research and development (R&D) costs, which include costs in connection with new product development, fundamental and exploratory research, process improvement, product use technology and product accreditation, are charged to operations in the period in which they are incurred. In connection with a business combination, the purchase price allocated to research and development projects that have not yet reached technological feasibility and for which no alternative future use exists is charged to operations in the period of acquisition. R&D costs were \$854 million, \$776 million and \$757 million in 2004, 2003 and 2002, respectively.

#### **ADVERTISING**

Advertising costs are expensed as incurred and included in selling, general and administrative expenses in the accompanying Consolidated Statement of Earnings. Advertising expenses amounted to \$513 million, \$596 million and \$630 million in 2004, 2003 and 2002, respectively.

#### **SHIPPING AND HANDLING COSTS**

Amounts charged to customers and costs incurred by the Company related to shipping and handling are included in net sales and cost of goods sold, respectively, in accordance with EITF Issue No. 00-10, "Accounting for Shipping and Handling Fees and Costs."

#### **IMPAIRMENT OF LONG-LIVED ASSETS**

The Company applies the provisions of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." Under the guidance of SFAS No. 144, the Company reviews the carrying value of its long-lived assets, other than goodwill and purchased intangible assets with indefinite useful lives, for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. The Company assesses the recoverability of the carrying value of long-lived assets by first grouping its long-lived assets with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities (the asset group) and, secondly, by estimating the undiscounted future cash flows that are directly associated with and that are expected to arise from the use of and eventual disposition of such asset group. The Company estimates the undiscounted cash flows over the remaining useful life of the primary asset within the asset group. If the carrying value of the asset group exceeds the estimated undiscounted cash flows, the Company records an impairment charge to the extent the carrying value of the long-lived asset exceeds its fair value. The Company determines fair value through quoted market prices in active markets or, if quoted market prices are unavailable, through the performance of internal analyses of discounted cash flows or external appraisals.

In connection with its assessment of recoverability of its long-lived assets and its ongoing strategic review of the business and its operations, the Company continually reviews the remaining useful lives of its long-lived assets. If this review indicates that the remaining useful life of the long-lived asset has been reduced, the Company adjusts the depreciation on that asset to facilitate full cost recovery over its revised estimated remaining useful life.

#### **DERIVATIVE FINANCIAL INSTRUMENTS**

The Company accounts for derivative financial instruments in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." All derivative instruments are recognized as either assets or liabilities and are measured at fair value. Certain derivatives are designated and accounted for as hedges. The Company does not use derivatives for trading or other speculative purposes.

The Company uses cash flow hedges to manage foreign currency exchange risk, commodity price risk, and interest rate risk related to forecasted transactions. The Company also uses foreign currency forward contracts to offset currency-related changes in foreign currency denominated assets and liabilities. These foreign currency forward contracts are not designated as accounting hedges and all changes in fair value are recognized in earnings in the period of change.

The fair values of foreign currency forward contracts designated as cash flow hedges of forecasted foreign currency denominated intercompany sales are reported in other current assets and/or current liabilities, and the effective portion of the gain or loss on the derivatives is recorded in other comprehensive income. When the related inventory is sold to third parties, the hedge gains or losses as of the date of the intercompany sale are transferred from other comprehensive income to cost of goods sold.

The fair values of silver forward contracts designated as hedges of forecasted worldwide silver purchases are reported in other current assets and/or current liabilities, and the effective portion of the gain or loss on the derivative is recorded in other comprehensive income. When the silver-containing products are sold to third parties, the hedge gains or losses as of the date of the purchase of raw silver are transferred from other comprehensive income to cost of goods sold.

#### **ENVIRONMENTAL EXPENDITURES**

Environmental expenditures that relate to current operations are expensed or capitalized, as appropriate. Expenditures that relate to an existing condition caused by past operations and that do not provide future benefits are expensed as incurred. Costs that are capital in nature and that provide future benefits are capitalized. Liabilities are recorded when environmental assessments are made or the requirement for remedial efforts is probable, and the costs can be reasonably estimated. The timing of accruing for these remediation liabilities is generally no later than the completion of feasibility studies.

The Company has an ongoing monitoring and identification process to assess how the activities, with respect to the known exposures, are progressing against the accrued cost estimates, as well as to identify other potential remediation sites that are presently unknown.

#### **INCOME TAXES**

The Company accounts for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes." The asset and liability approach underlying SFAS No. 109 requires the recognition of deferred tax liabilities and assets for the expected future tax consequences of temporary differences between the carrying amounts and tax basis of the Company's assets and liabilities. Management provides valuation allowances against the net deferred tax asset for amounts that are not considered more likely than not to be realized.



**EARNINGS PER SHARE**

In November 2004, the Emerging Issues Task Force finalized the consensus in Issue No. 04-8, "The Effect of Contingently Convertible Debt on Diluted Earnings per Share" (EITF 04-8). EITF 04-8 requires that contingent convertible instruments be included in diluted earnings per share regardless of whether a market price trigger or other contingent feature has been met. EITF 04-8 is effective for reporting periods ending after December 15, 2004 and requires restatement of prior periods. The Company currently has approximately \$575 million in contingent convertible notes (the Convertible Securities) outstanding that were issued in October 2003. Interest on the Convertible Securities accrues at a rate of 3.375% and is payable semi-annually. The Convertible Securities are convertible at an initial conversion rate of 32.2373 shares of the Company's common stock for each \$1,000 principal of the Convertible Securities. The Company's diluted net earnings per share includes the effect of EITF 04-8, which had no material impact on the Company's reported diluted earnings per share.

Basic earnings-per-share computations are based on the weighted-average number of shares of common stock outstanding during the year. Diluted earnings-per-share calculations reflect the assumed exercise and conversion of employee stock options that have an exercise price that is below the average market price of the common shares for the respective periods as well as shares related to the assumed conversion of the Convertible Securities, if dilutive. The reconciliation between the numerator and denominator of the basic and diluted earnings-per-share computations is presented as follows:

	2004	2003	2002
		(Restated)	
<b>Numerator:</b>			
Earnings from continuing operations used in basic net earnings per share	\$ 81	\$ 189	\$ 761
<b>Effect of dilutive securities:</b>			
Interest expense on contingent convertible notes, net of taxes	—	3	—
<b>Earnings from continuing operations used in diluted net earnings per share</b>	<b>\$ 81</b>	<b>\$ 192</b>	<b>\$ 761</b>
<b>Denominator:</b>			
Number of common shares used in basic net earnings per share	286.6	286.5	291.5
<b>Effect of dilutive securities:</b>			
Employee stock options	0.2	0.1	0.2
Contingent convertible notes	—	4.2	—
<b>Number of common shares used in diluted net earnings per share</b>	<b>286.8</b>	<b>290.8</b>	<b>291.7</b>

Options to purchase 32.5 million, 35.9 million and 26.8 million shares of common stock at weighted-average per share prices of \$52.47, \$51.63 and \$58.83 for the years ended December 31, 2004, 2003 and 2002, respectively, were outstanding during the years presented but were not included in the computation of diluted earnings per share because the effect would be anti-dilutive, meaning that the options' exercise price was greater than the average market price of the common shares for the respective periods.

**STOCK-BASED COMPENSATION**

The Company accounts for its employee stock incentive plans under Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees," and the related interpretations under Financial Accounting Standards Board (FASB) Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation." Accordingly, no stock-based employee compensation cost is reflected in net earnings for the years ended December 31, 2004, 2003 and 2002, as all options granted had an exercise price equal to the market value of the underlying common stock on the date of grant.

On February 18, 2004, the Company announced that it will begin expensing stock options starting January 1, 2005 using the fair value recognition provisions of Statement of Financial Accounting Standards (SFAS) No. 123, "Accounting for Stock-Based Compensation." In December 2004, the FASB issued SFAS No. 123R, "Share-Based Payment," a new accounting standard that will require the expensing of stock options as of the beginning of interim or annual reporting periods that begin after June 15, 2005. Early adoption is permitted for all companies; consequently, on January 1, 2005, the Company early adopted the stock option expensing rules of the new standard.

The Company has determined the pro forma net earnings and net earnings per share information as if the fair value method of SFAS No. 123, "Accounting for Stock-Based Compensation," had been applied to its stock-based employee compensation. The pro forma information is as follows:

(in millions, except per share data)	Year Ended December 31,		
	2004	2003	2002
Net earnings, as reported	\$ 556	(Restated) \$ 253	\$ 770
Deduct: Total stock-based employee compensation expense determined under fair value method for all awards, net of related tax effects	(12)	(17)	(105)
<b>Pro forma net earnings</b>	<b>\$ 544</b>	<b>\$ 236</b>	<b>\$ 665</b>
<b>Earnings per share:</b>			
Basic - as reported	\$ 1.94	\$ .88	\$ 2.64
Basic - pro forma	\$ 1.90	\$ .83	\$ 2.28
Diluted - as reported	\$ 1.94	\$ .88	\$ 2.64
Diluted - pro forma	\$ 1.90	\$ .83	\$ 2.28

The total stock-based employee compensation amount, net of related tax effects, for the year ended December 31, 2002, of \$105 million includes a net of tax expense impact of \$50 million representing the grant of approximately 16 million new options awarded on August 26, 2002 in relation to the voluntary stock option exchange program. These options were essentially fully vested at the date of grant.

Additionally, the 2002 total stock-based employee compensation expense amount of \$105 million, net of taxes, includes a net of tax expense impact of \$34 million representing the unamortized compensation cost of the options that were canceled in connection with the 2002 voluntary stock option exchange program. See Note 20, "Stock Options and Compensation Plans."

The Black-Scholes option pricing model was used with the following weighted-average assumptions for options issued in each year:

	2000 Plan	Exchange Program
	2004	2004
Risk-free interest rates	3.1%	N/A
Expected option lives	4 years	N/A
Expected volatilities	37%	N/A
Expected dividend yields	1.63%	N/A
	2003	2003
Risk-free interest rates	3.6%	N/A
Expected option lives	7 years	N/A
Expected volatilities	35%	N/A
Expected dividend yields	3.89%	N/A
	2002	2002
Risk-free interest rates	3.8%	2.9%
Expected option lives	7 years	4 years
Expected volatilities	34%	37%
Expected dividend yields	5.76%	5.76%

The weighted-average fair value per option granted in 2004 was \$8.77. The weighted-average fair value per option granted in 2003 was \$7.70. The weighted-average fair value per option granted in 2002 was \$8.22 for the 2000 Plan and \$5.99 for the voluntary stock option exchange program.

For purposes of pro forma disclosures, the estimated fair value of the options is amortized to compensation expense over the options' vesting period (1-3 years).

#### COMPREHENSIVE INCOME

SFAS No. 130, "Reporting Comprehensive Income," establishes standards for the reporting and display of comprehensive income and its components in financial statements. SFAS No. 130 requires that all items required to be recognized under accounting standards as components of comprehensive income be reported in a financial statement with the same prominence as other financial statements. Comprehensive income consists of net earnings, the net unrealized gains or losses on available-for-sale marketable securities, foreign currency translation adjustments, minimum pension liability adjustments, and unrealized gains and losses on financial instruments qualifying for cash flow hedge accounting, and is presented in the accompanying Consolidated Statement of Shareholders' Equity in accordance with SFAS No. 130.

#### SEGMENT REPORTING

The Company reports net sales, operating earnings (losses), net earnings and certain expense, asset and geographical information about its reportable segments. Reportable segments are components of the Company for which separate financial information is available that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. In September 2004, the Company announced an organizational realignment that will change the current reportable segment structure. See Note 23, "Segment Information," for a discussion of this change.

**RECENTLY ISSUED ACCOUNTING STANDARDS**

In December 2004, the FASB issued Statement No. 123R, a revision to SFAS No. 123. SFAS No. 123R eliminates the alternative to use the Accounting Principles Board Opinion 25's (Opinion 25) intrinsic value method of accounting that was provided in SFAS No. 123 as originally issued.

Under Opinion 25, issuing stock options to employees generally resulted in recognition of no compensation cost. SFAS No. 123R requires companies to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award (with limited exceptions). That cost will be recognized over the period during which an employee is required to provide service, in exchange for the award - the requisite service period (usually the vesting period). No compensation cost is recognized for equity instruments for which employees do not render the requisite service.

Companies will initially measure the cost of employee services received in exchange for an award of instruments classified as liabilities (Leadership stock, Stock Appreciation Rights (SARs)) based on its current fair value; the fair value of the awards classified as a liability will be remeasured subsequently at each reporting date through the settlement date. Changes in fair value during the requisite service period will be recognized as compensation cost over that period.

The grant-date fair value of employee share options, or the Company's restricted stock and similar instruments classified in the Statement of Financial Position as equity will be estimated using option-pricing models adjusted for the unique characteristics of those instruments (unless observable market prices for the same or similar instruments are available); the fair value of awards classified as equity will not be remeasured. If an equity award is modified after the grant date, incremental compensation cost will be recognized in an amount equal to the excess of the fair value of the modified award over the fair value of the original award immediately before the modification.

Excess tax benefits, as defined by SFAS No. 123R, will be recognized as an addition to paid-in capital. Cash retained as a result of those excess tax benefits will be presented in the statement of cash flows as financing cash inflows. The write-off of deferred tax assets relating to unrealized tax benefits associated with recognized compensation cost will be recognized as income tax expense unless there are excess tax benefits from previous awards remaining in paid-in capital to which it can be offset.

SFAS No. 123R applies to all awards granted after the required effective date and to awards modified, repurchased, or cancelled after that date. As of the required effective date, companies that used the fair-value-based method for either recognition or disclosure under SFAS No. 123 will apply SFAS No. 123R using a modified version of prospective application. Under that transition method, compensation cost is recognized on or after the required effective date for the portion of outstanding awards for which the requisite service has not yet been rendered, based on the grant-date fair value of those awards calculated under SFAS No. 123 for either recognition or pro forma disclosure. The cumulative effect of initially applying SFAS No. 123R, if any, is recognized as of the required effective date. SFAS No. 123R is effective as of the beginning of the first interim or annual reporting period that begins after June 15, 2005.

Early application is encouraged; consequently, the Company adopted the modified version of prospective application of SFAS No. 123R as of January 1, 2005. The cumulative effect of initial adoption to be recognized in the first interim consolidated statement of earnings for the period ended March 31, 2005, is immaterial. Management estimates that the adoption of SFAS No. 123R will reduce EPS by approximately \$.02 per share for the year ended December 31, 2005.

In December 2004, FASB issued SFAS No. 151, "Inventory Costs" that amends the guidance in Accounting Research Bulletin No. 43, Chapter 4, "Inventory Pricing," (ARB No. 43) to clarify the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). In addition, this Statement requires that an allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. SFAS No. 151 is effective for inventory costs incurred during fiscal years beginning after June 15, 2005. The Company is evaluating the impact of SFAS No. 151.

In December 2004, FASB issued FASB Staff Position (FSP) No. 109-1, "Application of FASB Statement No. 109, Accounting for Income Taxes, to the Tax Deduction on Qualified Production Activities Provided by the American Jobs Creation Act of 2004 (the "Act")." The Act, which was signed into law on October 22, 2004, authorizes a tax deduction of up to 9 percent (when fully phased-in) of the lesser of (a) "qualified production activities income," as defined in the Act, or (b) taxable income (after the deduction for the utilization of any net operating loss carryforwards), limited to 50 percent of W-2 wages paid by the taxpayer. Accordingly, the FSP provides guidance on accounting for the deduction as a special deduction in accordance with Statement 109, "Accounting for Income Taxes." Further, a company should consider the special deduction in (a) measuring deferred taxes when graduated tax rates are a significant factor and (b) assessing whether a valuation allowance is necessary as required by paragraph 232 of Statement 109. The provisions of FSP 109-1 were effective in the fourth quarter of 2004. The adoption of FSP 109-1 did not have a material effect on the Company's financial position, results of operations or cash flows.

In December 2004, FASB issued FSP No. 109-2, "Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004 (the "Act")." The Act, which was signed into law on October 22, 2004, provides for a special one-time tax deduction of 85 percent of certain foreign earnings that are repatriated (as defined in the Act) in either a company's last tax year that began before the enactment date, or the first tax year that begins during the one-year period beginning on the date of enactment. Accordingly, the FSP provides guidance on accounting for income taxes that related to the accounting treatment for unremitted earnings in a foreign investment (a consolidated subsidiary or corporate joint venture that is essentially permanent in nature). Further, the FSP permits a company time beyond the financial reporting period of enactment to evaluate the effect of the Act on its plan for reinvestment or repatriation of foreign earnings for purposes of applying FASB Statement No. 109, "Accounting for Income Taxes." Accordingly, an enterprise that has not yet completed its evaluation of the repatriation provision for purposes of applying Statement 109 is required to disclose certain information, for each period for which financial statements covering periods affected by the Act are presented. Subsequently, the total effect on income tax expense (or benefit) for amounts that have been recognized under the repatriation provision must be provided in a company's financial statements for the period in which it completes its evaluation of the repatriation provision. The provisions of FSP 109-2 are effective immediately. As of and for the year ended December 31, 2004, the Company has not yet completed its evaluation; consequently, the required information is disclosed in Note 15, "Income Taxes."

## NOTE 2: RECEIVABLES, NET

(in millions)	2004	2003
		(Restated)
Trade receivables	\$ 2,137	\$ 2,002
Miscellaneous receivables	407	325
	<hr/>	<hr/>
Total (net of allowances of \$127 and \$112)	\$ 2,544	\$ 2,327
	<hr/>	<hr/>

Of the total trade receivable amounts of \$2,137 million and \$2,002 million as of December 31, 2004 and 2003, respectively, approximately \$492 million and \$536 million, respectively, are expected to be settled through customer deductions in lieu of cash payments. Such deductions represent rebates owed to the customer and are included in accounts payable and other current liabilities in the accompanying Consolidated Statement of Financial Position at each respective balance sheet date.

**NOTE 3: INVENTORIES, NET**

(in millions)	2004	2003
		(Restated)
At FIFO or average cost (approximates current cost)		
Finished goods	\$ 822	\$ 818
Work in process	275	300
Raw materials	391	328
	1,488	1,446
LIFO reserve	(330)	(368)
Total	\$ 1,158	\$ 1,078

Inventories valued on the LIFO method are approximately 35% and 42% of total inventories in 2004 and 2003, respectively. During 2004 and 2003, inventory usage resulted in liquidations of LIFO inventory quantities. In the aggregate, these inventories were carried at the lower costs prevailing in prior years as compared with the cost of current purchases. The effect of these LIFO liquidations was to reduce cost of goods sold by \$69 million and \$45 million in 2004 and 2003, respectively.

The Company reduces the carrying value of inventories to a lower of cost or market basis for those items that are potentially excess, obsolete or slow-moving based on management's analysis of inventory levels and future sales forecasts. The Company also reduces the carrying value of inventories whose net book value is in excess of market. Aggregate reductions in the carrying value with respect to inventories that were still on hand at December 31, 2004 and 2003, and that were deemed to be excess, obsolete, slow-moving or that had a carrying value in excess of market, were \$100 million and \$75 million, respectively.

**NOTE 4: PROPERTY, PLANT AND EQUIPMENT, NET**

(in millions)	2004	2003
		(Restated)
Land	\$ 118	\$ 116
Buildings and building improvements	2,619	2,652
Machinery and equipment	9,722	10,144
Construction in progress	235	264
	12,694	13,176
Accumulated depreciation	(8,182)	(8,125)
Net properties	\$ 4,512	\$ 5,051

Depreciation expense was \$964 million, \$839 million and \$813 million for the years 2004, 2003 and 2002, respectively, of which approximately \$183 million, \$70 million and \$19 million, respectively, represented accelerated depreciation in connection with restructuring actions.

**NOTE 5: GOODWILL AND OTHER INTANGIBLE ASSETS**

Goodwill was \$1,446 million and \$1,349 million at December 31, 2004 and 2003, respectively. The changes in the carrying amount of goodwill by reportable segment for 2004 were as follows:

(in millions)	D&FIS	Health	Commer- cial Imaging	Graphic Communi- cations	Consolidated Total
Balance at December 31, 2002	\$ 705	\$ 174	\$ 86	\$ (4)	\$ 961
Goodwill related to acquisitions	26	350	—	2	378
Goodwill written off related to disposals/ divestitures	(21)	—	—	(6)	(27)
Finalization of purchase accounting	15	1	—	—	16
Correction of purchase accounting	(6)	(15)	—	4	(17)
Goodwill amortization	—	—	—	3	3
Currency translation adjustments	13	15	7	—	35
<b>Balance at December 31, 2003 Restated</b>	<b>\$ 732</b>	<b>\$ 525</b>	<b>\$ 93</b>	<b>\$ (1)</b>	<b>\$ 1,349</b>
Goodwill related to acquisitions	13	—	—	17	30
Goodwill written off related to disposals/ divestitures	(21)	—	—	—	(21)
Finalization of purchase accounting	2	45	—	7	54
Goodwill amortization	—	—	—	1	1
Currency translation adjustments	13	18	1	1	33
<b>Balance at December 31, 2004</b>	<b>\$ 739</b>	<b>\$ 588</b>	<b>\$ 94</b>	<b>\$ 25</b>	<b>\$ 1,446</b>

The aggregate amount of goodwill acquired during 2004 of \$30 million was primarily attributable to \$17 million for the purchase of Kodak Versamark within the Graphic Communications segment and \$13 million for the purchase of Chinon within the D&FIS segment. The \$21 million of goodwill written off in relation to disposals during 2004 in the D&FIS segment was attributable to the divestiture of Consumer Imaging Services in Austria (\$5 million) and the write-off of Applied Science Fiction (\$16 million), as the Company has canceled its program to market an automatic film processing station due to diminishing market opportunity.

The aggregate amount of goodwill added through the finalization of purchase accounting during 2004 of \$54 million was primarily attributable to \$36 million for the November 2003 purchase of Algotec Systems Ltd., \$8 million related to the October 2003 purchase of PracticeWorks, Inc., both of which are within the Health segment, \$6 million for the May 2004 purchase of the NexPress related entities, which are within the Graphic Communications segment, and \$4 million for an adjustment of a deferred tax asset relating to the purchase of Chinon within the D&FIS segment.

The correction of purchase accounting relates to the following correction of errors: deferred tax assets should have been recorded as a part of the 1998 acquisition of the Imation Medical Imaging business, in the Health segment, and goodwill should have been reduced accordingly; deferred tax liabilities should have been recorded as a part of the 1999 formation of the NexPress joint venture, part of the Graphic Communications segment, and the deferred credit related to the excess of basis in the investment over the value of contributed amounts should have been reduced accordingly; and goodwill related to the acquisition of Spector should have been reduced in the fourth quarter of 2003 when the Company reduced a deferred tax asset valuation allowance that had been recorded in purchase accounting.

The gross carrying amount and accumulated amortization by major intangible asset category for 2004 and 2003 were as follows:

As of December 31, 2004				
(in millions)	Gross Carrying Amount	Accumulated Amortization	Net	Weighted- Average Amortization Period
Technology-based	\$ 264	\$ 106	\$ 158	8 years
Customer-related	206	34	172	15 years
Other	168	20	148	13 years
<b>Total</b>	<b>\$ 638</b>	<b>\$ 160</b>	<b>\$ 478</b>	<b>11 years</b>
As of December 31, 2003				
(in millions)	Gross Carrying Amount	Accumulated Amortization	Net	Weighted- Average Amortization Period
Technology-based	\$ 201	\$ 76	\$ 125	8 years
Customer-related	176	17	159	15 years
Other	14	4	10	12 years
<b>Total</b>	<b>\$ 391</b>	<b>\$ 97</b>	<b>\$ 294</b>	<b>12 years</b>

The aggregate amount of intangible assets acquired during 2004 of \$258 million was primarily attributable to \$139 million of manufacturing exclusivity intangible assets for the purchase of Lucky Film; \$86 million related to the purchase of Kodak Versamark, consisting of \$26 million in customer-related intangible assets, \$54 million of technology-based intangible assets, and \$6 million of other intangible assets; and \$15 million of technology-based intangible assets related to the finalization of purchase accounting for the purchase of Algotec Systems Ltd. as described in Note 21 "Acquisitions." In addition, in December 2004, the Company wrote off approximately \$11 million of net technology-based intangible assets related to Applied Science Fiction, as the Company has canceled its program to market an automatic film processing station due to diminishing market opportunity.

Amortization expense related to intangible assets was \$67 million, \$28 million and \$21 million in 2004, 2003 and 2002, respectively.

Estimated future amortization expense related to purchased intangible assets at December 31, 2004 is as follows:

(in millions)	
2005	\$ 66
2006	59
2007	54
2008	54
2009	44
2010+	201
<b>Total</b>	<b>\$ 478</b>



**NOTE 6: OTHER LONG-TERM ASSETS**

(in millions)	2004	2003
		(Restated)
Prepaid pension costs	\$ 1,203	\$ 1,135
Investments in unconsolidated affiliates	513	446
Deferred income taxes	521	439
Intangible assets other than goodwill	478	294
Non-current receivables	163	292
Miscellaneous other long-term assets	253	323
<b>Total</b>	<b>\$ 3,131</b>	<b>\$ 2,929</b>

The miscellaneous component above consists of other miscellaneous long-term assets that, individually, are less than 5% of the Company's total long-term assets, and therefore, have been aggregated in accordance with Regulation S-X.

**NOTE 7: INVESTMENTS****Equity Method -**

At December 31, 2004, the Company's significant equity method investees and the Company's approximate ownership interest in each investee were as follows:

Kodak Polychrome Graphics (KPG)	50%
Express Stop Financing (ESF)	50%
SK Display Corporation	34%
Matsushita-Ultra Technologies Battery Corporation	30%
Lucky Film Co. Ltd (Lucky Film)	13%

At December 31, 2004 and 2003, the carrying value of the Company's equity investment in these significant unconsolidated affiliates was \$488 million and \$417 million, respectively, and is reported within other long-term assets in the accompanying Consolidated Statement of Financial Position. The Company records its equity in the income or losses of these investees and reports such amounts in other income (charges), net, in the accompanying Consolidated Statement of Earnings. See Note 14, "Other Income (Charges), Net." These investments do not meet the Regulation S-X significance test requiring the inclusion of the separate investee financial statements.

The Company sells graphics film and other products to its equity affiliate, KPG. Sales to KPG for the years ended December 31, 2004, 2003 and 2002 amounted to \$268 million, \$271 million and \$315 million, respectively. These sales are reported in the Consolidated Statement of Earnings. The Company eliminates profits on these sales, to the extent the inventory has not been sold through to third parties, on the basis of its 50% interest. Amounts due from KPG relating to these sales were \$6 million at December 31, 2004 and 2003, and are reported in receivables, net in the accompanying Consolidated Statement of Financial Position. Additionally, the Company has guaranteed certain debt obligations of KPG up to \$160 million, which is included in the total guarantees amount of \$356 million at December 31, 2004, as discussed in Note 12, "Guarantees."

Kodak sells certain of its long-term lease receivables relating to the sale of photofinishing equipment to ESF without recourse to the Company. Sales of long-term lease receivables to ESF were approximately \$0, \$15 million and \$9 million in 2004, 2003 and 2002, respectively. See Note 11, "Commitments and Contingencies."

The Company performed an analysis of ESF in order to determine whether the provisions of FASB Interpretations No. 46(R) "Consolidation of Variable Interest Entities an interpretation of ARB No. 51" (FIN 46(R)) were applicable to ESF, requiring consolidation. Based on the analysis performed, it was determined that ESF does not qualify as a variable interest entity under FIN 46(R) and, therefore, consolidation is not required. ESF is an operating entity formed between Qualex and Dana Credit Corporation in October 1993 to provide a long-term financing solution to Qualex's photofinishing customers in connection with Qualex's leasing of photofinishing equipment to third parties, as opposed to Qualex extending long-term credit (see Note 11 under "Other Commitments and Contingencies"). Qualex's estimated maximum exposure to loss as a result of its continuing involvement with ESF is \$59 million as of December 31, 2004, which is equal to the carrying value of Qualex's investment balance in the entity. As of December 31, 2004 the Company does not intend to nor is it committed to fund any amounts to ESF in the future, and there are no debt guarantees under which Qualex could potentially be required to perform in relation to its investment in ESF. The Company was not involved with any other entities that would qualify as VIEs under the Revised Interpretations of FIN 46.

On February 10, 2004, the Company acquired a 13 percent interest in Lucky Film, the largest China-based manufacturer of photographic film, as of March 31, 2004. The Company's interest in Lucky Film is accounted for under the equity method of accounting as the Company has the ability to exercise significant influence over Lucky Film's operating and financial policies. Refer to Note 21, "Acquisitions" for further discussion of this purchase.

Kodak has no other material activities with its equity method investees.

#### Cost Method -

The Company also has certain investments with less than a 20% ownership interest in various private companies whereby the Company does not have the ability to exercise significant influence. These investments are accounted for under the cost method. The remaining carrying value of the Company's investments accounted for under the cost method at December 31, 2004 and 2003 of \$19 million and \$20 million, respectively, is included in other long-term assets in the accompanying Consolidated Statement of Financial Position.

The Company recorded total charges for the years ended December 31, 2004, 2003 and 2002 of \$0 million, \$7 million and \$45 million, respectively, for other than temporary impairments relating to certain of its strategic and non-strategic venture investments, which were accounted for under the cost method. The strategic venture investment impairment charges for the years ended December 31, 2004, 2003 and 2002 of \$0 million, \$3 million and \$27 million, respectively, were recorded in selling, general and administrative expenses in the accompanying Consolidated Statement of Earnings. The non-strategic venture investment impairment charges for the years ended December 31, 2004, 2003 and 2002 of \$0 million, \$4 million and \$18 million, respectively, were recorded in other income (charges), net, in the accompanying Consolidated Statement of Earnings. The charges were taken in the respective periods in which the available evidence, including subsequent financing rounds, independent valuations, and other factors indicated that the underlying investments were permanently impaired.

#### NOTE 8: ACCOUNTS PAYABLE AND OTHER CURRENT LIABILITIES

(in millions)	2004	2003
		(Restated)
Accounts payable, trade	\$ 868	\$ 832
Accrued advertising and promotional expenses	762	738
Accrued employment-related liabilities	872	889
Accrued restructuring liabilities	355	267
Other	1,039	904
	<u>3,896</u>	<u>3,630</u>
Total	\$ 3,896	\$ 3,630

The other component above consists of other miscellaneous current liabilities that, individually, are less than 5% of the total current liabilities component within the Consolidated Statement of Financial Position, and therefore, have been aggregated in accordance with Regulation S-X.

**NOTE 9: SHORT-TERM BORROWINGS AND LONG-TERM DEBT****SHORT-TERM BORROWINGS**

The Company's short-term borrowings at December 31, 2004 and 2003 were as follows:

(in millions)	2004	2003
Commercial paper	\$ —	\$ 304
Current portion of long-term debt	400	457
Short-term bank borrowings	69	185
<b>Total</b>	<b>\$ 469</b>	<b>\$ 946</b>

The weighted-average interest rate for commercial paper outstanding at December 31, 2003 was 2.95%. The weighted-average interest rates for short-term bank borrowings outstanding at December 31, 2004 and 2003 were 5.02% and 3.79%, respectively.

**LINES OF CREDIT**

The Company has \$2,225 million in committed revolving credit facilities, which are available for general corporate purposes including the support of the Company's commercial paper program. The credit facilities are comprised of the \$1,000 million 364-day committed revolving credit facility (364-Day Facility) expiring in July 2005 and a 5-year committed facility at \$1,225 million expiring in July 2006 (5-Year Facility). If unused, they have a commitment fee of \$4.5 million per year at the Company's current credit rating of Baa3 and BBB- from Moody's and Standard & Poors (S&P), respectively. Interest on amounts borrowed under these facilities is calculated at rates based on spreads above certain reference rates and the Company's credit rating. The Company issues letters of credit under the 5-Year Facility. As of December 31, 2004, there were \$103 million of letters of credit outstanding under the 5-Year Facility. The remainder of the 5-Year Facility and the 364-Day Facility was unused at December 31, 2004. In February 2005, the Company issued \$31 million in letters of credit in support of Workers' Compensation liabilities. Under the 364-Day Facility and 5-Year Facility, there is a quarterly financial covenant that requires the Company to maintain a debt to EBITDA (earnings before interest, income taxes, depreciation and amortization) ratio, on a rolling four-quarter basis, of not greater than 3 to 1. In the event of violation of the covenant, the facility would not be available for borrowing until the covenant provisions were waived, amended or satisfied. The Company was in compliance with this covenant at December 31, 2004. The Company does not anticipate that a violation is likely to occur.

The Company has other committed and uncommitted lines of credit at December 31, 2004 totaling \$148 million and \$753 million, respectively. These lines primarily support borrowing needs of the Company's subsidiaries, which include term loans, overdraft lines, letters of credit and revolving credit lines. Interest rates and other terms of borrowing under these lines of credit vary from country to country, depending on local market conditions. Total outstanding borrowings against these other committed and uncommitted lines of credit at December 31, 2004 were \$53 million and \$47 million, respectively. These outstanding borrowings are reflected in the short-term borrowings in the accompanying Consolidated Statement of Financial Position at December 31, 2004.

### Accounts Receivable Securitization Program

The Company has an accounts receivable securitization program (the Program), which provides the Company with borrowings up to a maximum of \$200 million. The Program is renewable annually, subject to the bank's approval in March. Under the Program, the Company sells certain of its domestic trade accounts receivable without recourse to EK Funding LLC, a Kodak wholly owned, consolidated, bankruptcy-remote, limited purpose, limited liability corporation (EKFC). Kodak continues to service, administer and collect the receivables. A bank, acting as the Program agent, purchases undivided percentage ownership interests in those receivables on behalf of the conduit purchasers, who have a first priority security interest in the related receivables pool. The receivables pool at December 31, 2004, representing the outstanding balance of the gross accounts receivable sold to EKFC, totaled approximately \$555 million. As the Company has the right at any time during the Program to repurchase all of the then outstanding purchased interests for a purchase price equal to the outstanding principal plus accrued fees, the receivables remain on the Company's Consolidated Statement of Financial Position, and the proceeds from the sale of undivided interests are recorded as secured borrowings.

As the Program is renewable annually subject to the bank's approval, the secured borrowings under the Program are included in short-term borrowings. At December 31, 2004, the Company had no outstanding secured borrowings under the Program.

The cost of the secured borrowings under the Program is comprised of yield, liquidity, conduit, Program and Program agent fees. The yield fee is subject to a floating rate, based on the average of the conduits' commercial paper rates. The total charge for these fees is recorded in interest expense. Interest expense for the year ended December 31, 2004 in relation to the Program was not material.

The Program agreement contains a number of customary covenants and termination events. Upon the occurrence of a termination event, all secured borrowings under the Program shall be immediately due and payable. The Company was in compliance with all such covenants at December 31, 2004.

### LONG-TERM DEBT

Long-term debt and related maturities and interest rates were as follows at December 31, 2004 and 2003 (in millions):

Country	Type	Maturity	2004		2003	
			Weighted-Average Interest Rate	Amount Outstanding	Weighted-Average Interest Rate	Amount Outstanding
U.S.	Medium-term	2004	—	\$ —	1.72%*	\$ 200
U.S.	Medium-term	2005	2.84%*	100	1.73%*	100
U.S.	Medium-term	2005	7.25%	200	7.25%	200
U.S.	Medium-term	2006	6.38%	500	6.38%	500
U.S.	Medium-term	2008	3.63%	249	3.63%	249
U.S.	Term note	2008	—	—	9.50%	34
U.S.	Term note	2013	7.25%	500	7.25%	500
U.S.	Term note	2018	9.95%	3	9.95%	3
U.S.	Term note	2021	9.20%	10	9.20%	10
U.S.	Convertible	2033	3.38%	575	3.38%	575
China	Bank loans	2004	—	—	5.50%	225
China	Bank loans	2005	5.45%	88	5.45%	106
Qualex	Notes	2004-2010	5.08%	20	5.53%	49
Other				7		8
				2,252	2,759	
Current portion of long-term debt				(400)	(457)	
Long-term debt, net of current portion				\$ 1,852	\$ 2,302	

\* Represents debt with a variable interest rate.

Annual maturities (in millions) of long-term debt outstanding at December 31, 2004 are as follows: \$400 in 2005, \$509 in 2006, \$4 in 2007, \$250 in 2008, \$1 in 2009 and \$1,088 in 2010 and beyond.

In May 2003, the Company issued Series A fixed rate medium-term notes and Series A floating rate medium-term notes under its then existing debt shelf registration totaling \$250 million and \$100 million, respectively, as follows:

(in millions)

Type	Principal	Annual Interest Rate	Maturity
Series A fixed rate	\$ 250	3.625%	May 2008
Series A floating rate	100	3-month LIBOR plus 0.55%	November 2005
<b>Total</b>	<b>\$ 350</b>		

Interest on the notes will be paid quarterly, and the Company may not redeem or repay these notes prior to their stated maturities. After these issuances, the Company had \$650 million of remaining unsold debt securities under its then existing debt shelf registration.

On September 5, 2003, the Company filed a shelf registration statement on Form S-3 (the new debt shelf registration) for the issuance of up to \$2,000 million of new debt securities. The new debt shelf registration became effective on September 19, 2003. Pursuant to Rule 429 under the Securities Act of 1933, \$650 million of remaining unsold debt securities were included in the new debt shelf registration, giving the Company the ability to issue up to \$2,650 million in public debt.

On October 10, 2003, the Company completed the offering and sale of \$500 million aggregate principal amount of Senior Notes due 2013 (the Notes), which was made pursuant to the Company's new debt shelf registration. The remaining unused balance under the Company's new debt shelf is \$2,150 million. Concurrent with the offering and sale of the Notes, on October 10, 2003, the Company completed the private placement of \$575 million aggregate principal amount of Convertible Senior Notes due 2033 (the Convertible Securities) to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933. Interest on the Convertible Securities will accrue at the rate of 3.375% per annum and is payable semiannually. The Convertible Securities are unsecured and rank equally with all of the Company's other unsecured and unsubordinated indebtedness. As a condition of the private placement, on January 6, 2004 the Company filed a shelf registration statement under the Securities Act of 1933 relating to the resale of the Convertible Securities and the common stock to be issued upon conversion of the Convertible Securities pursuant to a registration rights agreement, and made this shelf registration statement effective on February 6, 2004.

The Convertible Securities contain a number of conversion features that include substantive contingencies. The Convertible Securities are convertible by the holders at an initial conversion rate of 32.2373 shares of the Company's common stock for each \$1,000 principal amount of the Convertible Securities, which is equal to an initial conversion price of \$31.02 per share. The initial conversion rate of 32.2373 is subject to adjustment for: (1) stock dividends, (2) subdivisions or combinations of the Company's common stock, (3) issuance to all holders of the Company's common stock of certain rights or warrants to purchase shares of the Company's common stock at less than the market price, (4) distributions to all holders of the Company's common stock of shares of the Company's capital stock or the Company's assets or evidences of indebtedness, (5) cash dividends in excess of the Company's current cash dividends, or (6) certain payments made by the Company in connection with tender offers and exchange offers.

The holders may convert their Convertible Securities, in whole or in part, into shares of the Company's common stock under any of the following circumstances: (1) during any calendar quarter, if the price of the Company's common stock is greater than or equal to 120% of the applicable conversion price for at least 20 trading days during a 30 consecutive trading day period ending on the last trading day of the previous calendar quarter; (2) during any five consecutive trading day period following any 10 consecutive trading day period in which the trading price of the Convertible Securities for each day of such period is less than 105% of the conversion value, and the conversion value for each day of such period was less than 95% of the principal amount of the Convertible Securities (the Parity Clause); (3) if the Company has called the Convertible Securities for redemption; (4) upon the occurrence of specified corporate transactions such as a consolidation, merger or binding share exchange pursuant to which the Company's common stock would be converted into cash, property or securities; and (5) if the credit rating assigned to the Convertible Securities by either Moody's or S&P is lower than Ba2 or BB, respectively, which represents a three notch downgrade from the Company's current standing, or if the Convertible Securities are no longer rated by at least one of these services or their successors (the Credit Rating Clause).

The Company may redeem some or all of the Convertible Securities at any time on or after October 15, 2010 at a purchase price equal to 100% of the principal amount of the Convertible Securities plus any accrued and unpaid interest. Upon a call for redemption by the Company, a conversion trigger is met whereby the holder of each \$1,000 Convertible Senior Note may convert such note to shares of the Company's common stock.

The holders have the right to require the Company to purchase their Convertible Securities for cash at a purchase price equal to 100% of the principal amount of the Convertible Securities plus any accrued and unpaid interest on October 15, 2010, October 15, 2013, October 15, 2018, October 15, 2023 and October 15, 2028, or upon a fundamental change as described in the offering memorandum filed under Rule 144A in conjunction with the private placement of the Convertible Securities. As of December 31, 2004, the Company has reserved 18,536,447 shares in treasury stock to cover potential future conversions of these Convertible Securities into common stock.

Certain of the conversion features contained in the Convertible Securities are deemed to be embedded derivatives as defined under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." These embedded derivatives include the Parity Clause, the Credit Rating Clause, and any specified corporate transaction outside of the Company's control such as a hostile takeover. Based on an external valuation, these embedded derivatives were not material to the Company's financial position, results of operations or cash flows.

In November 2004, the Emerging Issues Task Force finalized the consensus in Issue No. 04-8, "The Effect of Contingently Convertible Debt on Diluted Earnings per Share" (EITF 04-8). EITF 04-8 requires that contingent convertible instruments be included in diluted earnings per share regardless of whether a market price trigger or other contingent feature has been met. EITF 04-8 is effective for reporting periods ending after December 15, 2004 and requires restatement of prior periods. See Note 1, "Significant Accounting Policies," "Earnings Per Share" for further discussion.

#### NOTE 10: OTHER LONG-TERM LIABILITIES

(in millions)	2004	2003
		(Restated)
Deferred compensation	\$ 176	\$ 164
Environmental liabilities	153	141
Deferred income taxes	67	89
Minority interest in Kodak companies	25	45
Other	325	223
	<u>746</u>	<u>662</u>
Total	\$ 746	\$ 662

The other component above consists of other miscellaneous long-term liabilities that, individually, are less than 5% of the total liabilities component in the accompanying Consolidated Statement of Financial Position, and therefore, have been aggregated in accordance with Regulation S-X.

**NOTE 11: COMMITMENTS AND CONTINGENCIES****Environmental**

Cash expenditures for pollution prevention and waste treatment for the Company's current facilities were as follows:

(in millions)	2004	2003	2002
Recurring costs for pollution prevention and waste treatment	\$ 75	\$ 74	\$ 67
Capital expenditures for pollution prevention and waste treatment	7	8	12
Site remediation costs	3	2	3
<b>Total</b>	<b>\$ 85</b>	<b>\$ 84</b>	<b>\$ 82</b>

At December 31, 2004 and 2003, the Company's undiscounted accrued liabilities for environmental remediation costs amounted to \$153 million and \$141 million, respectively. These amounts are reported in other long-term liabilities in the accompanying Consolidated Statement of Financial Position.

The Company is currently implementing a Corrective Action Program required by the Resource Conservation and Recovery Act (RCRA) at the Kodak Park site in Rochester, NY. As part of this program, the Company has completed the RCRA Facility Assessment (RFA), a broad-based environmental investigation of the site. The Company is currently in the process of completing, and in some cases has completed, RCRA Facility Investigations (RFI) and Corrective Measures Studies (CMS) for areas at the site. At December 31, 2004, estimated future investigation and remediation costs of \$67 million are accrued for this site and are included in the \$153 million reported in other long-term liabilities.

The Company announced the closing of three manufacturing facilities outside the United States in 2004. The Company has obligations with estimated future investigation, remediation and monitoring costs of \$21 million at two of these facilities. At December 31, 2004, these costs are accrued and included in the \$153 million reported in other long-term liabilities.

The Company has obligations relating to other operating sites and former operations with estimated future investigation, remediation and monitoring costs of \$35 million. At December 31, 2004, these costs are accrued and included in the \$153 million reported in other long-term liabilities.

The Company has retained certain obligations for environmental remediation and Superfund matters related to certain sites associated with the non-imaging health businesses sold in 1994. At December 31, 2004, estimated future remediation costs of \$30 million are accrued for these sites and are included in the \$153 million reported in other long-term liabilities.

Cash expenditures for the aforementioned investigation, remediation and monitoring activities are expected to be incurred over the next thirty years for many of the sites. For these known environmental exposures, the accrual reflects the Company's best estimate of the amount it will incur under the agreed-upon or proposed work plans. The Company's cost estimates were determined using the ASTM Standard E 2137-01, "Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters," and have not been reduced by possible recoveries from third parties. The overall method includes the use of a probabilistic model which forecasts a range of cost estimates for the remediation required at individual sites. The projects are closely monitored and the models are reviewed as significant events occur or at least once per year. The Company's estimate includes equipment and operating costs for remediation and long-term monitoring of the sites. The Company does not believe it is reasonably possible that the losses for the known exposures could exceed the current accruals by material amounts.

A Consent Decree was signed in 1994 in settlement of a civil complaint brought by the U.S. Environmental Protection Agency and the U.S. Department of Justice. In connection with the Consent Decree, the Company is subject to a Compliance Schedule, under which the Company has improved its waste characterization procedures, upgraded one of its incinerators, and is evaluating and upgrading its industrial sewer system. The total expenditures required to complete this program are currently estimated to be approximately \$15 million over the next five years. These expenditures are incurred as part of plant operations and, therefore, are not included in the environmental accrual at December 31, 2004.

The Company is presently designated as a potentially responsible party (PRP) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (the Superfund Law), or under similar state laws, for environmental assessment and cleanup costs as the result of the Company's alleged arrangements for disposal of hazardous substances at five such active sites. With respect to each of these sites, the Company's liability is minimal. In addition, the Company has been identified as a PRP in connection with the non-imaging health businesses in four active Superfund sites. Numerous other PRPs have also been designated at these sites. Although the law imposes joint and several liability on PRPs, the Company's historical experience demonstrates that these costs are shared with other PRPs. Settlements and costs paid by the Company in Superfund matters to date have not been material. Future costs are also not expected to be material to the Company's financial position, results of operations or cash flows.

The Clean Air Act Amendments were enacted in 1990. Expenditures to comply with the Clean Air Act implementing regulations issued to date have not been material and have been primarily capital in nature. In addition, future expenditures for existing regulations, which are primarily capital in nature, are not expected to be material. Many of the regulations to be promulgated pursuant to this Act have not been issued.

Uncertainties associated with environmental remediation contingencies are pervasive and often result in wide ranges of outcomes. Estimates developed in the early stages of remediation can vary significantly. A finite estimate of cost does not normally become fixed and determinable at a specific time. Rather, the costs associated with environmental remediation become estimable over a continuum of events and activities that help to frame and define a liability, and the Company continually updates its cost estimates. The Company has an ongoing monitoring and identification process to assess how the activities, with respect to the known exposures, are progressing against the accrued cost estimates, as well as to identify other potential remediation sites that are presently unknown.

Estimates of the amount and timing of future costs of environmental remediation requirements are necessarily imprecise because of the continuing evolution of environmental laws and regulatory requirements, the availability and application of technology, the identification of presently unknown remediation sites and the allocation of costs among the potentially responsible parties. Based upon information presently available, such future costs are not expected to have a material effect on the Company's competitive or financial position. However, such costs could be material to results of operations in a particular future quarter or year.

#### **Other Commitments and Contingencies**

The Company has entered into agreements with several companies, which provide Kodak with products and services to be used in its normal operations. These agreements are related to supplies, production and administrative services, as well as marketing and advertising. The terms of these agreements cover the next two to eighteen years. The minimum payments for these agreements are approximately \$182 million in 2005, \$171 million in 2006, \$155 million in 2007, \$117 million in 2008, \$75 million in 2009 and \$159 million in 2010 and thereafter.



Qualex, a wholly owned subsidiary of Kodak, has a 50% ownership interest in Express Stop Financing (ESF), which is a joint venture partnership between Qualex and a subsidiary of Dana Credit Corporation (DCC), a wholly owned subsidiary of Dana Corporation. Qualex accounts for its investment in ESF under the equity method of accounting. ESF provided a long-term financing solution to Qualex's photofinishing customers in connection with Qualex's leasing of photofinishing equipment to third parties, as opposed to Qualex extending long-term credit. As part of the operations of its photofinishing services, Qualex sold equipment under a sales-type lease arrangement and recorded a long-term receivable. These long-term receivables were subsequently sold to ESF without recourse to Qualex and, therefore, these receivables were removed from Qualex's accounts. ESF incurred debt to finance the purchase of the receivables from Qualex. This debt was collateralized solely by the long-term receivables purchased from Qualex, and in part, by a \$40 million guarantee from DCC. This guarantee was terminated on December 17, 2004 in conjunction with the payment in full of this debt on the same date (see below). Qualex provided no guarantee or collateral to ESF's creditors in connection with the debt, and ESF's debt was non-recourse to Qualex. Qualex's only continued involvement in connection with the sale of the long-term receivables is the servicing of the related equipment under the leases. Qualex has continued revenue streams in connection with this equipment through future sales of photofinishing consumables, including paper and chemicals, and maintenance.

Although the lessees' requirement to pay ESF under the lease agreements is not contingent upon Qualex's fulfillment of its servicing obligations, under the agreement with ESF, Qualex would be responsible for any deficiency in the amount of rent not paid to ESF as a result of any lessee's claim regarding maintenance or supply services not provided by Qualex. Such lease payments would be made in accordance with the original lease terms, which generally extend over 5 to 7 years. To date, the Company has incurred no such material claims, and Qualex does not anticipate any significant situations where it would be unable to fulfill its service obligations under the arrangement with ESF. ESF's outstanding lease receivable amount was approximately \$113 million at December 31, 2004.

Effective July 20, 2004, ESF entered into an agreement amending the Receivables Purchase Agreement (RPA), which represents the financing arrangement between ESF and its banks. Under the amended RPA agreement, maximum borrowings were lowered to \$200 million. On December 17, 2004, ESF terminated the RPA upon payment in full, to its banks, of the then outstanding balance of the RPA totaling \$138 million. Pursuant to the ESF partnership agreement between Qualex and DCC, commencing October 6, 2003, Qualex no longer sells its lease receivables to ESF. Qualex currently is utilizing the services of Imaging Financial Services, Inc., a wholly owned subsidiary of General Electric Capital Corporation, as its primary financing solution for prospective leasing activity with its U.S. customers.

The Company performed an analysis of ESF in order to determine whether the provisions of FASB Interpretation No. 46(R) "Consolidation of Variable Interest Entities an interpretation of ARB No. 51" (FIN 46(R)) were applicable to ESF, requiring consolidation. Based on the analysis performed, it was determined that ESF does not qualify as a variable interest entity under FIN 46(R) and, therefore, consolidation is not required.

At December 31, 2004, the Company had outstanding letters of credit totaling \$110 million and surety bonds in the amount of \$117 million primarily to ensure the completion of environmental remediations and payment of possible casualty and workers' compensation claims. In February of 2005, the Company issued \$31 million in letters of credit in support of Workers' Compensation liabilities.

Rental expense, net of minor sublease income, amounted to \$161 million in 2004, and \$157 million in each of the years 2003 and 2002. The approximate amounts of noncancelable lease commitments with terms of more than one year, principally for the rental of real property, reduced by minor sublease income, are \$128 million in 2005, \$97 million in 2006, \$79 million in 2007, \$61 million in 2008, \$46 million in 2009 and \$104 million in 2010 and thereafter.

In December 2003, the Company sold a property in France for approximately \$65 million, net of direct selling costs, and then leased back a portion of this property for a nine-year term. In accordance with SFAS No. 98, "Accounting for Leases," the entire gain on the property sale of approximately \$57 million was deferred and no gain was recognizable upon the closing of the sale as the Company's continuing involvement in the property is deemed to be significant. As a result, the Company is accounting for the transaction as a financing. Future minimum lease payments under this noncancelable lease commitment amounts noted above include approximately \$5 million per year for 2005 through 2009, and approximately \$15 million for 2010 and thereafter, in relation to this transaction.

On March 8, 2004, the Company filed a complaint against Sony Corporation in federal district court in Rochester, New York, for digital camera patent infringement. Several weeks later, on March 31, 2004, Sony sued the Company for digital camera patent infringement in federal district court in Newark, New Jersey. Sony subsequently filed a second lawsuit against the Company in Newark, New Jersey, alleging infringement of a variety of other Sony patents. The Company filed a counterclaim in the New Jersey action, asserting infringement by Sony of the Company's kiosk patents. The Company successfully moved to transfer Sony's New Jersey digital camera patent infringement case to Rochester, New York, and the two digital camera patent infringement cases are now consolidated for purposes of discovery. Based on the current discovery schedule, the Company expects that claims construction hearings in the digital camera cases will take place in 2006. Both the Company and Sony Corporation seek unspecified damages and other relief. Although this lawsuit may result in the Company's recovery of damages, the amount of the damages, if any, cannot be quantified at this time. Accordingly, the Company has not recognized any gain in the financial statements as of December 31, 2004, in connection with this matter.

On October 7, 2004, the Company and Sun Microsystems Inc. reached a tentative agreement to settle a lawsuit filed by Kodak on February 11, 2002 in Federal District Court, Western District of New York, for infringement of three Kodak patents covering a software architecture used in Sun's Java product. The settlement followed an October 1, 2004 verdict in which a federal court jury found that the Kodak patents in issue were valid, that Sun infringed the patents, and that Sun's affirmative defense was without merit.

On October 12, 2004, a final settlement agreement was signed. Pursuant to the terms of the settlement agreement, Sun paid Kodak \$92 million in cash on October 12, 2004.

Kodak provided to Sun a non-exclusive license under the Kodak patents at issue. In addition, Kodak licensed to Sun certain other Kodak patents for existing and future versions of Sun's Java technology. The other licensed Kodak patents are limited to those Kodak patents infringed on October 12, 2004 by the current version of Sun's Java technology.

Kodak also released Sun from any past infringement of Kodak's patents by the Java technology.

The license and the release relative to Java technology extend to Sun's licensees, customers, developers, suppliers, manufacturers, and distributors.

Sun released Kodak from all counterclaims that it had asserted in the litigation.

The case was dismissed with prejudice.

The Company and its subsidiary companies are involved in lawsuits, claims, investigations and proceedings, including product liability, commercial, intellectual property, environmental, and health and safety matters, which are being handled and defended in the ordinary course of business. There are no such matters pending representing contingent losses that the Company and its General Counsel expect to be material in relation to the Company's business, financial position or results of operations, or cash flows.

**NOTE 12: GUARANTEES**

The Company guarantees debt and other obligations under agreements with certain affiliated companies and customers. At December 31, 2004, these guarantees totaled a maximum of \$356 million, with outstanding guaranteed amounts of \$149 million. The maximum guarantee amount includes guarantees of up to: \$160 million of debt for KPG (\$30 million outstanding); \$128 million of customer amounts due to banks in connection with various banks' financing of customers' purchase of product and equipment from Kodak (\$71 million outstanding), and \$68 million for other unconsolidated affiliates and third parties (\$48 million outstanding). The KPG debt facility and the related guarantee mature on December 31, 2005. The guarantees for the other unconsolidated affiliates and third party debt mature between 2005 and 2010. The customer financing agreements and related guarantees typically have a term of 90 days for product and short-term equipment financing arrangements, and up to five years for long-term equipment financing arrangements. These guarantees would require payment from Kodak only in the event of default on payment by the respective debtor. In some cases, particularly for guarantees related to equipment financing, the Company has collateral or recourse provisions to recover and sell the equipment to reduce any losses that might be incurred in connection with the guarantee.

Management believes the likelihood is remote that material payments will be required under any of the guarantees disclosed above. With respect to the guarantees that the Company issued in the year ended December 31, 2004, the Company assessed the fair value of its obligation to stand ready to perform under these guarantees by considering the likelihood of occurrence of the specified triggering events or conditions requiring performance as well as other assumptions and factors. The Company has determined that the fair value of the guarantees was not material to the Company's financial position, results of operations or cash flows.

The Company also guarantees debt owed to banks for some of its consolidated subsidiaries. The maximum amount guaranteed is \$306 million, and the outstanding debt under those guarantees, which is recorded within the short-term borrowings and long-term debt, net of current portion components in the accompanying Consolidated Statement of Financial Position, is \$166 million. These guarantees expire in 2005 through 2006.

The Company may provide up to \$100 million in loan guarantees to support funding needs for SK Display Corporation, an unconsolidated affiliate in which the Company has a 34% ownership interest. As of December 31, 2004, the Company has not been required to guarantee any of SK Display Corporation's outstanding debt.

**Indemnifications**

The Company issues indemnifications in certain instances when it sells businesses and real estate, and in the ordinary course of business with its customers, suppliers, service providers and business partners. Further, the Company indemnifies its directors and officers who are, or were, serving at Kodak's request in such capacities. Historically, costs incurred to settle claims related to these indemnifications have not been material to the Company's financial position, results of operations or cash flows. Additionally, the fair value of the indemnifications that the Company issued during the year ended December 31, 2004 was not material to the Company's financial position, results of operations or cash flows.

**Warranty Costs**

The Company has warranty obligations in connection with the sale of its equipment. The original warranty period for equipment products is generally one year or less. The costs incurred to provide for these warranty obligations are estimated and recorded as an accrued liability at the time of sale. The Company estimates its warranty cost at the point of sale for a given product based on historical failure rates and related costs to repair. The change in the Company's accrued warranty obligations balance, which is reflected in accounts payable and other current liabilities in the accompanying Consolidated Statement of Financial Position, was as follows:

(in millions)	
Accrued warranty obligations at December 31, 2002	\$ 43
Actual warranty experience during 2003	(53)
2003 warranty provisions	59
<hr/>	
Accrued warranty obligations at December 31, 2003	\$ 49
Actual warranty experience during 2004	(60)
2004 warranty provisions	75
Adjustments for changes in estimates	(2)
<hr/>	
Accrued warranty obligations at December 31, 2004	<u>\$ 62</u>

The Company also offers extended warranty arrangements to its customers that are generally one year, but may range from three months to three years after the original warranty period. The Company provides repair services and routine maintenance under these arrangements. The Company has not separated the extended warranty revenues and costs from the routine maintenance service revenues and costs, as it is not practicable to do so. Costs incurred under these extended warranty arrangements for the year ended December 31, 2004 amounted to \$208 million. The change in the Company's deferred revenue balance in relation to these extended warranty arrangements, which is reflected in accounts payable and other current liabilities in the accompanying Consolidated Statement of Financial Position, was as follows:

(in millions)	
Deferred revenue at December 31, 2002	\$ 103
New extended warranty arrangements in 2003	372
Recognition of extended warranty arrangement revenue in 2003	(355)
Adjustments for changes in estimates	(2)
<hr/>	
Deferred revenue at December 31, 2003	\$ 118
New extended warranty arrangements in 2004	411
Recognition of extended warranty arrangement revenue in 2004	(388)
<hr/>	
Deferred revenue at December 31, 2004	<u>\$ 141</u>

**NOTE 13: FINANCIAL INSTRUMENTS**

The following table presents the carrying amounts of the assets (liabilities) and the estimated fair values of financial instruments at December 31, 2004 and 2003:

(in millions)	2004		2003	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
<b>Marketable securities:</b>				
Current	\$ 3	\$ 3	\$ 11	\$ 11
Long-term	24	26	24	35
Long-term borrowings	(1,852)	(2,039)	(2,302)	(2,450)
Foreign currency forwards	25	25	(1)	(1)
Silver forwards	—	—	1	1

Marketable securities are valued at quoted market prices. The fair values of long-term borrowings are determined by reference to quoted market prices or by obtaining quotes from dealers. The fair values for the remaining financial instruments in the above table are based on dealer quotes and reflect the estimated amounts the Company would pay or receive to terminate the contracts. The carrying values of cash and cash equivalents, receivables, short-term borrowings and payables approximate their fair values.

The Company, as a result of its global operating and financing activities, is exposed to changes in foreign currency exchange rates, commodity prices and interest rates which may adversely affect its results of operations and financial position. The Company manages such exposures, in part, with derivative financial instruments. The fair value of these derivative contracts is reported in other current assets or accounts payable and other current liabilities in the accompanying Consolidated Statement of Financial Position.

Foreign currency forward contracts are used to hedge existing foreign currency denominated assets and liabilities, especially those of the Company's International Treasury Center, as well as forecasted foreign currency denominated intercompany sales. Silver forward contracts are used to mitigate the Company's risk to fluctuating silver prices. The Company's exposure to changes in interest rates results from its investing and borrowing activities used to meet its liquidity needs. Long-term debt is generally used to finance long-term investments, while short-term debt is used to meet working capital requirements. The Company does not utilize financial instruments for trading or other speculative purposes.

The Company periodically enters into foreign currency forward contracts that are designated as cash flow hedges of exchange rate risk related to forecasted foreign currency denominated intercompany sales. At December 31, 2004, the Company had no open cash flow hedges related to these foreign currency forward contracts. During 2004, as a result of the sale of intercompany foreign currency denominated assets and liabilities to third parties, a pre-tax loss of \$16 million was reclassified from accumulated other comprehensive (loss) income to cost of goods sold. Hedge ineffectiveness was insignificant.

The Company does not apply hedge accounting to the foreign currency forward contracts used to offset currency-related changes in the fair value of foreign currency denominated assets and liabilities. These contracts are marked to market through earnings at the same time that the exposed assets and liabilities are remeasured through earnings (both in other income (charges), net). The majority of the contracts of this type held by the Company are denominated in euros, Australian dollars, and Canadian dollars. At December 31, 2004, the fair value of these open contracts was an unrealized gain of \$25 million (pre-tax).

The Company has entered into silver forward contracts that are designated as cash flow hedges of price risk related to forecasted worldwide silver purchases. The Company used silver forward contracts to minimize its exposure to increases in silver prices in 2002, 2003, and 2004. At December 31, 2004, the Company had open forward contracts with maturities through March 2005.

At December 31, 2004, the fair value of open silver forward contracts was an unrealized loss of less than \$1 million (pre-tax), which is included in accumulated other comprehensive (loss) income. If this amount were to be realized, all of it would be reclassified into cost of goods sold during the next twelve months. Additionally, realized gains of \$2 million (pre-tax), related to closed silver contracts, have been deferred in accumulated other comprehensive (loss) income. These gains will be reclassified into cost of goods sold as silver-containing products are sold, all within the next twelve months. During 2004, resulting from the sale of silver containing products, a realized gain of \$10 million (pre-tax) was recorded in cost of goods sold. Hedge ineffectiveness was insignificant.

The Company's financial instrument counterparties are high-quality investment or commercial banks with significant experience with such instruments. The Company manages exposure to counterparty credit risk by requiring specific minimum credit standards and diversification of counterparties. The Company has procedures to monitor the credit exposure amounts. The maximum credit exposure at December 31, 2004 was not significant to the Company.

The Company has a 50 percent ownership interest in KPG, a joint venture accounted for under the equity method. The Company's proportionate share of KPG's other comprehensive income is therefore included in its presentation of other comprehensive (loss) income displayed in the Consolidated Statement of Shareholders' Equity.

**NOTE 14: OTHER INCOME (CHARGES), NET**

(in millions)	2004	2003 (Restated)	2002
Income (charges):			
Investment income	\$ 18	\$ 19	\$ 20
Loss on foreign exchange transactions	(10)	(10)	(19)
Equity in income (losses) of unconsolidated affiliates	30	(41)	(106)
Gain on sales of capital assets	15	13	24
Interest on past-due receivables and finance revenue on sales	4	5	6
Minority interest	(2)	(24)	(17)
Non-strategic venture investment impairments	—	(4)	(18)
Sun Microsystems settlement	92	—	—
BIGT settlement	9	—	—
Other	5	(9)	9
<b>Total</b>	<b>\$ 161</b>	<b>\$ (51)</b>	<b>\$ (101)</b>

**NOTE 15: INCOME TAXES**

The components of earnings from continuing operations before income taxes and the related (benefit) provision for U.S. and other income taxes were as follows:

(in millions)	2004	2003	2002
		(Restated)	
<b>Earnings (loss) before income taxes</b>			
U.S.	\$ (581)	\$ (205)	\$ 165
Outside the U.S.	487	309	729
<b>Total</b>	<b>\$ (94)</b>	<b>\$ 104</b>	<b>\$ 894</b>
<b>U.S. income taxes</b>			
Current (benefit) provision	\$ (227)	\$ (88)	\$ 38
Deferred benefit	(73)	(41)	(31)
<b>Income taxes outside the U.S.</b>			
Current provision	141	133	101
Deferred (benefit) provision	(2)	(87)	22
<b>State and other income taxes</b>			
Current provision (benefit)	(3)	(6)	10
Deferred provision (benefit)	(11)	4	(7)
<b>Total</b>	<b>\$ (175)</b>	<b>\$ (85)</b>	<b>\$ 133</b>

The Company recognized net income of \$475 million from discontinued operations for 2004, which was net of a tax provision of \$275 million. Net income from discontinued operations for 2003 and 2002 was \$64 million and \$9 million, respectively, which was net of tax provisions of \$10 million and \$6 million, respectively. The discontinued operations tax provision for 2003 includes an \$18 million tax benefit related to the reversal of tax reserves resulting from the elimination of uncertainties surrounding the realizability of such benefits.

The differences between income taxes computed using the U.S. federal income tax rate and the (benefit) provision for income taxes for continuing operations were as follows:

(in millions)	2004	2003	2002
		(Restated)	
<b>Amount computed using the statutory rate</b>	<b>\$ (33)</b>	<b>\$ 36</b>	<b>\$ 313</b>
<b>Increase (reduction) in taxes resulting from:</b>			
State and other income taxes, net of federal	(9)	(3)	1
Export sales and manufacturing credits	(30)	(25)	(23)
Operations outside the U.S.	(89)	(69)	(96)
Valuation allowance	(10)	11	56
Business closures, restructuring and land donation	—	(13)	(99)
Tax settlements, including interest	(32)	—	—
Interest on reserves	33	(16)	(29)
Other, net	(5)	(6)	10
<b>(Benefit) provision for income taxes</b>	<b>\$ (175)</b>	<b>\$ (85)</b>	<b>\$ 133</b>

During 2004, the Company reached a settlement with the Internal Revenue Service covering tax years 1982-1992. As a result, the Company recognized a tax benefit of \$37 million in 2004, which consisted of benefits of \$32 million related to a formal concession concerning the taxation of certain intercompany royalties that could not legally be distributed to the parent entity and \$9 million related to the income tax treatment of a patent infringement litigation settlement, and a \$4 million charge related to other tax items. The Company also reached a favorable resolution of interest calculations for these years, and recorded a benefit of \$8 million. Finally, the Company recorded net charges of \$13 for adjustments for audit years 1993 and thereafter.

The audit for tax years 1993-1998 has progressed to the administrative appeals level of the IRS and the Company anticipates that it will be formally settled during 2005. The finalization of this settlement could have a significant impact upon the Company's 2005 effective tax rate and operating results because the settlement covers six years and also includes significant transactional activity associated with the disposition of various businesses.

During 2003, the Company recorded a tax benefit of \$13 million related to the donation of intellectual property in the form of technology patents to a tax-qualified organization.

During 2002, the Company recorded a tax benefit of \$91 million relating to business closures and restructuring of certain subsidiaries. Additionally, the Company recorded a tax benefit of \$8 million relating to a land donation. Also, during the fourth quarter of 2002, the Company recorded an adjustment of \$22 million to reduce its income tax provision due to a decrease in the estimated effective tax rate for the full year. The decrease in the effective tax rate was attributable to an increase in earnings in lower tax rate jurisdictions relative to original estimates.

A degree of judgment is required in determining our effective tax rate and in evaluating our tax position. The Company establishes reserves when, despite significant support for the Company's filing position, a belief exists that these positions may be challenged by the respective tax jurisdiction. The reserves are adjusted upon the occurrence of external, identifiable events. A change in our tax reserves could have a significant impact on our effective tax rate and our operating results.



The significant components of deferred tax assets and liabilities were as follows:

(in millions)	2004	2003
		(Restated)
<b>Deferred tax assets</b>		
Pension and postretirement obligations	\$ 835	\$ 901
Restructuring programs	145	42
Foreign tax credit	189	137
Employee deferred compensation	214	162
Inventories	84	82
Tax loss carryforwards	234	338
Other	379	661
<b>Total deferred tax assets</b>	<b>2,080</b>	<b>2,323</b>
<b>Deferred tax liabilities</b>		
Depreciation	584	663
Leasing	101	135
Other	298	475
<b>Total deferred tax liabilities</b>	<b>983</b>	<b>1,273</b>
<b>Valuation allowance</b>	<b>131</b>	<b>141</b>
<b>Net deferred tax assets</b>	<b>\$ 966</b>	<b>\$ 909</b>

Deferred tax assets (liabilities) are reported in the following components within the Consolidated Statement of Financial Position:

(in millions)	2004	2003
		(Restated)
<b>Deferred income taxes (current)</b>	<b>\$ 556</b>	<b>\$ 596</b>
Other long-term assets	521	439
Accrued income taxes	(44)	(37)
Other long-term liabilities	(67)	(89)
<b>Net deferred tax assets</b>	<b>\$ 966</b>	<b>\$ 909</b>

At December 31, 2004, the Company had available net operating loss carryforwards of approximately \$509 million for income tax purposes, of which approximately \$330 million has an indefinite carryforward period. The remaining \$179 million expires between the years 2005 and 2019. The Company has \$189 million of unused foreign tax credits at December 31, 2004, with various expiration dates through 2014.

The valuation allowance as of December 31, 2004 of \$131 million is attributable to certain net operating loss and capital loss carryforwards outside the U.S. The valuation allowance as of December 31, 2003 of \$141 million is attributable to both U.S. foreign tax credits and certain net operating loss and capital loss carryforwards outside the U.S. The valuation allowance at December 31, 2003 included \$56 million related to U.S. foreign tax credit carryforwards which, because of a short carryforward period, the Company would only be able to utilize if it were to forgo other tax benefits. In October of 2004, The American Jobs Creation Act of 2004 (the Act) was signed into law. The Act extended the foreign tax credit carryforward period and this will allow the Company to realize the credits without having to forgo other tax benefits. Accordingly, the valuation allowance of \$56 million has been reversed in the fourth quarter of 2004.

Additionally during 2004, the Company increased the valuation allowance that had been provided at December 31, 2003 by \$46 million. The \$46 million increase related to net operating loss carryforwards and other deferred tax assets for certain of its subsidiaries for which management believed that it was more likely than not that the Company would be unable to generate sufficient taxable income to realize these benefits.

During 2003, the Company increased the valuation allowance that had been provided at December 31, 2002 by \$11 million that related to net operating loss carryforwards for certain of its subsidiaries for which management believed that it was more likely than not that the Company would be unable to generate sufficient taxable income to realize these benefits.

The Company has recognized the balance of its deferred tax assets on the belief that it is more likely than not that they will be realized. This belief is based on all available evidence, including historical operating results, projections of taxable income, and tax planning strategies.

The Company has been utilizing net operating loss carryforwards to offset taxable income from its operations in China that have become profitable. The Company has been granted a tax holiday in China that became effective when the net operating loss carryforwards were fully utilized during 2004. The tax holiday thus became effective during 2004, and the Company's tax rate in China was zero percent for 2004 and will be zero percent for 2005. For 2006, 2007 and 2008, the Company's tax rate will be 7.5%, which is 50% of the normal 15% tax rate for the jurisdiction in which Kodak operates. Thereafter, the Company's tax rate will be 15%.

Retained earnings of subsidiary companies outside the U.S. were approximately \$1,919 million and \$1,857 million at December 31, 2004 and 2003 (as restated), respectively. Deferred taxes have not been provided on such undistributed earnings, as it is the Company's policy to permanently reinvest its retained earnings, and it is not practicable to determine the deferred tax liability on such undistributed earnings in the event they were to be remitted. However, the Company periodically repatriates a portion of these earnings to the extent that it can do so tax-free.

As discussed, the Act was signed into law in October of 2004. The Act creates a temporary incentive for U.S. multinationals to repatriate foreign subsidiary earnings by providing a 85% dividends received deduction for certain dividends from controlled foreign corporations. The deduction is subject to a number of limitations and requirements, including adoption of a specific domestic reinvestment plan for the repatriated earnings. Whether the Company will ultimately take advantage of the temporary incentive depends on a number of factors. The Company is not yet in a position to finalize its decision regarding this temporary incentive, although it needs to do so before December 31, 2005. Until the time that the Company finalizes its decision, the Company will make no changes in its current intention to indefinitely reinvest accumulated earnings of its foreign subsidiaries. As a result, no provision has been made for income taxes that would be payable upon distribution of such earnings.

**NOTE 16: RESTRUCTURING COSTS AND OTHER****RESTRUCTURING COSTS AND OTHER**

Currently, the Company is being adversely impacted by the progressing digital substitution. As the Company continues to adjust its operating model in light of changing business conditions, it is probable that ongoing cost reduction activities will be required from time to time.

In accordance with this, the Company periodically announces planned restructuring programs (Programs), which often consist of a number of restructuring initiatives. These Program announcements provide estimated ranges relating to the number of positions to be eliminated and the total restructuring charges to be incurred. The actual charges for initiatives under a Program are recorded in the period in which the Company commits to formalized restructuring plans or executes the specific actions contemplated by the Program and all criteria for restructuring charge recognition under the applicable accounting guidance have been met.

## Restructuring Programs Summary

The activity in the accrued restructuring balances and the non-cash charges incurred in relation to all of the restructuring programs described below was as follows for fiscal 2004:

(in millions)	Balance Dec. 31, 2003	Costs Incurred	Rever- sals	Cash Pay- ments	Non- cash Settle- ments	Other Adjustments and Reclasses (1)	Balance Dec. 31, 2004
<b>2004-2006 Program:</b>							
Severance reserve	\$ —	\$ 418	\$ (6)	\$ (169)	\$ —	\$ 24	\$ 267
Exit costs reserve	—	99	(1)	(47)	—	(15)	36
Total reserve	\$ —	\$ 517	\$ (7)	\$ (216)	\$ —	\$ 9	\$ 303
<b>Long-lived asset impairments and inventory write-downs</b>							
Accelerated depreciation	—	152	—	—	(152)	—	—
<b>Q3 2003 Program:</b>							
Severance reserve	\$ 180	\$ 45	\$ (4)	\$ (208)	\$ —	\$ 17	\$ 30
Exit costs reserve	12	7	(3)	(14)	—	—	2
Total reserve	\$ 192	\$ 52	\$ (7)	\$ (222)	\$ —	\$ 17	\$ 32
<b>Long-lived asset impairments and inventory write-downs</b>							
Accelerated depreciation	\$ —	\$ 24	\$ —	\$ —	\$ (24)	\$ —	\$ —
<b>Q1 2003 Program:</b>							
Severance reserve	\$ 23	\$ —	\$ (1)	\$ (15)	\$ —	\$ —	\$ 7
Exit costs reserve	4	—	—	(4)	—	—	—
Total reserve	\$ 27	\$ —	\$ (1)	\$ (19)	\$ —	\$ —	\$ 7
Accelerated depreciation	\$ —	\$ 7	\$ —	\$ —	\$ (7)	\$ —	\$ —
<b>Phoenix Program:</b>							
Exit costs reserve	\$ 9	\$ —	\$ (6)	\$ (3)	\$ —	\$ —	\$ —
<b>Q4 2002 Program:</b>							
Severance reserve	\$ 12	\$ —	\$ —	\$ (11)	\$ —	\$ —	\$ 1
Exit costs reserve	8	1	(4)	(3)	—	—	2
Total reserve	\$ 20	\$ 1	\$ (4)	\$ (14)	\$ —	\$ —	\$ 3
<b>2001 Programs:</b>							
Severance reserve	\$ 6	\$ —	\$ —	\$ (4)	\$ —	\$ —	\$ 2
Exit costs reserve	13	—	(2)	(3)	—	—	8
Total reserve	\$ 19	\$ —	\$ (2)	\$ (7)	\$ —	\$ —	\$ 10
Total of all restructuring programs	\$ 267	\$ 916	\$ (27)	\$ (481)	\$ (346)	\$ 26	\$ 355

- (1) The Other Adjustments and Reclasses column of the table above includes reclassifications to Other long-term assets, Postretirement liabilities and Other long-term liabilities in the Consolidated Statement of Financial Position. It also includes foreign currency translation adjustments of \$19 million which are reflected in the Consolidated Statement of Earnings.

The costs incurred, net of reversals, which total \$889 million for the year ended December 31, 2004, include \$183 million and \$21 million of charges related to accelerated depreciation and inventory write-downs, respectively, which were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The remaining costs incurred, net of reversals, of \$685 million, were reported as restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The severance costs and exit costs require the outlay of cash, while long-lived asset impairments, accelerated depreciation and inventory write-downs represent non-cash items.

#### **2004-2006 Restructuring Program**

In addition to completing the remaining initiatives under the Third Quarter, 2003 Restructuring Program, the Company announced on January 22, 2004 that it planned to develop and execute a comprehensive cost reduction program throughout the 2004 to 2006 timeframe. The objective of these actions is to achieve a business model appropriate for the Company's traditional businesses, and to sharpen the Company's competitiveness in digital markets.

The Program is expected to result in total charges of \$1.3 billion to \$1.7 billion over the three-year period, of which \$700 million to \$900 million are related to severance, with the remainder relating to the disposal of buildings and equipment. Overall, Kodak's worldwide facility square footage is expected to be reduced by approximately one-third. Approximately 12,000 to 15,000 positions worldwide are expected to be eliminated through these actions primarily in global manufacturing, selected traditional businesses and corporate administration. Maximum single year cash usage under the new program is expected to be approximately \$250 million.

The Company implemented certain actions under this program during 2004. As a result of these actions, the Company recorded charges of \$674 million in 2004, which was composed of severance, long-lived asset impairments, exit costs and inventory write-downs of \$418 million, \$138 million, \$99 million and \$19 million, respectively. The severance costs related to the elimination of approximately 9,625 positions, including approximately 4,700 photofinishing, 3,575 manufacturing, 425 research and development and 925 administrative positions. The geographic composition of the positions to be eliminated includes approximately 5,075 in the United States and Canada and 4,550 throughout the rest of the world. The reduction of the 9,625 positions and the \$517 million charges for severance and exit costs are reflected in the 2004-2006 Restructuring Program table below. The \$138 million charge for long-lived asset impairments was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The charges taken for inventory write-downs of \$19 million were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004.

The following table summarizes the activity with respect to the charges recorded in connection with the focused cost reduction actions that the Company has committed to under the 2004-2006 Restructuring Program and the remaining balances in the related reserves at December 31, 2004:

(dollars in millions)	Number of Employees	Severance Reserve	Exit Costs Reserve	Total	Long-lived Asset Impairments and Inventory Write-downs	Accelerated Depreciation
Q1, 2004 charges	—	\$ —	\$ —	\$ —	\$ 1	\$ 2
Q1, 2004 utilization	—	—	—	—	(1)	(2)
Balance at 3/31/04	—	—	—	—	—	—
Q2, 2004 charges	2,700	98	17	115	28	23
Q2, 2004 utilization	(800)	(12)	(11)	(23)	(28)	(23)
Q2, 2004 other adj. & reclasses	—	(2)	—	(2)	—	—
Balance at 6/30/04	1,900	84	6	90	—	—
Q3, 2004 charges	3,200	186	20	206	27	31
Q3, 2004 reversal	—	—	(1)	(1)	—	—
Q3, 2004 utilization	(2,075)	(32)	(14)	(46)	(27)	(31)
Q3, 2004 other adj. & reclasses	—	—	(5)	(5)	—	—
Balance at 9/30/04	3,025	238	6	244	—	—
Q4, 2004 charges	3,725	134	62	196	101	96
Q4, 2004 reversal	—	(6)	—	(6)	—	—
Q4, 2004 utilization	(2,300)	(125)	(22)	(147)	(101)	(96)
Q4, 2004 other adj. & reclasses	—	26	(10)	16	—	—
Balance at 12/31/04	4,450	\$ 267	\$ 36	\$ 303	\$ —	\$ —

The severance charges of \$418 million and the exit costs of \$99 million were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. Included in the \$418 million charge taken for severance costs was a net curtailment gain of \$6 million. This net curtailment gain is disclosed in Note 17, "Retirement Plans" and Note 18, "Other Postretirement Benefits." Included in the \$99 million charge taken for exit costs was a \$16 million charge for environmental remediation associated with the closures of the manufacturing facility in Coburg, Australia and Toronto, Canada, and the closure of a Qualex wholesale photofinishing lab in the U.S. The liability related to this charge is disclosed in Note 11, "Commitments and Contingencies" under "Environmental." During 2004, the Company made \$169 million of severance payments and \$47 million of exit cost payments related to the 2004-2006 Restructuring Program. In the fourth quarter of 2004, the Company reversed \$6 million of severance reserves, as severance payments were less than originally estimated. The \$1 million exit costs reserve reversal recorded in the third quarter of 2004 resulted from the settlement of a lease obligation for an amount that was less than originally estimated. These reserve reversals were included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. As a result of the initiatives already implemented under the 2004-2006 Restructuring Program, severance payments will be paid during periods through 2007 since, in many instances, the employees whose positions were eliminated can elect or are required to receive their payments over an extended period of time. Most exit costs were paid during 2004. However, certain costs, such as long-term lease payments, will be paid over periods after 2004.

As a result of initiatives implemented under the 2004-2006 Restructuring Program, the Company recorded \$152 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. The year-to-date amount of \$152 million relates to \$49 million of photofinishing facilities and equipment, \$102 million of manufacturing facilities and equipment, and \$1 million of administrative facilities and equipment that will be used until their abandonment. The Company will record approximately \$142 million of additional accelerated depreciation in 2005 related to the initiatives implemented in 2004. Additional amounts of accelerated depreciation may be recorded in 2005 and 2006 as the Company continues to execute its 2004-2006 Restructuring Program.

The charges of \$826 million recorded in 2004 included \$435 million applicable to the D&FIS segment, \$8 million applicable to the Health segment, \$5 million applicable to the Graphic Communications segment and \$2 million applicable to the Commercial Imaging segment. The balance of \$376 million was applicable to manufacturing, research and development, and administrative functions, which are shared across all segments.

### **Third Quarter, 2003 Restructuring Program**

During the third quarter of 2003, the Company announced its intention to implement a series of cost reduction actions during the last two quarters of 2003 and the first two quarters of 2004, which were expected to result in pre-tax charges totaling \$350 million to \$450 million. It was anticipated that these actions would result in a reduction of approximately 4,500 to 6,000 positions worldwide, primarily relating to the rationalization of global manufacturing assets, reduction of corporate administration and research and development, and the consolidation of the infrastructure and administration supporting the Company's consumer imaging and professional products and services operations.

The Company implemented certain actions under this Program during 2004. As a result of these actions, the Company recorded charges of \$58 million in 2004, which was composed of severance, exit costs, long-lived asset impairments and inventory write-downs of \$45 million, \$7 million, \$4 million and \$2 million, respectively. The severance costs related to the elimination of approximately 2,000 positions, including approximately 850 photofinishing positions, 775 manufacturing positions and 375 administrative positions. The geographic composition of the positions to be eliminated includes approximately 1,100 in the United States and Canada and 900 throughout the rest of the world. The reduction of the 2,000 positions and the \$52 million charges for severance and exit costs are reflected in the Third Quarter, 2003 Restructuring Program table below. The \$4 million charge for long-lived asset impairments was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The charges taken for inventory write-downs of \$2 million were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004.

The following table summarizes the activity with respect to the charges recorded in connection with the focused cost reduction actions that the Company has committed to under the Third Quarter, 2003 Restructuring Program and the remaining balances in the related reserves at December 31, 2004:

(dollars in millions)	Number of Employees	Severance Reserve	Exit Costs Reserve	Total	Long-lived Asset Impairments and Inventory Write-downs	Accelerated Depreciation
Q3, 2003 charges	1,700	\$ 123	\$ —	\$ 123	\$ 1	\$ 14
Q3, 2003 utilization	(100)	(3)	—	(3)	(1)	(14)
Balance at 9/30/03	1,600	120	—	120	—	—
Q4, 2003 charges	2,150	103	40	143	109	7
Q4, 2003 utilization	(2,025)	(48)	(28)	(76)	(109)	(7)
Q4, 2003 other adj. & reclasses	—	5	—	5	—	—
Balance at 12/31/03	1,725	180	12	192	—	—
Q1, 2004 charges	2,000	44	7	51	6	14
Q1, 2004 utilization	(2,075)	(76)	(5)	(81)	(6)	(14)
Q1, 2004 other adj. & reclasses	—	18	—	18	—	—
Balance at 3/31/04	1,650	166	14	180	—	—
Q2, 2004 charges	—	—	—	—	—	6
Q2, 2004 reversal	—	(2)	(2)	(4)	—	—
Q2, 2004 utilization	(1,375)	(62)	(2)	(64)	—	(6)
Balance at 6/30/04	275	102	10	112	—	—
Q3, 2004 charges	—	—	—	—	—	3
Q3, 2004 reversal	—	(2)	—	(2)	—	—
Q3, 2004 utilization	(225)	(42)	(2)	(44)	—	(3)
Balance at 9/30/04	50	58	8	66	—	—
Q4, 2004 charges	—	1	—	1	—	1
Q4, 2004 reversal	—	—	(1)	(1)	—	—
Q4, 2004 utilization	(25)	(28)	(5)	(33)	—	(1)
Q4, 2004 other adj. & reclasses	—	(1)	—	(1)	—	—
	25	\$ 30	\$ 2	\$ 32	\$ —	\$ —

The severance charges of \$45 million and the exit costs of \$7 million were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. Included in the \$45 million charge taken for severance costs was a net curtailment gain of \$17 million. The net curtailment gain is disclosed in Note 17, "Retirement Plans" and Note 18, "Other Postretirement Benefits." During 2004, the Company made \$208 million of severance payments and \$14 million of exit costs payments related to the Third Quarter, 2003 Restructuring Program. In addition, the Company reversed \$4 million of severance reserves and \$3 million of exit costs reserves during 2004. The severance reserve reversals were recorded, as severance payments were less than originally estimated. The \$2 million exit costs reserve reversal recorded during the second quarter of 2004 resulted from the Company settling a lease obligation for an amount that was less than originally estimated. The additional \$1 million of exit costs reserves reversed in the fourth quarter of 2004 resulted from the Company settling certain exit cost obligations for an amount that was less than originally estimated. The severance and exit costs reserve reversals were included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The remaining severance payments relating to initiatives already implemented under the Third Quarter, 2003 Restructuring Program will be paid during 2005 since, in many instances, the employees whose positions were eliminated can elect or are required to receive their severance payments over an extended period of time. Most exit costs were paid during 2004. However, certain costs, such as long-term lease payments, will be paid over periods after 2004.



As a result of initiatives implemented under the Third Quarter, 2003 Restructuring Program, the Company recorded \$24 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. The year-to-date amount of \$24 million relates to \$17 million of manufacturing facilities and equipment and \$7 million of photofinishing facilities and equipment that will be used until their abandonment.

The year-to-date charges of \$82 million included \$45 million applicable to the D&FIS segment, \$6 million applicable to the Health segment and \$1 million applicable to the Commercial Imaging segment. The balance of \$30 million was applicable to manufacturing, research and development, and administrative functions, which are shared across segments. The program-to-date charges of \$479 million included \$253 million applicable to the D&FIS segment, \$26 million applicable to the Health segment and \$10 million applicable to the Commercial Imaging segment. The balance of \$190 million was applicable to manufacturing, research and development, and administrative functions, which are shared across segments.

As of the end of the first quarter of 2004, the Company had committed to all of the initiatives originally contemplated under the Third Quarter, 2003 Restructuring Program. The Company committed to the elimination of a total of 5,850 positions under the Third Quarter, 2003 Restructuring Program. The remaining 25 positions to be eliminated under the Third Quarter, 2003 Restructuring Program are expected to be completed during 2005.

#### **First Quarter, 2003 Restructuring Program**

In the early part of the first quarter of 2003, as part of its continuing focused cost reduction efforts and in addition to the remaining initiatives under the Fourth Quarter, 2002 Restructuring Program, the Company announced its First Quarter, 2003 Restructuring Program that included new initiatives to further reduce employment within a range of 1,800 to 2,200 employees. A significant portion of these new initiatives related to the rationalization of the Company's photofinishing operations in the U.S. and Europe. Specifically, as a result of declining film and photofinishing volumes and in response to global economic and political conditions, the Company began to implement initiatives to: (1) close certain photofinishing operations in the U.S. and EAMER, (2) rationalize manufacturing capacity by eliminating manufacturing positions on a worldwide basis, and (3) eliminate selling, general and administrative positions, particularly in the D&FIS segment.

The following table summarizes the activity with respect to the charges recorded in connection with the focused cost reduction actions that the Company has committed to under the First Quarter, 2003 Restructuring Program and the remaining balances in the related reserves at December 31, 2004:

(dollars in millions)	Number of Employees	Severance Reserve	Exit Costs Reserve	Total	Long-lived Asset Impairments and Inventory Write-downs	Accelerated Depreciation
Q1, 2003 charges	425	\$ 31	\$ —	\$ 31	\$ —	\$ —
Q1, 2003 utilization	(150)	(2)	—	(2)	—	—
Balance at 3/31/03	275	29	—	29	—	—
Q2, 2003 charges	500	17	4	21	5	—
Q2, 2003 utilization	(500)	(13)	—	(13)	(5)	—
Balance at 6/30/03	275	33	4	37	—	—
Q3, 2003 charges	925	19	4	23	1	16
Q3, 2003 utilization	(400)	(12)	(1)	(13)	(1)	(16)
Balance at 9/30/03	800	40	7	47	—	—
Q4, 2003 charges	—	—	—	—	—	8
Q4, 2003 utilization	(625)	(17)	(3)	(20)	—	(8)
Balance at 12/31/03	175	23	4	27	—	—
Q1, 2004 charges	—	—	—	—	—	6
Q1, 2004 reversal	—	(1)	—	(1)	—	—
Q1, 2004 utilization	(150)	(11)	(3)	(14)	—	(6)
Balance at 3/31/04	25	11	1	12	—	—
Q2, 2004 charges	—	—	—	—	—	1
Q2, 2004 utilization	—	(2)	—	(2)	—	(1)
Balance at 6/30/04	25	9	1	10	—	—
Q3, 2004 utilization	(25)	(1)	(1)	(2)	—	—
Balance at 9/30/04	—	8	—	8	—	—
Q4, 2004 utilization	—	(1)	—	(1)	—	—
Balance at 12/31/04	—	\$ 7	\$ —	\$ 7	\$ —	\$ —

During 2004, the Company made severance payments of \$15 million and exit cost payments of \$4 million related to the First Quarter, 2003 Restructuring Program. In addition, the Company reversed \$1 million of severance reserves during 2004, as severance payments were less than originally estimated. This reversal was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The remaining severance payments relating to initiatives already implemented under the First Quarter, 2003 Restructuring Program will be paid during 2005 since, in many instances, the employees whose positions were eliminated can elect or are required to receive their severance payments over an extended period of time.

As a result of initiatives implemented under the First Quarter, 2003 Restructuring Program, the Company recorded \$7 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the year ended December 31, 2004. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. The year-to-date amount of \$7 million relates to lab equipment used in photofinishing that was used until its abandonment.

The charges of \$7 million recorded during 2004 were applicable to the D&FIS segment. The program-to-date charges of \$112 million included \$92 million applicable to the D&FIS segment, \$4 million applicable to the Commercial Imaging segment and \$1 million applicable to the Graphic Communications segment. The balance of \$15 million was applicable to manufacturing and administrative functions, which are shared across all segments.

As of the end of the third quarter of 2003, the Company had committed to all of the initiatives originally contemplated under the First Quarter, 2003 Restructuring Program. A total of 1,850 positions were eliminated as a result of the initiatives implemented under the First Quarter, 2003 Restructuring Program.

#### **NOTE 17: RETIREMENT PLANS**

Substantially all U.S. employees are covered by a noncontributory defined benefit plan, the Kodak Retirement Income Plan (KRIP), which is funded by Company contributions to an irrevocable trust fund. The funding policy for KRIP is to contribute amounts sufficient to meet minimum funding requirements as determined by employee benefit and tax laws plus additional amounts the Company determines to be appropriate. Generally, benefits are based on a formula recognizing length of service and final average earnings. Assets in the trust fund are held for the sole benefit of participating employees and retirees. They are comprised of corporate equity and debt securities, U.S. government securities, partnership and joint venture investments, interests in pooled funds, and various types of interest rate, foreign currency and equity market financial instruments.

On March 25, 1999, the Company amended this plan to include a separate cash balance formula for all U.S. employees hired after February 1999. All U.S. employees hired prior to that date were granted the option to choose the KRIP plan or the Cash Balance Plus plan. Written elections were made by employees in 1999, and were effective January 1, 2000. The Cash Balance Plus plan credits employees' accounts with an amount equal to 4% of their pay, plus interest based on the 30-year treasury bond rate. In addition, for employees participating in this plan and the Company's defined contribution plan, the Savings and Investment Plan (SIP), the Company will match SIP contributions for an amount up to 3% of pay, for employee contributions of up to 5% of pay. Company contributions to SIP were \$15 million, \$15 million and \$14 million for 2004, 2003 and 2002, respectively. As a result of employee elections to the Cash Balance Plus plan, the reductions in future pension expense will be almost entirely offset by the cost of matching employee contributions to SIP. The impact of the Cash Balance Plus plan is shown as a plan amendment.

The Company also sponsors unfunded defined benefit plans for certain U.S. employees, primarily executives. The benefits of these plans are obtained by applying KRIP provisions to all compensation, including amounts being deferred, and without regard to the legislated qualified plan maximums, reduced by benefits under KRIP.

Most subsidiaries and branches operating outside the U.S. have defined benefit retirement plans covering substantially all employees. Contributions by the Company for these plans are typically deposited under government or other fiduciary-type arrangements. Retirement benefits are generally based on contractual agreements that provide for benefit formulas using years of service and/or compensation prior to retirement. The actuarial assumptions used for these plans reflect the diverse economic environments within the various countries in which the Company operates.

The measurement date used to determine the pension obligation for all major funded and unfunded U.S. and Non-U.S. defined benefit plans comprising a majority of the plan assets and benefit obligations is December 31.

The net pension amounts recognized on the Consolidated Statement of Financial Position at December 31, 2004 and 2003 for all major funded and unfunded U.S. and Non-U.S. defined benefit plans are as follows:

(in millions)	2004		2003 (Restated)	
	U.S.	Non-U.S.	U.S.	Non-U.S.
<b>Change in Benefit Obligation</b>				
Projected benefit obligation at January 1	\$ 6,588	\$ 3,141	\$ 6,239	\$ 2,603
Acquisitions/divestitures	(291)	36	—	—
Service cost	119	38	119	38
Interest cost	381	169	410	148
Participant contributions	—	7	—	14
Plan amendment	—	—	—	18
Benefit payments	(707)	(204)	(692)	(173)
Actuarial loss	451	220	513	115
Curtailments	(66)	(9)	(1)	(2)
Settlements	—	(85)	—	(6)
Special termination benefits	—	52	—	3
Currency adjustments	—	270	—	383
Projected benefit obligation at December 31	\$ 6,475	\$ 3,635	\$ 6,588	\$ 3,141
<b>Change in Plan Assets</b>				
Assets Fair value of plan assets at January 1	\$ 6,503	\$ 2,432	\$ 5,790	\$ 1,805
Acquisitions/divestitures	(291)	1	—	—
Actual return on plan assets	945	302	1,381	378
Employer contributions	30	166	24	126
Participant contributions	—	7	—	14
Settlements	—	—	—	(6)
Benefit payments	(707)	(262)	(692)	(173)
Currency adjustments	—	212	—	288
Fair value of plan assets at December 31	\$ 6,480	\$ 2,858	\$ 6,503	\$ 2,432
Funded Status at December 31	\$ 5	\$ (777)	\$ (84)	\$ (709)
Unrecognized:				
Net transition obligation (asset)	—	(2)	—	(3)
Net actuarial loss	631	957	695	859
Prior service cost (gain)	5	91	7	36
Net amount recognized at December 31	\$ 641	\$ 269	\$ 618	\$ 183

Amounts recognized in the Statement of Financial Position for all major funded and unfunded U.S. and Non-U.S. defined benefit plans are as follows:

(in millions)	2004		2003 (Restated)	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Prepaid pension cost	\$ 803	\$ 393	\$ 776	\$ 353
Accrued benefit liability	(162)	(124)	(158)	(170)
Additional minimum pension liability	(99)	(674)	(91)	(572)
Intangible asset	2	57	3	94
Accumulated other comprehensive income	97	617	88	478
Net amount recognized at December 31	\$ 641	\$ 269	\$ 618	\$ 183

The prepaid pension cost asset amounts for the U.S. and Non-U.S. at December 31, 2004 and 2003 are included in other long-term assets. The accrued benefit liability and additional minimum pension liability amounts (net of the intangible asset amounts) for the U.S. and Non-U.S. at December 31, 2004 and 2003 are included in postretirement liabilities. The accumulated other comprehensive income amounts for the U.S. and Non-U.S. at December 31, 2004 and 2003 are included as a component of shareholders' equity, net of taxes.

The accumulated benefit obligations for all the major funded and unfunded U.S. and Non-U.S. defined benefit plans are as follows:

(in millions)	2004		2003 (Restated)	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Accumulated benefit obligation	\$ 5,738	\$ 3,327	\$ 5,685	\$ 2,870

Information with respect to the major funded and unfunded U.S. and Non-U.S. defined benefit plans with an accumulated benefit obligation in excess of plan assets is as follows:

(in millions)	2004		2003 (Restated)	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Projected benefit obligation	\$ 374	\$ 3,274	\$ 343	\$ 2,763
Accumulated benefit obligation	340	2,983	316	2,520
Fair value of plan assets	79	2,491	67	2,075

Pension expense (income) for all defined benefit plans included:

(in millions)	2004		2003 (Restated)		2002	
	U.S.	Non-U.S.	U.S.	Non-U.S.	U.S.	Non-U.S.
Service cost	\$ 119	\$ 38	\$ 119	\$ 38	\$ 106	\$ 33
Interest cost	381	169	410	148	421	131
Expected return on plan assets	(534)	(198)	(582)	(177)	(677)	(165)
Amortization of:						
Transition obligation (asset)	—	(1)	2	(2)	(54)	(3)
Prior service cost	1	(17)	2	(30)	1	(21)
Actuarial loss	28	48	4	31	3	39
	(5)	39	(45)	8	(200)	14
Special termination benefits	—	52	—	30	—	27
Curtailement	8	—	—	—	—	—
Settlements	—	—	—	2	—	—
Net pension (income) expense	3	91	(45)	40	(200)	41
Other plans including unfunded plans	—	7	—	17	3	49
Total net pension (income) expense	3	98	(45)	57	(197)	90
Net pension (income) expense from discontinued operations	—	—	(5)	—	6	—
Net pension (income) expense from continuing operations	\$ 3	\$ 98	\$ (50)	\$ 57	\$ (191)	\$ 90

The special termination benefits of \$52 million, \$30 million and \$27 million for the years ended December 31, 2004, 2003 and 2002, respectively, were incurred as a result of the Company's restructuring actions and, therefore, have been included in restructuring costs and other in the Consolidated Statement of Earnings.

The Japanese Welfare Pension Insurance Law (JWPIL) was amended in June 2001 to permit employers with Employees' Pension Funds (EPFs) to separate the pay related portion of the old-age pension benefits under the JWPIL (Substitutional Portion) from the EPF. This obligation and related plan assets are transferred to a government agency, thereby relieving the EPF from paying the substitutional portion of benefits. The Kodak Japan Limited EPF completed the transfer of the substitutional portion to the Japanese Government in December 2004. The effect of the transfer resulted in a one-time credit due to the derecognition of future salary increases in the amount of \$3 million, a one-time credit due to the government subsidy from the transfer of liabilities and related plan assets of \$25 million and a one-time charge due to the accelerated recognition of unrecognized loss in accordance with SFAS No. 88 settlement accounting in the amount of \$20 million.

The increase (decrease) in the additional minimum liability (net of the change in the intangible asset) included in other comprehensive income for the major funded and unfunded U.S. and Non-U.S. defined benefit plans is as follows:

	2004		2003	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Increase (decrease) in the additional minimum liability (net of the change in the intangible asset) included in other comprehensive income	\$ 5	\$ 56	\$ 14	\$ (175)

The weighted-average assumptions used to determine the benefit obligation amounts for all major funded and unfunded U.S. and Non-U.S. defined benefit plans were as follows:

	2004		2003	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Discount rate	5.75%	5.02%	6.00%	5.40%
Salary increase rate	4.25%	3.29%	4.25%	3.20%

The weighted-average assumptions used to determine net pension (income) expense for all the major funded and unfunded U.S. and Non-U.S. defined benefit plans were as follows:

	2004		2003	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Discount rate	5.95%	5.27%	6.50%	5.40%
Salary increase rate	4.25%	3.20%	4.25%	3.30%
Expected long-term rate of return on plan assets	9.00%	7.86%	9.00%	7.90%

Of the total plan assets attributable to the major U.S. defined benefit plans at December 31, 2004 and 2003, 98% and 98%, respectively, relate to the KRIP plan. The expected long-term rate of return on plan assets assumption (EROA) is determined from the plan's asset allocation using forward-looking assumptions in the context of historical returns, correlations and volatilities. The plan lowered its EROA from 9.5% in 2002 to 9.0% in 2003 based on an asset and liability modeling study that was completed in September 2002. A 9.0% EROA was maintained for 2004.

The investment strategy is to manage the assets of the U.S. plans to meet the long-term liabilities while maintaining sufficient liquidity to pay current benefits. This is primarily achieved by holding equity-like investments while investing a portion of the assets in long duration bonds in order to match the long-term nature of the liabilities. The Company will periodically undertake an asset and liability modeling study because of a material shift in the plan's liability profile or changes in the capital markets.

The expected return on plan assets for the major non-US pension plans range from 4.5% to 9.0% for 2004. Every three years or when markets conditions have changed materially, the Company will undertake new asset and liability modeling studies for each of its larger pension plans. The asset allocations and expected return on plan assets are individually set to meet each plan's liabilities within each country's legal investment constraints. The investment strategy is to manage the assets of the non-US plans to meet the long-term liabilities while maintaining sufficient liquidity to pay current benefits. This is primarily achieved by holding equity-like investments while investing a portion of the assets in long duration bonds in order to partially match the long-term nature of the liabilities.

The Company's weighted-average asset allocations for its major U.S. defined benefit pension plans at December 31, 2004 and 2003, by asset category, are as follows:

Asset Category	2004	2003	Target
Equity securities	41%	43%	40%-46%
Debt securities	32%	34%	31%-37%
Real estate	7%	6%	6%-7%
Other	20%	17%	23%-10%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

The Company's weighted-average asset allocations for its major non-U.S. Defined Benefit Pension Plans at December 31, 2004, by asset category are as follows:

Asset Category	2004	2003	Target
Equity securities	39%	38%	36%-42%
Debt securities	33%	36%	33%-39%
Real estate	9%	8%	8%-10%
Other	19%	18%	23%-9%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

The Other asset category in the table above is primarily composed of private equity, venture capital, cash and other investments.

The Company expects to contribute approximately \$22 million and \$107 million in 2005 for U.S. and Non-U.S. defined benefit pension plans, respectively.

The following pension benefit payments, which reflect expected future service, are expected to be paid:

(in millions)	U.S.	Non-U.S.
2005	\$ 434	\$ 188
2006	426	187
2007	425	186
2008	425	183
2009	431	177
2010-2014	2,288	894

#### NOTE 18: OTHER POSTRETIREMENT BENEFITS

The Company provides healthcare, dental and life insurance benefits to U.S. eligible retirees and eligible survivors of retirees. Generally, to be eligible for the plan, individuals retiring prior to January 1, 1996 were required to be 55 years of age with ten years of service or their age plus years of service must have equaled or exceeded 75. For those retiring after December 31, 1995, the individuals must be 55 years of age with ten years of service or have been eligible as of December 31, 1995. Based on the eligibility requirements, these benefits are provided to U.S. retirees who are covered by the Company's KRIP plan and are funded from the general assets of the Company as they are incurred. However, those under the Cash Balance Plus portion of the KRIP plan would be required to pay the full cost of their benefits under the plan. The Company's subsidiaries in the United Kingdom and Canada offer similar healthcare benefits.

During the quarter ended June 30, 2004, the Company adopted the provisions of FSP 106-2 with respect to its U.S. Postretirement Plan, which resulted in a remeasurement of the Plan's accumulated projected benefit obligation (APBO) as of April 1, 2004. This remeasurement takes into account the impact of the subsidy the Company will receive under the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the Act) and certain actuarial assumption changes including: (1) changes in participation rates, (2) a decrease in the Company's Medicare plan premiums, and (3) a decrease in the discount rate from 6.00% to 5.75%. The actuarially determined impact of the subsidy reduced the APBO by approximately \$228 million. The effect of the subsidy on the measurement of the net periodic postretirement benefit cost was to reduce the cost by approximately \$52 million as follows:

(in millions)	12 months ended December 31, 2004		
	Effect of Subsidy	Effect of Assumption Changes	Total
Service cost	\$ —	\$ 1	\$ 1
Interest cost	13	13	26
Amortization of actuarial gain	17	8	25
	<u>\$ 30</u>	<u>\$ 22</u>	<u>\$ 52</u>

The measurement date used to determine the net benefit obligation for the Company's other postretirement benefit plans is December 31.



Changes in the Company's benefit obligation and funded status for the U.S., United Kingdom and Canada postretirement benefit plans are as follows:

(in millions)	2004	2003 (Restated)
Net benefit obligation at beginning of year	\$ 3,540	\$ 3,690
Acquisitions/divestitures	(33)	—
Service cost	15	16
Interest cost	189	213
Plan participants' contributions	17	6
Plan amendments	(15)	(30)
Actuarial gain	(82)	(117)
Curtailements	(17)	1
Settlements	(99)	—
Benefit payments	(254)	(254)
Currency adjustments	9	15
Net benefit obligation at end of year	\$ 3,270	\$ 3,540
Funded status at end of year	\$ (3,270)	\$ (3,540)
Unamortized net actuarial loss	1,188	1,401
Unamortized prior service cost	(251)	(326)
Net amount recognized and recorded at end of year	\$ (2,333)	\$ (2,465)

Postretirement benefit cost for the Company's U.S., United Kingdom and Canada postretirement benefit plans included:

(in millions)	2004	2003 (Restated)	2002
Components of net postretirement benefit cost			
Service cost	\$ 15	\$ 17	\$ 16
Interest cost	189	213	213
Amortization of:			
Prior service cost	(59)	(61)	(60)
Actuarial loss	85	69	58
	230	238	227
Curtailements	(63)	1	—
Settlements	(64)	—	—
Total net postretirement benefit cost	\$ 103	\$ 239	\$ 227
Net postretirement benefit income from discontinued operations	—	(1)	—
Net postretirement benefit cost from continuing operations	\$ 103	\$ 238	\$ 227

The U.S. plan represents approximately 97% and 97% of the total other postretirement net benefit obligation as of December 31, 2004 and 2003, respectively, and, therefore, the weighted-average assumptions used to compute the other postretirement benefit amounts approximate the U.S. assumptions.

The weighted-average assumptions used to determine the net benefit obligations were as follows:

	2004	2003
Discount rate	5.75%	6.00%
Salary increase rate	4.25%	4.25%

The weighted-average assumptions used to determine the net postretirement benefit cost were as follows:

	2004	2003
Discount rate	6.00%	6.50%
Salary increase rate	4.25%	4.25%

The weighted-average assumed healthcare cost trend rates used to compute the other postretirement amounts were as follows:

	2004	2003
Healthcare cost trend	10.00%	11.00%
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	5.00%	5.00%
Year that the rate reaches the ultimate trend rate	2010	2010

Assumed healthcare cost trend rates have a significant effect on the amounts reported for the healthcare plans. A one percentage point change in assumed healthcare cost trend rates would have the following effects:

	1% increase	1% decrease
Effect on total service and interest cost	\$ 6	\$ (5)
Effect on postretirement benefit obligation	103	(88)

The Company expects to contribute \$282 million to its other postretirement benefits plan in 2005.

The following postretirement benefits, which reflect expected future service, are expected to be paid.

(in millions)		Medicare Part D (U.S.)
2005	\$ 282	\$ N/A
2006	280	(18)
2007	276	(19)
2008	271	(21)
2009	266	(22)
2010-2014	1,240	(125)

#### NOTE 19: ACCUMULATED OTHER COMPREHENSIVE (LOSS) INCOME

The components of accumulated other comprehensive (loss) income at December 31, 2004, 2003 and 2002 were as follows:

(in millions)	2004	2003 (Restated)	2002
Accumulated unrealized holding gains related to available-for-sale securities	\$ —	\$ 11	\$ —
Accumulated unrealized losses related to hedging activity	(2)	(15)	(9)
Accumulated translations adjustments	328	100	(306)
Accumulated minimum pension liability adjustments - net of tax	(416)	(334)	(456)
Total	\$ (90)	\$ (238)	\$ (771)

**NOTE 20: STOCK OPTION AND COMPENSATION PLANS**

The Company's stock incentive plans consist of the 2000 Omnibus Long-Term Compensation Plan (the 2000 Plan), the 1995 Omnibus Long-Term Compensation Plan (the 1995 Plan), and the 1990 Omnibus Long-Term Compensation Plan (the 1990 Plan). The Plans are administered by the Executive Compensation and Development Committee of the Board of Directors.

Under the 2000 Plan, 22 million shares of the Company's common stock may be granted to a variety of employees between January 1, 2000 and December 31, 2004. The 2000 Plan is substantially similar to, and is intended to replace, the 1995 Plan, which expired on December 31, 1999. Stock options are generally non-qualified and are at prices not less than 100% of the per share fair market value on the date of grant, and the options generally expire ten years from the date of grant, but may expire sooner if the optionee's employment terminates. The 2000 Plan also provides for Stock Appreciation Rights (SARs) to be granted, either in tandem with options or freestanding. SARs allow optionees to receive payment equal to the increase in the Company's stock market price from the grant date to the exercise date. At December 31, 2004, 72,230 freestanding SARs were outstanding at option prices ranging from \$23.25 to \$60.50. Compensation expense recognized in 2004 on those freestanding SARs, the majority of which had option prices less than the market value of the Company's underlying common stock, was not material.

Under the 1995 Plan, 22 million shares of the Company's common stock were eligible for grant to a variety of employees between February 1, 1995 and December 31, 1999. Stock options are generally non-qualified and are at prices not less than 100% of the per share fair market value on the date of grant, and the options generally expire ten years from the date of grant, but may expire sooner if the optionee's employment terminates. The 1995 Plan also provides for SARs to be granted, either in tandem with options or freestanding. At December 31, 2004, 316,723 freestanding SARs were outstanding at option prices ranging from \$31.30 to \$90.63.

Under the 1990 Plan, 22 million shares of the Company's common stock were eligible for grant to key employees between February 1, 1990 and January 31, 1995. The stock options, which were generally non-qualified, could not have prices less than 50% of the per share fair market value on the date of grant; however, no options below fair market value were granted. The options generally expire ten years from the date of grant, but may expire sooner if the optionee's employment terminates. The 1990 Plan also provided that options with dividend equivalents, tandem SARs and freestanding SARs could be granted. At December 31, 2004, no freestanding SARs were outstanding.

In January 2002, the Company's shareholders voted in favor of a voluntary stock option exchange program for its employees. Under the program, employees were given the opportunity, if they so chose, to cancel outstanding stock options previously granted to them at exercise prices ranging from \$26.90 to \$92.31, in exchange for new options to be granted on or shortly after August 26, 2002, over six months and one day from February 22, 2002, the date the old options were canceled. The number of shares subject to the new options was determined by applying an exchange ratio in the range of 1:1 to 1:3 (i.e., one new option share for every three canceled option shares) based on the exercise price of the canceled option. As a result of the exchange program, approximately 23.7 million old options were canceled on February 22, 2002, with approximately 16 million new options granted on, or shortly after, August 26, 2002. The exchange program did not result in variable accounting, as it was designed to comply with FASB Interpretation No. 44 (FIN 44), "Accounting for Certain Transactions Involving Stock-Based Compensation." Also, the new options had an exercise price equal to the fair market value of the Company's common stock on the new grant date, so no compensation expense was recorded as a result of the exchange program.

Further information relating to options is as follows:  
(Amounts in thousands, except per share amounts)

	Shares Under Option	Range of Price Per Share	Weighted- Average Exercise Price Per Share
Outstanding on December 31, 2001	50,455	\$25.92 - \$92.31	\$ 57.53
Granted	20,155	\$26.30 - \$38.04	\$ 32.72
Exercised	1,581	\$26.90 - \$37.74	\$ 32.05
Terminated, Canceled or Surrendered	26,752	\$26.90 - \$92.31	\$ 54.58
Outstanding on December 31, 2002	42,277	\$25.92 - \$92.31	\$ 48.52
Granted	1,595	\$22.58 - \$38.85	\$ 28.45
Exercised	392	\$29.31 - \$32.50	\$ 31.28
Terminated, Canceled or Surrendered	3,931	\$26.82 - \$86.94	\$ 44.49
Outstanding on December 31, 2003	39,549	\$22.58 - \$92.31	\$ 48.30
Granted	800	\$24.92 - \$33.32	\$ 30.18
Exercised	157	\$22.58 - \$31.30	\$ 30.84
Terminated, Canceled or Surrendered	2,982	\$22.58 - \$75.66	\$ 41.70
Outstanding on December 31, 2004	37,210	\$22.58 - \$92.31	\$ 48.51
Exercisable on December 31, 2002	31,813	\$25.92 - \$92.31	\$ 52.49
Exercisable on December 31, 2003	32,593	\$22.58 - \$92.31	\$ 51.30
Exercisable on December 31, 2004	33,196	\$22.58 - \$92.31	\$ 50.32

The table above excludes approximately 68 (in thousands) options granted by the Company in 2001 at an exercise price of \$.05-\$21.91 as part of an acquisition. At December 31, 2004, approximately 21 (in thousands) stock options were outstanding in relation to this acquisition.

The following table summarizes information about stock options at December 31, 2004:

(Number of options in thousands)

Range of Exercise Prices At Least Less Than	Options Outstanding			Options Exercisable	
	Options	Weighted- Average Remaining Contractual Life	Weighted- Average Exercise Price	Options	Weighted- Average Exercise Price
\$20 - \$30	1,655	6.80	\$ 26.83	987	\$ 27.85
\$30 - \$40	18,512	5.69	\$ 32.42	15,393	\$ 32.17
\$40 - \$50	591	6.04	\$ 41.86	565	\$ 41.84
\$50 - \$60	3,414	3.01	\$ 55.41	3,257	\$ 55.47
\$60 - \$70	6,058	3.50	\$ 65.42	6,014	\$ 65.42
\$70 - \$80	4,651	2.03	\$ 73.26	4,651	\$ 73.26
Over \$80	2,329	2.17	\$ 89.94	2,329	\$ 89.94
	37,210			33,196	

**NOTE 21: ACQUISITIONS****2004*****National Semiconductor Corporation***

On September 7, 2004, the Company completed the purchase of the imaging business of National Semiconductor Corporation, which develops and manufactures complimentary metal oxide semiconductor image sensor (CIS) devices. The Company paid approximately \$10 million cash at closing, which included all transaction related costs. Under the terms of the acquisition, the Company acquired certain assets, including intellectual property and equipment, and hired approximately 50 employees that previously supported the imaging business. This acquisition added resources and technologies that will further strengthen the Company's ability to design next generation CIS devices that promise to deliver improved image quality with complex on-chip image processing circuitry.

Based on the Company's purchase price allocation, approximately \$6 million was assigned to research and development assets that were written off at the date of acquisition. This amount was determined by identifying research and development projects that had not yet reached technological feasibility and for which no alternative future uses exist. The value of the projects identified to be in progress was determined by estimating the future cash flows from the projects once commercialized, less costs to complete development and discounting these net cash flows back to their present value. The discount rate used for these three research and development projects was 15%. The charges for the write-off were included as research and development costs in the Company's Consolidated Statement of Earnings for the year ended December 31, 2004.

In addition, approximately \$2 million of the purchase price was included in other long-term assets, as technology-based intangible assets in the Company's Consolidate Statement of Financial Position at December 31, 2004. The remaining purchase price was allocated among other current assets, property, plant, and equipment, and goodwill in the Company's Consolidated Statement of Financial Position at December 31, 2004.

***NexPress-Related Entities***

On May 1, 2004, the Company completed the purchase of Heidelberger Druckmaschinen AG's (Heidelberg) 50 percent interest in NexPress Solutions LLC, a 50/50 joint venture of Kodak and Heidelberg that makes high-end, on-demand digital color printing systems, and the equity of Heidelberg Digital LLC, a leading maker of digital black-and-white variable-data printing systems. Kodak also announced the acquisition of NexPress GmbH, a German subsidiary of Heidelberg that provides engineering and development support, and certain inventory, assets, and employees of Heidelberg's regional operations or market centers. There was no consideration paid to Heidelberg at closing. Under the terms of the acquisition, Kodak and Heidelberg agreed to use a performance-based earn-out formula whereby Kodak will make periodic payments to Heidelberg over a two-year period, if certain sales goals are met. If all sales goals are met during the two calendar years ending December 31, 2005, the Company will pay a maximum of \$150 million in cash. During the first calendar year, no amounts were paid. Additional payments may also be made relating to the incremental sales of certain products in excess of a stated minimum number of units sold during a five-year period following the closing of the transaction. This acquisition advances the Company's strategy of diversifying its business portfolio, and accelerates its participation in the digital commercial printing industry.

The following table summarizes the estimated fair value of the assets acquired and liabilities assumed at the date of acquisition. The preliminary purchase price allocation is as follows:

<b>At May 1, 2004 – (in millions)</b>	
Current assets	\$ 95
Intangible assets (including in-process R&D)	9
Other non-current assets (including PP&E)	37
	<hr/>
Total assets acquired	\$ 141
	<hr/>
Current liabilities	\$ 55
Other non-current liabilities	6
Deferred taxes	30
	<hr/>
Total liabilities assumed	\$ 91
	<hr/>
Net assets acquired	\$ 50
	<hr/>

The excess of fair value of acquired net assets over cost of \$50 million represents negative goodwill and was recorded as a component of other long-term liabilities in the Company's Consolidated Statement of Financial Position.

As of the acquisition date, management began to assess and formulate plans to restructure the NexPress-related entities. As of December 31, 2004, management had completed its assessment and approved actions on some of the plans. Accordingly, the Company recorded a related liability of \$7 million. This liability is included in the current liabilities amount reported above and represents restructuring charges related to the entities and net assets acquired. As of December 31, 2004, management had not approved all plans and actions to be taken and, therefore the Company was not committed to specific actions. Accordingly, the amount related to future actions cannot be estimated and has not been recorded. However, once management approves and commits the Company to the plans, the accounting for the restructuring charges will be reflected in the purchase accounting as a reduction of negative goodwill to the extent the actions relate to the entities and the net assets acquired. To the extent such actions relate to the Company's historical ownership in the NexPress Solutions LLC joint venture, the restructuring charges will be reflected in the Company's Consolidated Statement of Earnings. This amount was \$1.1 million as of December 31, 2004.

#### ***China Lucky Film Co. Ltd.***

On October 22, 2003, the Company announced that it signed a twenty-year agreement with China Lucky Film Corp. On February 10, 2004, the Chinese government approved the Company's acquisition of 20 percent of Lucky Film Co. Ltd. (Lucky Film), the largest maker of photographic film in China, in exchange for total consideration of approximately \$167 million. The total consideration of \$167 million was composed of \$90 million in cash, \$40 million in additional net cash to build and upgrade manufacturing assets, \$30 million of contributed assets consisting of a building and equipment, and \$7 million for technical support and training that the Company will provide to Lucky Film. Under the twenty-year agreement, Lucky Film will pay Kodak a royalty fee for the use of certain of the Company's technologies as well as dividends on the Lucky Film shares that Kodak will acquire. In addition, Kodak has obtained a twenty-year manufacturing exclusivity arrangement with Lucky Film as well as access to Lucky Film's distribution network.

As the total consideration of \$167 million will be paid through 2005, the amount was discounted to \$164 million for purposes of the purchase price allocation.

The preliminary purchase price allocation is as follows: (in millions)

Intangible assets	\$ 139
Investment in Lucky	41
Deferred tax liability	(16)
	<hr/>
	\$ 164

The acquired intangible assets consist of the manufacturing exclusivity agreement and the distribution rights agreement. In accordance with the terms of the twenty-year agreement, the Company had acquired a 13 percent interest in Lucky Film as of March 31, 2004 and, therefore, \$26 million of the \$41 million of value allocated to the 20 percent interest was recorded as of March 31, 2004. The Company will record the \$15 million of value allocated to the additional 7 percent interest in Lucky Film when it completes the acquisition of those shares in 2007. The Company's interest in Lucky Film is accounted for under the equity method of accounting, as the Company has the ability to exercise significant influence over Lucky Film's operating and financial policies.

#### **Scitex Digital Printing (Renamed Versamark)**

On January 5, 2004, the Company completed its acquisition of Scitex Digital Printing (SDP) from its parent for \$252 million, inclusive of cash on hand at closing which totaled approximately \$13 million. This resulted in a net cash price of approximately \$239 million, inclusive of transaction costs. SDP is the leading supplier of high-speed, continuous inkjet printing systems, primarily serving the commercial and transactional printing sectors. Customers use SDP's products to print utility bills, banking and credit card statements, direct mail materials, as well as invoices, financial statements and other transactional documents. SDP now operates under the name Kodak Versamark, Inc. The acquisition will provide the Company with additional capabilities in the transactional printing and direct mail sectors while creating another path to commercialize proprietary inkjet technology.

The following table summarizes the estimated fair value of the assets acquired and liabilities assumed at the date of acquisition. The final purchase price allocation is as follows:

<b>At January 5, 2004 – (in millions)</b>	
Current assets	\$ 125
Intangible assets (including in-process R&D)	95
Other non-current assets (including PP&E)	47
Goodwill	17
	<hr/>
Total assets acquired	\$ 284
	<hr/>
Current liabilities	\$ 23
Other non-current liabilities	9
	<hr/>
Total liabilities assumed	\$ 32
	<hr/>
Net assets acquired	\$ 252

Of the \$95 million of acquired intangible assets, \$9 million was assigned to research and development assets that were written off at the date of acquisition. This amount was determined by identifying research and development projects that had not yet reached technological feasibility and for which no alternative future uses exist. The value of the projects identified to be in progress was determined by estimating the future cash flows from the projects once commercialized, less costs to complete development and discounting these net cash flows back to their present value. The discount rate used for these three research and development projects was 17%. The charges for the write-off were included as research and development costs in the Company's Consolidated Statement of Earnings for the year ended December 31, 2004.

The remaining \$86 million of intangible assets, which relate to developed technology, customer relationships, and trade names, have useful lives ranging from two to fourteen years. The \$17 million of goodwill will be assigned to the Graphic Communications segment and is expected to be deductible for tax purposes.

#### ***Pro-forma Financial Information***

The following unaudited pro forma financial information presents the combined results of operations of the Company and the Company's significant acquisitions since December 31, 2003, which include Kodak Versamark, NexPress, PracticeWorks and Laser-Pacific Media Corporation, as if these acquisitions had occurred as of the beginning of the periods presented. The unaudited pro forma financial information is not intended to represent or be indicative of the consolidated results of operations or financial condition of the Company that would have been reported had the acquisitions been completed as of the beginning of the periods presented, and should not be taken as representative of the future consolidated results of operations or financial condition of the Company. Pro forma results were as follows for the years ended December 31, 2004 and 2003:

<b>(in millions, except per share data)</b>	<b>2004</b>	<b>2003 (Restated)</b>
Net sales	\$ 13,616	\$ 13,520
Earnings from continuing operations	\$ 62	\$ 105
Basic earnings per share from continuing operations	\$ .22	\$ .37
Diluted earnings per share from continuing operations	\$ .22	\$ .37
Number of common shares used in:		
Basic earnings per share	286.6	286.5
Diluted earnings per share	286.8	290.8

The pro forma results include amortization of the intangible assets presented above and exclude the write-off of research and development assets that were acquired from the acquisitions. The amount of research and development assets, which were excluded above, was \$3 million and \$19 million for 2004 and 2003, respectively. The pro forma results also include interest expense on debt assumed to finance the purchase of PracticeWorks. The interest expense was calculated based on the assumption that approximately \$450 million of the PracticeWorks purchase price was financed through debt with an annual interest rate of approximately 5%.



***Chinon Industries, Inc.***

On January 22, 2004, the Company announced an offer to tender the outstanding common shares of Chinon Industries, Inc. (Chinon), a 59% majority owned subsidiary of Kodak. Chinon is engaged in the research, development and manufacturing of digital cameras. Acquiring the remaining interest helped Kodak increase its worldwide design and manufacturing capability for consumer digital cameras and accessories. Kodak completed its tender offer during the second quarter. As a result of the tender, Kodak increased its ownership of Chinon to 100% by acquiring 9.4 million shares for approximately \$32 million, inclusive of transaction costs. Approximately \$19 million of the purchase price was recorded as a reduction in minority interest and the remainder reported as goodwill in the Company's Consolidated Statement of Financial Position

***Algotec Systems Ltd.***

During the second quarter of 2004, the Company completed the purchase price allocation related to its November 2003 acquisition of Algotec Systems Ltd. (Algotec). As part of this allocation, the Company recorded intangible assets of approximately \$15 million related to acquired developed technology and approximately \$36 million of goodwill.

**2003*****Burrell Companies***

The Company had a commitment under a put option arrangement with the Burrell Companies, unaffiliated entities, whereby the shareholders of those Burrell Companies had the ability to put 100% of the stock to Kodak for a fixed price plus the assumption of debt. The option first became exercisable on October 1, 2002 and was ultimately exercised during the Company's fourth quarter ended December 31, 2002. Accordingly, on February 5, 2003, the Company acquired the Burrell Companies for a total purchase price of approximately \$63 million, which was composed of approximately \$54 million in cash and \$9 million in assumed debt. As the Company did not want to operate the business, they immediately entered into negotiations to sell the operations. As negotiations proceeded, the Company determined that the consideration expected in connection with the sale would not be sufficient to recover the carrying value of the assets.

Accordingly, the Company recorded an impairment charge of \$9 million in the second quarter of 2003. This charge is reflected in the selling, general and administrative component within the accompanying Consolidated Statement of Earnings for the year ended December 31, 2003. The Company ultimately closed on the sale of the Burrell Companies on October 6, 2003. The difference between the sale proceeds and the carrying value of the net assets in the Burrell Companies upon disposition was not material.

***Applied Science Fiction***

During the second quarter, the Company purchased Applied Science Fiction's proprietary rapid film processing technology and other assets for approximately \$32 million in cash. Of the \$32 million in purchase price, approximately \$16 million represented goodwill. The balance of the purchase price of approximately \$16 million was allocated to the acquired intangible assets, consisting of developed technologies, which have useful lives ranging from two to six years. The goodwill and intangible assets were written off in 2004 as the Company has canceled its program to market an automatic film processing station due to diminishing market opportunity.

**PracticeWorks, Inc.**

On October 7, 2003, Kodak acquired all of the outstanding shares of PracticeWorks, Inc. (PracticeWorks), a leading provider of dental practice management software (DPMS) and digital radiographic imaging systems, for approximately \$475 million in cash, inclusive of transaction costs. Accordingly, Kodak also became the 100% owner of Paris-based subsidiary, Trophy Radiologie, S.A., a developer and manufacturer of dental digital radiography equipment, which PracticeWorks acquired in December 2002. This acquisition will enable Kodak's Health business to offer its customers a full spectrum of dental imaging products and services from traditional film to digital radiography and photography. Earnings from continuing operations for 2003 include the results of PracticeWorks from the date of acquisition.

The following table summarizes the estimated fair value of the assets acquired and liabilities assumed at the date of acquisition and represents the final allocation of the purchase price.

At October 7, 2003 - (in millions)	
Current assets	\$ 52
Intangible assets (including in-process R&D)	179
Other non-current assets (including PP&E)	53
Goodwill	350
	<hr/>
Total assets acquired	\$ 634
	<hr/>
Current liabilities	\$ 71
Long-term debt	23
Other non-current liabilities	65
	<hr/>
Total liabilities assumed	\$ 159
	<hr/>
Net assets acquired	\$ 475
	<hr/>

Of the \$179 million of acquired intangible assets, \$10 million was assigned to research and development assets that were written off at the date of acquisition. This amount was determined by identifying research and development projects that had not yet reached technological feasibility and for which no alternative future uses exist. As of the acquisition date, there were two projects that met these criteria. The value of the projects identified to be in progress was determined by estimating the future cash flows from the projects once commercialized, less costs to complete development, and discounting these net cash flows back to their present value. The discount rate used for these projects was 14%. The charges for the write-off were included as research and development costs in the Company's Consolidated Statement of Earnings for the year ended December 31, 2003.

The remaining \$169 million of intangible assets have useful lives ranging from three to eighteen years. The intangible assets that make up that amount include customer relationships of \$123 million (eighteen-year weighted-average useful life), developed technology of \$44 million (seven-year weighted-average useful life), and other assets of \$2 million (three-year weighted-average useful life). The \$350 million of goodwill will be assigned to the Health segment and is not expected to be deductible for tax purposes.

The unaudited pro forma combined historical results, as if PracticeWorks had been acquired at the beginning of 2003 and 2002, respectively, are estimated to be:

(in millions, except per share data)	2003 (Restated)	2002
Net sales	\$ 13,039	\$ 12,636
Earnings from continuing operations	\$ 185	\$ 735
Basic earnings per share from continuing operations	\$ .65	\$ 2.52
Diluted earnings per share from continuing operations	\$ .65	\$ 2.52
Number of common shares used in:		
Basic earnings per share	286.5	291.5
Diluted earnings per share	290.8	291.7

The pro forma results include amortization of the intangible assets presented above and interest expense on debt assumed to finance the purchase. The interest expense was calculated based on the assumption that approximately \$450 million of the purchase price was financed through debt with an annual interest rate of approximately 5%. The pro forma results exclude the write-off of research and development assets that were acquired from the acquisition. The pro forma results are not necessarily indicative of what actually would have occurred if the acquisition had been completed as of the beginning of each fiscal period presented, nor are they necessarily indicative of future consolidated results.

#### ***Laser-Pacific Media Corporation***

On October 31, 2003, the Company announced that it had completed the acquisition of Laser-Pacific Media Corporation (Laser-Pacific), a leading Hollywood-based post-production company for approximately \$31 million or \$4.22 per share. At the time of the closing, Laser-Pacific had approximately \$6 million of net debt. The acquisition will allow the Company to establish a major presence in television post-production and further extends Kodak's current digital services capabilities in the feature film market. Approximately \$2 million of the purchase price was allocated to customer-related intangible assets that have a useful life of four years. Approximately \$10 million of the purchase price was allocated to goodwill, which is reported in the Company's Photography segment. The goodwill is not expected to be deductible for tax purposes. Earnings from continuing operations for 2003 include the results of Laser-Pacific from the date of acquisition.

#### ***Algotec Systems Ltd.***

On November 26, 2003, the Company announced that it had completed the acquisition of Algotec Systems Ltd. (Algotec), a leading developer of advanced picture-archiving-and-communications systems (PACS) in Raanana, Israel, for approximately \$43 million in cash. The acquisition improves the Company's position in the growing market for Healthcare Information Systems (HCIS), which enable radiology departments worldwide to digitally manage and store medical images and information.

#### ***Kodak Wuxi China Limited***

On December 26, 2003, an unaffiliated investor in Kodak Wuxi China Limited (KWCL) exercised its rights under a put option arrangement, which required Kodak to repurchase a 30% outstanding minority equity interest in this subsidiary for approximately \$15 million in cash. The purchase price allocation was completed in 2004, at which time the approximately \$3 million excess purchase price was allocated to goodwill and other identifiable assets.

***Kodak China Company Limited***

On December 31, 2003, an unaffiliated investor in Kodak China Company Limited (KCCL) exercised its rights under a put option arrangement, which required Kodak to repurchase a 10% outstanding minority equity interest in this subsidiary for approximately \$42 million in cash. The purchase price allocation was completed in the third quarter of 2004, at which time the approximately \$3 million excess purchase price was allocated to goodwill and other identifiable assets.

***Other***

During the first quarter, the Company paid approximately \$21 million for the rights to certain technology. As this technology was still in the development phase and not yet ready for commercialization, it qualified as in-process research and development. Additionally, management determined that there are no alternative future uses for this technology beyond its initial intended application. Accordingly, the entire purchase price was expensed in the year ended December 31, 2003 as research and development costs in the accompanying Consolidated Statement of Earnings.

During 2003, the Company completed a number of additional acquisitions with an aggregate purchase price of approximately \$3 million, which were individually immaterial to the Company's financial position, results of operations or cash flows.

**2002*****ENCAD, Inc.***

On January 24, 2002, the Company completed the acquisition of 100% of the voting common stock of ENCAD, Inc., (ENCAD) for a total purchase price of approximately \$25 million. The purchase price was paid almost entirely in Kodak common stock. The purchase price in excess of the fair value of the net assets acquired of approximately \$6 million has been allocated to goodwill. Earnings from continuing operations for 2002 include the results of ENCAD from the date of acquisition.

***Kodak India Limited***

On September 11, 2002, the Company initiated an offer to acquire all of the outstanding minority equity interests in Kodak India Limited (Kodak India), a majority owned subsidiary of the Company. The voluntary offer to the minority equity interest holders of Kodak India was for the acquisition of approximately 2.8 million shares representing the full 25.24% minority ownership in the subsidiary. In the fourth quarter of 2002, the Company purchased 2.1 million shares for approximately \$16 million in cash. Upon completion of the purchase price allocation in 2003, the Company recorded essentially all of the excess purchase price of \$8 million as goodwill. In December 2002, the Company also made an offer to purchase the remaining 6.04% outstanding minority interest in Kodak India for approximately \$4.9 million. This additional repurchase was completed during 2004. Kodak India operates in each of the Company's reportable segments and is engaged in the manufacture, trading and marketing of cameras, films, photo chemicals and other imaging products.

***Kodak China Company Limited***

On December 31, 2002, an unaffiliated investor in KCCL exercised its rights under a put option arrangement, which required Kodak to repurchase a 10% outstanding minority equity interest in this subsidiary for approximately \$44 million in cash. Due to the timing of this acquisition, the purchase price allocation was not complete as of December 31, 2002. Accordingly, the purchase price in excess of the fair value of the net assets acquired of approximately \$18 million was recorded in other long-term assets in the Company's 2002 Consolidated Statement of Financial Position. During 2003, the Company completed the purchase price allocation. As a result of this allocation, the Company recorded goodwill of approximately \$13 million and recognized approximately \$5 million in amortizable intangible assets.

**Other**

During 2002, the Company completed a number of additional acquisitions with an aggregate purchase price of approximately \$14 million, which were individually immaterial to the Company's financial position, results of operations or cash flows.

**NOTE 22: DISCONTINUED OPERATIONS****2004**

On August 13, 2004, the Company completed the sale of the assets and business of the Remote Sensing Systems operation, including the stock of Kodak's wholly owned subsidiary, Research Systems, Inc. (collectively known as RSS), to ITT Industries for \$725 million in cash. RSS, a leading provider of specialized imaging solutions to the aerospace and defense community, was part of the Company's commercial and government systems' operation within the Commercial Imaging segment. Its customers include NASA, other U.S. government agencies, and aerospace and defense companies. The sale was completed on August 13, 2004. RSS had net sales for the years ended December 31, 2004 and 2003 of approximately \$312 million and \$424 million, respectively. RSS had earnings before taxes for the years ended December 31, 2004 and 2003 of approximately \$44 million and \$66 million, respectively.

The sale of RSS resulted in an after-tax gain of approximately \$439 million. The after-tax gain excludes the potential impacts from any settlement gains or losses that may be incurred in connection with the Company's pension plan of approximately \$55 million, as this amount will be recognized upon final transfer of plan assets, which is expected to occur during 2005.

The contract with ITT includes a provision under which Kodak may receive up to \$35 million in cash (the "Cash Amount") from ITT depending on the amount of pension plan assets that are ultimately transferred from Kodak's defined benefit pension plan trust in the U.S. to ITT. The total amount of assets that Kodak will ultimately transfer to ITT will be actuarially determined in accordance with the applicable sections under the Treasury Regulations and ERISA (the "Transferred Assets"). The Cash Amount will be equal to 50% of the amount by which the Transferred Assets exceed the maximum amount of assets that would be required to be transferred in accordance with the applicable U.S. Government Cost Accounting Standards (the "CAS Assets"), up to \$35 million. Based on preliminary actuarial valuations, the estimated Cash Amount is approximately \$30 million. Accordingly, the after-tax gain from the sale of RSS includes an estimated pre-tax amount of \$30 million, representing the Company's estimate of the Cash Amount that will be received following the transfer of the pension plan assets to ITT. This amount has been recorded in assets of discontinued operations in the Company's Consolidated Statement of Financial Position as of December 31, 2004. Upon completion of the final actuarial valuation (expected during 2005), which will determine the Transferred Assets, the gain will be adjusted accordingly.

Total Company earnings from discontinued operations for the years ended December 31, 2004 and 2003 of approximately \$36 million (excluding the \$439 million RSS after-tax gain) and \$64 million, respectively, were net of provisions for income taxes of \$6 million and \$10 million, respectively.

**2003**

During the three month period ended March 31, 2003, the Company repurchased certain properties that were initially sold in connection with the 1994 divestiture of Sterling Winthrop Inc., which represented a portion of the Company's non-imaging health businesses. The repurchase of these properties allows the Company to directly manage the environmental remediation that the Company is required to perform in connection with those properties, which will result in better overall cost control (see Note 11, "Commitments and Contingencies"). In addition, the repurchase eliminated the uncertainty regarding the recoverability of tax benefits associated with the indemnification payments that were previously being made to the purchaser. Accordingly, the Company reversed a tax reserve of approximately \$15 million through earnings from discontinued operations in the accompanying Consolidated Statement of Earnings for the twelve months ended December 31, 2003, which was previously established through discontinued operations.

During the three month period ended March 31, 2003, the Company received cash relating to the favorable outcome of litigation associated with the 1994 sale of Sterling Winthrop Inc. The related gain of \$19 million was recognized in loss from discontinued operations in the Consolidated Statement of Earnings for the year ended December 31, 2002. The cash receipt is reflected in the net cash provided by (used in) discontinued operations component in the accompanying Consolidated Statement of Cash Flows for the year ended December 31, 2003.

During the fourth quarter of 2003, the Company recorded a net of tax credit of \$7 million through discontinued operations for the reversal of an environmental reserve, which was primarily attributable to positive developments in the Company's remediation efforts relating to a formerly owned manufacturing site in the U.S. In addition, during the fourth quarter of 2003, the Company reversed state income tax reserves of \$3 million, net of tax, through discontinued operations due to the favorable outcome of tax audits in connection with a formerly owned business.

**2002**

The net loss from discontinued operations of \$23 million in the accompanying Consolidated Statement of Earnings for the twelve months ended December 31, 2002 reflects losses incurred from the shutdown of Kodak Global Imaging, Inc., which amounted to \$35 million net of tax, partially offset by net of tax earnings of \$12 million related to the favorable outcome of litigation associated with the 1994 sale of Sterling Winthrop Inc.

**NOTE 23: SEGMENT INFORMATION****Current Segment Reporting Structure**

The Company has four reportable segments aligned based on aggregation of similar products and services: Digital & Film Imaging Systems (D&FIS); Health; Commercial Imaging; and Graphic Communications. The balance of the Company's operations, which individually and in the aggregate do not meet the criteria of a reportable segment, are reported in All Other. A description of the segments is as follows:

**Digital & Film Imaging Systems Segment:** The Digital & Film Imaging Systems segment derives revenues from consumer film products, sales of origination and print film to the entertainment industry, sales of professional film products, traditional and inkjet photo paper, chemicals, traditional and digital cameras, digital printers, photoprocessing equipment and services, and digitization services, including online services.

**Health Segment:** The Health segment derives revenues from the sale of digital products, including laser imagers, media, computed and direct radiography equipment and healthcare information systems, as well as traditional medical products, including analog film, equipment, chemistry, services and specialty products for the mammography, oncology and dental fields.

**Commercial Imaging Segment:** The Commercial Imaging segment is composed of document imaging products and services, commercial and government systems products and services, and optics. The Remote Sensing Systems business, which was sold to ITT Industries in August 2004, is accounted for as a discontinued operation in prior periods and the current period up through the date of sale.

**Graphic Communications Segment:** The Graphic Communications segment is composed of the Company's equity investments in Kodak Polychrome Graphics (Kodak's 50/50 joint venture with Sun Chemical) and NexPress (Kodak's 50/50 joint venture with Heidelberg) prior to its acquisition in May 2004, and the graphics and wide-format inkjet businesses. This segment also includes the results of Scitex Digital Printing, which was acquired in January 2004 and has since been renamed Kodak Versamark, as well as the results of the NexPress-related entities subsequent to the acquisition in May 2004.

**All Other:** All Other is composed of Kodak's display and components business for image sensors and other small, miscellaneous businesses. It also includes development initiatives in consumer inkjet technologies.

Transactions between segments, which are immaterial, are made on a basis intended to reflect the market value of the products, recognizing prevailing market prices and distributor discounts. Differences between the reportable segments' operating results and assets and the Company's consolidated financial statements relate primarily to items held at the corporate level, and to other items excluded from segment operating measurements.

No single customer represented 10% or more of the Company's total net sales in any period presented.

Segment financial information is shown below.

(in millions)	2004	2003	2002
		(Restated)	
<b>Net sales from continuing operations:</b>			
Digital & Film Imaging Systems	\$ 9,186	\$ 9,248	\$ 9,002
Health	2,686	2,431	2,274
Commercial Imaging	803	791	791
Graphic Communications	724	346	402
All Other	118	93	80
<b>Consolidated total</b>	<b>\$ 13,517</b>	<b>\$ 12,909</b>	<b>\$ 12,549</b>
<b>Earnings (losses) from continuing operations before interest, other income (charges), net, and income taxes:</b>			
Digital & Film Imaging Systems	\$ 580	\$ 416	\$ 771
Health	435	476	431
Commercial Imaging	127	109	118
Graphic Communications	(140)	(11)	21
All Other	(182)	(77)	(27)
<b>Total of segments</b>	<b>820</b>	<b>913</b>	<b>1,314</b>
Strategic asset impairments	—	(3)	(32)
Impairment of Burrell Companies' net assets	—	(9)	—
Restructuring costs and other	(901)	(552)	(114)
Donation to technology enterprise	—	(8)	—
GE settlement	—	(12)	—
Touch Point settlement	(6)	—	—
Patent infringement claim settlement	—	(14)	—
Prior year acquisition settlement	—	(14)	—
Legal settlement	—	(8)	—
Environmental reserve reversal	—	9	—
<b>Consolidated total</b>	<b>\$ (87)</b>	<b>\$ 302</b>	<b>\$ 1,168</b>
<b>Net earnings (losses) from continuing operations:</b>			
Digital & Film Imaging Systems	\$ 504	\$ 363	\$ 554
Health	352	397	315
Commercial Imaging	102	86	85
Graphic Communications	(88)	(41)	(38)
All Other	(155)	(80)	(25)
<b>Total of segments</b>	<b>715</b>	<b>725</b>	<b>891</b>
Strategic asset and venture investment impairments	—	(7)	(50)
Impairment of Burrell Companies' net assets	—	(9)	—
Restructuring costs and other	(901)	(552)	(114)
Donation to technology enterprise	—	(8)	—
GE settlement	—	(12)	—
Touch Point settlement	(6)	—	—
Sun Microsystems settlement	92	—	—
BIGT settlement	9	—	—
Patent infringement claim settlement	—	(14)	—
Prior year acquisition settlement	—	(14)	—
Legal settlement	—	(8)	—
Environmental reserve reversal	—	9	—
Interest expense	(168)	(147)	(173)
Other corporate items	12	11	14
Tax benefit - contribution of patents	—	13	—
Tax benefit - PictureVision subsidiary closure	—	—	45
Tax benefit - Kodak Imagex Japan	—	—	46
Income tax effects on above items and taxes not allocated to segments	328	202	102
<b>Consolidated total</b>	<b>\$ 81</b>	<b>\$ 189</b>	<b>\$ 761</b>



(in millions)	2004	2003	2002
		(Restated)	
<b>Segment total assets:</b>			
Digital & Film Imaging Systems	\$ 8,309	\$ 8,890	\$ 8,798
Health	2,647	2,598	2,011
Commercial Imaging	592	656	685
Graphic Communications	1,197	599	606
All Other	96	7	65
<b>Total of segments</b>	<b>12,841</b>	<b>12,750</b>	<b>12,165</b>
LIFO inventory reserve	(330)	(368)	(392)
Cash and marketable securities	1,258	1,261	577
Deferred income tax assets	1,077	1,034	925
Assets of discontinued operations	30	137	115
Other corporate assets/(reserves)	(139)	32	104
<b>Consolidated total assets</b>	<b>\$ 14,737</b>	<b>\$ 14,846</b>	<b>\$ 13,494</b>
<b>Intangible asset amortization expense from continuing operations:</b>			
Digital & Film Imaging Systems	\$ 31	\$ 17	\$ 14
Health	24	11	7
Commercial Imaging	—	—	—
Graphic Communications	12	—	—
All Other	—	—	—
<b>Consolidated total</b>	<b>\$ 67</b>	<b>\$ 28</b>	<b>\$ 21</b>
<b>Depreciation expense from continuing operations:</b>			
Digital & Film Imaging Systems	\$ 698	\$ 656	\$ 634
Health	149	108	107
Commercial Imaging	51	41	42
Graphic Communications	53	24	27
All Other	13	10	3
<b>Consolidated total</b>	<b>\$ 964</b>	<b>\$ 839</b>	<b>\$ 813</b>
<b>Capital additions from continuing operations:</b>			
Digital & Film Imaging Systems	\$ 307	\$ 377	\$ 408
Health	75	81	81
Commercial Imaging	21	24	46
Graphic Communications	29	9	32
All Other	28	6	4
<b>Consolidated total</b>	<b>\$ 460</b>	<b>\$ 497</b>	<b>\$ 571</b>

(in millions)	2004	2003	2002
		(Restated)	
Net sales to external customers attributed to (1):			
The United States	\$ 5,756	\$ 5,450	\$ 5,722
Europe, Middle East and Africa	\$ 3,926	\$ 3,794	\$ 3,363
Asia Pacific	2,482	2,347	2,242
Canada and Latin America	1,353	1,318	1,222
Foreign countries total	\$ 7,761	\$ 7,459	\$ 6,827
Consolidated total	\$ 13,517	\$ 12,909	\$ 12,549

(1) Sales are reported in the geographic area in which they originate.

Property, plant and equipment, net located in:			
The United States	\$ 2,838	\$ 3,175	\$ 3,459
Europe, Middle East and Africa	\$ 641	\$ 733	\$ 769
Asia Pacific	822	920	943
Canada and Latin America	211	223	207
Foreign countries total	\$ 1,674	\$ 1,876	\$ 1,919
Consolidated total	\$ 4,512	\$ 5,051	\$ 5,378

#### New Kodak Operating Model and Change in Reporting Structure

As of and for the year ended December 31, 2004, the Company reported financial information for four reportable segments (Digital & Film Imaging Systems, Health, Commercial Imaging, and Graphic Communications) and All Other. However, in September of 2004, the Company announced the realignment of its operations to accelerate growth in the commercial, consumer and health markets. The move is designed to enhance the Company's operational performance and to accelerate profitable growth. In connection with the realignment, the Company's new reporting structure will be implemented beginning in the first quarter of 2005 as outlined below:

**Digital & Film Imaging Systems Segment (D&FIS):** Subsequent to the realignment, the D&FIS segment comprises the same products and services as the current D&FIS segment with the addition of aerial and industrial film.

**Health Segment:** There were no changes to the Health segment.

**Graphic Communications Segment:** As of January 1, 2005, the Graphic Communications segment is composed of Encad, Inc., Kodak Versamark, the NexPress-related entities and Kodak Polychrome Graphics (Kodak's 50/50 joint venture with Sun Chemical), which includes the graphics and wide-format inkjet businesses. In addition, high-speed document scanners, microfilm and worldwide service and support, as well as business process services are included with Graphic Communications.

**All Other:** All Other is composed of Kodak's display and components business for image sensors and other small, miscellaneous businesses. It also includes development initiatives in consumer inkjet technologies.

**NOTE 24: QUARTERLY SALES AND EARNINGS DATA - UNAUDITED**

As discussed in Note 1, the Company has restated its consolidated financial statements as of and for the quarters ended March 31, June 30, September 30, and December 31, 2003 and for the quarters ended March 31, June 30, and September 30, 2004.

(in millions, except per share data)	4th Qtr.	3rd Qtr.	2nd Qtr.	1st Qtr.
		(Restated)	(Restated)	(Restated)
<b>2004</b>				
Net sales from continuing operations	\$ 3,759	\$ 3,374	\$ 3,464	\$ 2,920
Gross profit from continuing operations	983	1,078	1,101	807
(Loss) earnings from continuing operations	(58)(5)	12(3)	119(2)	8(1)
(Loss) earnings from discontinued operations (12)	(1)	446(4)	17	13
Net (loss) earnings	(59)	458	136	21
Basic net (loss) earnings per share (13)				
Continuing operations	(.20)	.04	.42	.03
Discontinued operations	—	1.56	.06	.04
Total	(.20)	1.60	.48	.07
Diluted net (loss) earnings per share (13)				
Continuing operations	(.20)	.04	.40	.03
Discontinued operations	—	1.56	.06	.04
Total	(.20)	1.60	.46	.07
<b>2004</b>				
<b>As Originally Reported</b>				
Net sales from continuing operations		\$ 3,364	\$ 3,469	\$ 2,919
Gross profit from continuing operations		1,075	1,115	812
Earnings from continuing operations		45	143	16
Earnings from discontinued operations		434	11	12
Net earnings		479	154	28
Basic net earnings per share				
Continuing operations		.16	.50	.06
Discontinued operations		1.51	.04	.04
Total		1.67	.54	.10
Diluted net earnings per share				
Continuing operations		.16	.48	.06
Discontinued operations		1.51	.03	.04
Total		1.67	.51	.10
<b>2003</b>				
<b>(Restated)</b>				
Net sales from continuing operations	\$ 3,645	\$ 3,367	\$ 3,258	\$ 2,639
Gross profit from continuing operations	1,153	1,128	1,094	800
(Loss) earnings from continuing operations	(46)(10)	139(9)	114(8)	(18)(6)
Earnings from discontinued operations (12)	30(11)	7	4	23(7)
Net (loss) earnings	(16)	146	118	5
Basic and diluted net (loss) earnings per share (13)				
Continuing operations	(.16)	.48	.40	(.06)
Discontinued operations	.10	.03	.01	.08
Total	(.06)	.51	.41	.02

(in millions, except per share data)

	4th Qtr.	3rd Qtr.	2nd Qtr.	1st Qtr.
<b>2003</b>				
<b>As Originally Reported</b>				
Net sales from continuing operations	\$ 3,648	\$ 3,346	\$ 3,259	\$ 2,640
Gross profit from continuing operations	1,176	1,105	1,096	801
(Loss) earnings from continuing operations	(10)	115	106	(12)
Earnings from discontinued operations	29	7	6	24
Net earnings	19	122	112	12
Basic and diluted net (loss) earnings per share				
Continuing operations	(.03)	.40	.37	(.04)
Discontinued operations	.10	.02	.02	.08
Total	.07	.42	.39	.04

- (1) Includes \$78 million (\$24 million included in cost of goods sold and \$54 million included in restructuring costs and other) of restructuring charges, which reduced net earnings by \$56 million; and \$9 million of purchased R&D, which reduced net earnings by \$6 million.
- (2) Includes \$168 million (\$34 million included in cost of goods sold and \$134 million included in restructuring costs and other) of restructuring and impairment charges, which reduced net earnings by \$107 million.
- (3) Includes \$264 million (\$37 million included in cost of goods sold and \$227 million included in restructuring costs and other) of restructuring charges, which reduced net earnings by \$202 million; and \$6 million of purchased R&D, which reduced net earnings by \$4 million.
- (4) Includes the gain on the sale of RSS to ITT.
- (5) Includes \$391 million (\$111 million included in cost of goods sold and \$280 million included in restructuring costs and other) of restructuring and impairment charges, which reduced net earnings by \$262 million; and \$6 million (included in SG&A) related to a charge for a legal settlement, which reduced net earnings by \$4 million. Also includes the benefit of two favorable legal settlements of \$101 million (included in other income (charges), net), which increased net earnings by \$63 million.
- (6) Includes \$49 million (\$14 million included in cost of goods sold and \$35 million included in restructuring costs and other) of restructuring charges, which reduced net earnings by \$34 million; \$21 million of purchased R&D, which reduced net earnings by \$13 million; \$12 million (included in SG&A) for a charge related to an intellectual property settlement, which reduced net earnings by \$7 million; and an \$8 million (included in benefit for income taxes) tax benefit related to the donation of certain patents.
- (7) Represents the reversal of a tax reserve resulting from the Company's repurchase of certain properties that were initially sold in connection with the 1994 divestiture of Sterling Winthrop Inc.

- (8) Includes \$51 million (\$10 million included in cost of goods sold and \$41 million included in restructuring costs and other) of restructuring charges, which reduced net earnings by \$33 million; \$14 million (included in SG&A) for a charge connected with the settlement of a patent infringement claim, which reduced net earnings by \$9 million; \$14 million (included in SG&A) for a charge connected with a prior-year acquisition, which reduced net earnings by \$9 million; and \$9 million (included in SG&A) for a charge to write down certain assets held for sale following the acquisition of the Burrell Companies, which reduced net earnings by \$6 million.
- (9) Includes \$185 million (\$33 million included in cost of goods sold and \$152 million included in restructuring costs and other) of restructuring charges, which reduced net earnings by \$121 million; and \$8 million (included in SG&A) for a donation to a technology enterprise, which reduced net earnings by \$5 million.
- (10) Includes \$267 million (\$16 million included in cost of goods sold and \$251 million included in restructuring costs and other) of restructuring charges, which reduced net earnings by \$208 million; \$8 million (included in SG&A) for legal settlements, which reduced net earnings by \$5 million; \$3 million (included in SG&A) for strategic asset impairments, which reduced net earnings by \$2 million; \$4 million (included in other income (charges), net) for non-strategic asset write-downs, which reduced net earnings by \$3 million; \$10 million of purchased R&D (included in R&D), which reduced net earnings by \$6 million; a \$9 million reversal (included in SG&A) for an environmental reserve, which increased net earnings by \$6 million; and a \$5 million (included in benefit for income taxes) tax benefit related to the donation of certain patents.
- (11) Includes \$12 million for the reversal of environmental reserves at a formerly owned manufacturing site, which increased net earnings by \$7 million; and a \$3 million increase to net earnings in relation to the reversal of state income tax reserves.
- (12) Refer to Note 22, "Discontinued Operations" for a discussion regarding earnings (loss) from discontinued operations.
- (13) Each quarter is calculated as a discrete period and the sum of the four quarters may not equal the full year amount. Effective December 15, 2004, the Company adopted the provisions of EITF 04-8. The consensus reached in this issue requires the dilutive effect of contingent convertible debt instruments with market price contingencies to be included in diluted earnings per share, regardless of whether the market price contingency has been met. The Company currently has contingent convertible debt instruments outstanding that are convertible if the market price of our common stock exceeds \$37.224 per share for a specified period of time. This debt was issued in October 2003. EITF 04-8 requires restatement of all periods presented for which contingent convertible debt instruments were outstanding. The Company's diluted net earnings per share in the above table includes the effect of EITF 04-8, which had no material impact on the Company's diluted earnings per share.

#### **Changes in Estimates Recorded During the Fourth Quarter Ended December 31, 2003 (Restated)**

During the fourth quarter ended December 31, 2003, the Company recorded approximately \$22 million relating to changes in estimates with respect to certain of its employee benefit and incentive compensation accruals. These changes in estimates favorably impacted the results for the fourth quarter by \$.07 per share.

**NOTE 25: SUBSEQUENT EVENTS**

On January 12, 2005, the Company announced that it would become the sole owner of Kodak Polychrome Graphics (KPG) through redemption of Sun Chemical Corporation's 50 percent interest in the KPG joint venture. The transaction will further establish the Company as a leader in the graphic communications industry and will complement the Company's existing business in this market. Under the terms of the transaction, the Company will redeem all of Sun Chemical's shares in KPG by providing \$317 million in cash at closing, \$200 million in cash in the third quarter of 2006, and \$50 million in cash annually from 2008 through 2013, for a total of \$817 million. The Company will fund the redemption through internally generated cash flow. The Company will initially operate KPG as a wholly owned subsidiary within the Graphic Communications segment. The Company completed its acquisition of KPG on April 1, 2005.

On January 31, 2005, the Company announced that it had entered into a definitive agreement to acquire Creo, Inc. (Creo), a premier supplier of pre-press systems used by commercial printers worldwide. Under the terms of the agreement, the Company will pay approximately \$980 million in cash, or \$16.50 per share, for all the outstanding shares of Creo, on a fully diluted basis. The transaction will provide the Company an innovative digital pre-press product portfolio and established relationships in the commercial printing segment. The transaction, which has been approved by the Company's and Creo's respective boards of directors, is to be carried out by statutory plan of arrangement under Canadian law and is subject to regulatory approvals, the approval of Creo's shareholders, and court approval. Upon the closing of the transaction, Creo's operations will become part of the Graphic Communications segment. The transaction is expected to close by the end of the third quarter of 2005.

**Eastman Kodak Company****SUMMARY OF OPERATING DATA** (in millions, except per share data, shareholders, and employees)

	2004	2003	2002	2001	2000
		(Restated)(1)			
Net sales from continuing operations	\$ 13,517	\$ 12,909	\$ 12,549	\$ 12,976	\$ 13,813
(Loss) earnings from continuing operations before interest, other income (charges), net, and income taxes	(87)	302	1,168	319	2,177
<b>Earnings from:</b>					
Continuing operations	81(2)	189(3)	761(4)	61(5)	1,384(6)
Discontinued operations	475(7)	64(7)	9(7)	15(7)	23
<b>NET EARNINGS</b>	556	253	770	76	1,407
<b>EARNINGS AND DIVIDENDS</b>					
Earnings from continuing operations					
- % of net sales from continuing operations	0.6%	1.5%	6.1%	0.5%	10.0%
Net earnings					
- % return on average shareholders' equity	15.8%	8.4%	27.2%	2.4%	38.3%
Basic earnings per share:					
Continuing operations	.28	.66	2.61	.21	4.54
Discontinued operations	1.66	.22	.03	.05	.08
Total	1.94	.88	2.64	.26	4.62
Diluted earnings per share:					
Continuing operations	.28	.66	2.61	.21	4.51
Discontinued operations	1.66	.22	.03	.05	.08
Total	1.94	.88	2.64	.26	4.59
Cash dividends declared and paid					
- on common shares	143	330	525	643	545
- per common share	.50	1.15	1.80	2.21	1.76
Common shares outstanding at year end	286.7	286.6	285.9	290.9	290.5
Shareholders at year end	80,426	85,712	89,988	91,893	113,308
<b>STATEMENT OF FINANCIAL POSITION DATA</b>					
Working capital	658	197	(968)	(737)	(786)
Property, plant and equipment, net	4,512	5,051	5,378	5,618	5,878
Total assets	14,737	14,846	13,494	13,362	14,212
Short-term borrowings and current portion of long-term debt	469	946	1,442	1,534	2,206
Long-term debt, net of current portion	1,852	2,302	1,164	1,666	1,166
Total shareholders' equity	3,811	3,245	2,777	2,894	3,428
<b>SUPPLEMENTAL INFORMATION</b> (all amounts are from continuing operations)					
Net sales from continuing operations					
- D&FIS	\$ 9,186	\$ 9,248	\$ 9,002	\$ 9,403	\$ 10,231
- Health	2,686	2,431	2,274	2,262	2,220
- Commercial Imaging	803	791	791	838	825
- Graphic Communications	724	346	402	387	450
- All Other	118	93	80	86	87
Research and development costs	854	776	757	777	784
Depreciation	964	839	813	760	733
Taxes (excludes payroll, sales and excise taxes)	(100)	4	268	142	920
Wages, salaries and employee benefits	4,188	3,960	3,906	3,744	3,658
Employees at year end					
- in the U.S.	29,200	33,800	37,900	40,900	42,300
- worldwide	54,800	62,300	68,900	74,000	77,500

(see footnotes on next page)

**SUMMARY OF OPERATING DATA****Eastman Kodak Company**

(footnotes for previous page)

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- (1) Refer to Note 1, "Significant Accounting Policies and Restatement" for a discussion of the restatement of previously issued financial statements.
  - (2) Includes \$889 million of restructuring charges; \$16 million of purchased R&D; \$12 million for a charge related to asset impairments and other asset write-offs; and a \$6 million charge for a legal settlement. Also includes the benefit of two legal settlements of \$101 million. These items reduced net earnings by \$609 million.
  - (3) Includes \$552 million of restructuring charges; \$31 million of purchased R&D; \$7 million for a charge related to asset impairments and other asset write-offs; a \$12 million charge related to an intellectual property settlement; \$14 million for a charge connected with the settlement of a patent infringement claim; \$14 million for a charge connected with a prior-year acquisition; \$9 million for a charge to write down certain assets held for sale following the acquisition of the Burrell Companies; \$8 million for a donation to a technology enterprise; an \$8 million charge for legal settlements; a \$9 million reversal for an environmental reserve; and a \$13 million tax benefit related to patent donations. These items reduced net earnings by \$441 million.
  - (4) Includes \$143 million of restructuring charges; \$29 million reversal of restructuring charges; \$50 million for a charge related to asset impairments and other asset write-offs; and a \$121 million tax benefit relating to the closure of the Company's PictureVision subsidiary, the consolidation of the Company's photofinishing operations in Japan, asset write-offs and a change in the corporate tax rate. These items improved net earnings by \$7 million.
  - (5) Includes \$672 million of restructuring charges; \$42 million for a charge related to asset impairments associated with certain of the Company's photofinishing operations; \$15 million for asset impairments related to venture investments; \$41 million for a charge for environmental reserves; \$77 million for the Wolf bankruptcy; a \$20 million charge for the Kmart bankruptcy; \$18 million of relocation charges related to the sale and exit of a manufacturing facility; an \$11 million tax benefit related to a favorable tax settlement; and a \$20 million tax benefit representing a decline in the year-over-year effective tax rate. These items reduced net earnings by \$590 million.
  - (6) Includes accelerated depreciation and relocation charges related to the sale and exit of a manufacturing facility of \$50 million, which reduced net earnings by \$33 million.
  - (7) Refer to Note 22, "Discontinued Operations" for a discussion regarding the earnings from discontinued operations.



**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES****Evaluation of Disclosure Controls and Procedures**

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. The Company's management, with participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the fiscal year covered by this Annual Report on Form 10-K. As described below under Management's Report on Internal Control Over Financial Reporting, the Company has identified material weaknesses in the Company's internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)). The Company's Chief Executive Officer and Chief Financial Officer have concluded that as a result of the material weaknesses, as of the end of the period covered by this Annual Report on Form 10-K, the Company's disclosure controls and procedures were not effective.

**Management's Report on Internal Control Over Financial Reporting**

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States of America. The Company's internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2004. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework. Management excluded the NexPress-related entities and Scitex Digital Printing (renamed Kodak Versamark) from its assessment of internal control over financial reporting because they were acquired by the Company in purchase business combinations during 2004. The NexPress-related entities and Scitex Digital Printing are wholly owned subsidiaries of the Company that represent 2% and 2%, respectively, of consolidated total assets and 1% and 1%, respectively, of consolidated revenue as of and for the year ended December 31, 2004.

Based on our assessment and those criteria, management has concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2004 as a result of material weaknesses in (a) internal controls surrounding the accounting for income taxes and (b) internal controls to validate the accuracy of participant census data and the monitoring of benefit payments for pension and other postretirement benefit plans.

A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

**Internal Controls Surrounding the Accounting for Income Taxes:**

The principal factors contributing to the material weakness in accounting for income taxes were as follows:

- Lack of local tax law expertise or failure to engage local tax law expertise resulting in the incorrect assumption of reduced tax expense associated with restructuring charges in various foreign locations in 2004 and 2003;
- Inadequate knowledge and application of the provisions of SFAS No. 109 by tax personnel resulting in errors in the accounting for income taxes;
- Lack of clarity in roles and responsibilities within the global tax organization related to income tax accounting;
- Insufficient or ineffective review and approval practices within the global tax and finance organizations resulting in the errors not being prevented or detected in a timely manner; and
- Lack of processes to effectively reconcile the income tax general ledger accounts to supporting detail and adequate verification of data used in computations.

This material weakness contributed to the restatement of the Company's consolidated financial statements for 2003, for each of the quarters in the year ended December 31, 2003 and for the first, second and third quarters for 2004, and in the Company recording audit adjustments to the fourth quarter 2004 financial statements. Additionally, if this material weakness is not corrected, it could result in a material misstatement of the income tax accounts that would result in a material misstatement to annual or interim financial statements that might not be prevented or detected.

**Internal Controls Surrounding the Accounting for Pension and Other Postretirement Benefit Plans:**

The principal factors contributing to the material weakness in the internal controls to validate the accuracy of participant census data and the monitoring of benefit payments for pension and other postretirement benefit plans included the following control deficiencies as discovered by management during year end 2004 closing procedures and in conjunction with testing of controls during management's assessment of internal control over financial reporting:

- A deficiency in the design of controls to validate actual versus estimated benefit payments in the accounting for other postretirement benefits. The design deficiency was an erroneous belief that actual payment data could not be captured at the required level of detail to enable adjustment of actuarial estimates on a quarterly basis.
- A failure to demonstrate operating effectiveness in controls surrounding reconciliation of participant census data between source systems and the plan actuary models for various domestic and international pension and other postretirement benefit plans. While analytical procedures to validate the reasonableness of census data extracts were employed, they were not sufficiently robust to prevent or detect errors in census data which could result in more than a remote possibility of a material misstatement of the Company's financial statements.

This material weakness resulted in adjustments that were included in the restatement of the Company's consolidated financial statements for 2003, for each of the quarters in the year ended December 31, 2003 and for the first, second and third quarters for 2004, and in the Company recording adjustments to the fourth quarter 2004 financial statements. Additionally, if this material weakness is not corrected, it could result in a material misstatement of the pension and postretirement accounts that would result in a material misstatement to annual or interim financial statements that might not be prevented or detected.

The Company's independent registered public accounting firm has audited management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2004, as stated in their report which appears on page 77 of this Form 10-K under the heading, *Report of Independent Registered Public Accounting Firm*.

### **Remediation Plans for Material Weaknesses in Internal Control over Financial Reporting**

#### **Accounting for Income Taxes**

The Company is implementing enhancements to its internal control over financial reporting to provide reasonable assurance that errors and control deficiencies in its accounting for income taxes will not recur. These steps include:

- The creation and staffing of a Tax Accounting Manager in the Controllers organization to provide oversight over the income tax accounting performed by the tax organization as well as other actions to strengthen the income tax accounting function within the tax organization.
- The Company, in conjunction with external advisors, has completed a review of all significant income tax related accounts on the balance sheet including a review of income tax accounting relating to significant restructuring and acquisition or divestiture transactions.
- The Company is implementing definitive standards for detailed documentation and reconciliations supporting the deferred tax balances including the review and approval of related journal entries by appropriate subject matter experts.
- The Company has engaged third party advisors to complete an initiative to clarify and enhance roles and responsibilities across the function including levels of authority based on an assessment of the qualifications of staff and management. In connection with this initiative, the Company will be upgrading its tax personnel.
- The Company is investigating the implementation of an IT solution to enhance controls with respect to the collection, tracking and bookkeeping of detailed deferred tax information on a global basis.
- The Company will develop comprehensive income tax accounting training programs for tax and certain finance personnel.
- The Company will enhance audit procedures surrounding accounting for income taxes.

#### **Accounting for Pension and Other Postretirement Benefit Plans**

The Company is implementing enhancements to its internal control over financial reporting for pensions and other postretirement benefits to provide reasonable assurance that errors and control deficiencies of this type will not recur. These steps include:

- The Company has obtained actual payment data for other postretirement benefits and in conjunction with its actuary, recorded the appropriate financial statement adjustments. On a prospective basis, quarterly reports of actual payment data will be utilized in the Company's financial reporting procedures.
- The Company will complete the installation and operational execution of a global IT system created with the assistance of external advisors to enhance controls with respect to the collection, tracking and validation of benefit arrangements, census data and other assumptions related to pension and other postretirement benefit plans on a global basis. This system was developed during 2004 and was partially effective during the Q4 closing process.

- The Company has completed reconciliations of census data between Company source records and plan actuary models for material pension and postretirement benefit plans. Financial adjustments required as a result of these reconciliations were recorded in the 2004 financial results.
- Actions will be undertaken to strengthen the functions responsible for the reconciliation of pension and postretirement benefit plan census data including appropriate training of personnel.

Until these changes are completed, the material weaknesses will continue to exist. Management presently anticipates that the changes necessary to remediate these weaknesses will be in place by the end of the third quarter of 2005.

#### **Changes in Internal Control over Financial Reporting**

Except as otherwise discussed herein, there have been no changes in our internal control over financial reporting during the most recently completed fiscal quarter that have materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

#### **ITEM 9B. OTHER INFORMATION**

**None.**

### **PART III**

#### **ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

The information required by Item 10 regarding directors is incorporated by reference from the information under the caption "Board Structure and Corporate Governance - Board of Directors" in the Company's Notice of 2005 Annual Meeting and Proxy Statement (the Proxy Statement), which will be filed within 120 days after December 31, 2004. The information required by Item 10 regarding audit committee financial expert disclosure is incorporated by reference from the information under the caption "Board Structure and Corporate Governance - Audit Committee Financial Qualifications" in the Proxy Statement. The information required by Item 10 regarding executive officers is contained in Part I under the caption "Executive Officers of the Registrant" on page 13. The information required by Item 10 regarding the Company's written code of ethics is incorporated by reference from the information under the captions "Board Structure and Corporate Governance - Corporate Governance Guidelines" and "Board Structure and Corporate Governance - Business Conduct Guide and Directors' Code of Conduct" in the Proxy Statement. The information required by Item 10 regarding compliance with Section 16(a) of the Securities Exchange Act of 1934 is incorporated by reference from the information under the caption "Section 16(a) Beneficial Ownership Compliance" in the Proxy Statement.

#### **ITEM 11. EXECUTIVE COMPENSATION**

The information required by Item 11 is incorporated by reference from the information under the following captions in the Proxy Statement: "Board Structure and Corporate Governance - Director Compensation," "Compensation of Named Executive Officers," "Summary Compensation Table," "Option/SAR Grants in Last Fiscal Year," "Aggregated Option/SAR Exercises in Last Fiscal Year and Fiscal Year-End Option/SAR Values," "Long-Term Incentive Plan," "Long-Term Incentive Plan - Awards in Last Fiscal Year," "Employment Contracts and Arrangements," "Change in Control Arrangements," "Retirement Plan," "Report of the Executive Compensation and Development Committee," and "Performance Graph - Shareholder Return."

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The information required by Item 12 is incorporated by reference from the information under the captions “Beneficial Security Ownership of More Than 5% of the Company’s Common Stock,” “Beneficial Security Ownership of Directors, Nominees and Executive Officers,” and “Stock Options and SARs Outstanding under Shareholder and Non-Shareholder Approved Plans” in the Proxy Statement.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

The information required by Item 13 is incorporated by reference from the information under the caption “Transactions with Management” in the Proxy Statement.

**ITEM 14. PRINCIPAL AUDITOR FEES AND SERVICES**

The information required by Item 14 regarding principal auditor fees and services is incorporated by reference from the information under the caption “Report of the Audit Committee” in the Proxy Statement.

**PART IV****ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

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(a) 1. Consolidated financial statements:	
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Consolidated statement of cash flows	85-86
Notes to financial statements	87-158
2. Financial statement schedules:	
II - Valuation and qualifying accounts	167
All other schedules have been omitted because they are not applicable or the information required is shown in the financial statements or notes thereto.	
3. Additional data required to be furnished:	
Exhibits required as part of this report are listed in the index appearing on pages 168 through 173.	

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**EASTMAN KODAK COMPANY**  
(Registrant)

By:                   /s/ DANIEL A. CARP                  

**Daniel A. Carp**  
**Chairman & Chief Executive Officer**

By:                   /s/ ROBERT H. BRUST                  

**Robert H. Brust**  
**Chief Financial Officer, and**  
**Executive Vice President**

                  /s/ RICHARD G. BROWN, JR.                  

**Richard G. Brown, Jr.**  
**Chief Accounting Officer, and**  
**Corporate Controller**

Date: April 6, 2005

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the date indicated.

                  /s/ RICHARD S. BRADDOCK                  

**Richard S. Braddock, Director**

                  /s/ DANIEL A. CARP                  

**Daniel A. Carp, Director**

                  /s/ MARTHA LAYNE COLLINS                  

**Martha Layne Collins, Director**

                  /s/ TIMOTHY M. DONAHUE                  

**Timothy M. Donahue, Director**

                  /s/ MICHAEL HAWLEY                  

**Michael Hawley, Director**

                  /s/ WILLIAM H. HERNANDEZ                  

**William H. Hernandez, Director**

                  /s/ DURK I. JAGER                  

**Durk I. Jager, Director**

                  /s/ DEBRA L. LEE                  

**Debra L. Lee, Director**

                  /s/ DELANO E. LEWIS                  

**Delano E. Lewis, Director**

                  /s/ PAUL H. O'NEILL                  

**Paul H. O'Neill, Director**

                  /s/ ANTONIO M. PEREZ                  

**Antonio M. Perez, Director**

                  /s/ HECTOR DE J. RUIZ                  

**Hector de J. Ruiz, Director**

                  /s/ LAURA D'ANDREA TYSON                  

**Laura D'Andrea Tyson, Director**

Date: April 6, 2005

**Eastman Kodak Company**  
**Valuation and Qualifying Accounts**  
(in millions)

	<u>Balance at Beginning of Period</u>	<u>Charges to Earnings</u>	<u>Amounts Written Off</u>	<u>Balance at End of Period</u>
<b>Year ended December 31, 2004</b>				
Deducted in the Statement of Financial Position:				
From Current Receivables				
Reserve for doubtful accounts	\$ 76	\$ 50	\$ 34	\$ 92
Reserve for loss on returns and allowances	36	16	17	35
<b>TOTAL</b>	<b>\$ 112</b>	<b>\$ 66</b>	<b>\$ 51</b>	<b>\$ 127</b>
From Long-Term Receivables and Other Noncurrent Assets				
Reserve for doubtful accounts	\$ 16	\$ 8	\$ 5	\$ 19
<b>Year ended December 31, 2003</b>				
Deducted in the Statement of Financial Position:				
From Current Receivables				
Reserve for doubtful accounts	\$ 104	\$ 28	\$ 56	\$ 76
Reserve for loss on returns and allowances	33	17	14	36
<b>TOTAL</b>	<b>\$ 137</b>	<b>\$ 45</b>	<b>\$ 70</b>	<b>\$ 112</b>
From Long-Term Receivables and Other Noncurrent Assets				
Reserve for doubtful accounts	\$ 53	\$ 4	\$ 41	\$ 16
<b>Year ended December 31, 2002</b>				
Deducted in the Statement of Financial Position:				
From Current Receivables				
Reserve for doubtful accounts	\$ 92	\$ 92	\$ 80	\$ 104
Reserve for loss on returns and allowances	17	17	1	33
<b>TOTAL</b>	<b>\$ 109</b>	<b>\$ 109</b>	<b>\$ 81</b>	<b>\$ 137</b>
From Long-Term Receivables and Other Noncurrent Assets				
Reserve for doubtful accounts	\$ 51	\$ 13	\$ 11	\$ 53

**Eastman Kodak Company**  
**Index to Exhibits**

**Exhibit  
Number**

- (3) A. Certificate of Incorporation.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 25, 1988, Exhibit 3.)
- B. By-laws, as amended through December 16, 2003.  
(Incorporated by reference to the Eastman Kodak Company Current Report on Form 8-K for the date December 16, 2003 as filed on December 17, 2003, Exhibit 3.)
- (4) A. Indenture dated as of January 1, 1988 between Eastman Kodak Company as issuer of (i) 9.95% Debentures Due 2018, (ii) 9.20% Debentures Due 2021, and (iii) 7.25% Notes Due 2005, and The Bank of New York as Trustee.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 25, 1988, Exhibit 4.)
- B. First Supplemental Indenture dated as of September 6, 1991 and Second Supplemental Indenture dated as of September 20, 1991, each between Eastman Kodak Company and The Bank of New York as Trustee, supplementing the Indenture described in A.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1991, Exhibit 4.)
- C. Third Supplemental Indenture dated as of January 26, 1993, between Eastman Kodak Company and The Bank of New York as Trustee, supplementing the Indenture described in A.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1992, Exhibit 4.)
- D. Fourth Supplemental Indenture dated as of March 1, 1993, between Eastman Kodak Company and The Bank of New York as Trustee, supplementing the Indenture described in A.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1993, Exhibit 4.)
- E. Five-Year Credit Agreement among Eastman Kodak Company, The Banks named therein, J.P. Morgan Securities Inc. as Syndication Agent and Citibank, N.A. as Administrative Agent, Salomon Smith Barney Inc. and J.P. Morgan Securities Inc. as Co-Advisors, Co-Lead Arrangers and Co-Bookrunners, dated as of July 13, 2001, \$1,225,000,000.  
(Incorporated by reference to the Eastman Kodak Company Current Report on Form 8-K for the date October 6, 2003 as filed on October 7, 2003, Exhibit 4.)
- F. AMENDMENT NO. 1 to the Five-Year Credit Agreement among Eastman Kodak Company, The Banks named therein, J.P. Morgan Securities Inc. as Syndication Agent and Citibank, N.A. as Administrative Agent, Salomon Smith Barney Inc. and J.P. Morgan Securities Inc. as Co-Advisors, Co-Lead Arrangers and Co-Bookrunners, dated as of July 12, 2002, \$1,225,000,000.  
(Incorporated by reference to the Eastman Kodak Company Current Report on Form 8-K for the date October 6, 2003 as filed on October 7, 2003, Exhibit 4.)



**Eastman Kodak Company**  
**Index to Exhibits (continued)**

**Exhibit  
Number**

- G. 364-Day Credit Agreement among Eastman Kodak Company, The Banks named herein, Citicorp USA, Inc. as Administrative Agent, BNP Paribas as Syndication Agent and The Bank of Nova Scotia as Documentation Agent, Citigroup Global Markets Inc., Scotia Capital and BNP Paribas as Joint Lead Arrangers, and Citigroup Global Markets Inc. as Bookrunner, dated as of July 9, 2004, \$1,000,000,000.
- H. Form of the 7.25% Senior Notes due 2013.  
(Incorporated by reference to the Eastman Kodak Company Current Report on Form 8-K for the date October 10, 2003 as filed on October 10, 2003, Exhibit 4.)
- I. Resolutions of the Committee of the Board of Directors of Eastman Kodak Company, adopted on October 7, 2003, establishing the terms of the Securities.  
(Incorporated by reference to the Eastman Kodak Company Current Report on Form 8-K for the date October 10, 2003 as filed on October 10, 2003, Exhibit 4.)
- J. Fifth Supplemental Indenture, dated October 10, 2003, between Eastman Kodak Company and The Bank of New York, as Trustee.  
(Incorporated by reference to the Eastman Kodak Company Current Report on Form 8-K for the date October 10, 2003 as filed on October 10, 2003, Exhibit 4.)

Eastman Kodak Company and certain subsidiaries are parties to instruments defining the rights of holders of long-term debt that was not registered under the Securities Act of 1933. Eastman Kodak Company has undertaken to furnish a copy of these instruments to the Securities and Exchange Commission upon request.

- (10) B. Eastman Kodak Company Insurance Plan for Directors.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 29, 1985, Exhibit 10.)
- C. Eastman Kodak Company Deferred Compensation Plan for Directors, as amended February 11, 2000.  
(Incorporated by reference to the Eastman Kodak Company Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1999, and the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1999, Exhibit 10.)
- D. Eastman Kodak Company Non-Employee Director Annual Compensation Plan, effective June 1, 2004.  
(Incorporated by reference to the Eastman Kodak Company Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2004, Exhibit 10.)
- E. 1982 Eastman Kodak Company Executive Deferred Compensation Plan, as amended effective December 9, 1999.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1996, and the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 1999, and the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1999, Exhibit 10.)

**Eastman Kodak Company**  
**Index to Exhibits (continued)**

**Exhibit  
Number**

- G. Eastman Kodak Company 1990 Omnibus Long-term Compensation Plan, as amended effective as of November 12, 2001.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1996, the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 1997, the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1998, the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 1999, the Annual Report on Form 10-K for the fiscal year ended December 31, 1999, and the Annual Report on Form 10-K for the fiscal year ended December 31, 2001, Exhibit 10.)
- H. Stock and Asset Purchase Agreement by and between Eastman Kodak Company and ITT Industries, Inc. dated February 8, 2004.  
(Incorporated by reference to the Eastman Kodak Company Quarterly Report on Form 10-Q for the period ended September 30, 2004, Exhibit 10.)
- I. Eastman Kodak Company 1995 Omnibus Long-Term Compensation Plan, as amended effective as of November 12, 2001.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1996, the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 1997, the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 1998, the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1998, the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 1998, the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 1999, the Annual Report on Form 10-K for the fiscal year ended December 31, 1999, and the Annual Report on Form 10-K for the fiscal year ended December 31, 2001, Exhibit 10.)
- J. Kodak Executive Financial Counseling Program.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1992, Exhibit 10.)
- K. Personal Umbrella Liability Insurance Coverage.  
Eastman Kodak Company provides \$5,000,000 personal umbrella liability insurance coverage to its directors and approximately 160 key executives. The coverage, which is insured through The Mayflower Insurance Company, Ltd., supplements participants' personal coverage. The Company pays the cost of this insurance. Income is imputed to participants.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1995, Exhibit 10.)
- L. Kodak Executive Health Management Plan, as amended effective January 1, 1995.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1995 and the Annual Report on Form 10-K for the fiscal year ended December 31, 2001, Exhibit 10.)
- M. James Langley Agreement dated August 12, 2003.

**Eastman Kodak Company**  
**Index to Exhibits (continued)**

**Exhibit  
Number**

- N. Kodak Stock Option Plan, as amended and restated August 26, 2002.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 2002, Exhibit 10.)
- O. Eastman Kodak Company 1997 Stock Option Plan, as amended effective as of March 13, 2001.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1999 and the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2001, Exhibit 10.)
- P. Bernard Masson Agreement dated August 13, 2003.
- Q. Eastman Kodak Company 2001 Short-Term Variable Pay to Named Executive Officers.  
(Incorporated by reference to the Eastman Kodak Company Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2002, Exhibit 10.)
- R. Eastman Kodak Company 2000 Omnibus Long-Term Compensation Plan, as amended effective January 1, 2004.  
(Incorporated by reference to the Eastman Kodak Company Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1999, the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 1999, the Annual Report on Form 10-K for the fiscal year ended December 31, 1999, the Annual Report on Form 10-K for the fiscal year ended December 31, 2001, the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2004, and the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2004, Exhibit 10.)
- Notice of Award of Non-Qualified Stock Options Granted To \_\_\_\_\_, Effective December 10, 2004, Pursuant to the 2000 Omnibus Long-Term Compensation Plan.
- Notice of Award of Restricted Stock Granted To \_\_\_\_\_, December 10, 2004, Pursuant to the 2000 Omnibus Long-Term Compensation Plan.
- S. Executive Compensation for Excellence and Leadership Plan, (formerly known as the 2000 Management Variable Compensation Plan), as amended and restated effective as of January 1, 2002.  
(Incorporated by reference to the Eastman Kodak Company Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2002, Exhibit 10.)
- Amendment, effective January 1, 2004.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 2003, Exhibit 10.)
- Amendment, effective January 1, 2005.
- T. Eastman Kodak Company Executive Protection Plan, effective July 25, 2001.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1999 and the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2001, Exhibit 10.)

**Eastman Kodak Company**  
**Index to Exhibits (continued)**

**Exhibit  
Number**

- U. Eastman Kodak Company Estate Enhancement Plan, as adopted effective March 6, 2000.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1999, Exhibit 10.)
- V. Michael P. Morley Agreement dated March 13, 2001.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 2002, Exhibit 10.)
- Amendment, dated February 19, 2003, to Agreement dated March 13, 2001.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 2002, Exhibit 10.)
- Amendment, dated October 23, 2003, to Agreement dated March 13, 2001.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 2003, Exhibit 10.)
- W. Daniel A. Carp Agreement dated November 22, 1999.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1999, Exhibit 10.)
- \$1,000,000 Promissory Note dated March 2, 2001.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 2000, Exhibit 10.)
- X. Robert H. Brust Agreement dated December 20, 1999.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 1999, Exhibit 10.)
- Amendment, dated February 8, 2001, to Agreement dated December 20, 1999.  
(Incorporated by reference to the Eastman Kodak Company Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2001, Exhibit 10.)
- Amendment, dated November 12, 2001, to Agreement dated December 20, 1999.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 2001, Exhibit 10.)
- Amendment, dated October 2, 2003, to Agreement dated December 20, 1999.  
(Incorporated by reference to the Eastman Kodak Company Annual Report on Form 10-K for the fiscal year ended December 31, 2003, Exhibit 10.)
- Amendment, dated March 7, 2005, to Agreement dated December 20, 1999.
- Y. Redemption Agreement among Sun Chemical Corporation and Sun Chemical Group B.V. and Eastman Kodak Company and Kodak Graphics Holdings, Inc., dated as of January 11, 2005.
- Z. Arrangement Agreement among Eastman Kodak Company, 4284488 Canada Inc. and Creo Inc., dated January 30, 2005.

**Eastman Kodak Company**  
**Index to Exhibits (continued)**

**Exhibit  
Number**

AA. Notice of Award of Non-Qualified Stock Options Granted To \_\_\_\_\_, Effective \_\_\_\_\_, Pursuant To The \_\_\_\_\_ Plan  
Notice of Award of Restricted Stock Granted To \_\_\_\_\_, Pursuant To The \_\_\_\_\_ Plan

(12) Statement Re Computation of Ratio of Earnings to Fixed Charges.

(21) Subsidiaries of Eastman Kodak Company.

(23) Consent of Independent Registered Public Accounting Firm.

(31.1) Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

(31.2) Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

(32.1) Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(32.2) Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

364-DAY  
CREDIT AGREEMENT

among

EASTMAN KODAK COMPANY,

THE BANKS NAMED HEREIN,

CITICORP USA, INC.  
as Administrative Agent,

BNP PARIBAS  
as Syndication Agent

and

THE BANK OF NOVA SCOTIA  
as Documentation Agent

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CITIGROUP GLOBAL MARKETS INC., SCOTIA CAPITAL and BNP PARIBAS  
as Joint Lead Arrangers

and

CITIGROUP GLOBAL MARKETS INC.  
as Bookrunner

Dated as of July 9, 2004

\$1,000,000,000

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CREDIT AGREEMENT, dated as of July 9, 2004 among EASTMAN KODAK COMPANY, a New Jersey corporation (the "Borrower", whether or not any Borrowing has taken place hereunder), the Banks (as hereinafter defined), CITICORP USA, INC. ("CUSA"), as Administrative Agent (in such capacity, the "Administrative Agent"), BNP PARIBAS ("BNP"), as Syndication Agent (in such capacity, the "Syndication Agent"), and THE BANK OF NOVA SCOTIA ("Scotia"), as Documentation Agent (in such capacity, the "Documentation Agent").

WITNESSETH:

WHEREAS, subject to and upon the terms and conditions herein set forth, the Banks are willing to make available to the Borrower the credit facilities provided for herein, which credit facilities have been arranged by the Joint Lead Arrangers (as hereinafter defined);

NOW, THEREFORE, IT IS AGREED:

SECTION 1. DEFINITIONS.

(a) As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms in this Agreement shall include in the singular number the plural and in the plural number the singular:

"Absolute Rate" shall mean an interest rate (rounded to the nearest .0001) expressed as a decimal.

"Absolute Rate Borrowing" shall mean a Competitive Bid Borrowing with respect to which the Borrower has requested that the Banks offer to make Competitive Bid Loans at Absolute Rates.

"Additional Bank" shall have the meaning provided in Section 3.5(c).

"Administrative Agent" shall have the meaning provided in the first paragraph of this Agreement and shall include any successor administrative agent appointed in accordance with Section 10.9.

"Administrative Agent Fee Letter" shall have the meaning provided in Section 2.3(g).

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling (including but not limited to all directors and executive officers of such Person), controlled by or under direct or indirect common control with such Person. A Person shall be deemed to control a corporation if such Person, directly or indirectly, controls the management and policies of such corporation, whether through the ownership of voting securities, by contract or otherwise.

"Agents" shall mean, collectively, the Administrative Agent, the Syndication Agent and the Documentation Agent.

"Agreement" shall mean this Credit Agreement as the same may hereafter be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms.

"Applicable Facility Fee Rate" shall mean, for any date of determination, the applicable rate computed in accordance with the following levels (where (i) is the highest level and (vi) is the lowest level): (i) a rate per annum equal to 0.09% if on such date the Borrower's outstanding Long-Term Indebtedness is rated A- or higher by Standard & Poor's and A3 or higher by Moody's, (ii) a rate per annum equal to 0.125% if on such date clause (i) is inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BBB+ or higher by Standard & Poor's and Baa1 or higher by Moody's, (iii) a rate per annum equal to 0.15% if on such date clauses (i) and (ii) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BBB or higher by Standard & Poor's and Baa2 or higher by Moody's, (iv) a rate per annum equal to 0.175% if on such date clauses (i) through (iii) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BBB- or higher by Standard & Poor's and Baa3 or higher by Moody's, (v) a rate per annum equal to 0.25% if on such date clauses (i)

through (iv) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BB+ or higher by Standard & Poor's and Ba1 or higher by Moody's, and (vi) a rate equal to 0.35% if on such date clauses (i) through (v) are inapplicable and the Borrower's Long-Term Indebtedness is rated lower than BB+ by Standard & Poor's and lower than Ba1 by Moody's; provided that where the Standard & Poor's rating and the Moody's rating are in two different levels, the rating used herein will be the higher of the two ratings, except that where the Standard & Poor's rating and the Moody's rating are in two different levels and one of such levels is more than one level lower than the other, the applicable level herein will be one level higher than the level corresponding with such lower rating; provided further that all references to any rating agency shall be deemed to be deleted in the event that the Borrower's outstanding Long-Term Indebtedness is no longer rated by such agency, and clause (vi) shall be deemed to apply if such Long-Term Indebtedness is no longer rated by either agency.

"Applicable Margin" shall mean,

(A) with respect to each Eurodollar Loan which is a Revolving Loan, the applicable rate computed in accordance with the following levels (where (i) is the highest level and (vi) is the lowest level): (i) 0.41% if on the date such Loan is made the Borrower's outstanding Long-Term Indebtedness is rated A- or higher by Standard & Poor's and A3 or higher by Moody's, (ii) 0.50% if on the date such Loan is made clause (i) is inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BBB+ or higher by Standard & Poor's and Baa1 or higher by Moody's, (iii) 0.60% if on the date such Loan is made clauses (i) and (ii) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BBB or higher by Standard & Poor's and Baa2 or higher by Moody's, (iv) 0.825% if on the date such Loan is made clauses (i) through (iii) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BBB- or higher by Standard & Poor's and Baa3 or higher by Moody's, (v) 1.25% if on the date such Loan is made clauses (i) through (iv) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BB+ or higher by Standard & Poor's and Ba1 or higher by Moody's, and (vi) 1.65% if on the date such Loan is made clauses (i) through (v) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated lower than BB+ by Standard & Poor's and lower than Ba1 by Moody's; provided that where the Standard & Poor's rating and the Moody's rating are in two different levels, the rating used herein will be the higher of the two ratings, except that where the Standard & Poor's rating and the Moody's rating are in two different levels and one of such levels is more than one level lower than the other, the applicable level herein will be one level higher than the level corresponding with such lower rating; provided further that for purposes of this definition all references to any rating agency shall be deemed to be deleted in the event that the Borrower's outstanding Long-Term Indebtedness is no longer rated by such agency, and clause (vi) shall be deemed to apply if such Long-Term Indebtedness is no longer rated by either agency; and

(B) with respect to each Eurodollar Loan which is a Term Loan, the applicable rate computed in accordance with the following levels (where (i) is the highest level and (vi) is the lowest level): (i) 0.85% if on the date such Loan is made the Borrower's outstanding Long-Term Indebtedness is rated A- or higher by Standard & Poor's and A3 or higher by Moody's, (ii) 1.00% if on the date such Loan is made clause (i) is inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BBB+ or higher by Standard & Poor's and Baa1 or higher by Moody's, (iii) 1.25% if on the date such Loan is made clauses (i) and (ii) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BBB or higher by Standard & Poor's and Baa2 or higher by Moody's, (iv) 1.75% if on the date such Loan is made clauses (i) through (iii) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BBB- or higher by Standard & Poor's and Baa3 or higher by Moody's, (v) 2.50% if on the date such Loan is made clauses (i) through (iv) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated BB+ or higher by Standard & Poor's and Ba1 or higher by Moody's, and (vi) 3.50% if on the date such Loan is made clauses (i) through (v) are inapplicable and the Borrower's outstanding Long-Term Indebtedness is rated lower than BB+ by Standard & Poor's and lower than Ba1 by Moody's; provided that where the Standard & Poor's rating and the Moody's rating are in two different levels, the rating used herein will be the higher of the two ratings, except that where the Standard & Poor's rating and the Moody's rating are in two different levels and one of such levels is more than one level lower than the other, the applicable level herein will be one level higher than the level corresponding with such lower rating; provided further that for purposes of this definition all references to any rating agency shall be deemed to be deleted in the event that the Borrower's outstanding Long-Term Indebtedness is no longer rated by such agency, and clause (vi) shall be deemed to apply if such Long-Term Indebtedness is no longer rated by either agency.



“Applicable Utilization Fee Rate” shall mean, for any date of determination, the applicable rate computed in accordance with the following levels (where (i) is the highest level and (vi) is the lowest level): (i) a rate per annum equal to 0.10% if on such date the Borrower’s outstanding Long-Term Indebtedness is rated A- or higher by Standard & Poor’s and A3 or higher by Moody’s, (ii) a rate per annum equal to 0.125% if on such date clause (i) is inapplicable and the Borrower’s outstanding Long-Term Indebtedness is rated BBB+ or higher by Standard & Poor’s and Baa1 or higher by Moody’s, (iii) a rate per annum equal to 0.25% if on such date clauses (i) and (ii) are inapplicable and the Borrower’s outstanding Long-Term Indebtedness is rated BBB or higher by Standard & Poor’s and Baa2 or higher by Moody’s, (iv) 0.25% if on such date clauses (i) through (iii) are inapplicable and the Borrower’s outstanding Long-Term Indebtedness is rated BBB- or higher by Standard & Poor’s and Baa3 or higher by Moody’s, (v) 0.25% if on such date clauses (i) through (iv) are inapplicable and the Borrower’s outstanding Long-Term Indebtedness is rated BB+ or higher by Standard & Poor’s and Ba1 or higher by Moody’s, and (vi) 0.50% if on such date clauses (i) through (v) are inapplicable and the Borrower’s outstanding Long-Term Indebtedness is rated lower than BB+ by Standard & Poor’s and lower than Ba1 by Moody’s; provided that where the Standard & Poor’s rating and the Moody’s rating are in two different levels, the rating used herein will be the higher of the two ratings, except that where the Standard & Poor’s rating and the Moody’s rating are in two different levels and one of such levels is more than one level lower than the other, the applicable level herein will be one level higher than the level corresponding with such lower rating; provided further that for purposes of this definition all references to any rating agency shall be deemed to be deleted in the event that the Borrower’s outstanding Long-Term Indebtedness is no longer rated by such agency, and clause (vi) shall be deemed to apply if such Long-Term Indebtedness is no longer rated by either agency.

“Assessment Rate” shall mean, for any day, the annual assessment rate in effect on such day that is payable by a member of the Bank Insurance Fund classified as “well-capitalized” and within supervisory subgroup “B” (or a comparable successor risk classification) within the meaning of 12 C.F.R. Part 327 (or any successor provision) to the Federal Deposit Insurance Corporation for insurance by such Corporation of time deposits made in dollars at the offices of such member in the United States; provided that if, as a result of any change in any law, rule or regulation, it is no longer possible to determine the Assessment Rate as aforesaid, then the Assessment Rate shall be such annual rate as shall be determined by the Administrative Agent to be representative of the cost of such insurance to the Banks.

“Assignee” shall have the meaning provided in Section 11.4(c).

“Attributable Debt” shall mean, with respect to any arrangement subject to the provisions of Section 8.4, the lesser of (a) the fair value of the Principal Property that has been or is to be sold or transferred in connection with such arrangement, as determined by the Board of Directors of the Borrower, or (b) the present value (discounted at an annual rate of nine per cent (9%) compounded semi-annually) of the obligation of the lessee under such arrangement for net rental payments during the remaining term of the lease (including any period for which such lease has been extended).

“Authorized Officer” shall mean the Chairman, a President, any Vice President, the Controller, the Secretary or the Treasurer of the Borrower, and such other persons designated by the Borrower in writing to the Administrative Agent and acceptable to the Administrative Agent.

“Bank” shall mean the persons listed as such on Schedule 1 hereto (including Purchasing Banks that become Banks hereunder pursuant to Section 11.4).

“Bankruptcy Code” shall mean Title 11 of the United States Code entitled “Bankruptcy,” as amended from time to time, and any successor statute or statutes.

“Base CD Rate” shall mean the sum of (a) the Three-Month Secondary CD Rate multiplied by the Statutory Reserve Rate plus (b) the Assessment Rate.

“Base Rate” shall mean, at any particular date, the higher of (i) the rate of interest publicly announced by the Administrative Agent from time to time as its prime rate, as in effect from time to time at its principal office in New York City, (ii) the rate that is 1% in excess of the Base CD Rate and (iii) the rate that is ½ of 1% in excess of the Federal Funds Rate. The reference rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Administration Agent may make commercial loans or other loans at rates of interest at, above or below the reference rate.

“Base Rate Loans” shall mean Loans bearing interest at the rates provided in Section 2.6(a).

“BNP” shall have the meaning provided in the first paragraph of this Agreement.

“Borrower” shall have the meaning provided in the first paragraph of this Agreement.

“Borrowing” shall mean the incurrence by the Borrower of (i) Revolving Loans consisting of one Type of Loan from one or more of the Banks on a given date (or resulting from conversions or continuations on a given date), having in the case of Eurodollar Loans the same Interest Period (except as otherwise provided in Section 2.9 or 2.10), and (ii) Competitive Bid Loans.

“Business Day” shall mean (i) for all purposes other than as covered by clause (ii) below, any day excluding Saturday, Sunday and any day which shall be in the City of New York a legal holiday or a day on which banking institutions are authorized or required by law or other government actions to close and (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the interbank Eurodollar market.

“Capitalized Lease” shall mean any lease of property, real, personal or mixed, the obligations under which are capitalized on the consolidated balance sheet of the Borrower and its Subsidiaries in accordance with GAAP.

“Capitalized Lease Obligations” shall mean all obligations of the Borrower and its Subsidiaries under or in respect of Capitalized Leases.

“Change in Control” shall mean a change in control of the Borrower of a nature that would be required to be reported (assuming such event has not been “previously reported”) in response to Item 1(a) of the Current Report on Form 8-K, as in effect on the Effective Date, pursuant to Section 13 or 15(d) of the Exchange Act; provided that, without limitation, a Change in Control shall be deemed to have occurred at such time as (i) any “person” within the meaning of Section 14(d) of the Exchange Act, other than the Borrower, a Subsidiary of the Borrower, or any employee benefit plan(s) sponsored by the Borrower or any Subsidiary of the Borrower, is or has become the “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, directly or indirectly, of 20% or more of the combined voting power of the outstanding securities of the Borrower ordinarily having the right to vote at the election of directors, or (ii) individuals who constituted the Board on December 31, 2003 (the “Incumbent Board”) have ceased for any reason to constitute at least a majority thereof; provided further that any person becoming a director subsequent to December 31, 2003 whose election, or nomination for election by the Borrower’s shareholders, was approved by a vote of at least three-quarters (3/4) of the directors comprising the Incumbent Board (either by a specific vote or by approval of the proxy statement of the Borrower in which such person is named as a nominee for director without objection to such nomination) shall be, for purposes of this definition, considered as though such person were a member of the Incumbent Board.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Competitive Bid Loans.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

“Commitment” shall mean, at any time for any Bank, the amount set forth opposite such Bank’s name on Schedule 1 hereto under the heading “Commitment,” provided that the aggregate amount set forth on such Schedule 1 shall not exceed \$1,000,000,000, as such amount may be reduced or increased from time to time pursuant to the terms of this Agreement.

“Commitment Termination Date” shall mean (i) July 8, 2005, or (ii) the Requested Commitment Termination Date if the Commitment Termination Date shall have been extended pursuant to Section 3.5.

“Commitment Transfer Supplement” shall have the meaning provided in Section 3.5(c).

“Competitive Bid Borrowing” shall mean a Borrowing of Competitive Bid Loans pursuant to Section 2.3.

“Competitive Bid Loan” shall have the meaning set forth in Section 2.3.

“Competitive Bid Note” shall have the meaning provided in Section 2.5(b).

“Consolidated Debt” shall mean, as of any date of determination, all Debt of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“Consolidated Debt to EBITDA Ratio” shall mean for any period, the ratio of (a) Consolidated Debt for such period to (b) Consolidated EBITDA for such period.

“Consolidated EBITDA” shall mean, for any period, Consolidated Net Income for such period plus, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense, (b) interest expense, amortization or writeoff of debt discount with respect to Indebtedness (including the Loans), (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and organization costs, (e) any extraordinary expenses or losses (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, losses on sales of assets outside of the ordinary course of business and restructuring charges), and (f) any other non-cash charges that will not at any time result in any cash payment, and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (i) interest income, (ii) any extraordinary income or gains (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sales of assets outside of the ordinary course of business and reversals of restructuring charges) and (iii) any other non-cash income that will not at any time result in any cash payment, all as determined on a consolidated basis.

“Consolidated Net Income” shall mean, for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Borrower and a Person in which the Borrower or a Subsidiary of the Borrower owns 50% of the equity) in which the Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary of the Borrower and any other Person in which the Borrower or a Subsidiary of the Borrower owns 50% of the equity, to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary or other Person is not at the time permitted by the terms of any contractual obligation or any law applicable to such Subsidiary or other Person.

“Consolidated Net Tangible Assets” shall mean, at any particular time, Consolidated Tangible Assets at such time after deducting therefrom all current liabilities, except for (i) notes and loans payable, (ii) current maturities of long-term debt and (iii) current maturities of the principal component of Capitalized Lease Obligations, all as set forth on the most recent consolidated balance sheet of the Borrower and its Consolidated Subsidiaries and computed in accordance with GAAP.

“Consolidated Subsidiaries” shall mean all Subsidiaries of the Borrower which are consolidated with the Borrower for financial reporting purposes in accordance with GAAP.

“Consolidated Tangible Assets” shall mean, at any particular time, the aggregate amount of all assets (less applicable reserves and other properly deductible items) after deducting therefrom all goodwill, trade names, trademarks, patents, unamortized debt discount and expenses (to the extent included in said aggregate amount of assets) and other like intangibles, as set forth on the most recent consolidated balance sheet of the Borrower and its Consolidated Subsidiaries and computed in accordance with GAAP.

“Continuing Banks” shall have the meaning provided in Section 3.5(b).

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Credit Exposure” shall have the meaning provided in Section 11.4(b).

“CUSA” shall have the meaning provided in the first paragraph of this Agreement.

“Debt” shall mean, as applied to any Person at any time, all indebtedness, obligations or other liabilities of such Person (i) for borrowed money or evidenced by debt securities, debentures, acceptances, notes or other similar instruments, (ii) to pay the deferred purchase price of property or services, except accounts payable and accrued expenses arising in the ordinary course of business, and (iii) in respect of the principal component of Capitalized Lease Obligations.

“Default” shall mean any event, act or condition which, with notice or lapse of time, or both, would constitute an Event of Default.

“Documentation Agent” shall have the meaning provided in the first paragraph of this Agreement.

“Dollars” or “\$” shall mean dollars of the United States of America.

“Domestic Subsidiary” shall mean any Subsidiary of the Borrower incorporated under the laws of the United States of America or any state thereof.

“Effective Date” shall have the meaning provided in Section 11.9.

“Environmental Affiliate” shall mean, with respect to any Person, any other Person whose liability for any Environmental Claim such Person has or may have retained, assumed or otherwise become liable for (contingently or otherwise), either contractually or by operation of law.

“Environmental Approvals” shall mean any permit, license, approval, ruling, variance, exemption or other authorization required under applicable Environmental Laws.

“Environmental Claim” shall mean, with respect to any Person, any notice, claim, demand or similar communication (written or oral) by any other Person alleging potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, or release into the environment, of any Material of Environmental Concern at any location, whether or not owned by such Person or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

“Environmental Laws” shall mean all federal, state, local and foreign laws and regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

“ERISA Controlled Group” shall mean a group consisting of any ERISA Person and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control with such Person that, together with such Person, are treated as a single employer under regulations of the PBGC.

“ERISA Person” shall have the meaning set forth in Section 3(9) of ERISA for the term “person.”

“ERISA Plan” shall mean (i) any Plan that (x) is not a Multiemployer Plan and (y) has Unfunded Benefit Liabilities in excess of \$1,000,000 and (ii) any Plan that is a Multiemployer Plan.

“Eurodollar Loans” shall mean Revolving Loans or Term Loans bearing interest at the rates provided in Section 2.6(b).

“Eurodollar Rate” shall mean, with respect to each Interest Period for a Eurodollar Loan or a Spread Borrowing based on the Eurodollar Rate, the rate determined by the Administrative Agent to be (i)(a) the rate appearing on Page 3750 of the Telerate Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period and (b) in the event that the rate referenced in the preceding clause (a) is not available at such time for any reason, the rate (rounded upwards, if necessary, to the next 1/16 of 1%) at which dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, divided by (ii) a percentage equal to 1 minus the then average stated maximum rate (stated as a decimal) of all reserve requirements (including without limitation any marginal, emergency, supplemental, special or other reserves) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D).

“Event of Default” shall have the meaning provided in Section 9.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended from time to time, and any successor statute or statutes.

“Exiting Bank” shall have the meaning provided in Section 3.5(d).

“Extension Effective Date” shall have the meaning provided in Section 3.5(a).

“Extension Request” shall have the meaning provided in Section 3.5(a).

“Federal Funds Rate” shall mean, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent.

“Federal Reserve Board” shall mean the Board of Governors of the Federal Reserve System as constituted from time to time.

“Final Maturity Date” shall mean the Commitment Termination Date; provided, however, if the outstanding Revolving Loans are converted to Term Loans pursuant to Section 2.5(e), the “Final Maturity Date” shall mean the first anniversary of the Commitment Termination Date.

“GAAP” shall mean generally accepted accounting principles in effect in the United States of America as of the date of this Agreement.

“Governmental Authority” shall mean any nation or government, any state, provincial, local, municipal or other political subdivision thereof and any entity or instrumentality (of any nature whatsoever) exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and includes, without limitation, any pension board.

“Indebtedness” of any Person shall mean, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money or, to the extent it would appear as a liability in accordance with GAAP, for the deferred purchase price (or a portion thereof) of property or services (other than trade payables incurred in the ordinary course of business of such Person), (ii) all indebtedness of such Person evidenced by a note, bond, debenture or similar instrument, (iii) the principal component of all Capitalized Lease Obligations of such Person and all obligations of such Person under any other lease to the extent that the then present value of the minimum rental commitment thereunder should, in accordance with GAAP, be capitalized on a balance sheet of the lessee, (iv) the face amount of all letters of credit issued for the account of such Person and, without duplication, all unreimbursed amounts drawn thereunder, (v) all indebtedness of any other Person secured by any Lien on any property owned by such Person, whether or not such indebtedness has been assumed, (vi) payment obligations under any interest rate protection agreements (including without limitation, any interest rate swaps, caps, floors, collars and similar agreements) and currency swaps and similar agreements, (vii) payment obligations under any facility for the sale or financing of receivables and (viii) any indebtedness of any other Person of the character referred to in clauses (i) through (vii) with respect to which such Person has become liable by way of any guarantee, similar contingent obligation or other arrangement which has the effect of assuring payment.

“Indemnitee” shall have the meaning set forth in Section 11.1(c).

“Interest Period” shall have the meaning provided in Section 2.7.

“Interest Rate Basis” shall mean the Eurodollar Rate and/or such other basis for determining an interest rate as the Borrower and the Administrative Agent shall agree from time to time.

“Joint Lead Arrangers” shall mean Citigroup Global Markets Inc., Scotia Capital and BNP Paribas.

“Lending Office” shall mean, for each Bank, the office specified opposite such Bank’s name on the signature pages hereof with respect to each Type of Loan, or such other office as such Bank may designate in writing from time to time to the Borrower and the Administrative Agent with respect to such Type of Loan.

“Lien” shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preferential payment arrangement, priority or other security agreement of any kind or nature whatsoever, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing and the filing of any financing statement or similar instrument under the Uniform Commercial Code or comparable law of any jurisdiction, domestic or foreign.

“Loans” shall mean and include Revolving Loans, Competitive Bid Loans and Term Loans.

“Long-Term Indebtedness” shall mean long-term Indebtedness that is not subordinated to any other Indebtedness and is not secured or supported by a guarantee, letter of credit or other form of credit enhancement.

“Margin Stock” shall have the meaning provided such term in Regulation U.

“Material Adverse Effect” shall mean material adverse effect on (a) the business, condition (financial or otherwise), operations, performance or properties of the Borrower and its Subsidiaries taken as a whole, (b) the rights and remedies of the Administrative Agent or any Bank under this Agreement or any Note or (c) the ability of the Borrower to perform its obligations under this Agreement or any Note.

“Material Subsidiary” shall mean each Subsidiary of the Borrower which meets any of the following conditions: (a) the Borrower and its other Subsidiaries’ investments in and advances to such Subsidiary exceed 10% of the total assets of the Borrower and its Subsidiaries consolidated as of the end of the most recently completed fiscal year, (b) the Borrower’s and its other Subsidiaries’ proportionate share of the total assets (after intercompany eliminations) of such Subsidiary exceeds 10% of the total assets of the Borrower and its Subsidiaries consolidated as of the end of the most recently completed fiscal year, or (c) the Borrower’s and its other Subsidiaries’ equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of such Subsidiary exceeds 10% of such income of the Borrower and its Subsidiaries consolidated for the most recently completed year. For purposes of calculating the prescribed income test described in clause (c) above, if one or more of the following are applicable, it or they shall be applied in such computations: (i) when a loss has been incurred by either the Borrower and its Subsidiaries consolidated or the applicable Subsidiary, but not both, the equity in the income or loss of the applicable Subsidiary shall be excluded from the income of the Borrower and its Subsidiaries consolidated for purposes of the computation; (ii) if income of the Borrower and its Subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income shall be substituted for purposes of the computation, with any loss years omitted for purposes of computing average income; and (iii) where the test involves combined entities, entities reporting losses shall not be aggregated with entities reporting income.

“Materials of Environmental Concern” shall mean and include chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products.

“Moody’s” shall mean Moody’s Investors Service, Inc. or any of its successors.

“Multiemployer Plan” shall mean a Plan which is a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA.

“Non-Extending Bank” shall have the meaning provided in Section 3.5(b).

“Notes” shall have the meaning provided in Section 2.5(b).

“Notice of Borrowing” shall have the meaning provided in Section 2.2(a).

“Notice of Competitive Bid Borrowing” shall have the meaning provided in Section 2.3(b).

“Notice of Continuation or Conversion” shall have the meaning provided in Section 2.8(b).

“Obligations” shall mean all amounts owing to any Agent or any Bank pursuant to the terms of this Agreement or any Note.

“Participant” shall have the meaning provided in Section 11.4(b).

“Patriot Act” shall have the meaning provided in Section 11.4(h).

“Payment Date” shall mean the last Business Day of each January, April, July and October of each year.

“Payment Office” shall mean the office of CUSA as Administrative Agent located at 2 Penn’s Way, New Castle, DE 19720, or such other office of the Administrative Agent as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

“PBGC” shall mean the Pension Benefit Guaranty Corporation established under ERISA, or any successor thereto.

“Person” shall mean and include any individual, partnership, joint venture, firm, corporation, association, trust or other enterprise or entity or any government or political subdivision or agency, department or instrumentality thereof.

“Plan” shall mean any employee benefit plan covered by Title IV of ERISA, the funding requirements of which: (i) were the responsibility of the Borrower or a member of its ERISA Controlled Group at any time within the five years immediately preceding the date hereof, (ii) are currently the responsibility of the Borrower or a member of its ERISA Controlled Group, or (iii) hereafter become the responsibility of the Borrower or a member of its ERISA Controlled Group, including any such plans as may have been, or may hereafter be, terminated for whatever reason.

“Principal Property” shall mean any manufacturing plant or manufacturing facility which is (a) owned by the Borrower or any Principal Subsidiary, (b) located within the continental United States, and (c) in the opinion of the Board of Directors of the Borrower material to the total business conducted by the Borrower and the Principal Subsidiaries taken as a whole.

“Principal Subsidiary” shall mean any Subsidiary of the Borrower (a) substantially all the property of which is located within the continental United States and (b) which owns any Principal Property.

“Pro Rata Share” shall mean, with respect to each Bank, a fraction (expressed as a percentage), the numerator of which shall be the aggregate amount of such Bank’s Commitment and the denominator of which shall be the Total Commitment (without giving effect to any termination of the Total Commitment or any Bank’s Commitment).

“Purchasing Bank” shall have the meaning provided in Section 11.4(d).

“Refinanced Indebtedness” shall mean the Indebtedness of the Borrower under the 364-Day Credit Agreement dated as of July 11, 2003, among Eastman Kodak Company, the banks named therein, Citibank, N.A., as administrative agent, BNP Paribas, as syndication agent, and The Bank of Nova Scotia, as documentation agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Regulation D,” “Regulation U” and “Regulation X” shall mean, respectively, Regulation D, Regulation U and Regulation X of the Federal Reserve Board.

“Replacement Date” shall have the meaning provided in Section 3.5(d).

“Reply Date” shall have the meaning provided in Section 2.3(c).

“Reportable Event” shall have the meaning set forth in Section 4043(b) of ERISA (other than a Reportable Event as to which the provision of 30 days’ notice to the PBGC is waived under applicable regulations), or is the occurrence of any of the events described in Section 4068(f) or 4063(a) of ERISA.

“Requested Commitment Termination Date” shall have the meaning provided in Section 3.5(a).



“Required Banks” shall mean Banks whose Commitments aggregate 51% or more of the Total Commitment or, at any time after the Total Commitment has been terminated in its entirety, Banks holding 51% or more of the principal amount of all Loans then outstanding.

“Revolving Loans” shall have the meaning provided in Section 2.1(a).

“Revolving Note” shall have the meaning provided in Section 2.5(b).

“Securitization Facility” shall mean the accounts receivable securitization facility between the Securitization Subsidiary and various conduit purchasers and committed purchasers, and Borrower, as servicer, dated as of March 25, 2004, pursuant to which certain domestic accounts receivable of Borrower and certain Subsidiaries are sold to Securitization Subsidiary and resold to the purchasers, as the same may be amended, extended, modified or replaced.

“Securitization Subsidiary” shall mean EK Funding LLC, a wholly-owned subsidiary of the Borrower.

“Spread” shall mean a percentage per annum in excess of, or less than, an Interest Rate Basis.

“Spread Borrowing” shall mean a Competitive Bid Borrowing with respect to which the Borrower has requested that the Banks offer to make Competitive Bid Loans at a Spread over or under a specified Interest Rate Basis.

“Standard & Poor’s” shall mean Standard & Poor’s Ratings Group, a division of the McGraw-Hill Corporation or any of its successors.

“Statutory Reserve Rate” shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Base CD Rate, for new negotiable nonpersonal time deposits in dollars of over \$100,000 with maturities approximately equal to three months. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subsidiary” shall mean, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Syndication Agent” shall have the meaning provided in the first paragraph of this Agreement.

“Taxes” shall have the meaning provided in Section 2.12.

“Three-Month Secondary CD Rate” shall mean, for any day, the secondary market rate for three-month certificates of deposit reported as being in effect on such day (or, if such day is not a Business Day, the next preceding Business Day) by the Federal Reserve Board through the public information telephone line of the Federal Reserve Bank of New York (which rate will, under the current practices of the Federal Reserve Board, be published in Federal Reserve Statistical Release H.15(519) during the week following such day) or, if such rate is not so reported on such day or such next preceding Business Day, the average of the secondary market quotations for three-month certificates of deposit of major money center banks in New York City received at approximately 10:00 a.m., New York City time, on such day (or, if such day is not a Business Day, on the next preceding Business Day) by the Administrative Agent from three negotiable certificate of deposit dealers of recognized standing selected by it.

“Termination Event” shall mean (i) a Reportable Event, or (ii) the initiation of any action by the Borrower, any member of the Borrower’s ERISA Controlled Group or any ERISA Plan fiduciary to terminate an ERISA Plan or the treatment of an amendment to an ERISA Plan as a termination under ERISA, or (iii) the institution of proceedings by the PBGC under Section 4042 of ERISA to terminate an ERISA Plan or to appoint a trustee to administer any ERISA Plan.

“Term Loan” shall have the meaning provided in Section 2.5(e).

“Term Loan Conversion Option” shall have the meaning provided in Section 2.5(e).

“Term Note” shall have the meaning provided in Section 2.5(b).

“Total Commitment” shall mean, at any time, the sum of the Commitments of each of the Banks at such time.

“Transferee” shall have the meaning provided in Section 11.4(g).

“Transfer Supplement” shall have the meaning provided in Section 11.4(d).

“Type” shall mean any type of Loan determined with respect to the interest option applicable thereto, i.e., whether a Base Rate Loan or Eurodollar Loan.

“Unfunded Benefit Liabilities” shall mean with respect to any Plan at any time, the amount (if any) by which (i) the present value of all benefit liabilities under such Plan as defined in Section 4001(a)(16) of ERISA, exceeds (ii) the fair market value of all Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plan (on the basis of reasonable assumptions under such Plan).

“Utilization Percentage” shall have the meaning provided in Section 3.1(b).

(b) The financial statements to be furnished to the Administrative Agent and the Banks pursuant hereto shall be made and prepared in accordance with GAAP consistently applied throughout the periods involved and consistent with GAAP as used in the preparation of the financial statements referred to in Section 7.1, and, except as otherwise specifically provided herein, all computations determining compliance with Section 8 hereof shall utilize GAAP.

## SECTION 2. AMOUNT AND TERMS OF CREDIT.

2.1 Revolving Loan Commitments. (a) Subject to and upon the terms and conditions and in reliance upon the representations and warranties of the Borrower herein set forth, each Bank severally and not jointly agrees, at any time and from time to time on and after the Effective Date and prior to the Commitment Termination Date, to make a revolving loan or loans (collectively, the “Revolving Loans”) to the Borrower, which Revolving Loans (i) shall, at the option of the Borrower, be made as part of one or more Borrowings, each of which Borrowings shall, unless otherwise specifically provided herein, consist entirely of Base Rate Loans or Eurodollar Loans, (ii) subject to the terms and conditions set out in Section 5, may be repaid and reborrowed in accordance with the provisions hereof, and (iii) shall not exceed for any Bank an aggregate outstanding principal amount at any time equal to the Commitment of such Bank at such time, as reduced by the outstanding principal amount of Revolving Loans made by such Bank at such time. Notwithstanding the foregoing, no Revolving Loans shall be made hereunder if immediately after giving effect thereto and the use of proceeds thereof, the aggregate principal amount of Loans outstanding at such time would exceed the Total Commitment. Each Bank’s Commitment shall expire, and each Revolving Loan shall mature, on the Commitment Termination Date, without further action being required on the part of the Administrative Agent or any Bank.

(b) The aggregate principal amount of each Borrowing of Revolving Loans by the Borrower shall be not less than \$100,000,000 and, if greater, shall be in an integral multiple of \$5,000,000. Notwithstanding the foregoing limitations, the Borrower may borrow an amount, if less than the minimum amount otherwise necessary to make such Borrowing, equal to the entire undrawn portion of the Total Commitments.

2.2 Notice of Revolving Loan Borrowing. (a) Whenever the Borrower desires to make a Borrowing of Revolving Loans hereunder (other than a conversion pursuant to Section 2.8), it shall give the Administrative Agent (i) at least one Business Day's prior written notice (or telephonic notice confirmed promptly in writing, any such written notice or confirmation being in the form of Exhibit A-1 hereto) before the requested date of the making of any such Borrowing consisting of Base Rate Loans and (ii) at least three Business Days' prior written notice (or telephonic notice confirmed promptly in writing) before the requested date of the making of any such Borrowing consisting of Eurodollar Loans, each such notice to be given at the Payment Office prior to 11:00 a.m. (New York City time) on the date specified. Each such notice or confirmation thereof (each a "Notice of Borrowing") shall be irrevocable and shall specify (x) the aggregate principal amount of the Revolving Loans to be made pursuant to such Borrowing, (y) the date of Borrowing (which shall be a Business Day) and (z) whether such Borrowing shall consist of Base Rate Loans or Eurodollar Loans and, in the case of Eurodollar Loans, the initial Interest Period to be applicable thereto.

(b) Promptly after receipt of a Notice of Borrowing, the Administrative Agent shall provide each Bank with a copy thereof and inform each Bank of such Bank's Pro Rata Share of the Loans requested thereunder.

2.3 Competitive Bid Loans. (a) Subject to and upon the terms and conditions and in reliance upon the representations and warranties of the Borrower herein set forth, each Bank severally and not jointly agrees that the Borrower may incur a loan or loans (each a "Competitive Bid Loan" and collectively, the "Competitive Bid Loans") pursuant to a Competitive Bid Borrowing from time to time on and after the Effective Date and prior to the Commitment Termination Date, or, if earlier, the date of the termination or expiration of the Commitments; provided that no Competitive Bid Loans shall be made hereunder if, after giving effect to any Competitive Bid Borrowing and the use of the proceeds thereof, the aggregate principal amount of Loans outstanding at any time would exceed the Total Commitment. Within the foregoing limits and subject to the conditions set out in Section 5, Competitive Bid Loans may be repaid and reborrowed in accordance with the provisions hereof. No Competitive Bid Loan shall be entitled to be converted into any other type of Loan.

(b) Whenever the Borrower desires to make a Borrowing of Competitive Bid Loans hereunder, it shall give the Administrative Agent, not later than 11:00 a.m. (New York City time) on the fourth Business Day prior to the date of such proposed Competitive Bid Borrowing, a written notice in the form of Exhibit A-2 hereto (a "Notice of Competitive Bid Borrowing"), such notice to specify in each case (i) the date (which shall be a Business Day) and the aggregate amount of the proposed Competitive Bid Borrowing (which shall not be less than \$100,000,000 and, if greater, shall be in an integral multiple of \$5,000,000), (ii) the Interest Period and maturity date for repayment of each Competitive Bid Loan to be made as part of such Competitive Bid Borrowing (which maturity date shall be the last day of the Interest Period relating thereto, and may not be later than the Commitment Termination Date), (iii) the interest payment date or dates relating thereto, (iv) whether the proposed Competitive Bid Borrowing is to be an Absolute Rate Borrowing or a Spread Borrowing, and if a Spread Borrowing, the Interest Rate Basis, and (v) any other terms to be applicable to such Competitive Bid Borrowing. Promptly after receipt of a Notice of Competitive Bid Borrowing, the Administrative Agent shall provide each Bank with a copy thereof.

(c) Each Bank shall, if in its sole discretion it elects to do so, irrevocably offer to make one or more Competitive Bid Loans to the Borrower as part of such proposed Competitive Bid Borrowing at a rate or rates of interest specified by such Bank in its sole discretion and determined by such Bank independently of each other Bank, by notifying the Administrative Agent (which shall give prompt notice thereof to the Borrower), before 10:00 a.m. (New York City time) on the date (the "Reply Date") which is (x) in the case of an Absolute Rate Borrowing, the Business Day before and (y) in the case of a Spread Borrowing, three Business Days before, the date of such proposed Competitive Bid Borrowing, of the minimum amount and maximum amount of each Competitive Bid Loan which such Bank would make as part of such proposed Competitive Bid Borrowing (which amounts may, subject to the proviso to the first sentence of Section 2.3(a), exceed such Bank's Commitment), the rate or rates of interest therefor and such Bank's Lending Office with respect to such Competitive Bid Loan; provided that if the

Administrative Agent in its capacity as a Bank shall, in its sole discretion, elect to make any such offer, it shall notify the Borrower of such offer before 9:30 a.m. (New York City time) on the Reply Date. If any Bank shall elect not to make such an offer, such Bank shall so notify the Administrative Agent, before 10:00 a.m. (New York City time) on the Reply Date, and such Bank shall not be obligated to, and shall not, make any Competitive Bid Loan as part of such Competitive Bid Borrowing; provided that the failure by any Bank to give such notice shall not cause such Bank to be obligated to make any Competitive Bid Loan as part of such proposed Competitive Bid Borrowing.

(d) The Borrower shall, in turn, before (x) in the case of Absolute Rate Borrowings, Noon (New York City time) or (y) in the case of Spread Borrowings, 1:00 p.m. (New York City time) on the Reply Date, either

(1) cancel such Competitive Bid Borrowing by giving the Administrative Agent notice to that effect, or

(2) accept one or more of the offers made by any Bank or Banks pursuant to clause (c) above by giving notice (in writing or by telephone promptly confirmed in writing) to the Administrative Agent of the amount of each Competitive Bid Loan (which amount shall be equal to or greater than the minimum amount, and equal to or less than the maximum amount, notified to the Borrower by the Administrative Agent on behalf of such Bank for such Competitive Bid Borrowing pursuant to clause (c) above) to be made by each Bank as part of such Competitive Bid Borrowing, and reject any remaining offers made by Banks pursuant to clause (c) above by giving the Administrative Agent notice to that effect; provided that acceptance of offers may only be made on the basis of ascending Absolute Rates (in the case of an Absolute Rate Borrowing) or Spreads (in the case of a Spread Borrowing), in each case commencing with the lowest rate so offered; provided further, however, if offers are made by two or more Banks at the same rate and acceptance of all such equal offers would result in a greater principal amount of Competitive Bid Loans being accepted than the aggregate principal amount requested by the Borrower, the Borrower shall have the right in its sole discretion to accept one or more such equal offers in their entirety and reject the other equal offer or offers or to allocate acceptance among all such equal offers (but giving effect to the minimum and maximum amounts specified for each such offer pursuant to clause (c) above).

(e) If the Borrower notifies the Administrative Agent that such Competitive Bid Borrowing is cancelled pursuant to clause (d)(1) above, the Administrative Agent shall give prompt notice thereof to the Banks and such Competitive Bid Borrowing shall not be made.

(f) If the Borrower accepts one or more of the offers made by any Bank or Banks pursuant to clause (d)(2) above, the Administrative Agent shall in turn promptly notify (x) each Bank that has made an offer as described in clause (c) above, of the date and aggregate amount of such Competitive Bid Borrowing and whether or not any offer or offers made by such Bank pursuant to clause (c) above have been accepted by the Borrower and (y) each Bank that is to make a Competitive Bid Loan as part of such Competitive Bid Borrowing, of the amount of each Competitive Bid Loan to be made by such Bank as part of such Competitive Bid Borrowing.

(g) The Borrower agrees to pay the Administrative Agent for its own account a competitive bid auction fee, payable on the date of each Competitive Bid Borrowing with respect to each Competitive Bid Loan, in the amounts set forth in the letter agreement, dated May 13, 2004 (the "Administrative Agent Fee Letter"), between Citigroup Global Markets Inc., the Administrative Agent and the Borrower.

2.4 Disbursement of Funds. (a) No later than Noon (New York City time) on the date specified for each Borrowing of Revolving Loans or Competitive Bid Loans, each Bank required to participate therein will, subject to the terms and conditions of this Agreement, make available its Pro Rata Share, in the case of a Borrowing of Revolving Loans, its share as specified in Section 2.3(d) of the Loans requested to be made on such date in Dollars and immediately available funds at the Payment Office by such Bank. After the Administrative Agent's receipt of the proceeds of such Loans in immediately available funds, the Administrative Agent will make available to the Borrower by depositing in the Borrower's account at the Payment Office the aggregate of the amounts so made available by the Banks in immediately available funds. In the event that the Loans made by a Bank mature or are being prepaid on the date of a requested Borrowing, such Bank shall apply the proceeds of the Loans, if any, it is then making to the extent thereof, to the repayment of such maturing or prepaid Loans, such Loans and prepayments intended to be a contemporaneous exchange.

(b) Unless the Administrative Agent shall have been notified by any Bank prior to the date of a Borrowing that such Bank does not intend to make available to the Administrative Agent such Bank's portion of the Loans to be made on such date, the Administrative Agent may assume that such Bank has made such amount available to the Administrative Agent on such date and the Administrative Agent may, in its sole discretion and in reliance upon such assumption, but shall not be obligated to, make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Bank on the date of Borrowing, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Bank. If such Bank does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall pay such corresponding amount (to the extent such amount is not collected from such Bank) to the Administrative Agent promptly, and in any event no later than the next succeeding Business Day. The Administrative Agent shall also be entitled to recover from such Bank or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower at a rate per annum equal to the interbank compensation rate set by the Administrative Agent or its actual cost of funds, whichever is higher. Nothing herein shall be deemed to relieve any Bank from its obligation to fulfill its commitments hereunder or to prejudice any rights which the Borrower may have against any Bank as a result of any default by such Bank hereunder.

(c) In the event that a Borrowing of Revolving Loans is requested to be made pursuant to this Agreement, if, after giving effect thereto and the use of proceeds thereof, the outstanding principal amount of Revolving Loans and Competitive Bid Loans made by such Bank at such time would exceed such Bank's Commitment, such Bank shall, immediately upon but in any event within one Business Day of receipt of a Notice of Borrowing, notify the Administrative Agent, and the Borrower of the amount of such excess, and such Bank shall not be obligated to make Loans pursuant to such Borrowing to the extent of such excess.

2.5 Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Bank the then unpaid principal amount of each Revolving Loan on the Commitment Termination Date, provided, however, if the Borrower exercises the Term Loan Conversion Option pursuant to Section 2.5(e), each Revolving Loan shall be converted on the Commitment Termination Date to a Term Loan and payable pursuant to clause (iii) of this Section 2.5(a), (ii) to the Administrative Agent for the account of each Bank the then unpaid principal amount of each Competitive Bid Loan on the last day of the Interest Period applicable to such Loan and (iii) to the Administrative Agent for the account of each Bank the then unpaid principal amount of each Term Loan on the Final Maturity Date.

(b) The Borrower's obligation to pay the principal of, and interest on, all of the Loans made by a Bank shall, upon the request of such Bank (i) in the case of Revolving Loans be evidenced by a promissory note (collectively, the "Revolving Notes"), (ii) in the case of Competitive Bid Loans be evidenced by a promissory note (collectively, the "Competitive Bid Notes") and (iii) in the case of Term Loans be evidenced by a promissory note (collectively, the "Term Notes", and together with the Revolving Notes and Competitive Bid Notes, the "Notes"), duly executed and delivered by the Borrower substantially in the forms of Exhibits B-1, B-2 and B-3 hereto, respectively, in each case with blanks appropriately completed in conformity herewith. The Borrower shall promptly issue Notes to a Bank upon the request of such Bank. Any Notes issued to each Bank by the Borrower shall (i) be payable to the order of such Bank and be dated, in the case of a Revolving Note or Competitive Bid Note, the Effective Date (or in the case of a Term Note, the Commitment Termination Date), (ii) be in a stated principal amount, in the case of the Revolving Notes, equal to the Commitment of such Bank, in the case of the Competitive Bid Notes, equal to the aggregate outstanding principal amount of Competitive Bid Loans made by such Bank, in the case of the Term Notes, equal to unpaid principal amount of the Revolving Loans converted to Term Loans and in any such case, be payable in the aggregate principal amount of the Loans evidenced thereby, (iii) mature, in the case of the Revolving Notes, on the Commitment Termination Date or on an earlier date as specified therein, in the case of the Competitive Bid Notes, on the last day of the Interest Period applicable to such Note, and in the case of the Term Notes, on the Final Maturity Date, and in any such case, be subject to mandatory prepayment as provided herein, (iv) bear interest as provided in the appropriate clause of Section 2.6 in respect of the Loans evidenced thereby and (v) be entitled to the benefits of this Agreement.

(c) Each Bank shall note on its internal records each Loan made by such Bank and payment thereon; provided that the failure to make, or an error in making, a notation with respect to any Loan shall not limit or otherwise affect the obligation of the Borrower hereunder or under the applicable Note. Such notations shall constitute prima facie evidence of the accuracy of the information contained therein. Promptly upon the Borrower's request (with a copy to the Administrative Agent), each Bank shall provide to the Borrower copies of such notations. Although each Note shall be dated the Effective Date, interest in respect thereof shall be payable only for the periods during which any amount thereunder is outstanding and although the stated amount of each Revolving Note shall be equal to the relevant Bank's Commitment, each Note shall be enforceable, with respect to the Borrower's obligation to pay the principal amount thereof, only to the extent of the outstanding principal amount of Loans evidenced thereby.

(d) The Administrative Agent shall maintain at its Payment Office (i) records of the names and addresses of the Banks and (ii) accounts in which it shall record (x) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (y) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Bank hereunder and (z) the amount of any sum received by the Administrative Agent hereunder for the account of the Banks and each Bank's share thereof. The entries made in the accounts maintained pursuant to this Section 2.5(d) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement. Such records shall be available for inspection by the Borrower or any Bank at any reasonable time and from time to time upon reasonable prior notice.

(e) The Borrower shall have an option (the "Term Loan Conversion Option") to convert the principal amount of the Revolving Loans outstanding on the Commitment Termination Date to term loans (the "Term Loans") provided that no Default or Event of Default shall have occurred and be continuing on the Commitment Termination Date. The Term Loans shall mature and be payable on the Final Maturity Date. The Borrower may exercise the Term Loan Conversion Option by sending notice thereof to the Administrative Agent not less than 15 days and not more than 30 days prior to the Commitment Termination Date. Promptly upon receipt of such notice, the Administrative Agent shall notify each Bank that the Borrower has exercised the Term Loan Conversion Option.

2.6 Interest. (a) The Borrower agrees to pay interest in respect of the unpaid principal amount of each Base Rate Loan, whether such Base Rate Loan is a Revolving Loan or a Term Loan, as the case may be, from the date of the respective Borrowing until maturity (whether by acceleration or otherwise) at a rate per annum which shall be equal to the Base Rate as in effect from time to time, such rate to change as and when the Base Rate changes.

(b) The Borrower agrees to pay interest in respect of the unpaid principal amount of each Eurodollar Loan, whether such Eurodollar Loan is a Revolving Loan or a Term Loan, as the case may be, from the date of the respective Borrowing until maturity (whether by acceleration or otherwise) at a rate per annum which shall be equal to the sum of (x) the relevant Eurodollar Rate plus (y) the Applicable Margin.

(c) The Borrower agrees to pay interest in respect of the unpaid principal amount of each Competitive Bid Loan from the date of the respective Borrowing until maturity (whether by acceleration or otherwise) at the rate or rates per annum specified pursuant to Section 2.3(c) by the Bank making such Loan and accepted by the Borrower pursuant to Section 2.3(d)(2).

(d) The Administrative Agent, upon determining the interest rate for any Borrowing of Eurodollar Loans for any Interest Period, shall promptly notify by telephone (confirmed in writing) or in writing, the Borrower and the Banks thereof.

(e) Overdue principal and, to the extent permitted by law, overdue interest in respect of each Loan and all other overdue amounts owing hereunder shall bear interest for each day from the date such payment was due to but not including the date paid in full at a rate per annum equal to two per cent (2%) per annum in excess of the Base Rate in effect from time to time, payable on demand; provided that no Loan shall bear interest after maturity (whether by acceleration or otherwise) at a rate per annum less than two per cent (2%) in excess of the rate of interest applicable thereto at maturity.

(f) Interest on each Loan shall accrue from and including the date of the Borrowing thereof to but excluding the date of any repayment thereof (provided that any Loan borrowed and repaid on the same day shall accrue one day's interest) and shall be payable (i) in respect of each Base Rate Loan, quarterly in arrears on each Payment Date, (ii) in respect of each Eurodollar Loan, on the last day of each Interest Period applicable to such Loan and, in the case of an Interest Period of six months or nine months, on the date occurring every three months after the first day of such Interest Period, (iii) in the case of Competitive Bid Loans, as provided in Section 2.3 and (iv) in respect of all Loans, on any prepayment or conversion thereof (on the amount prepaid or converted), at maturity (whether by acceleration or otherwise) and, after maturity, on demand.

(g) All computations of interest on (i) Eurodollar Loans and Competitive Bid Loans and interest payable pursuant to Section 2.4(b) shall be made on the basis of a year of 360 days for the actual number of days occurring in the period for which such interest is payable and (ii) Base Rate Loans and interest payable pursuant to Section 2.6(e) shall be made on the basis of a year of 365 days (or 366 days in leap year) for the actual number of days occurring in the period for which such interest is payable. Each determination by the Administrative Agent of an interest rate hereunder shall, except for manifest error, be final, conclusive and binding for all purposes.

2.7 Interest Periods. The Borrower shall, in each Notice of Borrowing or Notice of Continuation or Conversion in respect of the making of, conversion into or continuation of, a Borrowing of Eurodollar Loans, or in each Notice of Competitive Bid Borrowing in respect of a Borrowing of Competitive Bid Loans, select the interest period (each, an "Interest Period") to be applicable to such Borrowing, which Interest Period shall, at the option of the Borrower, be a one, two, three, six or, if available, nine month period, and in the case of a Competitive Bid Loan, a period of one to 360 days; provided that:

(i) any Interest Period for any Loan shall commence on the date of such Loan;

(ii) the initial Interest Period for any Borrowing of or conversion to Eurodollar Loans shall commence on the date of such Borrowing or conversion and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires;

(iii) if any Interest Period relating to a Borrowing consisting of Eurodollar Loans or Competitive Bid Loans having the Eurodollar Rate as the Interest Rate Basis begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month;

(iv) if any Interest Period would otherwise expire on a day which is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that if any Interest Period for a Eurodollar Loan or Competitive Bid Loan having the Eurodollar Rate as the Interest Rate Basis would otherwise expire on a day which is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; and

(v) no Interest Period in respect of any Revolving Loan or Competitive Bid Loan shall extend beyond the Commitment Termination Date and no Interest Period in respect of any Term Loan shall extend beyond the Final Maturity Date.

2.8 Conversions or Continuations. (a) Subject to the other provisions hereof, the Borrower shall have the option (i) to convert pro rata on any Business Day all or a portion equal to at least \$100,000,000 (or if greater, an integral multiple of \$5,000,000) of the outstanding principal amount of any Revolving Loan or Term Loan, Revolving Loans made pursuant to one or more Borrowings or Term Loans from one or more Types of Loans into one Borrowing of another Type, or (ii) to continue all or any part of the outstanding Eurodollar Loans made pursuant to one Borrowing; provided that (x) except as otherwise provided in Section 2.9, Eurodollar Loans may be converted into Loans of another Type only on the last day of an Interest Period applicable thereto and (y) Loans of any Type may only be converted into or continued as Eurodollar Loans if no Default or Event of Default has occurred and is continuing.

(b) In order to select to convert or continue a Revolving Loan or a Term Loan under this Section 2.8, the Borrower shall deliver an irrevocable notice thereof by telephone (confirmed promptly in writing) or in writing (a "Notice of Continuation or Conversion") to the Administrative Agent at the Payment Office prior to 11:00 a.m. (New York City time) at least three Business Days prior to the date of such conversion or continuation specifying whether a continuation or conversion is requested, the Loans to be so converted or continued and, if to be converted into or continued as Eurodollar Loans, the Interest Period to be initially applicable thereto. Notwithstanding the foregoing, if a Default or Event of Default is in existence at the time any Interest Period in respect of any Borrowing of Eurodollar Loans is to expire, such Loans may not be continued as Eurodollar Loans but instead shall be automatically converted on the expiration date of such Interest Period into a Borrowing of Base Rate Loans. If upon the expiration of any Interest Period, the Borrower has failed to elect a new Interest Period to be applicable to the respective Borrowing of Eurodollar Loans as provided above, the Borrower shall be deemed to have elected to convert the Borrowing into a Borrowing of Base Rate Loans effective as of the expiration date of such current Interest Period.

2.9 Interest Rate Unascertainable, Increased Cost, Illegality, etc. (a) In the event that the Administrative Agent, in the case of clause (i) below, or any Bank, in the case of clauses (ii) and (iii) below, shall in good faith have reasonably determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto):

(i) on any date for determining the Eurodollar Rate for any Interest Period, that by reason of any changes arising after the date of this Agreement affecting the interbank Eurodollar market adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of Eurodollar Rate; or

(ii) at any time, that the relevant Eurodollar Rate applicable to its Loans shall not represent the effective pricing to such Bank for funding or maintaining the affected Loans, or such Bank shall incur increased costs or reductions in the amounts received or receivable hereunder in respect thereof, because of (x) any change since the date of this Agreement in any applicable law or governmental rule, regulation, guideline or order or any interpretation thereof by any governmental agency or authority and including the introduction of any new law or governmental rule, regulation, guideline or order (such as, for example, but not limited to, a change in official reserve requirements), whether or not having the force of law and whether or not failure to comply therewith would be unlawful or (y) other circumstances affecting such Bank or the interbank Eurodollar market or the position of such Bank in such market; or

(iii) at any time, that the making or continuance of any Eurodollar Loan or Competitive Bid Loan having the Eurodollar Rate as the Interest Rate Basis has become unlawful by compliance by such Bank in good faith with any law, governmental rule, regulation, guideline or order enacted or adopted after the date of this Agreement (whether or not having the force of law), or has become impracticable as a result of a contingency occurring after the date of this Agreement which materially and adversely affects the interbank Eurodollar market;

then, and in any such event, the Administrative Agent or such Bank, as the case may be, shall, promptly after making such determination, give notice (by telephone promptly confirmed in writing) to the Borrower and (if applicable) to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Banks). Thereafter (x) in the case of clause (i) above, Eurodollar Loans shall no longer be available until such time as the Administrative Agent notifies the Borrower and the Banks that the circumstances giving rise to such notice by the Administrative Agent no longer exist, and any Notice of Borrowing, Notice of Competitive Bid Borrowing or Notice of Conversion or Continuation given by the Borrower with respect to any Borrowing of Eurodollar Loans or Competitive Bid Loans having the Eurodollar Rate as the Interest Rate Basis which have not yet been incurred shall be deemed cancelled and rescinded by the Borrower, (y) in the case of clause (ii) above, the Borrower shall pay to such Bank, within five Business Days of written demand therefor with a copy to the Administrative Agent, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as the Bank in its sole discretion shall determine) as shall be required to



compensate such Bank for such increased costs or reduction in amounts receivable hereunder (a written notice as to additional amounts owed such Bank, showing the basis for the calculation thereof, submitted to the Borrower by the Bank shall, absent manifest error, be final and conclusive and binding upon all of the parties hereto) and (z) in the case of clause (iii) above, the Borrower shall take one of the actions specified in clause (b) below as promptly as possible.

(b) At any time that any Eurodollar Loans are affected by the circumstances described in clause (a) above, the Borrower may (and, in the case of a Eurodollar Loan affected pursuant to clause (a)(iii) above, shall) either (i) if the affected Eurodollar Loan has not yet been made but is then the subject of a Notice of Borrowing or a Notice of Conversion or Continuation, be deemed to have cancelled and rescinded such notice, or (ii) if the affected Eurodollar Loan is then outstanding, require the affected Bank to convert each such Eurodollar Loan into a Base Rate Loan at the end of the applicable Interest Period or such earlier time as may be required by law by giving the Administrative Agent telephonic notice (promptly confirmed in writing) thereof on the Business Day that the Borrower was notified by the Bank pursuant to clause (a) above; provided that if more than one Bank is affected at any time, then all affected Banks must be treated in the same manner pursuant to this clause (b).

(c) In the event that the Administrative Agent determines at any time following its giving of notice based on the conditions described in clause (a)(i) above that none of such conditions exist, the Administrative Agent shall promptly give notice thereof to the Borrower and the Banks, whereupon the Borrower's right to request Eurodollar Loans from the Banks and the Banks' obligation to make Eurodollar Loans shall be restored.

(d) In the event that a Bank determines at any time following its giving of a notice based on the conditions described in clause (a)(iii) above that none of such conditions exist, such Bank shall promptly give notice thereof to the Borrower and the Administrative Agent, whereupon the Borrower's right to request Eurodollar Loans from such Bank and such Bank's obligation to make Eurodollar Loans shall be restored.

2.10 Capital Adequacy. (a) If any Bank determines in good faith that compliance with any applicable law, rule, regulation, guideline, request or directive, whether or not having the force of law, from a governmental authority, central bank or comparable agency, concerning capital adequacy or reserves, or any change therein or in interpretation or administration thereof by any governmental authority, central bank or comparable agency has or will have the effect of reducing the rate of return on the capital or assets of such Bank or any Person controlling such Bank as a consequence of such Bank's commitments or obligations hereunder, then from time to time within 15 days after demand therefor by such Bank (with a copy to the Administrative Agent), the Borrower will pay to such Bank such additional amounts as will compensate such Bank or Person for such reduction. Each Bank, upon determining that any increased costs will be payable pursuant to this Section 2.10, will give prompt written notice thereof to the Borrower, which notice shall show the basis for calculation of such increased costs, although the failure to give any such notice shall not release or diminish any of the Borrower's obligations to pay increased costs pursuant to this Section. To the extent that the notice required by the immediately preceding sentence is given by any Bank more than 180 days after the occurrence of the event giving rise to additional costs of the type described in this Section 2.10, such Bank shall not be entitled to compensation under this Section 2.10 for any amounts incurred or accrued prior to the giving of such notice to the Borrower.

(b) If the Borrower shall, as a result of the requirements of subsection (a) above or Section 2.12, be required to pay any Bank the additional costs referred to therein and the Borrower, in its sole discretion, shall deem such additional amounts to be material, the Borrower shall have the right to substitute another bank satisfactory to the Administrative Agent for such Bank which has certified the additional costs to the Borrower, and the Administrative Agent shall use reasonable efforts to assist the Borrower to locate such substitute bank. Any such substitution shall be on terms and conditions satisfactory to the Administrative Agent and until such time as such substitution shall be consummated, the Borrower shall continue to pay such additional costs. Upon any such substitution, the Borrower shall pay or cause to be paid to the Bank that is being replaced, all principal, interest (to the date of such substitution) and other amounts owing hereunder to such Bank and such Bank will be released from liability hereunder.

2.11 Funding Losses. The Borrower shall compensate each Bank, upon such Bank's delivery of a written request therefore, with a copy to the Administrative Agent, (which request shall set forth in reasonable detail the basis for requesting such amounts and which request shall, absent manifest error, be final, conclusive and

binding upon all of the parties hereto), for all losses, expenses and liabilities (including, without limitation, any interest paid by such Bank to lenders of funds borrowed by it to make or carry its Eurodollar Loans to the extent not recovered by such Bank in connection with the re-employment of such funds and including loss of anticipated profits) which such Bank may sustain: (i) if for any reason (other than a default by such Bank) a Borrowing of, or conversion (or deemed conversion) from or into, or continuation of, Eurodollar Loans, or a Borrowing of Competitive Bid Loans, does not occur on the date specified therefor in a Notice of Borrowing, a Notice of Continuation or Conversion or a Notice of Competitive Bid Borrowing (whether or not cancelled, rescinded or otherwise withdrawn); (ii) if, for any reason, any repayment (including, without limitation, payment after acceleration) of any of its Eurodollar Loans or Competitive Bid Loans or conversion of its Eurodollar Loans occurs on a date which is not the last day of an Interest Period applicable thereto; (iii) if any prepayment of any of its Eurodollar Loans or Competitive Bid Loans is not made on any date specified in a notice of prepayment given by the Borrower; or (iv) as a consequence of (x) any default by the Borrower to repay its Loans when required by the terms of this Agreement or a Note of such Bank or (y) an election made or action required to be taken pursuant to Section 2.9(b).

2.12 Taxes. (a) All payments made by the Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any governmental authority excluding, in the case of the Administrative Agent and each Bank, net income and franchise, gross receipts or other taxes imposed on net income, in each case imposed on the Administrative Agent or such Bank by the jurisdiction under the laws of which the Administrative Agent or such Bank is organized or qualified to do business (other than in situations where the basis of the imposition of such tax is the activity of the Borrower or any of its Affiliates in such jurisdiction) or any political subdivision or taxing authority thereof or therein, or by any jurisdiction in which such Bank's Lending Office is located or any political subdivision or taxing authority thereof or therein (all such non-excluded taxes, levies, imposts, deductions, charges or withholdings being hereinafter called "Taxes"). If any Taxes are required to be deducted or withheld from any amounts payable to the Administrative Agent or any Bank hereunder or under any Notes, the amounts so payable to the Administrative Agent or such Bank shall be increased to the extent necessary to yield to the Administrative Agent or such Bank (after payment of all Taxes including Taxes payable with respect to the additional amounts payable under this Section) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement and any Notes. Whenever any Taxes are payable by the Borrower, as promptly as possible thereafter, the Borrower shall send to the Administrative Agent for its own account or for the account of such Bank, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Administrative Agent and the Banks for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Bank as a result of any such failure. The agreements in this Section 2.12(a) shall survive the termination of this Agreement and the payment of any Notes and all other Obligations and are subject to the provisions of Section 2.12(b).

(b) Each Bank that is not incorporated under the laws of the United States of America or a state thereof (including each Purchasing Bank that becomes a party to this Agreement pursuant to Section 11.4(d)) agrees that, prior to the first date on which any Loan is made, or, in the case of a Purchasing Bank, prior to the date it becomes a Bank hereunder, it will deliver to the Borrower and the Administrative Agent two duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8ECI or successor applicable form, as the case may be, certifying in each case that such Bank is entitled to receive payments under this Agreement and any Notes payable to it, without deduction or withholding of any United States federal income taxes. Each Bank which delivers to the Borrower and the Administrative Agent a Form W-8BEN or W-8ECI pursuant to the preceding sentence further undertakes to deliver to the Borrower and the Administrative Agent two further copies of the said Form W-8BEN or W-8ECI (if required by law), or successor applicable forms, or other manner of certification, as the case may be, on or before the date that any such form expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower, and such extensions or renewals thereof as may reasonably be requested by the Borrower, certifying that such Bank is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, unless in any such case an event (including, without limitation, any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Bank from duly completing and delivering any such form with respect to it and such Bank advises the Borrower that it is not capable of receiving payments without any deduction or withholding of United States federal income tax.

2.13 Sharing of Payments, etc. Each of the Banks agrees that if it should receive any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under this Agreement, or otherwise) which is applicable to the payment of any Obligations, of a sum which with respect to the related sum or sums received by other Banks is in a greater proportion than the total of such Obligations then owed and due to such Bank bears to the total of such Obligations then owed and due to all of the Banks immediately prior to such receipt, then such Bank receiving such excess payment shall purchase for cash without recourse or warranty from the other Banks an interest in such Obligations owing to such Banks in such amount as shall result in a proportional participation by all of the Banks in such amount; provided that if all or any portion of such excess amount is thereafter recovered from such Bank, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. The Borrower agrees that any Bank so purchasing a participation from another Bank pursuant to this Section 2.13, may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Bank were the direct creditor of the Borrower in the amount of such participation.

2.14 Change of Lending Office. Each Bank agrees that it will use its best efforts (subject to overall policy considerations of such Bank) to designate an alternate Lending Office for any Eurodollar Loans or Competitive Bid Loans affected by the matters or circumstances described in Sections 2.9 and 2.10 (provided that such designation is made on such terms that such Bank suffers no economic, legal, regulatory or other disadvantage, determined by such Bank in its sole discretion) with the object of avoiding the consequences of the event giving rise to the operation of any such Section. Nothing in this Section 2.14 shall affect or postpone any of the obligations of the Borrower or the right of any Bank provided in this Agreement.

### SECTION 3. ADMINISTRATIVE AGENT'S FEES; FACILITY FEE; UTILIZATION FEE; COMMITMENTS.

3.1 Facility Fee; Utilization Fee. (a) Facility Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Bank an annual facility fee on the amount of such Bank's Commitment at the Applicable Facility Fee Rate, commencing on the Effective Date and payable in arrears on the Payment Date to occur in July, 2004 and thereafter payable quarterly in arrears on each subsequent Payment Date prior to the Commitment Termination Date, and on the Commitment Termination Date. All computations of the facility fee shall be computed on the basis of number of days elapsed (including the first day but excluding the last day) over a year of 360 days.

(b) Utilization Fee. In addition to the fees set forth in Section 3.1(a), the Borrower agrees to pay to the Administrative Agent for the account of each Bank a utilization fee for each day during the periods (x) from and including the Effective Date to but excluding the next day thereafter on which the utilization fee is payable and (y) from and including each day on which the utilization fee is payable to but excluding the next day thereafter on which the utilization fee is payable, on the daily average aggregate outstanding principal amount of the Loans (other than Competitive Bid Loans) of such Bank during such period at a rate per annum equal to (i) 0% if the Utilization Percentage for such period shall be less than or equal to 50% and (ii) the Applicable Utilization Fee Rate if the Utilization Percentage for such period shall be greater than 50%. "Utilization Percentage" shall mean the percentage corresponding to the fraction, the numerator of which shall be the daily average aggregate outstanding principal amount of all Loans of all Banks during any relevant period and the denominator of which shall be the daily average amount of the Commitments of all Banks during such period. Utilization fees shall be payable quarterly in arrears on each subsequent Payment Date prior to the date on which all Obligations have been paid in full and the Commitments have expired or been terminated, and on such date. All computations of the utilization fee shall be computed on the basis of the number of days elapsed (including the first but excluding the last day) over a year of 360 days.

3.2 Administrative Agent's Fees. The Borrower shall pay to the Administrative Agent for its own account such fees and other amounts as set forth in the Administrative Agent Fee Letter.

3.3 Voluntary Reduction of Commitments. Upon at least two Business Days' prior written notice (or telephonic notice confirmed promptly in writing) to the Administrative Agent (which notice the Administrative Agent shall promptly transmit to each of the Banks), the Borrower shall have the right, without premium or penalty, to permanently reduce each Bank's Pro Rata Share of all or part of the Total Commitment; provided that any partial reduction pursuant to this Section 3.3 shall be in the amount of \$100,000,000 or, if greater, an integral multiple of \$5,000,000.

3.4 Pro Rata Reductions; No Reinstatement. Each reduction of the Total Commitment shall be applied pro rata according to the respective Commitments of the Banks. The Banks' Commitments, once reduced or terminated, may not be reinstated.

3.5 Extension of Commitment Termination Date. (a) The Borrower may request, in a notice substantially in the form of Exhibit C (an "Extension Request") given as herein provided to the Administrative Agent not less than 45 days and not more than 60 days prior to the Commitment Termination Date, that the Commitment Termination Date be extended, which notice shall specify that the requested extension is to be effective (the "Extension Effective Date") on the then current Commitment Termination Date, and that the new Commitment Termination Date to be in effect following such extension (the "Requested Commitment Termination Date") is to be July 7, 2006. The Administrative Agent shall forthwith transmit such Extension Request to the Banks. Each Bank shall, not less than 30 days and not more than 45 days prior to the Extension Effective Date, notify the Borrower and the Administrative Agent of its election to extend or not to extend the Commitment Termination Date with respect to its Commitment. If on the date 30 days prior to the Extension Effective Date Banks having at least 75% of the aggregate amount of the Commitments elect to extend the Commitment Termination Date with respect to their Commitments, then, subject to the provisions of this Section 3.5 and Section 5.3, the Commitment Termination Date shall be extended to the Requested Commitment Termination Date. Any Bank which shall not notify the Borrower and the Administrative Agent of its election to extend the Commitment Termination Date on or prior to the date 30 days prior to the Extension Effective Date shall be deemed to have elected not to extend the Commitment Termination Date with respect to its Commitment.

(b) Provided that Banks having at least 75% of the aggregate amount of the Commitments shall have elected to extend their Commitments as provided in this Section 3.5, and any Bank shall timely notify the Borrower and the Administrative Agent pursuant to Section 3.5(a) of its election not to extend its Commitment or shall be deemed to have elected not to extend its Commitment (any such Bank being called a "Non-Extending Bank"), then the remaining Banks (the "Continuing Banks") or any of them shall have the right (but not the obligation), upon irrevocable notice to the Borrower and the Administrative Agent not later than 15 days preceding the Extension Effective Date to increase their Commitments, by an amount up to the aggregate Commitments of the Non-Extending Banks. If Continuing Banks have elected to increase their Commitments pursuant to the preceding sentence by an aggregate amount which exceeds the aggregate Commitments of the Non-Extending Banks, then the proposed increase in the Commitment of each such Continuing Bank (as specified in the notice referred to in the preceding sentence) shall be decreased pro rata in accordance with the proposed increase of each so that the aggregate increase in the Commitments of such Continuing Banks is equal to the aggregate Commitments of the Non-Extending Banks. Each increase in the Commitments of a Continuing Bank shall be evidenced by a written instrument executed by such Continuing Bank, the Borrower and the Administrative Agent.

(c) In the event the aggregate Commitments of the Non-Extending Banks shall exceed the aggregate amount by which the Continuing Banks have agreed to increase their Commitments pursuant to Section 3.5(b), the Borrower may, subject to the same approval process required of Purchasing Banks in Section 11.4(d), designate one or more other financial institutions willing to provide Commitments until the Requested Commitment Termination Date in an aggregate amount not greater than such excess. Any such financial institution (an "Additional Bank"), shall, on the Replacement Date (as hereinafter defined), execute and deliver to the Borrower and the Administrative Agent a Commitment Transfer Supplement, substantially in the form of Exhibit D (the "Commitment Transfer Supplement"), satisfactory to the Borrower and the Administrative Agent, setting forth the amount of such Additional Bank's Commitment and containing its agreement to become, and to perform all the obligations of, a Bank hereunder.

(d) The Borrower, with the consent of the Administrative Agent, shall be permitted at its option to designate one or more Non-Extending Banks to be replaced on the Extension Effective Date or at any time thereafter until the Commitment Termination Date, as extended, by one or more Continuing Banks or Additional Banks (each such Non-Extending Bank to be hereinafter referred to as an “Exiting Bank”). The increase in the Commitment of a Continuing Bank and the Commitment of an Additional Bank shall become effective on the date on which such Continuing Bank or Additional Bank, as the case may be, replaces the Commitment of an Exiting Bank (the “Replacement Date”) pursuant to the terms of Section 3.5(b) or Section 3.5(c), respectively. On the Replacement Date, the Exiting Bank shall receive payment from the Borrower in full of the outstanding principal amount, together with accrued interest to such date and any other amount owed by the Borrower to such Exiting Bank pursuant to this Agreement or any Note, of the Loans of such Exiting Bank.

(e) The Borrower shall deliver and cause to be delivered to each Continuing Bank whose Commitment is being increased pursuant to this Section 3.5 and to each Additional Bank, on the Replacement Date, in exchange for the Notes held by such Bank, new Notes, if requested by such Continuing Bank or Additional Bank, as the case may be, maturing on the Requested Commitment Termination Date, in the principal amount of such Bank’s Commitment after giving effect to the adjustments made pursuant to this Section 3.5.

(f) If the Banks having at least 75% of the aggregate amount of the Commitments shall have elected to extend their Commitments as provided in this Section 3.5, then (i) effective on the then current Commitment Termination Date, the Commitments of the Continuing Banks and any Additional Banks shall continue until the Requested Commitment Termination Date, and as to such Banks the terms “Commitment Termination Date”, as used herein shall mean such Requested Commitment Termination Date; (ii) the Commitments of any Non-Extending Bank shall continue until the Commitment Termination Date, and shall then terminate (as to any Non-Extending Bank, the term “Commitment Termination Date”, as used herein, shall mean the then current Commitment Termination Date) and any such Non-Extending Bank shall receive payment from the Borrower in full of the outstanding principal amount, together with accrued interest to such date and any other amounts owed by the Borrower to such Non-Extending Bank pursuant to this Agreement or any Note, of the Loans of such Non-Extending Bank; and (iii) from and after any Replacement Date, the term “Banks” shall be deemed to include the Continuing Banks, the Non-Extending Banks and the Additional Banks and (except with respect to Sections 2.9, 2.10, 2.11, 2.12 and 11.1 to the extent the rights under such sections arise after the applicable Replacement Date in respect of Exiting Banks) to exclude the Exiting Banks exiting on such Replacement Date.

#### SECTION 4. PAYMENTS.

4.1 Voluntary Prepayments. The Borrower shall have the right to prepay Revolving Loans, Term Loans and Eurodollar Loans, in whole or in part from time to time on the following terms and conditions: (i) the Borrower shall give the Administrative Agent at the Payment Office at least one Business Day’s, in the case of Revolving Loans and Term Loans, or at least three Business Days’, in the case of Eurodollar Loans, prior written notice (or telephonic notice confirmed promptly in writing, any such written notice confirmation being in the form of Exhibit E hereto) by 11:00 a.m. (New York City time) on such date of its intent to prepay such Loans, which notice shall be irrevocable, specifying the date (which shall be a Business Day) and amount of such prepayment and the Type(s) of Loans to be prepaid, which notice the Administrative Agent shall promptly transmit to each of the Banks, and which notice of prepayment having been given, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein; (ii) each partial prepayment of all Loans shall be in an aggregate principal amount of \$100,000,000 or, if greater, shall be in an integral multiple of \$5,000,000; provided that if a partial prepayment of Eurodollar Loans made pursuant to a single Borrowing shall reduce the outstanding Loans made pursuant to such Borrowing to an amount less than \$100,000,000, such outstanding Loans shall be deemed to have been converted to Base Rate Loans on the date of such prepayment; and (iii) each prepayment by the Borrower in respect of any Loans made pursuant to a Borrowing shall be applied pro rata among such Loans. A Competitive Bid Loan may not be prepaid under this Section 4.1 in whole or in part without the prior written consent of the Bank which made such Loan. Subject to Section 2.11, all prepayments shall be made without premium or penalty.

Upon receipt of a notice of prepayment pursuant to this Section 4.1, the Administrative Agent shall promptly notify each Bank of the contents thereof and of each Bank’s ratable share, if any, of such prepayment.

4.2 Mandatory Prepayments. (a) If, at any time prior to the Commitment Termination Date, after giving effect to any termination or reduction of the Total Commitment pursuant to the terms of this Agreement, the aggregate outstanding principal amount of all Loans shall exceed the Total Commitment, the Borrower shall immediately prepay the Loans in an aggregate amount equal to the lesser of (x) the outstanding principal amount of Loans and (y) such excess. Promptly after the Final Maturity Date, or if later, the payment of all Obligations, the Administrative Agent shall return any amount in excess of the Obligations to the Borrower, without interest.

(b) With respect to each prepayment of Loans required by this Section 4.2, the Borrower may designate the Types of Loans which are to be prepaid and the specific Borrowing(s) pursuant to which made; provided that (i) Eurodollar Loans may be designated for prepayment pursuant to this Section 4.2 only on the last day of an Interest Period applicable thereto unless (x) all Loans incurred by the Borrower which are Eurodollar Loans with Interest Periods ending on such date of required prepayment have been paid in full and (y) all Loans incurred by the Borrower which are Base Rate Loans have been paid in full; (ii) if any prepayment of Eurodollar Loans made pursuant to a single Borrowing shall reduce the outstanding principal amount of such Eurodollar Loans to an amount less than \$100,000,000, such Borrowing shall immediately be deemed converted into Base Rate Loans; and (iii) each prepayment of any Loans made pursuant to a Borrowing shall be applied pro rata among such Loans. Notwithstanding anything to the contrary contained above, Competitive Bid Loans shall be prepaid pursuant to this Section 4.2(b) only if no other Loans are then outstanding. In the absence of a designation by the Borrower as described in the second sentence of this Section 4.2(b), the Administrative Agent shall, subject to the above, make such designation in its sole discretion.

4.3 Method and Place of Payment. (a) Except as otherwise specifically provided herein, all payments under this Agreement and any Notes shall be made without defense, set-off or counterclaim to the Administrative Agent for the ratable account of the Banks entitled thereto not later than Noon (New York City time) on the date when due and shall be made in Dollars in immediately available funds at the Payment Office.

(b) Except as otherwise specifically provided herein, any payments under this Agreement or any Notes to be made by the Borrower which are made later than Noon (New York City time) shall for all purposes hereof (including the following sentence) be deemed to have been made on the next succeeding Business Day.

(c) Whenever any payment to be made hereunder or under any Note shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

4.4 Use of Proceeds. The Borrower shall use all of the proceeds of the Loans for general corporate purposes of the Borrower in furtherance of its business.

## SECTION 5. CONDITIONS PRECEDENT.

5.1 Conditions Precedent to Effectiveness. The occurrence of the Effective Date pursuant to Section 11.9 is subject to the satisfaction of the following conditions precedent prior to, on or contemporaneously with the occurrence of the Effective Date:

(a) Agreement and Notes. This Agreement shall have been executed and delivered in accordance with Section 11.9 and the Administrative Agent shall have received, for the account of each Bank which has requested to receive Notes, if any, the Revolving Note and the Competitive Bid Note of such Bank, in each case duly completed, executed and delivered by an Authorized Officer of the Borrower.

(b) Termination of Existing Credit Agreement. There shall be no obligations of the Borrower or any of its Subsidiaries outstanding under the Refinanced Indebtedness, except for the continuing indemnities provided for therein, which shall have been terminated and the commitments of the lenders thereunder shall have been terminated and any notes issued in connection therewith shall be deemed cancelled.

(c) Officers' Certificates and Corporate Documents. The Agents shall have received (with a copy for each of the other Banks) (i) a certificate of the Secretary or an Assistant Secretary of the Borrower certifying (x) the names and true signatures of the officers of the Borrower authorized to sign this Agreement, any Notes and the other documents to be delivered hereunder, (y) the resolutions of the Borrower's Board of Directors approving and authorizing the execution and delivery of this Agreement and the Notes, if any, and (z) that there have been no changes in the Borrower's Certificate of Incorporation (which shall have been furnished to the Administrative Agent) since the date of the most recent certification thereof by the appropriate Secretary of State and (ii) a certificate of the chief executive officer or chief financial officer of the Borrower certifying that the statements referred to in clauses (h), (i) and (j) below are true as of the Effective Date, in each case in form and substance satisfactory to the Banks.

(d) Opinion of Borrower's Counsel. The Agents shall have received (with a copy for each of the other Banks) a favorable opinion of Gary P. Van Graafeiland, general counsel of the Borrower, substantially in the form of Exhibit F hereto.

(e) Opinion of Administrative Agent's Counsel. The Agents shall have received (with a copy for each of the other Banks) an opinion of Sidley Austin Brown & Wood LLP, special counsel for the Administrative Agent, substantially in the form of Exhibit G hereto.

(f) Fees and Expenses. The Administrative Agent shall have received payment in full of all fees referred to in Section 3.2 which are payable on or prior to the Effective Date and all substantiated expenses for which invoices have been presented on or prior to the Effective Date.

(g) Corporate Proceedings. All corporate and legal proceedings and all instruments and agreements in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Banks, and the Agents shall have received (with copies for each of the other Banks) all information and copies of all documents and papers, including records of corporate proceedings, the Certificate of Incorporation and By-Laws of the Borrower and governmental approvals, if any, which any Bank may have reasonably requested in connection therewith.

(h) Representations and Warranties True; No Default. On and as of the Effective Date (i) the representations and warranties contained in Section 6 shall be true and correct and (ii) no event shall have occurred and be continuing, and no condition shall exist, which constitutes an Event of Default or a Default.

(i) Material Adverse Effect. Since December 31, 2003, there has not occurred and there does not exist any event, act, condition or liability which has had, or may reasonably be expected to have, a Material Adverse Effect.

(j) Litigation. There are no actions, suits or proceedings, or any governmental investigation or any arbitration, in each case pending or, to the knowledge of the Borrower, threatened which, individually or in the aggregate, may reasonably be expected to result in a Material Adverse Effect.

5.2 Conditions Precedent to Each Loan. The obligation of each Bank to make any Loan is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties True; No Default. On the date of such Loan, both before and after giving effect thereto and to the application of the proceeds thereof, the following statements shall be true (and each of the giving of the applicable Notice of Borrowing, Notice of Competitive Bid Borrowing, or the acceptance by the Borrower of the proceeds of such Loan shall constitute a representation and warranty by the Borrower that on such date, both before and after giving effect thereto and to the application of the proceeds thereof, such statements are true): (i) the representations and warranties contained in Section 6 are true and correct on and as of the date of such Loan, with the same effect as though made on and as of the date of such Loan; and (ii) no event has occurred and is continuing or condition exists, or would result from such Loan or the application of the proceeds thereof, which constitutes an Event of Default or a Default.

(b) Other. The Administrative Agent shall have received such other approvals, opinions or documents as it may reasonably request, all in form and substance satisfactory to the Administrative Agent.

5.3 Conditions Precedent to the Extension of the Commitment Termination Date. On the date of the extension of the Commitment Termination Date pursuant to Section 3.5, both before and after giving effect thereto, the following statements shall be true (and the giving of the Extension Notice shall constitute a representation and warranty by the Borrower that on the date of such notice such statements are true): (i) the representations and warranties contained in Section 6 are true and correct on and as of the date of such extension, with the same effect as though made on and as of the date of such extension; (ii) since December 31, 2003, there has not occurred and there does not exist any event, act, condition or liability which has had, or may reasonably be expected to have, a Material Adverse Effect; (iii) there are no actions, suits or proceedings, or any governmental investigation or any arbitration, in each case pending or, to the knowledge of the Borrower, threatened which, individually or in the aggregate, may reasonably be expected to result in a Material Adverse Effect; and (iv) no event has occurred and is continuing or condition exists, or would result from such extension, which constitutes an Event of Default or a Default.

## SECTION 6. REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

In order to induce the Agents and the Banks to enter into this Agreement and to make available the credit facilities contemplated hereby, the Borrower makes the following representations, warranties and agreements, each of which shall survive the execution and delivery of this Agreement and any Notes and the making of the Loans:

6.1 Corporate Status. Each of the Borrower and its Domestic Subsidiaries (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to own its property and assets and to transact the business in which it is engaged or presently proposes to engage and (iii) has duly qualified and is authorized to do business and is in good standing in every jurisdiction (other than the jurisdiction of its organization) in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect. Schedule 6.1 identifies all of the Borrower's Material Subsidiaries, Domestic Subsidiaries and Principal Subsidiaries as of the Effective Date and the principal type of business of each such Subsidiary.

6.2 Corporate Power and Authority. The Borrower has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Agreement and the Notes, if any, and has taken all necessary corporate action to authorize the execution, delivery and performance by the Borrower of such Agreement and the Notes, if any. The Borrower has duly executed and delivered this Agreement, and this Agreement and each Note, if any, constitutes, its legal, valid and binding obligation, enforceable in accordance with its terms, except as enforcement thereof may be subject to (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such enforcement is sought in a proceeding in equity or at law).

6.3 No Violation. Neither the execution, delivery or performance by the Borrower of this Agreement and the Notes, if any, nor compliance by it with the terms and provisions thereof nor the consummation of the transactions contemplated thereby, (i) will contravene any applicable provision of any law, statute, rule, regulation, order, writ, injunction or decree of any court or governmental instrumentality or (ii) will conflict or be inconsistent with or result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of the Borrower or any of its Subsidiaries pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the Borrower or any of its Subsidiaries is a party or by which it or any of its property or assets is bound or to which it may be subject, or (iii) will violate any provision of the Certificate of Incorporation or By-Laws of the Borrower.

6.4 Litigation. There is no action, suit, investigation, litigation or proceeding, in each case pending or, to the best knowledge of the Borrower, threatened affecting the Borrower or any of its Subsidiaries before any court, governmental agency or arbitrator that is reasonably likely to affect the legality, validity or enforceability of this Agreement or any Note or the consummation of the transactions contemplated hereby.



6.5 Financial Statements; Financial Condition; etc. The audited consolidated financial statements of the Borrower and its Consolidated Subsidiaries as at December 31, 2003 and the unaudited consolidated financial statements of the Borrower and its Consolidated Subsidiaries as at March 31, 2004, heretofore delivered to the Banks were prepared in accordance with GAAP consistently applied and fairly present the consolidated financial condition and the results of operations of the entities covered thereby on the dates and for the periods covered thereby, except as disclosed in the notes thereto and, with respect to interim financial statements, subject to normally recurring year-end adjustments.

6.6 Use of Proceeds; Margin Regulations. All proceeds of each Loan, will be used by the Borrower only in accordance with the provisions of Section 4.4. No part of the proceeds of any Loan will be used by the Borrower to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock. Neither the making of any Loan nor the use of the proceeds thereof will violate or be inconsistent with the provisions of Regulations U or X.

6.7 Governmental Approvals. No order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with (i) the execution, delivery and performance of this Agreement or the Notes, if any, or the consummation of any of the transactions contemplated thereby or (ii) the legality, validity, binding effect or enforceability of this Agreement or the Notes, if any.

6.8 Tax Returns and Payments. The Borrower and each of its Subsidiaries has filed all tax returns required to be filed by it and has paid all taxes shown on such returns and assessments payable by it which have become due, other than (i) those not yet delinquent, (ii) or those that are in the aggregate adequately reserved against in accordance with GAAP which are being diligently contested in good faith by appropriate proceedings or (iii) those with respect to which the failure to pay, in the aggregate, could not reasonably be expected to have a Material Adverse Effect. There are and will be no tax-sharing or similar arrangements between the Borrower and any of its Subsidiaries.

6.9 ERISA. No accumulated funding deficiency (as defined in Section 412 of the Code or Section 302 of ERISA) or Reportable Event has occurred with respect to any Plan. There are no Unfunded Benefit Liabilities under any Plan. The Borrower and each member of its ERISA Controlled Group have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan, if any, and is not in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan. The aggregate potential total withdrawal liability, and the aggregate potential annual withdrawal liability payments of the Borrower and the members of its ERISA Controlled Group as determined in accordance with Title IV of ERISA as if the Borrower and the members of its ERISA Controlled Group had completely withdrawn from all Multiemployer Plans is not greater than \$10,000,000 and \$1,000,000, respectively. To the best knowledge of the Borrower and each member of its ERISA Controlled Group, no Multiemployer Plan is or is likely to be in reorganization (as defined in Section 4241 of ERISA or Section 418 of the Code) or is insolvent (as defined in Section 4245 of ERISA). No material liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Plan or any trust established under Title IV of ERISA has been, or is expected by the Borrower or any member of its ERISA Controlled Group to be, incurred by the Borrower or any member of its ERISA Controlled Group. Neither the Borrower nor any member of its ERISA Controlled Group has any contingent liability with respect to any post-retirement benefit under any "welfare plan" (as defined in Section 3(1) of ERISA), except contingent liabilities which in the aggregate are not reasonably expected to have a Material Adverse Effect. No lien under Section 412(n) of the Code or 302(f) of ERISA or requirement to provide security under Section 401(a)(29) of the Code or Section 307 of ERISA has been or is reasonably expected by the Borrower or any member of its ERISA Controlled Group to be imposed on the assets of the Borrower or any member of its ERISA Controlled Group.

6.10 Investment Company Act; Public Utility Holding Company Act. Neither the Borrower nor any of its Subsidiaries is (x) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended, (y) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or (z) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

6.11 True and Complete Disclosure. All factual information (taken as a whole) furnished by or on behalf of the Borrower and its Subsidiaries, taken as a whole, in writing to the Agents or any Bank on or prior to the Effective Date, for purposes of or in connection with this Agreement or any of the transactions contemplated hereby is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of the Borrower and its Subsidiaries, taken as a whole, in writing to the Agents or any Bank will be, true and accurate in all material respects on the date as of which such information is dated or furnished and not incomplete by knowingly omitting to state any material fact necessary to make such information (taken as a whole) not misleading at such time. As of the Effective Date, there are no facts, events, conditions or liabilities known to the Borrower which, individually or in the aggregate, have or may reasonably be expected to have a Material Adverse Effect.

6.12 Environmental Matters. (a) (i) The Borrower, each of its Affiliates and, to the best of the Borrower's actual knowledge, each of its other Environmental Affiliates are in compliance with all applicable Environmental Laws except where noncompliance, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect, (ii) the Borrower, each of its Affiliates, and, to the best of the Borrower's actual knowledge, each of its other Environmental Affiliates has all Environmental Approvals required to operate its business as presently conducted or as reasonably anticipated to be conducted except where the failure to obtain any such Environmental Approval, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect, (iii) neither the Borrower, any of its Affiliates, nor, to the best of the Borrower's actual knowledge, any of its other Environmental Affiliates has received any communication (written or oral), whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Borrower, such Affiliate or such Environmental Affiliate is not in full compliance with all Environmental Laws and where such noncompliance, individually or in the aggregate, may reasonably be expected to have a Material Adverse Effect, and (iv) to the Borrower's best knowledge after due inquiry, there are no circumstances that may prevent or interfere with such full compliance in the future except where such noncompliance, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect.

(b) There is no Environmental Claim pending or threatened against the Borrower, any of its Affiliates or, to the best of the Borrower's actual knowledge, its other Environmental Affiliates, which, individually or in the aggregate, may reasonably be expected to have a Material Adverse Effect.

(c) There are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge or disposal of any Material of Environmental Concern, that could form the basis of any Environmental Claims against the Borrower, any of its Affiliates or, to the best of the Borrower's actual knowledge, any of its other Environmental Affiliates, which Environmental Claims, individually or in the aggregate, may reasonably be expected to have a Material Adverse Effect.

(d) Without in any way limiting the generality of the foregoing, (i) there are no on-site or off-site locations in which the Borrower, any of its Affiliates or, to the best of the Borrower's actual knowledge, any of its other Environmental Affiliates has stored, disposed or arranged for the disposal of Materials of Environmental Concern, (ii) there are no underground storage tanks located on property owned or leased by the Borrower, any of its Affiliates or, to the best of the Borrower's actual knowledge, any of its other Environmental Affiliates, (iii) there is no asbestos contained in or forming part of any building, building component, structure or office space owned or leased by the Borrower, any of its Affiliates or, to the best of the Borrower's actual knowledge, any of its other Environmental Affiliates, and (iv) no polychlorinated biphenyls (PCB's) are used or stored at any property owned or leased by the Borrower, any of its Affiliates or, to the best of the Borrower's actual knowledge, any of its other Environmental Affiliates, in each case the consequences of which may reasonably be expected to have a Material Adverse Effect.

(e) For purposes of this Section 6.12, "actual" knowledge shall mean knowledge of the Borrower's chairman of the board, chief executive officer, chief financial officer, general counsel or any other person responsible for the administration of this Agreement, including without limitation, attorneys.

6.13 Patents, Trademarks, etc. The Borrower and each of its Subsidiaries has obtained and holds in full force and effect all patents, trademarks, servicemarks, trade names, copyrights and other such rights, free from burdensome restrictions, which are necessary for the operation of its business as presently conducted.

No product, process, method, substance, part or other material presently sold by or employed by the Borrower or any of its Subsidiaries in connection with such business infringes any patent, trademark, service mark, trade name, copyright, license or other right owned by any other Person which in each case is valid without such Person's express authorization, except where such unauthorized infringement, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect. There is not pending or overtly threatened any claim or litigation against or affecting the Borrower or any of its Subsidiaries contesting its right to sell or use any such product, process, method, substance, part or other material, which claim or litigation, individually or in the aggregate, may reasonably be expected to have a Material Adverse Effect.

6.14 Ownership of Property. The Borrower and each of its Subsidiaries has good and marketable fee simple title to or valid leasehold interests in all of the real property owned or leased by the Borrower or such Subsidiary and good title to all of their personal property, except where the failure to hold such title or leasehold interests, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect. The personal and real property owned by the Borrower and its Subsidiaries is not subject to any Lien of any kind except Liens permitted hereby. The Borrower and its Subsidiaries enjoy peaceful and undisturbed possession under all of their respective leases except where the failure to enjoy such peaceful and undisturbed possession, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect.

6.15 No Default. The Borrower is not in default under or with respect to any agreement, instrument or undertaking to which it is a party or by which it or any of its property is bound in any respect which may reasonably be expected to result in a Material Adverse Effect. No Default or Event of Default exists.

6.16 Licenses, etc. The Borrower and each of its Subsidiaries have obtained and hold in full force and effect, all franchises, licenses, permits, certificates, authorizations, qualifications, accreditations, easements, rights of way and other rights, consents and approvals which are necessary for the operation of their respective businesses as presently conducted, except where the failure to obtain and hold the same, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect.

6.17 Compliance With Law. The Borrower and each of its Subsidiaries is in compliance with all laws, rules, regulations, orders, judgments, writs and decrees except where such non-compliance, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect.

6.18 Labor Matters. (i) Neither the Borrower nor any of its Subsidiaries is or has been in breach of any collective bargaining agreement, which breach has had or may reasonably be expected to have a Material Adverse Effect, and (ii) there are no Multiemployer Plans covering the employees of the Borrower or any of its Subsidiaries. None of such Persons has suffered or is suffering any strikes, walkouts, work stoppages or other material labor difficulty within the last five years which has had or may reasonably be expected to have a Material Adverse Effect.

#### SECTION 7. AFFIRMATIVE COVENANTS.

The Borrower covenants and agrees that on and after the Effective Date and until the Total Commitment has terminated and the Obligations are paid in full:

7.1 Information Covenants. The Borrower will furnish to each Bank with a copy to the Administrative Agent:

(a) Quarterly Financial Statements. Within 60 days after the close of each quarterly accounting period in each fiscal year of the Borrower (other than the final quarter), the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such quarterly period and the related consolidated statements of income, cash flow and retained earnings for such quarterly period and for the elapsed portion of the fiscal year ended with the last day of such quarterly period, and in each case setting forth comparative figures for the related periods in the prior fiscal year.

(b) Annual Financial Statements. Within 120 days after the close of each fiscal year of the Borrower, the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year and the related consolidated statements of income, cash flow and retained earnings for such fiscal year, setting forth comparative figures for the preceding fiscal year and, with respect to such consolidated financial statements, certified without qualification by independent certified public accountants of recognized national standing selected by the Borrower, in each case together with a report of such accounting firm stating that in the course of its regular audit of the consolidated financial statements of the Borrower, which audit was conducted in accordance with generally accepted auditing standards, such accounting firm has obtained no knowledge of any Default or Event of Default, or if in the opinion of such accounting firm such a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof.

(c) Officer's Certificates. At the time of the delivery of the financial statements under clauses (a) and (b) above, a certificate of the chief financial officer of the Borrower which (i) certifies (x) that such financial statements fairly present the financial condition and the results of operations of the Borrower and its Subsidiaries on the dates and for the periods indicated, subject, in the case of interim financial statements, to normally recurring year-end adjustments and (y) that such officer has reviewed the terms of this Agreement and has made, or caused to be made under his or her supervision, a review in reasonable detail of the business and condition of the Borrower and its Subsidiaries during the accounting period covered by such financial statements, and that as a result of such review such officer has concluded that no Default or Event of Default has occurred during the period commencing at the beginning of the accounting period covered by the financial statements accompanied by such certificate and ending on the date of such certificate or, if any Default or Event of Default has occurred, specifying the nature and extent thereof and, if continuing, the action the Borrower proposes to take in respect thereof, (ii) has attached thereto a reasonably detailed calculation demonstrating compliance with Section 8.8 and (iii) states whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 6.5 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate. Such certificate shall be substantially in the form of Exhibit H.

(d) Notice of Default. Promptly after the Borrower obtains knowledge of the occurrence of any Default or Event of Default, a certificate of the chief financial officer of the Borrower specifying the nature thereof and the Borrower's proposed response thereto.

(e) Litigation. Promptly after (i) the occurrence thereof, notice of the institution of or any development in any action, suit or proceeding or any governmental investigation or any arbitration, before any court or arbitrator or any governmental or administrative body, agency or official, against the Borrower, any of its Subsidiaries or any material property of any thereof which, individually or in the aggregate, may reasonably be expected to have a Material Adverse Effect, or (ii) actual knowledge thereof, notice of the threat of any such action, suit, proceeding, investigation or arbitration.

(f) ERISA. (i) As soon as possible and in any event within 10 days after the Borrower or any member of its ERISA Controlled Group knows, or has reason to know, that: (A) any Termination Event with respect to a Plan has occurred or will occur, or (B) any condition exists with respect to a Plan which presents a material risk of termination of the Plan or imposition of an excise tax or other liability on the Borrower or any member of its ERISA Controlled Group, or (C) the Borrower or any member of its ERISA Controlled Group has applied for a waiver of the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, or (D) the Borrower or any member of its ERISA Controlled Group has engaged in a "prohibited transaction," as defined in Section 4975 of the Code or as described in Section 406 of ERISA, that is not exempt under Section 4975 of the Code and Section 408 of ERISA, unless it is not reasonably expected to have a Material Adverse Effect, or (E) the aggregate present value of the Unfunded Benefit Liabilities under all Plans has in any year increased by

\$1,000,000 or to an amount in excess of \$10,000,000, or (F) any condition exists with respect to a Multiemployer Plan which presents a material risk of a partial or complete withdrawal (as described in Section 4203 or 4205 of ERISA) by the Borrower or any member of its ERISA Controlled Group from a Multiemployer Plan, or (G) the Borrower or any member of its ERISA Controlled Group is in “default” (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan, or (H) a Multiemployer Plan is in “reorganization” (as defined in Section 418 of the Code or Section 4241 of ERISA) or is “insolvent” (as defined in Section 4245 of ERISA), or (I) the potential withdrawal liability (as determined in accordance with Title IV of ERISA) of the Borrower and the members of its ERISA Controlled Group with respect to all Multiemployer Plans has in any year increased by \$1,000,000 or to an amount in excess of \$10,000,000, or (J) there is an action brought against the Borrower or any member of its ERISA Controlled Group under Section 502 of ERISA with respect to its failure to comply with Section 515 of ERISA, a certificate of the president or chief financial officer of the Borrower setting forth the details of each of the events described in clauses (A) through (J) above as applicable and the action which the Borrower or the applicable member of its ERISA Controlled Group proposes to take with respect thereto, together with a copy of any notice or filing from the PBGC or which may be required by the PBGC or other agency of the United States government with respect to each of the events described in clauses (A) through (J) above, as applicable.

(ii) As soon as possible and in any event within two Business Days after the receipt by the Borrower or any member of its ERISA Controlled Group of a demand letter from the PBGC notifying the Borrower or such member of its ERISA Controlled Group of its final decision finding liability and the date by which such liability must be paid, a copy of such letter, together with a certificate of the president or chief financial officer of the Borrower setting forth the action which the Borrower or such member of its ERISA Controlled Group proposes to take with respect thereto.

(g) SEC Filings. Promptly upon the filing thereof, copies of all regular and periodic financial information, proxy materials and other information and reports, if any, which the Borrower shall file with the Securities and Exchange Commission (or any successor thereto) or any governmental agencies substituted therefor or promptly upon the mailing thereof, copies of such documents, material, information and reports which the Borrower shall send to or generally make available to its stockholders.

(h) Environmental. Unless prohibited by any applicable law, rule, regulation, order, writ, injunction or decree of, or agreement with, any court or governmental instrumentality, or in the case of an Environmental Affiliate which is not otherwise an Affiliate of the Borrower, any contractual undertaking the primary purpose of which was other than to prohibit the disclosure of such information, promptly and in any event within five Business Days after the existence of any of the following conditions, a certificate of an Authorized Officer of the Borrower, specifying in detail the nature of such condition and the Borrower’s, such Affiliate’s or such Environmental Affiliate’s proposed response thereto: (i) the receipt by the Borrower, any of its Affiliates, or, to the best of the Borrower’s actual knowledge, any of its other Environmental Affiliates of any communication (written or oral), whether from a governmental authority, citizens group, employee or otherwise, that alleges that such Person is not in compliance with applicable Environmental Laws and such noncompliance, individually or in the aggregate, may reasonably be expected to have a Material Adverse Effect, (ii) the Borrower, any of its Affiliates, or, to the best of the Borrower’s actual knowledge, any of its other Environmental Affiliates shall obtain knowledge that there exists any Environmental Claim pending or threatened against such Person, which, individually or in the aggregate, may reasonably be expected to have a Material Adverse Effect, or (iii) any release, emission, discharge or disposal of any Material of Environmental Concern that could form the basis of any Environmental Claim against the Borrower, any of its Affiliates or any of its other Environmental Affiliates, which Environmental Claim, individually or in the aggregate, may reasonably be expected to have a Material Adverse Effect. For purposes of this clause (h), “actual” knowledge shall have the meaning provided by Section 6.12(e).

(i) Change in Ratings. Promptly and in any event within three days after the Borrower receives notice from Standard & Poor’s or Moody’s of a change in the rating of its Long-Term Indebtedness, the Borrower shall notify the Administrative Agent of such rating change.

(j) Other Information. From time to time with reasonable promptness, such other information or documents (financial or otherwise) as the Administrative Agent may reasonably request.

7.2 Books, Records and Inspections. The Borrower shall, and shall cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all requirements of law shall be made of all dealings and transactions in relation to its business and activities. The Borrower shall, and shall cause each of its Subsidiaries to, permit officers and designated representatives of any Bank to visit and inspect any of the properties of the Borrower or any of its Subsidiaries, and to examine the books of record and account of the Borrower or any of its Subsidiaries, and discuss the affairs, finances and accounts of the Borrower or any of its Subsidiaries with, and be advised as to the same by, its and their officers and independent accountants, all upon reasonable notice, at such reasonable times and to such reasonable extent as such Bank may desire.

7.3 Maintenance of Insurance. The Borrower shall, and shall cause each of its Subsidiaries to, maintain with financially sound and reputable insurance companies or through self-insurance programs consistent with past practices, which past practices have been disclosed in writing to the Agents prior to the Effective Date, insurance on itself and its properties in at least such amounts (in such types and with such deductibles) and against at least such risks as are customarily insured against in the same general area by companies engaged in the same or a similar business similarly situated.

7.4 Taxes. (a) The Borrower shall pay or cause to be paid or discharged, and shall cause each of its Subsidiaries to pay or cause to be paid or discharged, when due, all taxes, charges and assessments and all other lawful claims required to be paid by the Borrower or such Subsidiaries, except as contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves have been established with respect thereto in accordance with GAAP.

(b) The Borrower shall not, and shall not permit any of its Subsidiaries to, file or consent to the filing of any consolidated tax return with any Person (other than the Borrower and its Subsidiaries).

7.5 Corporate Franchises. The Borrower shall, and shall cause each of its Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and its patents, trademarks, servicemarks, tradenames, copyrights, franchises, licenses, permits, certificates, authorizations, qualifications, accreditations, easements, rights of way and other rights, consents and approvals, except where the failure to so preserve any of the foregoing (other than existence) may not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

7.6 Compliance with Law. The Borrower shall and shall cause each of its Subsidiaries to, comply with all applicable laws, rules, statutes, regulations, decrees and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of their business and the ownership of their property, including, without limitation, ERISA and all Environmental Laws, other than those the non-compliance with which, individually or in the aggregate, may not reasonably be expected to have a Material Adverse Effect.

7.7 Maintenance of Properties. The Borrower shall cause each of its Subsidiaries to, ensure that its material properties used or useful in its business are kept in good repair, working order and condition, normal wear and tear excepted.

#### SECTION 8. NEGATIVE COVENANTS.

The Borrower covenants and agrees that on and after the Effective Date until the Total Commitment has terminated, and the Obligations are paid in full:

8.1 Liens. The Borrower shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or suffer to exist, directly or indirectly, any Lien on any of its or their property (whether real or personal, including, without limitation, accounts receivable and inventory) or any interest it or they may have therein, whether owned at the date hereof or hereafter acquired (unless, in the case of any Lien of or upon the property of any of its Subsidiaries, all obligations and indebtedness thereby secured are held by the Borrower or any of its Subsidiaries); provided that the provisions of this Section 8.1 shall not prevent or restrict the existence or creation of:

(A) liens for taxes or assessments or governmental charges or levies not then due and delinquent or the validity of which is being contested in good faith; and materialmen's, mechanic's, carrier's, workmen's, repairmen's, landlord's or other like liens, or deposits to obtain the release of such liens;

(B) pledges or deposits to secure public or statutory obligations or to secure payment of workmen's compensation or to secure performance in connection with tenders, leases of real property, or bids of contracts and pledges or deposits made in the ordinary course of business for similar purposes;

(C) licenses, easements, rights of way and other similar encumbrances, or zoning or other restrictions as to the use of real properties, the existence of which does not in the aggregate interfere with the operation of the business of the Borrower or any Subsidiary thereof;

(D) Liens of or upon any property or assets owned by any Subsidiary of the Borrower existing on the date on which such Subsidiary first became a Subsidiary, if such date is subsequent to the date hereof;

(E) Liens of or upon (i) any property or assets acquired by the Borrower or any of its Subsidiaries (whether by purchase, merger or otherwise) after the date hereof (and not theretofore owned by the Borrower or any of its Subsidiaries), or (ii) improvements made on any property or assets now owned or hereafter acquired, securing the purchase price thereof or created or incurred simultaneously with, or within 180 days after, such acquisition or the making of such improvements or existing at the time of such acquisition (whether or not assumed) or the making of such improvements, if (x) such Lien shall be limited to the property or assets so acquired or the improvements so made, (y) the amount of the obligations or indebtedness secured by such Liens shall not be increased after the date of the acquisition of such property or assets or the making of such improvements, except to the extent improvements are made to such property or assets after the date of the acquisition or the making of the initial improvements, and (z) in each instance where the obligation or indebtedness secured by such Lien constitutes an obligation or indebtedness of, or is assumed by, the Borrower or any of its Subsidiaries, the principal amount of the obligation or indebtedness secured by such Lien shall not exceed 100% of the cost or fair value (which may be determined in good faith by the Board of Directors of the Borrower), whichever is lower, of the property or assets or improvements at the time of the acquisition or making thereof;

(F) Liens arising under Capitalized Leases;

(G) mortgages securing indebtedness of a Subsidiary of the Borrower owing to the Borrower or to another Subsidiary of the Borrower;

(H) Liens on property of a corporation existing at the time such corporation is merged into or consolidated with the Borrower or any of its Subsidiaries or at the time of a sale, lease or other disposition of the properties of a corporation as an entirety or substantially as an entirety to the Borrower or any of its Subsidiaries;

(I) Liens on or other conveyances of property owned by the Borrower or any of its Subsidiaries in favor of the United States of America or any State thereof, or any department, agency or instrumentality or political subdivision of the United States of America or any State thereof, or in favor of any other country, or any political subdivision thereof, to secure partial, progress, advance or other payments pursuant to any contract or statute or to secure any indebtedness incurred for the purpose of financing all or any part of the purchase price or the cost of construction of the property subject to such mortgages;

(J) renewals, extensions or replacements of the Liens referred to in clauses (D) through (I) for amounts which shall not exceed the principal amount of the obligations or indebtedness so renewed or replaced at the time of the renewal or replacement thereof and applying only to the same property or assets theretofore subject to such Liens;

(K) Liens (including Liens to secure judgments pending appeal) not otherwise permitted by this Section 8.1 securing obligations of the Borrower or any Subsidiary thereof in an aggregate principal amount outstanding at any one time not to exceed an amount equal to 10% of Consolidated Net Tangible Assets at such time; and

(L) Liens securing the obligations of the Securitization Subsidiary under the Securitization Facility.

8.2 Subsidiary Indebtedness. The Borrower shall not permit any Subsidiary to create, incur, assume or permit to exist any Indebtedness, except:

(A) Indebtedness to the Borrower or any other Subsidiary;

(B) Indebtedness of any Person that becomes a Subsidiary (or is merged into a Subsidiary) after the date hereof and any extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary; and

(C) Indebtedness incurred by any Subsidiary organized, or substantially all of the business of which is conducted, in the People's Republic of China;

(D) Indebtedness incurred by Kodak International Finance Limited, a company organized and existing under the laws of England, in connection with its payment obligations under any interest rate protection agreements (including without limitation, any interest rate swaps, caps, floors, collars and similar agreements) and currency swaps and similar agreements entered into in the ordinary course of business to protect the Borrower and its Subsidiaries against fluctuations in interest or exchange rates;

(E) Indebtedness of Kodak Diamic Ltd., a Japanese corporation and joint venture with the Mitsubishi Corporation doing business principally in Japan;

(F) Indebtedness incurred by the Securitization Subsidiary in connection with the Securitization Facility; and

(G) other Indebtedness in an aggregate principal amount not exceeding \$800,000,000 at any time outstanding.

8.3 Restriction on Fundamental Changes. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any merger or consolidation, or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), discontinue its business or convey, lease, sell, transfer or otherwise dispose of, in one transaction or series of transactions, all or any substantial part of the business or property of the Borrower or, in the case of a Subsidiary of the Borrower the business or property of the Borrower and its Subsidiaries taken as a whole, whether now or hereafter acquired; provided that any such merger or consolidation shall be permitted if (i) the Borrower shall be the continuing corporation (in the case of a merger or consolidation), or the successor, if other than the Borrower shall be a corporation organized and existing under the laws of the United States of America or any State thereof and such corporation shall expressly assume to the satisfaction of the Required Banks the due and punctual performance and observance of all of the covenants and obligations contained in this Agreement and any Notes to be performed by the Borrower and (ii) immediately after giving effect to such merger or consolidation, no Default or Event of Default shall have occurred and be continuing; provided further that any wholly-owned Subsidiary of the Borrower may merge into or convey, sell, lease or transfer all or substantially all of its assets to, the Borrower or any other wholly-owned Subsidiary of the Borrower.

8.4 Sales and Leasebacks. The Borrower shall not, nor shall it permit any Principal Subsidiary to, enter into any arrangement with any Person that provides for the leasing to the Borrower or any Principal Subsidiary of any Principal Property (except for leases for a term of not more than three years and leases between the Borrower and a Principal Subsidiary or between Principal Subsidiaries), which Principal Property has been or is to be sold or transferred by the Borrower or such Principal Subsidiary to such Person, unless the Borrower or such Principal Subsidiary would be entitled, pursuant to Section 8.1 and 8.2, to create, incur, assume or suffer to exist any Lien upon such property securing Indebtedness at least equal in amount to the Attributable Debt in respect of such arrangement; provided that from and after the date on which such arrangement becomes effective the Attributable Debt in respect of such arrangement shall be deemed for all purposes under Section 8.1 and 8.2 to be Indebtedness secured by a Lien.



8.5 Plans. The Borrower shall not, nor shall it permit any member of its ERISA Controlled Group to, take any action which would increase the aggregate present value of the Unfunded Benefit Liabilities under all Plans to an amount in excess of \$10,000,000 (except to the extent that such increase is caused by a change in a Plan's benefit formula and is reduced through funding or otherwise within the time period during which the Borrower could receive a federal income tax deduction with respect to the tax year in which such formula change was made).

8.6 Restrictions on Subsidiary Distributions. Except as provided herein, the Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of the Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's capital stock (or other ownership interest) owned by the Borrower or any other Subsidiary of the Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to the Borrower or any other Subsidiary of the Borrower, (c) make loans or advances to the Borrower or any other Subsidiary of the Borrower, or (d) transfer any of its property or assets to the Borrower or any other Subsidiary of the Borrower other than restrictions (i) in agreements evidencing Indebtedness permitted by Section 8.2(c) that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements, asset sale agreements and similar agreements entered into in the ordinary course of business, (iii) on any Person that becomes a Subsidiary after the date hereof provided that such restrictions exist at the time such Person becomes a Subsidiary and are not created in contemplation of or in connection with such Person becoming a Subsidiary, or (iv) with respect to the Securitization Subsidiary as set forth in the Securitization Facility.

8.7 No Further Negative Pledges. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to an asset sale permitted hereunder, (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be), and (c) restrictions on any Person that becomes a Subsidiary after the date hereof provided that such restrictions exist at the time such Person becomes a Subsidiary and are not created in contemplation of or in connection with such Person becoming a Subsidiary, neither the Borrower nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

8.8 Consolidated Debt to EBITDA Ratio. The Borrower will not permit the Consolidated Debt to EBITDA Ratio for any period of four consecutive fiscal quarters of the Borrower to be greater than 3.0:1.0.

## SECTION 9. EVENTS OF DEFAULT

9.1 Events of Default. Each of the following events, acts, occurrences or conditions shall constitute an Event of Default under this Agreement, regardless of whether such event, act, occurrence or condition is voluntary or involuntary or results from the operation of law or pursuant to or as a result of compliance by any Person with any judgment, decree, order, rule or regulation of any court or administrative or governmental body:

(a) Failure to Make Payments. The Borrower shall (i) default in the payment when due of any principal of the Loans or (ii) default, and such default shall continue unremedied for five or more Business Days, in the payment when due of any interest on the Loans or (iii) default, and such default shall continue unremedied for ten or more days after notice of such default, in the payment when due of any fees or any other amounts owing hereunder.

(b) Breach of Representation or Warranty. Any representation or warranty made by the Borrower herein or in any certificate or statement delivered pursuant hereto or thereto shall prove to be false or misleading in any material respect on the date as of which made or deemed made.

(c) Breach of Covenants. The Borrower shall fail to perform or observe any agreement, covenant or obligation arising under this Agreement (except those described in subsections (a) or (b) above) and, if capable of being remedied, such failure shall remain unremedied for 30 days after written notice thereof shall have been given to the Borrower by the Administrative Agent; provided that there shall be deducted from such number of days any grace period utilized by the Borrower in notifying the Banks of such Default pursuant to Section 7.1(d).

(d) Default Under Other Agreements. The Borrower or any of its Subsidiaries shall default in the payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) of any amount owing in respect of any Indebtedness in the principal amount of \$50,000,000 or more; or the Borrower or any of its Subsidiaries shall default in the performance or observance of any obligation or condition with respect to any Indebtedness or any other event shall occur or condition exist, if the effect of such default, event or condition is to accelerate the maturity of any such Indebtedness or to permit (without regard to any required notice or lapse of time) the holder or holders thereof, or any trustee or agent for such holders, to accelerate the maturity of any such Indebtedness, or any such Indebtedness shall become or be declared to be due and payable prior to its stated maturity other than as a result of a regularly scheduled payment, and the principal amount of such Indebtedness is \$50,000,000 or more.

(e) Bankruptcy, etc. (i) The Borrower or any Material Subsidiary shall commence a voluntary case concerning itself under the Bankruptcy Code; or (ii) an involuntary case is commenced against the Borrower or any Material Subsidiary and the petition is not controverted within 30 days, or is not dismissed within 60 days, after commencement of the case; or (iii) a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of the Borrower or any Material Subsidiary or the Borrower or any Material Subsidiary commences any other proceedings under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Borrower or any Material Subsidiary or there is commenced against the Borrower or any Material Subsidiary any such proceeding which remains undismissed for a period of 60 days; or (iv) any order of relief or other order approving any such case or proceeding is entered; or (v) the Borrower or any Material Subsidiary is adjudicated insolvent or bankrupt; or (vi) the Borrower or any Material Subsidiary suffers any appointment of any custodian or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 60 days; or (vii) the Borrower or any Material Subsidiary makes a general assignment for the benefit of creditors; or (viii) the Borrower or any Material Subsidiary shall fail to pay, or shall state that it is unable to pay, or shall be unable to pay, its debts generally as they become due; or (ix) the Borrower or any Material Subsidiary shall call a meeting of its creditors (other than a meeting solely with the Banks) with a view to arranging a composition or adjustment of its debts; or (x) the Borrower or any Material Subsidiary shall by any act or failure to act consent to, approve of or acquiesce in any of the foregoing; or (xi) any corporate action is taken by the Borrower or any Material Subsidiary for the purpose of effecting any of the foregoing.

(f) ERISA. (i) Any Termination Event shall occur, or (ii) any Plan shall incur an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived in excess of \$50,000,000, or (iii) the Borrower or a member of its ERISA Controlled Group shall have engaged in a transaction which is prohibited under Section 4975 of the Code or Section 406 of ERISA which could result in the imposition of liability in excess of \$50,000,000 on the Borrower or any member of its ERISA Controlled Group, or (iv) the Borrower or any member of its ERISA Controlled Group shall fail to pay when due an amount which it shall have become liable to pay to the PBGC, any Plan or a trust established under Title IV of ERISA, or (v) a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that an ERISA Plan must be terminated or have a trustee appointed to administer any ERISA Plan, or (vi) the Borrower or a member of its ERISA Controlled Group suffers a partial or complete withdrawal from a Multiemployer Plan or is in “default” (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan, or (vii) a proceeding shall be instituted against the Borrower or any member of its ERISA Controlled Group to enforce Section 515 of ERISA, or (viii) any other event or condition shall occur or exist with respect to any Plan which could subject the Borrower or any member of its ERISA Controlled Group to any tax, penalty or other liability in excess of \$50,000,000.

(g) Judgments. One or more judgments or decrees in an aggregate amount of \$50,000,000 or more shall be entered by a court against the Borrower or any of its Subsidiaries and (i) any such judgments or decrees shall not be stayed, discharged, paid, bonded or vacated within 30 days or (ii) enforcement proceedings shall be commenced by any creditor on any such judgments or decrees.

(h) Environmental Matters. (i) Any Environmental Claim shall have been asserted against the Borrower or any Environmental Affiliate thereof which may reasonably be expected to have a Material Adverse Effect, (ii) any release, emission, discharge or disposal of any Material of Environmental Concern shall have occurred, and such event could form the basis of an Environmental Claim against the Borrower or any Environmental Affiliate thereof which, if determined adversely, may reasonably be expected to have a Material Adverse Effect, or (iii) the Borrower or any Environmental Affiliate thereof shall have failed to obtain any Environmental Approval necessary for the management, use, control, ownership, or operation of its business, property or assets or any such Environmental Approval shall be revoked, terminated, or otherwise cease to be in full force and effect, in each case, if the existence of such condition may reasonably be expected to have a Material Adverse Effect.

(i) Change in Control. At any time on or after the Effective Date a Change in Control shall have occurred.

9.2 Rights and Remedies. Upon the occurrence of any Event of Default, the Administrative Agent may with the consent of, and shall upon the written request of, the Required Banks, by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, any Bank or the holder of any Note to enforce its claims against the Borrower (provided, that, if an Event of Default specified in Section 9.1(e) shall occur with respect to the Borrower or any Material Subsidiary, the result which would occur upon the giving of written notice by the Administrative Agent to the Borrower as specified in clauses (i) and (ii) below shall occur automatically without the giving of any such notice): (i) declare the Total Commitment terminated, whereupon the Commitment of each Bank shall forthwith terminate immediately; and (ii) declare the principal of and any accrued interest in respect of all Loans to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice or requirements of any kind (including, without limitation, valuation and appraisal, diligence, presentment, notice of intent to demand or accelerate and notice of acceleration), all of which are hereby waived by the Borrower. Promptly after the later of the Final Maturity Date or the payment of all Obligations, the Administrative Agent will return any amount in excess of the Obligations to the Borrower, without interest.

## SECTION 10. THE AGENTS.

10.1 Appointment. Each Bank hereby designates and appoints CUSA as the Administrative Agent of such Bank under this Agreement, and each such Bank authorizes the Administrative Agent for such Bank, to take such action on its behalf under the provisions of this Agreement and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement, together with such other powers as are reasonably incidental thereto. The Syndication Agent, in its capacity as such, shall have no duties, obligations or liabilities of any kind under this Agreement. The Documentation Agent, in its capacity as such, shall have no duties, obligations or liabilities of any kind under this Agreement. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Bank, and no implied covenants, functions, responsibilities, duties, obligations or liabilities on the part of the Administrative Agent shall be read into this Agreement or otherwise exist against the Administrative Agent. The provisions of this Section 10 are solely for the benefit of the Agents and the Banks and neither the Borrower nor any other Person shall have any rights as a third party beneficiary or otherwise under any of the provisions hereof. In performing its functions and duties hereunder, the Agents shall act solely as the agents of the Banks and do not assume nor shall be deemed to have assumed any obligation or relationship of trust or agency with or for the Borrower or any of their respective successors and assigns.

10.2 Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

10.3 Exculpatory Provisions. No Agent shall be (i) liable for any action lawfully taken or omitted to be taken by it or any Person described in Section 10.2 under or in connection with this Agreement (except for its or such Person's own gross negligence or willful misconduct), or (ii) responsible in any manner to any of the

Banks for any recitals, statements, representations or warranties made by the Borrower contained in this Agreement or in any certificate, report, statement or other document referred to or provided for in, or received under or in connection with, this Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, or for any failure to perform its obligations hereunder. The Administrative Agent shall not be under any obligation to any Bank to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement, or to inspect the properties, books or records of the Borrower. This Section is intended solely to govern the relationship between the Agents, on the one hand, and the Banks, on the other.

10.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any Note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement unless it shall first receive such advice or concurrence of the Required Banks as it deems appropriate or it shall first be indemnified to its satisfaction by the Banks against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the Required Banks, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Banks and all future holders of any Notes.

10.5 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice from a Bank or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall promptly give notice thereof to the Banks. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Required Banks; provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as the Administrative Agent shall deem advisable and in the best interests of the Banks.

10.6 Non-Reliance on the Agents and Other Banks. Each Bank expressly acknowledges that neither of the Agents, nor any of their officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representations or warranties to it and that no act by either of the Agents or any of the foregoing hereafter taken, including, without limitation, any review of the affairs of the Borrower, shall be deemed to constitute any representation or warranty by either of the Agents or any of the foregoing. Each Bank represents and warrants to the Agents that it has, independently and without reliance upon the Agents, any of the foregoing or any other Bank and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, prospects, financial and other conditions and creditworthiness of the Borrower and made its own decision to make its Loans hereunder and enter into this Agreement. Each Bank also represents that it will, independently and without reliance upon the Agents or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, prospects, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly required under this Agreement to be furnished to the Banks by either of the Agents, neither of the Agents nor any of their affiliates shall have any duty or responsibility to provide any Bank with any credit or other information concerning the business, operations, property, prospects, financial and other condition or creditworthiness of the Borrower which may come into the possession of either of the Agents or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

10.7 Indemnification. The Banks agree to indemnify the Administrative Agent and its officers, directors, employees, representatives and agents (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their Pro Rata Shares, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements

of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for the Administrative Agent or such Person in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not the Administrative Agent or such Person shall be designated a party thereto) that may at any time (including, without limitation, at any time following the payment of the Obligations) be imposed on, incurred by or asserted against the Administrative Agent or such Person as a result of, or arising out of, or in any way related to or by reason of, any of the transactions contemplated hereby or the execution, delivery or performance of this Agreement (but excluding any such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent resulting from the gross negligence or willful misconduct of the Administrative Agent or such Person as finally determined by a court of competent jurisdiction).

10.8 Agents in their Individual Capacity. The Agents and their affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower as though the Agents were not the Agents hereunder, including, without limitation, acting as financial advisors to the Borrower. With respect to Loans made or renewed by it and any Note issued to it, each Agent shall have the same rights and powers under this Agreement as any Bank and may exercise the same as though it were not an Agent, and the terms “Bank” and “Banks” shall include the Agents in their individual capacities.

10.9 Successor Administrative Agent. The Administrative Agent may resign as Administrative Agent upon 30 days’ notice to the Borrower and the Banks. If the Administrative Agent shall resign as the Administrative Agent under this Agreement, then the Required Banks during such 30-day period shall appoint from among the Banks a successor administrative agent, whereupon such successor administrative agent shall succeed to the rights, powers and duties of the Administrative Agent so resigning and the term “Administrative Agent” shall mean such successor administrative agent, effective upon its appointment, and the former Administrative Agent’s rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Notes. After any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the provisions of this Section 10 and Section 11.1 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

10.10  Holders. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until the Administrative Agent shall have received an executed Transfer Supplement in respect thereof. Any request, authority or consent of any Person or entity who, at the time of making such request or giving such authority or consent, is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee, assignee or endorsee, as the case may be, of such Note or of any Note(s) issued in exchange therefor.

## SECTION 11. MISCELLANEOUS.

11.1 Payment of Expenses; Indemnification. The Borrower shall:

(a) (i) whether or not the transactions hereby contemplated are consummated, pay all reasonable out-of-pocket costs and expenses of the Agents, and the Joint Lead Arrangers in connection with the administration (both before and after the execution hereof and including, without limitation, the advice of counsel as to the rights and duties of the Administrative Agent and the Banks with respect thereto) of and in connection with the syndication, negotiation, preparation, execution and delivery of this Agreement, the documents and instruments referred to herein and any amendment, waiver or consent related thereto (including, without limitation, the reasonable and actual fees and disbursements of Sidley Austin Brown & Wood LLP, special counsel to the Administrative Agent and reasonable allocated costs of internal counsel of the Agents) and (ii) pay all reasonable out-of-pocket costs and expenses of the Agents and each Bank incurred in connection with the preservation of rights under, and enforcement of, and, after a Default, the refinancing, renegotiation or restructuring of this Agreement, the Notes, if any, and the documents and instruments referred to therein and any amendment, waiver or consent relating thereto (including, without limitation, the reasonable and actual fees and disbursements of counsel and reasonable allocated costs of internal counsel for the Agents and, in the case of enforcement, for each of the Banks); provided that each Agent and Bank agrees to use its best efforts to avoid duplication of legal expenses when simultaneously using (and intending to seek reimbursement for) internal counsel and outside counsel and that each Agent and Bank agrees to notify the Borrower in the event it intends to simultaneously use and seek reimbursement for both internal counsel and outside counsel;

(b) pay and hold each of the Banks harmless from and against any and all present and future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder (without duplication of Section 2.12) or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any of the Notes and save each Bank harmless from and against any and all liabilities with respect to or resulting from any delay or omission by the Borrower or any of its Subsidiaries to pay any such taxes, charges or levies; and

(c) indemnify each Agent, and each Bank, its officers, directors, employees, representatives, affiliates and agents (each, an "Indemnitee") from and hold each of them harmless against any and all costs, losses, liabilities, claims, damages, obligations, judgments, suits, actions, disbursements or expenses of any nature whatsoever (including, without limitation, the reasonable and actual fees and disbursements of counsel (including reasonable allocated costs of internal counsel) for such Indemnitee in connection with any investigation, litigation or other proceeding commenced or threatened, whether or not such Indemnitee is a party thereto; provided that each Agent and Bank agrees to use its best efforts to avoid duplication of legal expenses when simultaneously using (and intending to seek reimbursement for) internal counsel and outside counsel and that each Agent and Bank agrees to notify the Borrower in the event it intends to simultaneously use and seek reimbursement for both internal counsel and outside counsel) that may at any time (including, without limitation, following the payment of the Obligations) be imposed on, asserted against or incurred by such Indemnitee as a result of or arising out of or in any way related to or by reason of any actual or proposed use by the Borrower or any Subsidiary of the Borrower of the proceeds of any Loan, this Agreement or any of the Notes, or any transaction contemplated hereby or thereby, any violation by the Borrower or its Environmental Affiliates of any applicable Environmental Law, any Environmental Claim arising out of the management, use, control, ownership or operation of property or assets by the Borrower or any of its Environmental Affiliates, including, without limitation, all on-site and off-site activities involving Materials of Environmental Concern, the breach of any representation or warranty set forth in Section 6 or the exercise by the Agents and the Banks of their rights and remedies (including, without limitation, foreclosure) (but excluding, as to any Indemnitee, any such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements incurred solely by reason of the gross negligence or willful misconduct of such Indemnitee as finally determined by a court of competent jurisdiction). If and to the extent the foregoing obligations in this Section 11.1 are unenforceable for any reason or are insufficient to hold any Indemnitee harmless as so provided, the Borrower agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law. The Borrower's obligations under this Section 11.1 shall survive any termination of this Agreement.

11.2 Right of Setoff. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Bank is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final) and any other indebtedness at any time held or owing by such Bank (including, without limitation, by branches and agencies of such Bank wherever located) to or for the credit or the account of the Borrower against and on account of the Obligation to such Bank under this Agreement or any Notes, including, without limitation, all interests in Obligations purchased by such Bank pursuant to Section 11.4, and all other claims of any nature or description arising out of or connected with this Agreement or any Notes, irrespective of whether or not such Bank shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

11.3 Notices. Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including when made by telecopier) and mailed, telecopied or delivered, if to any party, at its address specified opposite its signature below or at such other address as shall be designated by such party in a written notice to the other parties hereto; provided that all notices to be given by the Borrower hereunder shall be given by an Authorized Officer of the Borrower. All such notices and communications shall, when mailed, telecopied, or sent by reputable overnight courier, be effective (i) when received or (ii) three Business Days (or five Business Days, in case of notices and other communications provided to

or by any foreign Bank which does not have any branch or other office located in the United States) after being deposited, postage prepaid, in the mails, the Business Day (or the second Business Day, in case of notices and other communications provided to or by any foreign Bank which does not have any branch or other office located in the United States) following delivery, freight prepaid, to an overnight courier or the same Business Day of transmission by telecopier, whichever of (i) or (ii) shall be earlier, except that notices and communications to the Administrative Agent shall not be effective until received by the Administrative Agent; and provided further that all notices and communications permitted to be made by telephone hereunder shall be effective as of the time received.

Without in any way limiting the Borrower's obligation to confirm in writing any telephonic notice, the Administrative Agent may act without liability upon the basis of telephonic notice believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower prior to receipt of written confirmation. In each such case, the Borrower waives the right to dispute the Administrative Agent's record of the terms of such telephonic notice.

11.4 Benefit of Agreement. (a) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective permitted successors and assigns of the parties hereto, provided that the Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of each Bank.

(b) Participations. Any Bank may at any time sell to one or more Persons (each a "Participant") participating interests in any Loan owing to such Bank, any Note held by such Bank, or any Commitment of such Bank and or any other interest of such Bank hereunder (in respect of any such Bank, its "Credit Exposure"). Notwithstanding any such sale by a Bank of participating interests to a Participant, such Bank's rights and obligations under this Agreement shall remain unchanged, such Bank shall remain solely responsible for the performance thereof, such Bank shall remain the holder of any such Note for all purposes under this Agreement (except as expressly provided below), and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement. The Borrower agrees that if any Obligations are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence and during the continuance of an Event of Default, each Participant shall be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement and any Note to the same extent as if the amount of its participating interest were owing directly to it as a Bank under this Agreement or any Note; provided that such right of setoff shall be subject to the obligations of such Participant to share with the Banks, and the Banks agree to share with such Participant, as provided in Section 2.13. The Borrower also agrees that each Participant shall be entitled to the benefits of Sections 2.9, 2.10, 2.11 and 2.12; provided further that no Participant shall be entitled to receive any greater amount pursuant to such sections than the transferor Bank would have been entitled to receive in respect of the amount of the participating interest transferred by such transferor Bank to such Participant had no such transfer occurred. Each Bank agrees that any agreement between such Bank and any such Participant in respect of such participating interest shall not restrict such Bank's right to agree to any amendment, supplement, waiver or modification to this Agreement or any Note, except where the result of any of the foregoing would be to extend the final maturity of any Obligation or reduce the rate or extend the time of payment of interest thereon or reduce the principal amount thereof including, without limitation, reducing the amount of fees payable to any Bank under this Agreement or the rate at which such fees are calculated.

(c) Assignments. Any Bank may, in the ordinary course of its business and in accordance with applicable law, at any time, assign to any Bank (with the prior written consent of the Administrative Agent and the Borrower, which consent shall not be unreasonably withheld or delayed) or any affiliate of such assigning Bank (each an "Assignee") all or any part of its Credit Exposure; provided that such assignment shall be in a principal amount of at least \$10,000,000 unless otherwise agreed by the Borrower and the Administrative Agent. The Borrower, the Administrative Agent and the Banks agree that to the extent of any assignment the Assignee shall be deemed to have the same rights and benefits under this Agreement and any Notes and the same rights of setoff and obligation to share pursuant to Section 2.13 as it would have had if it were a Bank hereunder; provided that the Borrower and the Administrative Agent shall be entitled to continue to deal solely and directly with the assignor Bank in connection with the interests so assigned to the Assignee unless and until such Assignee becomes a direct signatory to this Agreement.

(d) Assignments to Purchasing Banks. Any Bank may at any time and from time to time, with the prior written consent of the Borrower and the Administrative Agent, which consent shall not be unreasonably withheld or delayed, assign to one or more financial institutions or other entities (“Purchasing Banks”) all or any part of its Credit Exposure pursuant to a supplement to this Agreement substantially in the form of Exhibit I attached hereto with such changes as the Administrative Agent shall approve (a “Transfer Supplement”), executed by such Purchasing Bank, such transferor Bank and the Administrative Agent. Any such partial assignment shall be an assignment of an identical percentage of the transferor Bank’s Loans and Commitment, under each of the facilities and shall be in a principal amount of at least \$10,000,000 unless otherwise agreed by the Borrower and the Administrative Agent. Upon (i) such execution of such Transfer Supplement, (ii) delivery of an executed copy thereof to the Borrower and the Administrative Agent, (iii) payment (x) by such Purchasing Bank to such transferor Bank of an amount equal to the purchase price agreed between such transferor Bank and such Purchasing Bank, and (y) by either such Purchasing Bank or such transferor Bank to the Administrative Agent of an assignment fee of \$3,000, such transferor Bank shall be released from its obligations hereunder to the extent of such assignment and such Purchasing Bank shall for all purposes be a Bank party to this Agreement and shall have all the rights and obligations of a Bank under this Agreement to the same extent as if it were an original party hereto, and no further consent or action by the Borrower, the Banks or the Administrative Agent shall be required; provided, however, that the transferor Bank shall retain such rights to expense reimbursement and indemnification hereunder to which it was entitled at the time of the transfer with respect to matters arising out of the prior involvement of such transferor Bank as a Bank hereunder. Such Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing Bank as a Bank and the resulting adjustment of the Commitments, if any, arising from the purchase by such Purchasing Bank of all or a portion of the Credit Exposure of such transferor Bank (and such amendment shall not require the consent of any Purchasing Bank). Promptly after the consummation of any transfer to a Purchasing Bank pursuant hereto, the transferor Bank, the Administrative Agent and the Borrower shall make appropriate arrangements so that, if such transferor Bank then holds a Note, a replacement Note is issued to such transferor Bank and, if requested by the Purchasing Bank, a new Note is issued to such Purchasing Bank, in each case in principal amounts reflecting such transfer.

(e) The Administrative Agent may, notwithstanding any other provision of this Agreement, revise Schedule 1 hereto as appropriate to reflect assignments and transfers, and any addition of an Assignee, Purchasing Bank or other permitted assignee or transferee as a party hereto, which are permitted under this Section 11.4.

(f) Certain Exceptions. (i) Notwithstanding any other provision set forth in this Agreement to the contrary, any Bank may at any time and from time to time pledge as collateral for advances, assign or endorse for discount, or otherwise transfer all or any portion of its rights under this Agreement and its Note, if any, to any Federal Reserve Bank pursuant to the Federal Reserve Act and related regulations of the Board of Governors of the Federal Reserve System (as such act or regulations are then or thereafter in effect or any successor act or regulations), as well as any applicable operating circular or other requirements of such Board of Governors or Federal Reserve Bank (as then or thereafter in effect). Any Federal Reserve Bank may at any time and from time to time subsequently transfer all or any portion of the rights acquired by such Bank pursuant to this subsection to any Person. No such pledge, assignment, endorsement or other transfer shall or have the effect of releasing the Administrative Agent, any Bank or the Borrower from its respective obligations or conferring any obligations on the pledgee, assignee, endorsee or transferee, as the case may be, under this Agreement or any Note. The requirements of subsections (b), (c) and (d) shall be deemed inapplicable to pledges, assignments, endorsements or other transfers permitted by this subsection.

(ii) Notwithstanding anything to the contrary contained herein, any Bank (a “Granting Bank”) may grant to a special purpose funding vehicle (an “SPC”) of such Granting Bank, identified as such in writing from time to time by the Granting Bank to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Bank would otherwise be obligated to make to the Borrower pursuant to this Agreement, provided that (a) nothing herein shall constitute a commitment to make any Loan by any SPC and (b) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan or fund any other obligation required to be funded by it hereunder, the Granting Bank shall be obligated to make such Loan or fund such obligation pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall satisfy the obligation of the Granting Bank to make Loans to the same extent, and as if, such Loan were made by the Granting Banks. Each party hereto hereby agrees that no SPC shall be liable for any payment



under this Agreement for which a Bank would otherwise be liable, for so long as, and to the extent, the related Granting Bank makes such payment. In furtherance of the foregoing, each party hereto hereby agrees that, prior to the date that is one year and one day after the payment in full of all outstanding senior indebtedness of any SPC, it will not institute against or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or similar proceedings, under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 11.4 any SPC may (A) with notice to, but without the prior written consent of, the Borrower or the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loan to its Granting Bank or to any financial institutions providing liquidity and/or credit facilities to or for the account of such SPC to fund the Loans made by such SPC or to support the securities (if any) issued by such SPC to fund such Loans and (B) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of a surety, guarantee or credit or liquidity enhancement to such SPC. Notwithstanding any other provisions of this Agreement, the Borrower agrees that it will not use the proceeds of any Loan made by a Bank which is funded through an SPC to be used to purchase or carry Margin Stock if such Bank (i) notifies the Borrower that its Loan will be funded through an SPC and (ii) requests the Borrower prior to the Effective Date not to use the proceeds of its Loan for such purpose.

(g) Disclosure of Information. The Borrower authorizes each Bank to disclose to any Participant, Assignee or Purchasing Bank (each, a “Transferee”) and any prospective Transferee any and all financial and other information in such Bank’s possession concerning the Borrower which has been delivered to such Bank by the Borrower pursuant to this Agreement or which has been delivered to such Bank by the Borrower in connection with such Bank’s credit evaluation of the Borrower prior to entering into this Agreement. Notwithstanding anything herein to the contrary, the Borrower, each Bank and each Agent (and each employee, representative, or other agent of each of the foregoing parties) may disclose to any and all Persons without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to any of the foregoing parties relating to such U.S. tax treatment and U.S. tax structure.

(h) USA PATRIOT Act. Each Bank hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Bank to identify the Borrower in accordance with the Patriot Act.

11.5 No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent or any Bank or any holder of a Note in exercising any right, power or privilege hereunder or under any Note and no course of dealing between the Borrower and the Administrative Agent, or any Bank or the holder of any Note shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any Note preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Administrative Agent or any Bank or the holder of any Note would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Banks or the holder of any Note to any other or further action in any circumstances without notice or demand.

11.6 Payments Pro Rata. The Administrative Agent agrees that upon receipt of each payment from or on behalf of the Borrower in respect of any Obligations of the Borrower hereunder, it shall promptly thereafter (on the same day if such payment was received by the Administrative Agent prior to Noon (New York time) or on the next Business Day if received thereafter) distribute funds in the form received relating to such payment to the Banks pro rata based upon their respective shares, if any, of the Obligations with respect to which such payment was received.

11.7 Governing Law; Submission to Jurisdiction. THIS AGREEMENT AND THE NOTES AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT, ANY OTHER

CREDIT DOCUMENT OR ANY DOCUMENT RELATED THERETO MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWER HEREBY CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE JURISDICTION OF THE AFORESAID COURTS SOLELY FOR THE PURPOSE OF ADJUDICATING ITS RIGHTS OR THE RIGHTS OF THE AGENTS AND THE BANKS WITH RESPECT TO THIS AGREEMENT, ANY NOTE OR ANY DOCUMENT RELATED THERETO. THE BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS SET FORTH OPPOSITE ITS SIGNATURE BELOW. THE BORROWER HEREBY IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS IN RESPECT OF THIS AGREEMENT, ANY OTHER CREDIT DOCUMENT OR ANY DOCUMENT RELATED THERETO AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF EITHER OF THE AGENTS, ANY BANK OR ANY HOLDER OF A NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE BORROWER IN ANY OTHER JURISDICTION.

11.8 Counterparts. This Agreement may be executed in any number of counter-parts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

11.9 Effectiveness. Subject to Section 5, this Agreement shall become effective on the date (the "Effective Date") on which all of the parties hereto shall have signed a copy hereof (whether the same or different copies) and shall have delivered the same to the Administrative Agent or, in the case of the Banks, shall have given to the Administrative Agent telephonic (confirmed in writing), written or telex notice (actually received) that the same has been signed and mailed to it. The Administrative Agent will give the Borrower and each Bank prompt written notice of the occurrence of the Effective Date.

11.10 Headings Descriptive. The headings of the several sections and subsections of this Agreement and the Table of Contents are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

11.11 Marshalling; Recapture. Neither the Administrative Agent nor any Bank shall be under any obligation to marshal any assets in favor of the Borrower or any other party or against or in payment of any or all of the Obligations. To the extent any Bank receives any payment by or on behalf of the Borrower which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to the Borrower or its estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the liabilities of the Borrower to such Bank as of the date such initial payment, reduction or satisfaction occurred.

11.12 Amendment or Waiver. Except as expressly provided in Section 11.4(d) and (e), no amendment or waiver of any provision of this Agreement or any Notes, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Required Banks, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no amendment, waiver or consent shall, unless in writing and signed by all the Banks, do any of the following: (i) amend or waive any of the conditions specified in Section 5, (ii) increase the Commitments of the Banks or subject the Banks to any additional monetary obligations (including, without limitation, extending the periods of the Commitments during which the Banks are obligated to make Loans),

(iii) reduce the principal of, or interest on, the Loans, any Notes or fees, (iv) postpone any date fixed for any payment in respect of principal of, or interest on, the Loans or other fees or amounts hereunder (including, without limitation, any date on which mandatory prepayments are due) except pursuant to Section 3.5, (v) change the percentage of the Commitments or the aggregate unpaid principal amount of the Loans, or the number or identity of the Banks, which shall be required for the Banks or any of them to take any action under this Agreement, or (vi) amend or waive Section 2.13, this Section 11.12 or the definitions of any terms used in such Sections; and provided further that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Banks required hereinabove to take such action, affect the rights or duties of the Administrative Agent under this Agreement or any Note. Notwithstanding the foregoing provisions of this Section 11.12, the provisions of this Agreement relating solely to fees payable to the Administrative Agent for its own account and not for the account of the Banks may be amended (but not to increase the amount of such fees so payable) or waived or departure therefrom may be consented to by the Administrative Agent in writing without any consent being required, written or otherwise, from any Bank. The Borrower agrees to give notice of any amendment or waiver approved by the Borrower and the Required Banks to the Administrative Agent.

11.13 Survival. All indemnities set forth in this Agreement shall survive the execution and delivery of this Agreement and any Notes and the making and repayment of the Obligations hereunder.

11.14 Independent Nature of Banks' Rights and Obligations. Except as expressly provided herein, the amounts payable at any time hereunder to each Bank shall be a separate and independent debt, and each Bank shall be entitled to protect and enforce its rights arising out of this Agreement, and it shall not be necessary for any other Bank to be joined as an additional party in any proceeding for such purpose. No Bank shall be responsible for any default by any other Bank in its obligations hereunder and each Bank shall be obligated to make Loans as required by the provisions of this Agreement, regardless of the failure of any other Bank to fulfill its commitments or obligations hereunder.

11.15 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default or Event of Default if such action is taken or condition exists.

11.16 Waiver of Trial by Jury. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE BORROWER, THE AGENTS AND THE BANKS HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY NOTE OR ANY MATTER ARISING HEREUNDER OR THEREUNDER.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement as of the date first above written.

Address:

343 State Street  
Rochester, New York 14560  
Attn: Treasurer  
Telephone: (585) 724-4000  
Telecopier: (585) 724-5174  
Telex: 978481  
Answerback: EKHQTR

EASTMAN KODAK COMPANY

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

Name:

Title:

with a copy to:

General Counsel  
343 State Street  
Rochester, New York 14560  
Telephone: (585) 724-4000  
Telecopier: (585) 724-9549

Citicorp USA, Inc.  
388 Greenwich Street  
New York, NY 10013

CITICORP USA, INC.,  
as Administrative Agent and Bank

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

Name:

Title:

Address: 388 Greenwich Street  
New York, NY 10013

The Bank of Nova Scotia  
One Liberty Plaza  
26<sup>th</sup> Floor  
New York, NY 10006

THE BANK OF NOVA SCOTIA  
as Documentation Agent and Bank

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

Name:

Title:

Address: One Liberty Plaza  
26<sup>th</sup> Floor  
New York, NY 10006

BNP Paribas  
787 Seventh Avenue  
New York, NY 10019

BNP PARIBAS,  
as Syndication Agent and Bank

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

Name:

Title:

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

Name:

Title:

Address: 787 Seventh Avenue  
New York, NY 10019

Bank of China London Branch  
90 Cannon Street  
London, EC4N 6HA  
UK

BANK OF CHINA LONDON BRANCH

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

Name:

Title:

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES



HSBC Bank USA  
452 Fifth Avenue  
New York, NY 10018

HSBC BANK USA

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

Name:

Title:

Address: 452 Fifth Avenue  
New York, NY 10018

Deutsche Bank AG New York Branch  
90 Hudson Street  
Mailstop JCY05-0511  
Jersey City, NJ 07302

DEUTSCHE BANK AG NEW YORK BRANCH

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

Name:

Title:

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

Name:

Title:

Address: 90 Hudson Street  
Mailstop JCY05-0511  
Jersey City, NJ 07302

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

Mellon Bank, N.A.  
1735 Market Street  
Philadelphia, PA 19103

MELLON BANK, N.A.

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

Name:

Title:

Address: 1735 Market Street  
Philadelphia, PA 19103

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

Key Bank National Association  
OH-01-27-0606  
127 Public Square  
OH-01-27-0606  
Cleveland, OH 44114

KEY BANK NATIONAL ASSOCIATION

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

Name:

Title:

Address: 127 Public Square  
OH-01-27-0606  
Cleveland, OH 44114

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

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

Name:

Title:

Address:

ING Capital LLC  
1325 Avenue of the Americas  
New York, NY 10019

ING CAPITAL LLC

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

Name:

Title:

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

ABN AMRO Bank N.V.  
One Post Office Square, 39<sup>th</sup> Floor  
Boston, MA 02109

ABN AMRO BANK N.V.

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

Name:

Title:

ABN AMRO BANK N.V.

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

Name:

Title:

Address: One Post Office Square, 39<sup>th</sup> Floor  
Boston MA 02109

Lloyds TSB Bank plc  
1251 Avenue of the Americas  
39<sup>th</sup> Floor  
New York, NY 10020

LLOYDS TSB BANK PLC

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

Name:

Title:

Address: 1251 Avenue of the Americas  
39<sup>th</sup> Floor  
New York, NY 10020

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES



Export Development Canada  
151 O'Connor  
Ottawa, Canada  
K1A 1K3

EXPORT DEVELOPMENT CANADA

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

Name: Carl Burlock  
Title: Senior Financial Services Manager

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

Name: William Brown  
Title: Director

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

Barclays Bank PLC  
200 Park Avenue  
4<sup>th</sup> Floor  
New York, NY 10166

BARCLAYS BANK PLC

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

Name:

Title:

Address: 200 Park Avenue, 4<sup>th</sup> Floor  
New York, NY 10166

Bank Hapoalim B.M.  
1177 Avenue of the Americas  
New York, NY 10036

BANK HAPOALIM B.M.

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

Name:

Title:

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

Name:

Title:

Address: 1177 Avenue of the Americas  
New York, NY 10036

Industrial and Commercial Bank of  
China, Shanghai Municipal Branch  
Address: No 9 PuDong Avenue  
Shanghai, China

INDUSTRIAL AND COMMERCIAL BANK OF CHINA SHANGHAI  
MUNICIPAL BRANCH

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

Name:

Title:

Address: No 9 PuDong Avenue  
Shanghai, China

Lehman Commercial Paper, Inc.  
200 Vesey Street  
New York, NY 10285

LEHMAN COMMERCIAL PAPER, INC.

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

Name:

Title:

Address: 200 Vesey Street  
New York, NY 10285

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

Mizuho Corporate Bank, Ltd.  
1251 Avenue of the Americas  
New York, NY 10020

MIZUHO CORPORATE BANK, LTD.

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

Name:

Title:

Nordea Bank Danmark A/S  
Strandgade 3, Christiansbro  
PO Box 850  
DK-0900 Copenhagen C.  
Denmark

NORDEA BANK DANMARK A/S

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

Name:

Title:

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

Sumitomo Mitsui Banking Corporation  
277 Park Avenue  
New York, NY 10172

SUMITOMO MITSUI BANKING CORPORATION

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

Name:

Title:

Address: 277 Park Avenue  
New York, NY 10172

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES



UFJ Bank Limited  
55 East 52<sup>nd</sup> Street  
New York, NY 10055

UFJ BANK LIMITED

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

Name:

Title:

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

Banca Nazionale Del Lavoro S.P.A.,  
New York Branch  
25 West 51<sup>st</sup> Street  
New York, NY 10019

BANCA NAZIONALE DEL LAVORO S.P.A., NEW YORK BRANCH

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

Name:

Title:

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

Name:

Title:

Address: 25 West 51<sup>st</sup> Street  
New York, NY 10019

U.S. Bank, National Association  
U.S. Bank Centre  
1350 Euclid Ave., 12<sup>th</sup> Floor  
Mail Loc: CN-OH-RN11  
Cleveland, OH 44115

U.S. BANK, NATIONAL ASSOCIATION

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

Name:

Title:

Address: U.S. Bank Centre  
1350 Euclid Ave., 12<sup>th</sup> Floor  
Mail Loc.: CN-OH-RN11  
Cleveland, OH 44115

Banco Santander Central Hispano, S.A.  
New York Branch  
45 East 53<sup>rd</sup> Street  
16<sup>th</sup> Floor  
New York, NY 10022

BANCO SANTANDER CENTRAL HISPANO, S.A.  
New York Branch

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

Name:

Title:

Address: 45 East 53<sup>rd</sup> Street  
16<sup>th</sup> Floor  
New York, NY 10022

PNC Bank  
One PNC Plaza  
Fifth Avenue and Wood Street  
Pittsburgh, PA 15222

PNC BANK, NATIONAL ASSOCIATION

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

Name:

Title:

Address: 345 Park Avenue  
New York, NY 10154

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

Wells Fargo Bank N.A.

WELLS FARGO BANK N.A.

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

Name:

Title:

Address:

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

The Bank of New York  
One Wall Street  
21<sup>st</sup> Floor  
New York, NY 10286

THE BANK OF NEW YORK

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

Name:

Title:

Address: One Wall Street  
21<sup>st</sup> Floor  
New York, NY 10286

Bank of Communications, New York Branch  
One Exchange Plaza  
55 Broadway, 31<sup>st</sup> Floor  
New York, NY 10006-3008

BANK OF COMMUNICATIONS, NEW YORK BRANCH

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

Name:

Title:

Address: One Exchange Plaza  
55 Broadway, 31<sup>st</sup> Floor  
New York, NY 10006-3008



The Northern Trust Company  
50 South LaSalle Street  
Chicago, Illinois 60675

THE NORTHERN TRUST COMPANY

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

Name:

Title:

364-DAY CREDIT AGREEMENT – SIGNATURE PAGES

Bank of America, N.A.  
901 Main Street  
Dallas, Texas 75202

BANK OF AMERICA, N.A.

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

Name:

Title:

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August 12, 2003

Mr. James Langley

Dear Jim:

We are delighted to extend you an offer to join Eastman Kodak Company ("Kodak") as President and General Manager, Commercial Publishing. We are confident that your professional talent will be a tremendous asset to our company and we are enthusiastic about welcoming you as a member of our management team. Kodak is at a turning point in its proud more than 115-year history, where technology and the Internet have the potential to unleash unprecedented value from our brand and other corporate assets. We look forward to you playing a major role, working with others throughout the company to realize our potential.

This letter outlines the role, compensation and benefits of your offer of employment with Kodak. Due to the strategic importance of your role, we are pleased to offer you a comprehensive program with the following elements.

The term "Company" as used in this letter agreement means Kodak and all of its subsidiaries and affiliates.

**Position**

Your position will be President and General Manager, Commercial Publishing. This position will report to Antonio Perez in his capacity as President and Chief Operating Officer, Eastman Kodak Company.

Your position will be located in Rochester, New York. Consequently, you will be expected to relocate your residence to the Rochester, New York area upon commencement of your employment.

**Employment Date**

You will commence your employment on or before September 12, 2003.

**Base Salary**

Your base salary will be at the rate of \$475,000 per year.

**Executive Compensation for Excellence and Leadership**

You will be eligible to participate in Kodak's short-term variable pay plan for its management level employees, Executive Compensation for Excellence and Leadership ("EXCEL"). Your annual target award under EXCEL will be 62% of your base salary, making your total targeted annual compensation \$769,500. Your actual award for a year will vary based on Company performance, unit performance, your job performance, and such other criteria selected by the Company. Any award you earn for 2003 will be prorated based on your length of service for 2003. That is, you will not receive a full award for 2003 since you will not be employed for the full year. You will receive a summary of this plan from Human Resources shortly after the commencement of your employment.

Mr. James Langley  
August 12, 2003

### **Stock Option Program**

You will be eligible to participate in our Management Stock Option Program under the terms of Kodak's 2000 Omnibus Long-Term Compensation Plan (the "Omnibus Plan"). Grants are typically made in the Fall of each year. Your target grant will be between 20,800-31,200 stock options. Your specific award for a year will be a function of your attainment of established performance criteria that includes business unit performance as well as your individual performance. Enclosed is a summary description of this plan. The first grant that you will be eligible for is the grant tentatively scheduled for the Fall of 2003.

If (1) your employment is terminated without "Cause," as defined below; (2) you terminate your employment prior to the third anniversary of the date of your commencement of employment for "Good Reason," as defined below; or (3) you voluntarily terminate your employment with Kodak after the third anniversary of the date of your commencement of employment, your termination of employment will be for an "Approved Reason," as that term is defined in the Omnibus Plan, for purposes of any Kodak stock options held by you on the date of your termination of employment. Consequently, you will not by virtue of your termination of employment forfeit any Kodak stock options granted to you earlier than one year prior to the date of your termination of employment.

### **Signing Bonus – Restricted Stock Award**

Upon your employment, Kodak will propose to the Compensation Committee that you be granted, as a signing bonus, a one-time grant under the Omnibus Plan of 15,000 shares of restricted Kodak Common Stock. The restrictions on one half of these shares will lapse on second anniversary of the date of your commencement of employment, and the restrictions on the balance will lapse on the third anniversary of the date of your commencement of employment.

Except as provided immediately below, if your employment terminates for any reason, other than a "Permitted Reason" as determined by the CEO in the exercise of his or her sole discretion, during the one-year period following the date of the grant of the restricted shares, you will immediately forfeit the shares. Thereafter, so long as these shares remain unvested, they will be subject to forfeiture in the event of your termination of employment for any reason other than for death, or for "Disability" or an "Approved Reason," as those terms are defined under the terms of the Omnibus Plan. In the event your termination is considered a "Permitted Reason" or an "Approved Reason," or if your termination of employment is due to "Disability," the restricted shares will not be forfeited by reason of your termination, but will, unless sooner forfeited under their terms and conditions, continue to remain restricted until the date the restrictions on the shares are scheduled to expire. If the event of your death, the restrictions of the shares will immediately lapse and the shares will be paid to your estate.

Notwithstanding the immediately preceding paragraph, if your employment is terminated by Kodak without Cause or if you terminate your employment for Good Reason, you will be entitled to retain a pro-rated portion of the restricted shares. The amount of the pro-rated portion will be determined by multiplying the 15,000 shares by a fraction the numerator of which will be the total number of months you were employed by Kodak during the period commencing on your first day of employment and ending on the date of your termination of employment, and the denominator of which will be thirty six. The restrictions on any restricted shares that you are permitted to retain following your termination of employment without Cause or for Good Reason will immediately lapse on the date of your termination of employment.

The specific terms, conditions and restrictions of your restricted stock grant will be contained in an award notice delivered to you shortly after the commencement of your employment.

### Signing Bonus – Cash Payment

Upon your employment, you will be eligible to receive a gross cash signing bonus of \$100,000. The cash signing bonus will be paid in four equal installments of \$25,000. In order to receive a given installment of the signing bonus, you must be employed by Kodak on the date the installment is paid. The first installment will be paid within thirty days of the commencement of employment; the remaining three installments will be paid as soon as administratively practicable following each of the first three anniversaries of the date of your commencement of employment. Each installment will be paid subject to withholding for all applicable federal, state, and FICA taxes and will not be “benefits bearing.”

### Individual Bonus Plan

- A. In General.** You will be eligible to participate in an individual bonus plan (the “Plan”) based on the performance of the Company’s commercial publishing business during the three-year period commencing January 1, 2004 and ending December 31, 2006. The purpose of this Plan is to incent you to achieve certain pre-established goals in the commercial publishing business during these three years. Your total aggregate target award under the Plan for the three-year period will be \$1,000,000; this amount will also be the maximum award you may receive under the Plan. The plan will be performance-based and, therefore, any payment under the Plan will be contingent upon satisfaction of the Plan’s performance goals. Prior to the start of the Plan on January 1, 2004, Kodak will provide you with a detailed description of all of the terms and conditions of the Plan (the “Plan Description”). This section of the letter agreement describes several of Plan’s major features.
- B. Target Performance Goals.** A separate “target performance goal” will be established for each of the Plan’s three years. To receive the entire amount of the target award for a particular year, it will be necessary for you to achieve 100% of the established “target performance goal” for that year. The “target performance goal” for each of the Plan’s three years will be established by the “Administrator” (as defined in section G below) in a manner similar to the manner in which business unit goals are established under EXCEL and will be communicated to you prior to the start of each year.
- C. Minimum Performance Goals.** If you do not achieve the “target performance goal” for a particular year of the Plan, you may nevertheless receive a portion of the target award for that year if you achieve at least the Plan’s “minimum performance goal” for that year. For each of the Plan’s three years, a separate “minimum performance goal” will be established by the Administrator and communicated to you prior to the start of the year. If you achieve in a given year at least the “minimum performance goal” for that year, you will receive a portion of the target award for the year. The exact amount of the award will be determined pursuant to the payment methodology set forth in the Plan Description.
- D. Target Awards.** The target award for each of the Plan’s three years is set forth in the table below.

Year	Target Award
2004	\$ 200,000
2005	\$ 300,000
2006	\$ 500,000
<b>Total</b>	<b>\$ 1,000,000</b>



- E. Continued Employment.** Except as provided in Subsection (F) below, in order to receive an award for a particular year, it will be necessary for you to remain continuously employed by Kodak through December 31st of that year. If prior to December 31<sup>st</sup> of a particular year, your employment terminates for any reason, other than as set forth in Subsection (F) below, you will forfeit in entirety the award for that year and any subsequent year.
- F. Termination Without Cause.** Notwithstanding Subsection (E) above to the contrary, if prior to December 31<sup>st</sup> of a particular year of the Plan Kodak terminates your employment without Cause, you will receive the full amount of the award earned for that year that you would have otherwise received had you remained employed through December 31<sup>st</sup>. If you terminate employment for Good Reason prior to December 31<sup>st</sup> of a particular year, you will receive a pro-rated award for that year. The amount of the pro-rated award will be determined from the award earned for that year that you would have otherwise received had you remained employed through December 31<sup>st</sup> and be based on the number of days you were employed by Kodak during the year.
- G. Administration.** The award will be administered by Kodak's President and Chief Operating Officer (the "Administrator") in accordance with the terms of this letter agreement and the terms and conditions of the Plan Description. Within 45 days of the completion of each year of the Plan or as soon thereafter as is administratively practicable, the Administrator will determine whether you have achieved the performance goal for such year and, if so, the amount of the award that will be credited to you. The Administrator will have total and exclusive responsibility to control, operate, manage and administer the Plan in accordance with its terms and all the authority that may be necessary or helpful to enable him/her to discharge his/her responsibilities with respect to the Plan. Without limiting the generality of the preceding sentence, the Administrator will have the exclusive right to: interpret the Plan, decide all questions concerning eligibility for and the amount of awards payable under the Plan, construe any ambiguous provision of the Plan, correct any default, supply any omission, reconcile any inconsistency, and decide all questions arising in the administration, interpretation and application of the Plan. The Administrator will have full discretionary authority in all matters related to the discharge of his/her responsibilities and the exercise of his/her authority under the Plan, including, without limitation, his/her construction of the terms of the Plan and his/her determination of eligibility for awards under the Plan. It is the intent of the Plan, as well as both parties hereto, that the decisions of the Administrator and his/her action with respect to the Plan will be final and binding upon all persons having or claiming to have any right or interest in or under the plan and that no such decision or actions shall be modified upon judicial review unless such decision or action is proven to be arbitrary or capricious.
- H. Payment.** Any award earned by you for a particular year under the Plan will be credited to an unfunded, deferred compensation account established on your behalf by Kodak. Any amounts credited to this account will earn interest at the prime rate, compounded annually, until distributed. The entire balance of the account will be distributed to you as soon as administratively practicable following your termination of employment from Kodak.
- I. Benefits Bearing.** In no event will any award under the Plan be "benefits bearing."

Mr. James Langley  
August 12, 2003

### **Vacation**

You will be entitled to 5 weeks' vacation per calendar year. Your vacation for the current calendar year will be pro-rated based on your service in 2003.

### **Benefits**

You will be eligible to immediately participate in Kodak's Flexible Benefits Plan, which includes health and dental coverage, long-term disability coverage, life insurance and eligibility for long-term care insurance. With regard specifically to life insurance coverage, Kodak annually contributes for each plan participant an amount sufficient to cover the cost of coverage equal to one times the participant's total target annual compensation (base salary plus target EXCEL award). You will also be eligible for coverage under Kodak's Short-Term Disability Plan.

You will be eligible to participate in the 1982 Eastman Kodak Company Executive Deferred Compensation Plan ("EDCP"). This is a non-qualified/unfunded plan in which you may elect to defer a portion of your base salary and EXCEL award. A description of the plan is enclosed.

Our executives also qualify for company-paid coverage of \$5 million of personal umbrella liability insurance ("PULI").

Our executives are provided with individual financial counseling services through one of three companies. You will be immediately eligible for this benefit.

You are also eligible to participate in the Kodak Executive Health Management plan.

Immediately upon your employment, you will also be eligible to participate in the Eastman Kodak Employees' Savings and Investment Plan ("SIP"), Kodak's 401(k) plan. You will be eligible to make rollover deferrals from other qualified plans within two years from the date of your hire.

### **Retirement Benefits**

- A. Cash Balance Plan.** Upon your employment, you will be eligible for the cash balance benefit provided under the Kodak Retirement Income Plan ("KRIP"). This program is Kodak's retirement plan for all employees hired on or after March 1, 1999. The enclosed brochure describes this program in more detail.
- B. Enhanced Retirement Benefit.** In addition to any benefit you may be eligible for under the cash balance benefit of KRIP, you will also be eligible for an enhanced retirement benefit. More specifically, Kodak will establish a phantom cash balance account on your behalf. Subject to your satisfaction of the terms of this letter agreement, including but not limited to Subsection (C) below, Kodak will, for each full year of service you complete with Kodak up to a maximum of six (6) years, credit this account by \$100,000. For each year of service, your account will be credited with this amount as soon as administratively practicable following your completion of the year of service. Thus, the maximum amount Kodak will credit to this account is \$600,000. By way of example, assuming you complete three (6) or more full years of service with Kodak, your account balance will be credited by \$600,000. Any amounts credited to this account will earn interest at the same interest rate that amounts accrue interest under the cash balance benefit of KRIP. This interest rate is the average monthly yield for 30-year U.S. Treasury bonds or some other comparable rate.

- C. Continuous Employment.** In order to receive any of the amounts, including interest, credited to your phantom cash balance account, you must remain continuously employed by Kodak until at least the third (3rd) anniversary of the date of your commencement of employment by Kodak. Thus, except as provided in Subsection (D) below, if your employment terminates for any reason, whether voluntarily or involuntarily, prior to the third (3rd) anniversary of the date of your commencement of employment, you will forfeit all of the amounts, including interest, credited to your phantom cash balance account.
- D. Termination.** Notwithstanding Subsection (C) above, if Kodak terminates your employment prior to the third (3rd) anniversary of the commencement of your employment and, as a result, you receive the benefits under the section entitled "Severance Benefits" below, you will be entitled to receive the then current balance in your phantom cash balance account, if any, plus a pro rata portion of the \$100,000 that would otherwise have been credited to your account had you remained employed until the next anniversary of the commencement of employment. The pro rata portion will be determined by multiplying \$100,000 by the following fraction:

$$\frac{(A)}{365}$$

For purposes of this fraction, "A" will be the total number of days that have elapsed since your last anniversary of the commencement of employment of service with Kodak occurring immediately prior to your termination of employment.

- E. Payment.** The amount of the enhanced retirement benefit, if any, payable to you under Subsection (B) will: (i) be paid in any of the permissible payment forms available under the cash balance benefit of KRIP; (ii) be paid out of Kodak's general assets, not under KRIP; (iii) not be funded in any manner; (iv) be included in your gross income as ordinary income, subject to all income and payroll tax withholding required to be made under all applicable laws; and (v) not be grossed up or be given any other special tax treatment by Kodak. In the event of your death, any amount remaining in your cash balance account will be paid to your estate.

- F. Employee Benefit Plan.** To the extent the terms of this enhanced retirement benefit constitute an “employee benefit plan” under Section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), the Vice President, Eastman Kodak Company and Director, Human Resources will be the plan administrator of the plan. The plan administrator will have total and exclusive responsibility to control, operate, manage and administer the plan in accordance with its terms and all the authority that may be necessary or helpful to enable him/her to discharge his/her responsibilities with respect to the plan. Without limiting the generality of the preceding sentence, the plan administrator shall have the exclusive right to: interpret the plan, decide all questions concerning eligibility for and the amount of benefits payable under the plan, construe any ambiguous provision of the plan, correct any default, supply any omission, reconcile any inconsistency, and decide all questions arising in the administration, interpretation and application of the plan. The plan administrator will have full discretionary authority in all matters related to the discharge of his/her responsibilities and the exercise of his/her authority under the plan, including, without limitation, his/her construction of the terms of the plan and his/her determination of eligibility for benefits under the plan. It is the intent of the plan, as well as both parties hereto, that the decisions of the plan administrator and his/her action with respect to the plan shall be final and binding upon all persons having or claiming to have any right or interest in or under the plan and that no such decision or actions shall be modified upon judicial review unless such decision or action is proven to be arbitrary or capricious.

## **Relocation**

You relocation from Idaho to Rochester, NY will be covered under the Company’s Enhanced New Hire Relocation Program (the “Relocation Program”). Enclosed is a summary of this Program. One of the features of the Program is a Mortgage Interest Subsidy (“MIS”) whereby Kodak will protect you for two (2) years if your new first mortgage interest rate is more than 1.1% higher than the rate on your existing first mortgage. The Mortgage Interest Subsidy will be calculated based on the difference, if any, between (x) the rate of interest on your new first mortgage, and (y) the rate on your existing first mortgage plus one percent. MIS is paid annually in the form of a lump sum payment subject to all applicable income and payroll tax withholdings.

You may request to be relocated back to Idaho from Rochester, NY upon the occurrence of any of the following events by providing Kodak written notice of your request not later than six (6) months following the date of your termination of employment: (1) Kodak’s termination of your employment without Cause; (2) your termination of employment for Good Reason; or (3) your voluntary termination of employment following the third anniversary of the date of your commencement of employment. In any of these events, the benefits under the Relocation Program will be included in your gross income as ordinary income, subject to all income and payroll tax withholding required to be made under all applicable laws and not be grossed up or be given any other special tax treatment by Kodak.

### **Temporary Housing**

To assist you in finding a permanent residence in the Rochester, NY area, Kodak agrees to reimburse you for your temporary housing expenses. More specifically, for up to a four (4) month period commencing on your first day of employment, Kodak agrees to reimburse you for your temporary housing expenses up to a maximum dollar amount of \$2,500 per month. These expenses must be incurred for temporary housing in the Rochester, NY area. Proper documentation of these expenses will be required in accordance with the terms of Kodak's relocation program. To the extent you are subject to Federal or state income tax on these expense reimbursements, Kodak will "gross-up" the reimbursements so that after such taxes are incurred by you, you shall receive a net payment equal to the amount of the expense. The amount of any such "gross-up" will not be included in the calculation of the \$2,500 per month limit.

### **Air Travel**

After the commencement of your employment, Kodak agrees to reimburse you for the air travel expenses you incur in traveling back and forth between Rochester, NY and Eagle, Idaho until such time as you relocate to Rochester. In order to be eligible for reimbursement, the air travel must be coach class, not exceed in the aggregate \$20,000 and be incurred prior to the earlier of the date of your relocation to Rochester or the fourth month anniversary of the date of your commencement of employment. Proper documentation of these expenses will be required in accordance with the terms of Kodak's relocation program. To the extent you are subject to Federal or state income tax on these expense reimbursements, Kodak will "gross-up" the reimbursements so that after such taxes are incurred by you, you shall receive a net payment equal to the amount of the expense. The amount of any such "gross-up" will not be included in the calculation of the \$20,000 limit.

### **Severance Benefits**

- A. In General.** Kodak will pay you, subject to your satisfaction of the terms of this section, a severance allowance equal to one (1) times your then-current annual total target compensation (base salary plus target award under EXCEL) if either of the following events occurs prior to the third anniversary of the date of your commencement of employment: (1) Kodak terminates your employment for reasons other than Cause or "Disability," as defined below; or (2) you voluntarily terminate your employment due to a material adverse change in your position within Kodak which is not remedied by Kodak within 10 days of its receipt of written notice from you specifying the nature of the material adverse change in your position.

This severance allowance will be paid to you in lieu of any other severance benefit, payment or allowance that you would otherwise be eligible for, except any benefits payable to you under Kodak's Termination Allowance Plan ("TAP") or any successor plan thereto. To the extent, however, you are eligible for a severance benefit under TAP (or any successor plan), the benefits payable to you under this section shall be reduced by the amount of such severance benefit. In no event will any of this severance allowance be "benefits bearing." Kodak will withhold from this severance allowance all income, payroll and employment taxes required by applicable law or regulation to be withheld.

In the event you breach any of the terms of the Eastman Kodak Company Employees' Agreement or the Agreement, Waiver and Release, both described below, in addition to and not in lieu of, any other remedies that Kodak may pursue against you, no further severance allowance payments will be made to you pursuant to this section and you agree to immediately repay to Kodak all moneys previously paid to you pursuant to this section.

- B. Agreement, Waiver and Release.** In order to receive the severance allowance described in this section, you must execute immediately prior to your termination of employment a waiver, general release and covenant not to sue in favor of Kodak (the "Agreement, Waiver and Release"), in a form satisfactory to the Vice President and Director, Human Resources, of Kodak.
- C. Cause.** For purposes of this letter, "Cause" shall mean:
- i. your continued failure, for a period of at least 30 calendar days following a written warning, to perform your duties in a manner deemed satisfactory by your supervisor, in the exercise of his/her sole discretion; or
  - ii. your failure to follow a lawful written directive of the Chief Executive Officer or your supervisor; or
  - iii. your willful violation of any material rule, regulation, or policy that may be established from time to time for the conduct of Kodak's business; provided, however, that for the purposes of determining whether conduct constitutes willful violation, no act on your part shall be considered "willful" unless it is done by you in bad faith and without reasonable belief that your action was in the best interests of Kodak;; or
  - iv. your unlawful possession, use or sale of narcotics or other controlled substances, or, performing job duties while illegally used controlled substances are present in your system; or
  - v. any act of omission or commission by you in the scope of your employment (a) which results in the assessment of a civil or criminal penalty against you or Kodak, or (b) which in the reasonable judgment of your supervisor could result in a material violation of any foreign or U.S. federal, state or local law or regulation having the force of law; or
  - vi. your conviction of or plea of guilty or no contest to any crime involving moral turpitude; or
  - vii. any willful misrepresentation of a material fact to, or willful concealment of a material fact from, your supervisor or any other person in Kodak to whom you have a reporting relationship in any capacity; provided, however, that for the purposes of determining whether conduct constitutes willful misrepresentation or concealment, no act on your part shall be considered "willful" unless it is done by you in bad faith and without reasonable belief that your action was in the best interests of Kodak; or
  - viii. your breach of Kodak's Business Conduct Guide, the Eastman Kodak Company Employee's Agreement or similar guide or agreement of a prior employer.
- D. Disability.** For purposes of this letter, the term "Disability" means disability under the terms of the Kodak Long-Term Disability Plan.
- E. Good Reason.** For purposes of this letter, the term "Good Reason" shall mean, without your consent:

Mr. James Langley  
August 12, 2003

- i. Any action by Kodak or its employees which results in a material diminution in your position, authority, duties, or responsibilities, excluding any action which is remedied by Kodak within fifteen (15) days after receipt of written notice given by you specifying the nature of the material diminution of your position, authority, duties or responsibilities;
- ii. Kodak requiring you to relocate to a principal place of employment outside of the continental United States; or
- iii. Any failure by Kodak to comply with any of the provisions in this agreement other than an isolated and inadvertent failure not committed in bad faith and which is remedied by Kodak with ten (10) days after receipt of notice given by you.

#### **Employment Preconditions**

This conditional offer of employment is subject to the following conditions and may be withdrawn by Kodak due to your inability to satisfy any one or more of these conditions. By signing this letter, you agree and acknowledge that Kodak may perform the activities contemplated below in order to verify the conditions.

**Physical Exam and Drug Test.** You are required to complete a physical examination and drug screen before this offer and your acceptance become final. This will be at Kodak's expense. This offer is contingent upon a negative drug screen urinalysis test result. Additional information will be sent to you under separate cover from our medical group.

**INS.** Kodak is required by Immigration and Naturalization Service and Federal Law to verify identity and authorization to work of all prospective employees. Enclosed is an Employment Eligibility Verification Form I-9 that outlines the details of these requirements. Inability to comply with these requirements will cause rescission of this conditional offer.

**Past Employment, Social Security Number, Criminal, Education, Credit History, etc.** Kodak will verify your past employment history and your social security number and conduct a check of your education, credit history, and criminal convictions records. This offer is contingent upon these verifications and checks being acceptable to Kodak. Itlix Decision Systems (IDS) of 800 W. Maple Street, Hartville, OH 44632 has been engaged by Kodak to conduct the verifications and checks. Attached is the Consent and Authorization form that authorize Kodak to conduct these verifications and checks.

**Reference Evaluation.** Kodak will conduct a check of your references. This offer is contingent upon this reference check being acceptable to Kodak.

#### **Confidential Information**

It is important that the relationship between you and Kodak be established at the outset so as to enable you to properly safeguard confidential information that you may have acquired from your previous employer(s). "Confidential Information" is defined as information proprietary to a previous employer which is generally secret and which you learned while employed with that employer.

By accepting this conditional offer, you represent to Kodak that your obligations regarding the Confidential Information will not impede your ability to perform the duties and responsibilities required by virtue of your position with Kodak.

Mr. James Langley  
August 12, 2003

During your employment with Kodak, we would expect that you will keep in mind the Confidential Information and inform us if you believe that any duties or responsibilities to which you are assigned will involve its use or disclosure. I am available at any time to discuss questions that might arise in this regard. All such discussions you may have with me or anyone else at Kodak in this regard should refer to the Confidential Information only in general terms so as to avoid disclosure of the information you believe to be confidential.

**Employee's Agreement**

Attached is a copy of the Eastman Kodak Company's Executive Employee's Agreement ("Employee's Agreement"). All employees are required to sign an Employee's Agreement as a precondition of employment. If you accept this offer letter, please sign and date the Employee's Agreement and return it along with this signed offer letter.

**No Conflicts of Interest**

By signing this letter, you represent that you are not subject to any restrictions, particularly, but without limitation, in connection with any previous employment, which prevent you from entering into and performing your obligations under this offer letter or which materially and adversely affect (or may in the future, so far as you can reasonably foresee, materially affect), your right to participate in the affairs of Kodak.

**Miscellaneous**

By accepting this conditional offer of employment, you agree and acknowledge that this offer letter contains the entire understanding between Kodak and yourself with respect to your employment and supersedes all previous written or oral negotiations, commitments, and agreements with respect to such subject matter.

You are expected to devote your best efforts and all of your business time to the affairs of Kodak. You may, however, engage in any charitable, civic and community activities, provided, however, such activity(ies) does (do) not materially interfere with your duties and responsibilities.

Please also keep in mind that, regardless of any provision contained in this letter to the contrary, your employment at Kodak is "at will". That is, you will be free to terminate your employment at any time, for any reason, and Kodak is free to do the same.

You agree to keep the existence of this letter confidential except that you may review it with your financial advisor, accountant, attorney or spouse/partner and with me or my designee. Prior to any such disclosure, you agree to advise these individuals of the confidential nature of this letter agreement and the facts giving rise to it as well as their obligations to maintain the confidentiality of this letter agreement and the facts giving rise to it.

If any portion of this letter is deemed to be void or unenforceable by a court of competent jurisdiction, the remaining portions will remain in full force and effect to the maximum extent allowed by law. The parties intend and desire that each portion of this letter be given the maximum possible effect by law.

This letter, and its interpretation and application, will be governed and controlled by the laws of the State of New York without giving effect to principles of conflicts of laws.

\* \* \* \*



Mr. James Langley  
August 12, 2003

Please respond to this conditional offer of employment by the close of business on August 14, 2003 if you find it acceptable. Please acknowledge this by signing your name on the signature line provided and returning the signed original of this letter along with the signed enclosed Employee's Agreement and the Consent and Authorization form directly to me.

Please feel free to contact me at 585-724-4573 if you have any questions.

Sincerely,

Michael P. Morley  
Chief Administrative Officer and Executive Vice President,  
Eastman Kodak Company

MPM:llh

Signature: \_\_\_\_\_  
James Langley

Date: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Birthdate: \_\_\_\_\_

Langley4.doc

August 13, 2003

Bernard Masson

Re: Offer of New Position

Dear Bernard:

I am delighted to extend you an offer to become the President, Consumer Group and Senior Vice President, Eastman Kodak Company. This letter briefly outlines the role and compensation of the position. I am confident that your professional talents will continue to be a great asset to Eastman Kodak Company in this new position.

Once signed by both parties, this letter will constitute an agreement between Eastman Kodak Company ("Kodak") and you.

**1. Position**

Your position will be President, Consumer Group and Senior Vice President, Eastman Kodak Company. In this new position, you will report directly to Antonio Perez, in his capacity as President and Chief Operating Office, Eastman Kodak Company.

**2. Position Date**

You will commence your new position on August 18, 2003. Except as specifically noted, the changes in your compensation described in this letter agreement will become effective on this date.

**3. Location**

You will continue to be located in Rochester, NY.

**4. Base Salary**

Your new base salary will be at the rate of \$575,000 per year.

**5. EXCEL**

Your target annual award under EXCEL will increase to 72% of your base salary, making your new total targeted annual compensation \$989,000.

*Michael P. Morley, Chief Administrative Officer and Executive Vice President*

**EASTMAN KODAK COMPANY • 343 STATE STREET • ROCHESTER, NEW YORK 14650-0232**

**TEL (585) 724-4573 • FAX (585) 724-1655, E-Mail: morley@kodak.com**

#### **6. Stock Option Program**

You will also continue to be eligible to participate in Kodak's annual Stock Option Program. Your new annual target range under the program will be 22,400-33,600 options. Your specific award for a year is, however, wholly within the discretion of the Compensation Committee of the Board.

As you know, Kodak is considering certain changes to its management long-term compensation program. In the event these changes are approved, some or your entire annual target stock option grant may be replaced with a different form of target award under a Company long-term compensation plan. In determining the size of your new target award for this purpose, you will be treated in substantially the same manner as similarly situated senior executives of the Company.

#### **7. Performance Stock Program**

You will also be eligible to continue to participate in the Company's Performance Stock Program. Commencing with the 2004-2006 performance cycle, your target award for a full performance cycle will be 5,250 shares of restricted Kodak common stock.

Here again, Kodak is considering certain changes to its Performance Stock Program. In the event these changes are approved, some or your entire target award under the program may be replaced with a different form of target award under a Company long-term compensation plan. In determining the size of your new target award for this purpose, you will be treated in substantially the same manner as similarly situated senior executives of the Company.

#### **8. Severance**

- A. In General.** If prior to August 13, 2008, Kodak terminates your employment for reasons other than "Cause" or "Disability," as those terms are defined below, Kodak will pay you, subject to your satisfaction of the terms of this section, a severance allowance equal to one (1) times your then-current annual total target compensation (base salary plus target award under EXCEL). The severance allowance will be paid in equal consecutive monthly payments over the twelve (12) month period commencing on the date of your termination of employment.

This severance allowance will be paid to you in lieu of any other severance benefit, payment or allowance that you would otherwise be eligible for, except any benefits payable to you under Kodak's Termination Allowance Plan ("TAP") or any successor plan thereto. To the extent, however, you are eligible for a severance benefit under TAP (or any successor plan), the benefits payable to you under this section will be reduced by the amount of such severance benefit. In no event will any of this severance allowance be "benefits bearing." Kodak will withhold from this severance allowance all income, payroll and employment taxes required by applicable law or regulation to be withheld.

In the event you breach any of the terms of your Eastman Kodak Company Employees' Agreement or the Agreement, Waiver and Release described below, in addition to and not in lieu of, any other remedies that Kodak may pursue against you, no further severance allowance payments will be made to you pursuant to this section and you agree to immediately repay to Kodak all moneys previously paid to you pursuant to this section.

- B. Agreement, Waiver and Release.** In order to receive the severance allowance described in this section, you must execute immediately prior to your termination of employment a waiver, general release and covenant not to sue in favor of Kodak (the "Agreement, Waiver and Release"), in a form satisfactory to the Vice President and Director, Human Resources, of Kodak.
- C. Cause.** For purposes of this letter, "Cause" shall mean:
- i. your continued failure, for a period of at least 30 calendar days following a written warning, to perform your duties in a manner deemed satisfactory by your supervisor, in the exercise of his/her sole discretion; or
  - ii. your failure to follow a lawful written directive of the Chief Executive Officer or your supervisor; or
  - iii. your willful violation of any material rule, regulation, or policy that may be established from time to time for the conduct of Kodak's business; or
  - iv. your unlawful possession, use or sale of narcotics or other controlled substances, or, performing job duties while illegally used controlled substances are present in your system; or
  - v. any act of omission or commission by you in the scope of your employment (a) which results in the assessment of a civil or criminal penalty against you or Kodak, or (b) which in the reasonable judgment of your supervisor could result in a material violation of any foreign or U.S. federal, state or local law or regulation having the force of law; or
  - vi. your conviction of or plea of guilty or no contest to any crime involving moral turpitude; or
  - vii. any misrepresentation of a material fact to, or concealment of a material fact from, your supervisor or any other person in Kodak to whom you have a reporting relationship in any capacity; or
  - viii. your breach of Kodak's Business Conduct Guide, the Eastman Kodak Company Employee's Agreement or similar guide or agreement of a prior employer.
- D. Disability.** For purposes of this letter, the term "Disability" means disability under the terms of the Kodak Long-Term Disability Plan.

**9. Miscellaneous**

- A. Unenforceability.** If any portion of this letter agreement is deemed to be void or unenforceable by a court of competent jurisdiction, the remaining portions will remain in full force and effect to the maximum extent allowed by law. The parties intend and desire that each portion of this letter agreement be given the maximum possible effect allowed by law.
- B. Headings.** The heading of the several sections of this letter agreement have been prepared for convenience and reference only and shall not control, affect the meaning, or be taken as the interpretation of any provision of this letter agreement.
- C. Applicable Law.** This letter agreement, and its interpretation and application, will be governed and controlled by the laws of the State of New York, applicable as though to a contract made in New York by residents of New York and wholly to be performed in New York without giving effect to principles of conflicts of laws.
- D. Amendment.** This letter agreement may not be changed, modified, or amended, except in a writing signed by both you and Kodak that expressly acknowledges that it is changing, modifying or amending this letter agreement.
- D. At Will.** Please also keep in mind that, regardless of any provision contained in this letter agreement to the contrary, your employment at Kodak is "at will". That is, you are free to terminate your employment at any time, for any reason, and Kodak is free to do the same.
- E. Confidentiality.** You will agree to keep the content and existence of this letter confidential except that you may review it with your attorney, financial advisor, spouse, or adult children, or with my designee or me. Upon any such disclosure, you agree to advise these individuals of the confidential nature of this letter agreement and the facts giving rise to it as well as their obligations to maintain the confidentiality of this letter agreement and the facts giving rise to it. Notwithstanding the foregoing provisions of this subsection to the contrary, you may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to you relating to such tax treatment and tax structure.

\* \* \*

Your signature below means that:

1. You have had ample opportunity to discuss the terms and conditions of this letter agreement with an attorney of your choice and as a result fully understand its terms and conditions; and
2. You accept the terms and conditions set forth in this letter agreement; and

Mr. Bernard Masson, page -5-  
August 13, 2003

3. This letter agreement supersedes and replaces any and all agreements or understandings whether written or oral that you may have with Kodak, or any subsidiaries or affiliates, concerning the subject matter hereof. This letter agreement does not, however, replace or supersede your Eastman Kodak Company Employee's Agreement.

If you find the foregoing acceptable, please sign your name on the signature line provided below and return the original signed copy of this letter agreement directly to my attention on or prior to August 15, 2003. Best of luck to you Bernard in your new position.

Very truly yours,

Michael P. Morley

MPM:llh  
Enclosure

CC: Antonio M. Perez  
Robert L. Berman

Signed:

\_\_\_\_\_

Bernard Masson

Dated:

\_\_\_\_\_

**NOTICE OF AWARD OF NON-QUALIFIED STOCK OPTIONS**

**GRANTED TO \_\_\_\_\_**

**EFFECTIVE DECEMBER 10, 2004**

**PURSUANT TO THE**

**2000 OMNIBUS LONG-TERM COMPENSATION PLAN**

APPROVED BY:

The Executive Compensation and  
Development Committee on  
December \_\_, 2004

**NOTICE OF AWARD OF NON-QUALIFIED STOCK OPTIONS  
GRANTED TO \_\_\_\_\_  
EFFECTIVE DECEMBER 10, 2004  
PURSUANT TO THE  
2000 OMNIBUS LONG-TERM COMPENSATION PLAN**

1. Background. Under Article 8 of the 2000 Omnibus Long-Term Compensation Plan (the "Plan"), the Committee may award non-qualified stock options of the Company's Common Stock to Kodak's non-employee Directors, subject to such terms, conditions and restrictions as it deems appropriate.
2. Award. The Committee granted, effective December 10, 2004 (the "Grant Date"), \_\_\_\_\_ (the "Participant") an award of one thousand five hundred (1,500) non-qualified stock options (the "Award"). One option provides for the ability to purchase a single share of Common Stock. The Award is granted under the Plan, subject to the terms and conditions of the Plan and those set forth in this Notice of Award of Non-Qualified Stock Options ("Award Notice").
3. Terms and Conditions of Award. The following terms and conditions will apply to the Award:
  - (a) Option Price. The option price for the options evidenced by this Award Notice will be the mean between the high and low at which Kodak Common Stock trades on the New York Stock Exchange on the Grant Date, i.e., \$\_\_\_\_\_.
  - (b) Duration of Option. Subject to Section 3(i) below, each option will expire at the close of business December 9, 2014, unless sooner terminated or forfeited in accordance with the terms and conditions of this Award Notice or the Plan.
  - (c) Vesting. No option will be exercisable prior to the date on which it vests. The options will all vest on the first anniversary of the Grant Date. The options must be exercised by written notice to Kodak stating the number of options to be exercised.



- (d) Payment of Option Price. The option price for the shares for which the Participant exercises an option must be paid by the Participant on the date the option is exercised in cash, in shares of Common Stock owned by the Participant, or a combination of the foregoing. Any share of Common Stock delivered in payment of the option price will be valued at its Fair Market Value on the date of exercise.
- (e) Rights as a Shareholder. The Participant will not have any of the rights of a shareholder with respect to the shares of Common Stock covered by an option except to the extent one or more certificates for such shares will be delivered to him or her upon the exercise of such option.
- (f) Broker Assisted Exercise. The Participant may, subject to Section 5 hereof, exercise any option granted to him or her under this Award Notice by way of the Company's broker-assisted stock option exercise program, to the extent such program is available at the time of such exercise.
- (g) Cessation of Board Membership.
  - (i) Forfeiture. If the Participant's Board membership terminates for any reason, other than for an Approved Reason or death or Retirement, prior to the first anniversary of the Grant Date, the Participant will immediately forfeit all of the stock options granted to him or her under this Award Notice. If the Participant's Board membership terminates for an Approved Reason or death or Retirement, the options will, unless sooner forfeited in accordance with another provision of this Award Notice or the provisions of the Plan, expire on the date set forth in Section 3(b) above.
  - (ii) Vesting. Notwithstanding Section 3(c) above to the contrary, if the Participant dies prior to the vesting of all of the stock options granted to him or her under this Award Notice, all of such unvested options will immediately vest on the date of the Participant's death and may be exercised, subject to the Plan's terms and conditions, at any time between such date and the date such options are scheduled to expire under Section 3(b) above.

(h) Exercise Upon Expiration.

- (i) Notwithstanding Section 3(b) hereof to the contrary, if on the options' scheduled expiration date (A) any options remain unexercised and (B) the Fair Market Value of a share of Common Stock exceeds the option price, then the provisions of Section 3(h)(ii) below will apply.
- (ii) The Participant may exercise any of his or her unexercised options as of the date they are scheduled to expire, unless already forfeited under the terms and conditions of this Award Notice or the Plan, by providing written notice thereof to Kodak within sixty (60) days after such scheduled expiration date. In such event, the options will, for purposes of this Award Notice and the Plan, be treated as exercised prior to the close of business on their scheduled expiration date; provided, however, the Participant will not be the record owner of the shares acquired upon exercise of such options until the one or more certificates for the shares have been delivered to the Participant. The strike price of any options exercised pursuant to the provisions of this Section 3(h) will be the mean between the high and low at which the Common Stock trades on the New York Stock Exchange on the options' scheduled expiration date, or, if such day is not a trading day, the immediately preceding trading day.
- (iii) Notwithstanding Section 3(f) above to the contrary, any options exercised pursuant to this Section 3(h) may not be exercised by way of the Company's broker-assisted stock option program.

4. Definitions.

- (a) Any defined term used in this Award Notice, other than those set forth in Section 4(b) below, will have the same meaning for purposes of this document as that ascribed to it under the terms of the Plan.
- (b) The following definitions will apply to this Award Notice:
  - (i) Approved Reason. A termination of Board membership will be identified as an "Approved Reason" if, in the opinion of the Committee in its sole discretion, it is in the best interest of the Company to do so.

(ii) Fair Market Value. “Fair Market Value” means the opening price of the Common Stock on the New York Stock Exchange on the relevant date; provided, however, if the Common Stock is not traded on the relevant date, then the opening price on the immediately preceding date on which the Common Stock is traded.

(iii) Retirement. The term “Retirement” means voluntary cessation of the Participant’s Board membership on or after the Participant’s 70<sup>th</sup> birthday.

5. Section 16 of the Exchange Act. In order to avoid any Exchange Act violations, the Committee may, at any time and from time to time, impose additional restrictions upon the Award, including, but not by way of limitation, restrictions regarding the Participant’s ability to exercise options under the Company’s broker-assisted stock option exercise program.

6. Non-Assignability.

(a) In General. Except as specified in Section 6(b), the Award shall not in any manner be subject to alienation, anticipation, sale, transfer, assignment, pledge or encumbrance.

(b) Transfers. The stock options granted pursuant to this Award Notice are transferable in accordance with, and subject to, the terms and conditions set forth in Section 19.1(b) of the Plan.

7. Effect of Award Notice. This Award Notice, including its reference to the Plan, constitutes the entire understanding between the Company and the Participant concerning the Award and supersedes any prior notices, letters, statements or other documents issued by the Company relating to the Award and all prior agreements and understandings between the Company and the Participant, whether written or oral, concerning the Award.

8. Miscellaneous.

(a) Headings. The headings of the Sections of this Award Notice have been prepared for convenience and reference only and shall not control, affect the meaning, or be taken as the interpretation of any provision of the Award Notice.

(b) Applicable Law. All matters pertaining to this Award Notice (including its interpretation, application, validity, performance and breach) shall be governed by, construed and enforced in accordance with the laws of the State of New York (except as superseded by applicable Federal Law) without giving effect to principles of conflicts of laws.

(c) Amendment. The Committee may, from time to time, amend this Award Notice in any manner.

9. Administration. The Committee shall have full and absolute authority and discretion, subject to the provisions of the Plan, to interpret, construe and implement this Award Notice, to prescribe, amend and rescind rules and regulations relating to it, and to make all other determinations necessary, appropriate or advisable for its administration. All such Committee determinations shall be final, conclusive and binding upon any and all interested parties and their heirs, successors, and personal representatives.

**NOTICE OF AWARD OF RESTRICTED STOCK**

**GRANTED TO \_\_\_\_\_**

**DECEMBER 10, 2004**

**PURSUANT TO THE**

**2000 OMNIBUS LONG-TERM**

**COMPENSATION PLAN**

APPROVED BY:

Executive Compensation and  
Development Committee  
December \_\_, 2004

**NOTICE OF AWARD OF RESTRICTED STOCK  
GRANTED TO \_\_\_\_\_  
DECEMBER 10, 2004  
PURSUANT TO THE  
2000 OMNIBUS LONG-TERM  
COMPENSATION PLAN**

1. Background. Under Article 10 of the 2000 Omnibus Long-Term Compensation Plan (the "Plan"), the Committee may, among other things, award restricted shares of Kodak's Common Stock to Kodak's non-employee Directors, subject to such terms, conditions and restrictions, as it deems appropriate.
2. Award. Effective December 10, 2004 (the "Grant Date"), the Committee granted to \_\_\_\_\_ (the "Participant") an Award of one thousand five hundred (1,500) restricted shares of Common Stock ("Restricted Shares"). This Award was granted under the Plan, subject to the terms and conditions of the Plan and those set forth in this Notice of Award of Restricted Stock ("Award Notice"). To the extent there are any inconsistencies between the terms of the Plan and this Award Notice, the terms of the Plan will control.
3. Terms and Conditions of Restricted Shares. The following terms and conditions will apply to the Restricted Shares:
  - (a) Issuance. The Restricted Shares awarded to the Participant will be evidenced by a book entry recorded by Kodak's transfer agent in an account established by the transfer agent on behalf of the Participant. This book entry will indicate that the Restricted Shares are restricted under the terms of this Award Notice. The Participant will be a shareowner of all the shares represented by this book entry. As such, the Participant will have all the rights of a shareowner with respect to the Restricted Shares, including but not limited to, the right to vote such shares and to receive all dividends and other distributions (subject to Section 3(b)) paid with respect to them, provided, however, that the Restricted Shares will be subject to the restrictions in Section 3(d).

- (b) Stock Splits, Dividends, etc. If under Section 6.2 of the Plan, entitled “Adjustment to Shares,” the Participant, as the owner of the Restricted Shares, becomes entitled to new, additional, or different shares of stock or securities: (i) Kodak’s transfer agent will adjust its book entry for the Participant to reflect such new, additional, or different shares of stock or securities; and (ii) such new, additional, or different shares of stock or securities will be subject to the restrictions provided for in Section 3(d) below.
- (c) Restriction Period. The Restricted Shares will be subject to one “Restriction Period.” The Restriction Period for the Restricted Shares will begin on the Grant Date and terminate upon the earlier of: (i) Retirement; (ii) death; (iii) cessation of Board membership for an Approved Reason; or (iv) the first anniversary of the Grant Date.
- (d) Restrictions on Restricted Shares. The restrictions to which the Restricted Shares are subject are:
  - (i) Nonalienation. During their Restriction Period, the Restricted Shares may not be sold, exchanged, transferred, assigned, pledged, hypothecated, or otherwise disposed of except by will or the laws of descent and distribution. Any attempt by the Participant to dispose of a Restricted Share in any such manner will result in the immediate forfeiture of such Restricted Share and all other Restricted Shares then held by Kodak’s transfer agent on the Participant’s behalf.
  - (ii) Continuous Board Membership. The Participant must remain continuously a member of Kodak’s Board of Directors throughout the Restriction Period in order to receive the Restricted Shares that are subject to that Restriction Period.
- (e) Lapse of Restrictions. The restrictions set forth in Section 3(d) above, with respect to a Restricted Share, will, unless the Restricted Share is forfeited sooner, lapse upon the expiration of such Restricted Share’s Restriction Period.

4. Cessation of Board Membership. If the Participant’s Board membership ceases during the Restriction Period for any reason other than due to Retirement, death or an Approved Reason, the Participant will immediately forfeit all of the Restricted Shares.

5. Issuance of Shares of Common Stock. Upon the lapse of the Restriction Period, Kodak will, unless the Restricted Shares are sooner forfeited, promptly instruct its transfer agent to reflect on its books those Restricted Shares that are no longer restricted. The transfer agent will then deliver to the Participant a stock certificate for the number of unrestricted shares held in the Participant's account.
6. Definitions.
  - (a) Any defined term used in this Award Notice, other than that set forth in Section 6(b) below, will have the same meaning for purposes of this document as that ascribed to it under the terms of the Plan.
  - (b) The following definitions will apply to this Award Notice:
    - (i) Approved Reason. A termination of Board membership will be identified as an "Approved Reason" if, in the opinion of the Committee in its sole discretion, it is in the best interest of the Company to do so.
    - (ii) Retirement. The term "Retirement" means voluntary cessation of the Participant's Board membership on or after the Participant's 70<sup>th</sup> birthday.
7. Effect of Award Notice. This Award Notice, including its reference to the Plan, constitutes the entire understanding between the Company and the Participant concerning the Award and supersedes any prior notices, letters, statements or other documents issued by the Company relating to the Award and all prior agreements and understandings between the Company and the Participant, whether written or oral, concerning the Award.
8. Administration. The Committee will have full and absolute authority and discretion, subject to the provisions of the Plan, to interpret, construe and implement this Award Notice, to prescribe, amend and rescind rules and regulations relating to it, and to make all other determinations necessary, appropriate or advisable for its administration. All such Committee determinations will be final, conclusive and binding upon any and all interested parties and their heirs, successors, and personal representatives.



9. Miscellaneous.

- (a) Headings. The headings of the Sections of the Award Notice have been prepared for convenience and reference only and will not control, affect the meaning, or be taken as the interpretation of any provision of the Award Notice.
- (b) Applicable Law. This Award Notice, and its interpretation and application, will be governed and controlled by the laws of the State of New York (except as superseded by applicable Federal Law), applicable as though to a contract made in New York by residents of New York and wholly to be performed in New York without giving effect to principles of conflicts of laws.
- (c) Amendment. The Committee may, from time to time, amend this Award Notice in any manner.

10. Tax Consequences. No person connected with this Award Notice in any capacity, including, but not limited to, Kodak and its Subsidiaries and their respective directors, officers, agents and employees makes any representation, commitment, or guarantee that any tax treatment, including, but not limited to, federal, state and local income, estate and gift tax treatment, will be applicable with respect to the Award.

**AMENDMENT TO EXECUTIVE COMPENSATION FOR EXCELLENCE AND LEADERSHIP PLAN**

Effective as of January 1, 2005, the Executive Compensation for Excellence and Leadership Plan (the "Plan") is amended to delete Section 1.3 thereof in its entirety.

Except as specifically modified hereby, the Plan shall remain in full force and effect in all respects.

March 7, 2005

Mr. Robert H. Brust  
(address intentionally omitted)

Re: Retention

Dear Bob:

The purpose of this Letter Agreement is to further amend in several respects your prior letter agreements with Eastman Kodak Company ("Kodak") regarding the terms and conditions of your employment by Kodak, as an additional inducement to incent you to remain employed by Kodak through January 3, 2007, with a retirement date of February 1, 2007. In particular, the letter agreements that will be amended hereby are the following: (i) the letter agreement dated December 20, 1999, as amended by the Executive Development and Compensation Committee of the Board of Directors (the "Committee") on February 8, 2001, (ii) the letter agreement dated November 12, 2001 and (iii) the letter agreement dated October 2, 2003 (which letter agreements shall be referred to herein collectively as the "Agreement"). Once signed by both parties, this Letter Agreement will constitute an agreement between Kodak and you. For purposes of this Letter Agreement, the term "Company" will refer to Kodak and all of its subsidiaries and affiliates.

#### **1. Cash Retention Benefit**

Subject to your satisfaction of the terms and conditions of this Letter Agreement, Kodak agrees to provide you a cash retention benefit in the amount of \$15,000 per month for each full month that you remain continuously and actively employed by Kodak between January 1, 2006 and December 31, 2006 (the "Cash Retention Benefit"), resulting in a potential aggregate Cash Retention Benefit to you of up to \$180,000.

For each month that you earn a Cash Retention Benefit, the amount will be paid in a single lump sum payment as soon as administratively practicable following the last day of that month. In the event, however, that during a month, you either die, or your employment is terminated by Kodak without Cause, as defined in the Agreement, you will be paid a pro-rated amount of the \$15,000 payment you otherwise would have received had you remained actively and continuously employed for the entire month. The amount of the pro-rated payment will be determined by multiplying \$15,000 by a fraction, the numerator of which is the number of days you were employed by Kodak

during the month of your termination of employment and the denominator of which is the total number of days in the month of your termination of employment. This amount will be paid as soon as administratively practicable following the date of your death or termination of employment. In the event of your death, any amount owed will be paid to your estate. The Cash Retention Benefit will be paid subject to withholding for all applicable federal, state and local income and payroll taxes.

The Cash Retention Benefit will not be “benefits bearing.” That is, such amount will not be taken into account and considered for purposes of determining any employer-provided benefits or compensation to which you are or may hereinafter become eligible.

## **2. Restricted Stock Retention Grant**

Kodak will grant you 27,000 shares of restricted stock in May 2005 (the “Restricted Stock Retention Grant”) under the terms of the 2005 Omnibus Long-Term Compensation Plan (the “2005 Omnibus Plan”), subject to shareholder approval of the 2005 Omnibus Plan. The Restricted Stock Retention Grant will vest in three consecutive equal annual installments commencing in 2007; provided that your termination of employment for other than Cause on or after January 3, 2007 shall constitute an “Approved Reason” for purposes of the Restricted Stock Retention Grant, whereupon all remaining restrictions on such shares of restricted stock shall lapse automatically and you shall not forfeit any restricted stock under the Restricted Stock Retention Grant. The specific terms, conditions and restrictions of the Restricted Stock Retention Grant will be contained in an award notice to be delivered to you on or about the time of the grant in May 2005.

## **3. Remaining Terms of Agreement**

Except as specifically amended by this Letter Agreement, all the terms of the Agreement will remain in full force and effect, without amendment or modification.

## **4. Miscellaneous**

- A. Confidentiality.** You agree to keep the content and existence of this Letter Agreement confidential except that you may review it with your financial advisor, attorney or spouse/partner and with me or my designee. Upon such a disclosure, however, you agree to advise the recipient of the confidential nature of this Letter Agreement and the facts giving rise to it as well as the recipient’s obligations to maintain the confidentiality of this Letter Agreement and the facts giving rise to it.

- B. Unenforceability.** If any portion of this Letter Agreement is deemed to be void or unenforceable by a court of competent jurisdiction, the remaining portions will remain in full force and effect to the maximum extent allowed by law. The parties intend and desire that each portion of this Letter Agreement be given the maximum possible effect allowed by law.
- C. Headings.** The headings of the several sections of this Letter Agreement have been prepared for convenience and reference only and shall not control, affect the meaning, or be taken as the interpretation of any provision of this Letter Agreement.
- D. Applicable Law.** This Letter Agreement, and its interpretation and application, will be governed and controlled by the laws of the State of New York, applicable as though to a contract made in New York by residents of New York and wholly to be performed in New York without giving effect to principles of conflicts of law.
- E. Amendment.** This Letter Agreement may not be changed, modified, or amended, except in a writing signed by both you and Kodak that expressly acknowledges that it is changing, modifying or amending this Letter Agreement.
- F. At Will.** Please also keep in mind that, regardless of any provision contained in this Letter Agreement to the contrary, your employment at Kodak is “at will.” That is, you will be free to terminate your employment at any time, for any reason, and Kodak is free to do the same.

\* \* \*

Your signature below means that:

1. You have had ample opportunity to discuss the terms and conditions of this Letter Agreement with advisors of your choice from among those types listed in Section 5(A) above, and as a result fully understand its terms and conditions; and
2. You accept the terms and conditions set forth in this Letter Agreement; and
3. You agree that this Letter Agreement supersedes and replaces any and all agreements or understandings whether written or oral that you may have with Kodak concerning the subject matter hereof; provided, however, this Letter Agreement does not in any way supersede or replace your Eastman Kodak Company Employee's Agreement.

If you find the foregoing acceptable, please sign your name on the signature line provided below and return the original signed copy of this Letter Agreement directly to my attention. Thank you, and best wishes for your continuing successes at Kodak.

Very truly yours,

RLB:seu

I agree to the terms and conditions of this Letter Agreement.

Signed: /s/ ROBERT H. BRUST

\_\_\_\_\_

Robert H. Brust

Dated:

**REDEMPTION AGREEMENT**

**among**

**Sun Chemical Corporation**

**and**

**Sun Chemical Group B.V.**

**and**

**Eastman Kodak Company**

**and**

**Kodak Graphics Holdings, Inc.**

**Dated as of January 11, 2005**

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**THIS REDEMPTION AGREEMENT** (this "Agreement"), is dated as of January 11, 2005, and is among Sun Chemical Corporation, a Delaware corporation ("SCC"), Sun Chemical Group B.V., a Netherlands limited liability company ("Sun" and, together with SCC, "Sun Parties"), Eastman Kodak Company, a New Jersey corporation ("Kodak") and Kodak Graphics Holdings, Inc., a Delaware corporation ("Kodak SPV") and, together with Kodak, "Kodak Parties").

**WITNESSETH:**

**WHEREAS**, as of the date hereof, SCC and Kodak each own 50% of the limited liability company interests of Kodak Polychrome Graphics LLC, a Delaware limited liability company ("KPG LLC");

**WHEREAS**, as of the date hereof, Sun and Kodak SPV each own 50% of the common shares, no par value, of Kodak Polychrome Graphics Company Ltd., a company incorporated under the laws of Barbados ("Barbados Co.");

**WHEREAS**, the parties hereto wish to cause KPG LLC to redeem all of the limited liability company interests of KPG LLC held by SCC;

**WHEREAS**, the parties hereto wish to cause Barbados Co. to redeem all of the common shares, no par value, of Barbados Co. held by Sun; and

**WHEREAS**, the parties hereto wish to cause their respective Affiliates and KPG LLC, Barbados Co. and their Affiliates to consummate the Redemption Transactions;

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings contained herein, and on the terms and subject to the conditions herein set forth, the parties agree as follows:

**ARTICLE I**

**DEFINITIONS AND TERMS**

Section 1.1. Specific Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Affiliates" shall mean, with respect to any Person, any Persons directly or indirectly controlling, controlled by, or under common control with, such other Person at any time during the period for which the determination of affiliation is being made. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management policies of such Person, whether through the ownership of voting securities, by contract or otherwise; provided that for purposes of this Agreement and only with respect to the period until the Closing, neither KPG LLC nor Barbados Co. nor any Person controlled by KPG LLC or Barbados Co. shall be deemed an Affiliate of any Sun Party or its Affiliates or any Kodak Party or its Affiliates.

"Agreement" shall mean this Agreement, the Exhibits and the Schedules hereto, as the same may be amended or supplemented from time to time in accordance with the terms hereof.

"Ancillary Agreements" shall mean the Plate Technology License Agreement, the Polychrome Trademark Assignment, the Avranches Assumption Agreement and the Distribution Agreement.

"Asset Measurement Date" shall have the meaning set forth in Section 5.17(a).

"Avranches Assumption Agreement" shall mean the assumption agreement in the form attached as Exhibit C pursuant to which Sun Parties or one of their Affiliates shall assume from Barbados Co. and its Affiliates all Liabilities related to, arising out of or resulting from the ownership and operation at any time of the Avranches Facility.

“Avranches Facility” shall mean the facility and all related real property located at rue Division Leclerc, 50300, Avranches, France and contributed to Barbados Co. or one of its Affiliates pursuant to the Contribution Agreement.

“Barbados Co.” shall have the meaning set forth in the Recitals.

“Benefit Plans” shall have the meaning set forth in Section 3.7.

“Books and Records” shall mean the originals or copies of all customer lists, financial and other policies and procedures, policy information, contract forms, administrative and pricing manuals, sales records, financial records, environmental records, product and formulation records, corporate and accounting and other records (including the books of account, minute books, stock record books and other records), compliance records prepared for or filed with regulators, Tax records, Tax Returns (and all books and records (including tax accrual workpapers) related to such Tax Returns), and any other agreements, instruments, information, data, files or records related to the Business, whether or not stored in hardcopy form or electronic or on magnetic or optical media (to the extent not subject to licensing restrictions).

“Business” shall mean the business conducted by KPG LLC and Barbados Co. and their Affiliates since their formation until the Closing Date.

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banks in New York City are authorized or obligated by Law or executive order to close.

“BV-1” shall have the meaning set forth in Section 2.2(a)(i)(C).

“BV-1 Shares” shall have the meaning set forth in Section 2.2(a)(i)(C).

“Chosen Courts” shall have the meaning set forth in Section 10.8.

“Claim Notice” shall have the meaning set forth in Section 7.4.

“Closing” shall mean the closing of the last in sequence of the transactions contemplated by Article II of this Agreement.

“Closing Date” shall have the meaning set forth in Section 2.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Competing Business” shall have the meaning set forth in Section 5.7(a).

“Competition Filing” shall mean any filing under any U.S. Antitrust Law, any EU Competition Law or any Other Competition Law.

“Confidential Information” shall have the meaning set forth in Section 5.10.

“Consideration” shall have the meaning set forth in Section 5.5(i).

“Continuing Intercompany Agreements” shall have the meaning set forth in Section 5.11(a).

“Contracts” shall mean all written or legally binding agreements, contracts, licenses, leases and subleases, purchase orders, arrangements or commitments.

“Copyrights” shall mean published and unpublished works of authorship (including databases and other compilations of information), and all United States and foreign copyrights therein and thereto, registrations and applications therefor, and renewals, extensions, restorations and reversions thereof.

“Contribution Agreement” shall mean the Contribution and Asset Purchase Agreement, dated as of November 24, 1997, by and among Kodak, Sun and Barbados Co., as amended from time to time.

“DIC” shall have the meaning set forth in Section 5.12.

“Distribution Agreement” shall have the meaning set forth in Section 5.18.

“Encumbrances” shall mean mortgages, liens, pledges, charges, claims, encumbrances, security interests, equitable interests, options, rights of first option, rights of first refusal, or any other restrictions or third party rights, including any restriction on use, voting (in case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

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

“Environmental Law” shall mean any applicable Law relating to (a) the protection of human health, safety or the Environment (including air, water vapor, surface water, groundwater, drinking water supply, and surface or subsurface land) or (b) the exposure (including of employees) to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, management, release or disposal of, Hazardous Substances or any waste material, on-site or at any off-site locations.

“EU” shall mean the European Union.

“EU Competition Laws” shall mean the EC Merger Control Regulation (Council Regulation (EEC) No. 4064/89).

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Force Majeure Event” shall mean any war, armed conflict, insurrection or terrorist event that occurs after the date hereof.

“German Pension Fund” shall have the meaning set forth in Section 5.17(a).

“Governmental Authorization” shall mean any filing, consent, license, registration, permit, franchise, certificate or other authorization or approval issued, granted, given or otherwise made by or under authority of any Governmental Entity or pursuant to any Law.

“Governmental Entity” shall mean any local, state, provincial, regional, federal, national or other government, including each of their respective offices, branches, departments, agencies, courts, instrumentalities or other subdivisions in the EU, United States of America or any other jurisdiction in the world, any multinational organization or body, any body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or any official of any of the foregoing, as applicable.

“Hazardous Substances” shall mean any hazardous, toxic, chemical, or dangerous substance, pollutant, contaminant, waste or material that is regulated by any Governmental Entity or pursuant to, or could give rise to Liability under any Environmental Law, including: (A) any material, substance or waste that is defined as “hazardous waste,” hazardous material,” “hazardous substance,” “extremely Hazardous waste,” or “toxic substance” under any Environmental Law; (B) petroleum, petroleum products, waste oil, and their constituents and fractions; (C) asbestos and asbestos-containing materials; and (D) radon, and radioactive material

“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Indemnified Parties” shall have the meaning set forth in Section 7.3(a).

“Indemnifying Party” shall have the meaning set forth in Section 7.4.

“Intellectual Property” shall mean, collectively, all (i) Trademarks; (ii) Patents; (iii) trade secrets and proprietary know-how; (iv) Copyrights; and (v) rights to inventions.

“Intercompany Agreements” shall have the meaning set forth in Section 3.7.

“Irish Newco” shall mean an Irish unlimited liability company to be formed by Barbados Co. as provided in Section 2.2(a)(i)(A).

“Knowledge” shall mean, when used with respect to SCC, Sun or Sun Parties, the knowledge, after reasonable inquiry, of any of the following individuals: Melvin Cox, David Hill, Rudi Lenz, Edward Lovas, Wes Lucas and William Glass.

“Kodak” shall have the meaning set forth in the Preamble.

“Kodak ForCo” shall mean a Netherlands corporation and a wholly-owned Subsidiary of Kodak.

“Kodak ForCo Note” shall have the meaning set forth in Section 2.2(a)(ii)(C).

“Kodak Parties” shall have the meaning set forth in the Preamble.

“Kodak Parties Indemnified Parties” shall have the meaning set forth in Section 7.3(a).

“Kodak Parties Release Parties” shall have the meaning set forth in Section 9.1.

“Kodak Party Transaction Activity” shall have the meaning set forth in Section 5.15.

“Kodak SPV” shall have the meaning set forth in the Preamble.

“KPG Beneficiaries” shall have the meaning set forth in Section 5.17(a).

“KPG-J” shall have the meaning set forth in Section 5.11(b).

“KPG LLC” shall have the meaning set forth in the Recitals.

“KPG MS” shall have the meaning set forth in Section 2.2(a)(i)(C).

“KPG NA” shall have the meaning set forth in Section 2.2(a)(i)(C).

“KPG Note” shall have the meaning set forth in Section 2.1(a).

“KPG Plan Assets” shall have the meaning set forth in Section 5.17(a).

“Law” shall mean any law, statute, ordinance, rule, regulation, code, order, judgment, injunction or decree, principle of common law, equity or admiralty, promulgated, issued, adjudged or decreed by any Governmental Entity.

“Liabilities” shall mean all liabilities, obligations, guarantees, damages, losses, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, verdicts, extents, executions, claims, liens, payments, damages, costs, attorneys fees, expenses, fines, penalties or settlements of any nature or kind, including indebtedness, whether known or unknown, disputed or undisputed, determined, determinable or otherwise, fixed or accrued, absolute or contingent, liquidated or unliquidated, matured or unmatured, secured or unsecured, joint or several, past, present or future, whether incurred prior to, at or after the Closing, including all costs and expenses (legal, accounting or otherwise) relating thereto and whether or not the same is required to be accrued on the financial statements of any Person.

“Lithographic Imaging Material” shall mean material (a) that has primarily physical-chemical properties for attracting or repelling Printing Inks, and that is suited to be applied on a substrate in an imagewise configuration to form an intermediate master for Printing, or (b) that is coated on a substrate and has primarily physical-chemical properties that can be activated to attract or repel Printing Inks in an imagewise configuration to form an intermediate master for Printing.

“Lithographic Plate Business” shall mean the business of developing, designing, commercializing, manufacturing, marketing, distributing and selling Offset Printing Plates and the film and prepress chemistry, excluding inkjet and toner chemistries developed primarily for the production of a final image, used in processing Offset Printing Plates.

“Lithographic Process” shall mean a process for applying ink to selected areas of an intermediate master which has primarily physical-chemical properties that attract or repel inks in selected areas to retain the ink in an imagewise configuration for Printing.

“LLC Agreement” shall mean the Limited Liability Company Agreement of KPG LLC between Kodak and SCC, dated as of December 31, 1997, as amended from time to time.

“LLC Interests” shall have the meaning set forth in Section 2.1.

“Losses” shall have the meaning set forth in Section 7.2.

“Non-Governmental Authorization” shall mean all filings, consents, licenses, registrations, permits, franchises, certificates or other authorizations or approvals, other than Governmental Authorizations.

“Notice Period” shall have the meaning set forth in Section 7.4.

“Offset Printing Plates” shall mean plates or drums or flexible substrates having Lithographic Imaging Material coated or applied thereon for forming an intermediate image master for offset Printing.

“Other Competition Laws” shall mean any and all national or supra-national statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade in all jurisdictions in which KPG LLC, Barbados Co. or their Affiliates conduct business and that have or may claim jurisdiction over the transaction contemplated by this Agreement, other than the United States of America and the EU.

“Other Sun Contributed Properties” shall mean the facilities and all related real property located at (a) 117 a Tsarigradsko, Shosse Blvd, 1184 Sofia, Bulgaria, (b) An der Bahn, 80, 37520 Osterode am Harz, Germany; and (c) Columbus, Georgia, pursuant to (i) a lease, dated June 16, 1993, between Waddell Industrial Park, as landlord, and Polychrome Corporation, a division of Sun Chemical Corporation, as tenant (Building B) and (ii) a lease, dated July 15, 1992, between Waddell Industrial Park, as landlord, and Polychrome Corporation, a division of Sun Chemical Corporation, as tenant (Building C/D), and contributed to KPG LLC, Barbados Co. or one of their Affiliates pursuant to the Contribution Agreement.

“Patents” shall mean all United States and foreign patents and applications therefor, including divisions, continuations, continuations-in-part, renewals, extensions and reissues.

“Person” shall mean an individual, a corporation, a partnership, a limited liability company, an association, a trust, a Governmental Entity or any other entity or organization.

“Plate Technology License Agreement” shall have the meaning set forth in Section 5.22.

“Polychrome Trademark Assignment” shall mean the trademark assignment and license termination agreement substantially in the form of Exhibit A to be entered into between Sun, KPG LLC and the other parties thereto.

“Printing” shall mean the process of transferring inks in an imagewise configuration to a receiving surface using the Lithographic Process.

“Printing Ink” shall mean an image forming material that contains a colorant and is adapted (a) to be attracted to or repelled by selected areas of an intermediate master primarily by the physical and/or physical-chemical properties of that master, and (b) for transfer to a final print-receiving surface for Printing.

“Proofing Business” shall mean the business of developing, designing, commercializing, manufacturing, marketing, distributing and selling digital and/or analog equipment, consumables, software, systems, services or other products or solutions required to match an image to a desired target and shall include: separation of a multi-color or monochrome image into at least two monochrome components; image conversion; matching of a color-separated images; capture, storage, manipulation, transmission and/or output of color-separation images; color enhancement or definition of an image; and software or software interface for any of the above.

“Redemption Transactions” shall have the meaning set forth in Section 2.2(a).

“Representatives” shall mean, with respect to any Person, the officers, directors, employees, agents, accountants, auditors and advisors of such Person.

“Retained Benefits” shall have the meaning set forth in Section 5.17(b).

“Sale Transaction” shall mean any asset purchase, stock purchase, tender offer, exchange offer, merger, joint venture, business combination or other like transaction or series of transactions involving the Business, which (a) occurs prior to the merger, consolidation or other integration of any material portion of the assets and operations of KPG LLC, Barbados Co. and their Subsidiaries with the assets and operations of Kodak Parties and their Affiliates, (b) involves all or substantially all the assets of KPG LLC, Barbados Co. and their Subsidiaries, (c) does not involve more than an immaterial amount of the assets of Kodak Parties and their Affiliates (other than the assets of KPG LLC, Barbados Co. and their Subsidiaries) and (d) provides for an aggregate consideration to be received by Kodak Parties or their Affiliates of greater than \$1,618,000,000.

“Sarbanes Oxley Certification Requirements” shall have the meaning set forth in Section 5.1(b).

“Share Value” shall have the meaning set forth in Section 2.2(a)(i)(C).

“SCC” shall have the meaning set forth in the Preamble.

“Shares” shall have the meaning set forth in Section 3.2(b).

“Sun Parties” shall have the meaning set forth in the Preamble.

“Sun Parties’ Employees Intellectual Property” shall have the meaning set forth in Section 3.7.

“Sun Parties Indemnified Parties” shall have the meaning set forth in Section 7.2.

“Sun Parties Release Parties” shall have the meaning set forth in Section 9.1.



“Starting Value” shall have the meaning set forth in Section 5.17(a).

“Subsidiary” shall mean (a) any corporation in an unbroken chain of corporations beginning with the parent entity (the “Owner”) if each of the corporations other than the last corporation in the unbroken chain then owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain, (b) any partnership in which the Owner is a general partner, or (c) any partnership, corporation, limited liability company, similar entity or any other Person that the Owner or one or more Subsidiaries controls, through the ownership of interests or otherwise. For purposes of this definition, the term “controls”, as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management policies of such Person, whether through the ownership of voting securities or by contract or otherwise; provided that for purposes of this Agreement and only with respect to the period until the Closing, neither KPG LLC nor Barbados Co. nor any Person controlled by KPG LLC or Barbados Co. shall be deemed a Subsidiary of any Sun Party or its Affiliates or any Kodak Party or its Affiliates.

“Sun” shall have the meaning set forth in the Preamble.

“Tax Returns” shall mean any and all reports or returns (including information returns, returns for estimated Taxes and claims for refund) required to be supplied to a taxing authority in connection with Taxes, including any schedule or attachment thereto.

“Taxes” shall mean all taxes or payments in lieu of taxes imposed by any Governmental Entity anywhere in the world, including income, gross receipts, windfall profits, value added, severance, property, production, sales, use, license, excise, franchise, employment, social security contributions, withholding or similar taxes or payments in lieu of, including Transfer Taxes (but excluding customs, import or export duties), together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties. For the avoidance of doubt, with respect to all jurisdictions located in Europe, the term “Taxes” shall include all other public dues of a similar nature.

“Trademarks” shall mean all United States and foreign trademarks, service marks, brand names, certification marks, collective marks, d/b/a’s, Internet domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names, and other indicia of origin, all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby, including all renewals of any of the foregoing.

“Transfer Taxes” shall have the meaning set forth in Section 5.5(e).

“Unanimous Shareholder Agreement” shall mean the Unanimous Shareholder Agreement by and among Kodak SPV, Sun and Barbados Co., dated as of December 31, 1997, as amended from time to time.

“U.S. Antitrust Laws” shall mean the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act and all other U.S. federal and state statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

“Watford Lease” shall have the meaning set forth in Section 5.20.

“Watford Property” shall have the meaning set forth in Section 5.20.

Section 1.2. Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

Section 1.3. Other Definitional Provisions.

(a) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) The terms “dollars” and “\$” shall mean United States dollars.

(d) References herein to a specific Section, Schedule or Exhibit shall refer, respectively, to Sections, Schedules or Exhibits of this Agreement, unless the express context otherwise requires.

(e) The words “include,” “includes” and “including,” when used in this Agreement, shall be deemed to be followed by the words “without limitation.”

## ARTICLE II

### REDEMPTION

Section 2.1. Redemption of LLC Interests. At the Closing, on the terms and subject to the conditions set forth in this Agreement,

(a) Kodak shall, or shall cause any Affiliate of Kodak to, contribute to KPG LLC by wire transfer of immediately available funds to one or more accounts designated in writing by KPG LLC cash in the amount sufficient, when combined with other cash on hand of KPG LLC, for KPG LLC to make the cash payment set forth in Section 2.1(b) and a promissory note for payment by Kodak of an aggregate amount of \$100,000,000 in the amounts and on the dates set forth on Exhibit B-1 (the “KPG Note”) in exchange for an additional interest in KPG LLC; and

(b) SCC and Kodak shall jointly cause KPG LLC to redeem from SCC all of SCC’s Interest (as defined in the LLC Agreement) in KPG LLC (the “LLC Interests”) and to cancel SCC’s right, title and interest in and to KPG LLC pursuant to the LLC Agreement as provided in this Agreement, in consideration for which Sun Parties and Kodak Parties shall jointly cause KPG LLC to (i) pay to SCC, by wire transfer of immediately available funds to one or more accounts designated in writing by SCC to Kodak at least three Business Days in advance of when payment is to be made, cash in the amount of \$63,300,000 and (ii) deliver to SCC the KPG Note.

Section 2.2. Redemption of Shares.

(a) Each party shall, and shall cause its respective Affiliates and Barbados Co. and its Affiliates to, take the following actions (the “Redemption Transactions”):

(i) The actions described below will be completed after the date hereof but on or before March 31, 2005:

(A) Barbados Co. will form Irish Newco as a wholly-owned Subsidiary and will cause Irish Newco to elect to be disregarded as an entity separate from Barbados Co. for United States federal income tax purposes;

(B) Any wholly-owned Subsidiary of Barbados Co. that is not disregarded for United States federal income tax purposes as a corporation separate from Barbados Co. or from a Subsidiary of Barbados Co., if such Subsidiary is not so disregarded, will make a valid and timely election to be so disregarded. Any such Subsidiary of Barbados Co. that is disallowed from making such an election under Treas. Reg. § 301.7701-2(b)(8) shall, to the extent permitted by applicable Law, convert to an entity that is permitted to make the election under Treas. Reg. § 301.7701-3(a) and (c);

(C) KPG Netherlands Antilles NV or its successor pursuant to Section 2.2(a)(i)(B) above (“KPG NA”) will distribute to its sole shareholder, KPG Madeira Serviços Ltda., a direct wholly-owned Subsidiary of Barbados Co. (“KPG MS”), shares of KPG Enterprises BV, a Netherlands *Besloten Vennootschap met beperkte aansprakelijkheid* and a direct wholly-owned Subsidiary of KPG NA (“BV-1” and shares of BV-1 shall be referred to herein as “BV-1 Shares”), with a fair market value equal to the sum of \$253,200,000 and the fair market value, as mutually agreed by the parties hereto, of the Kodak ForCo Note (this sum, the “Share Value”); and

(D) Barbados Co. will purchase from KPG MS the BV-1 Shares distributed to KPG MS pursuant to Section 2.2(a)(i)(C) above in exchange for a promissory note with a principal amount equal to the Share Value.

(ii) The actions described below will be completed after March 31, 2005 but no later than the Closing Date:

(A) Under applicable Barbados law, Barbados Co. will revalue its assets such that its equity value after the revaluation will exceed an amount equal to the Share Value;

(B) Barbados Co. will sell to Irish Newco the number of BV-1 Shares with a fair market value equal to \$400,000,000 in exchange for a promissory note in the amount of \$400,000,000;

(C) Barbados Co. and Irish Newco jointly will transfer to Kodak ForCo the BV-1 Shares held by Barbados Co. and Irish Newco; in exchange for these BV-1 Shares, Kodak ForCo will transfer to Barbados Co. cash in the amount of \$253,200,000 and will issue to Irish Newco a promissory note for payment of an aggregate amount of \$400,000,000 in the amounts and on the dates set forth on Exhibit B-2 (“Kodak ForCo Note”);

(D) Barbados Co. will redeem all the shares in Barbados Co. that are held by Sun, in consideration for 100% of the shares of Irish Newco, the promissory note described in Section 2.2(a)(ii)(B) and cash in the amount of \$253,200,000; and

(E) Sun will capitalize Irish Newco by contributing the promissory note described in Sections 2.2(a)(ii)(B) and 2.2(a)(ii)(D) above to Irish Newco.

(b) All documentation implementing the Redemption Transactions shall be subject to the prior review and reasonable consent of each of the parties.

(c) In the event that this Agreement is terminated pursuant to its terms, neither Sun Parties nor Kodak Parties shall take any further action to complete the Redemption Transactions, and Sun Parties and Kodak Parties shall use commercially reasonable efforts to unwind each of the steps in the Redemption Transactions that have been accomplished as of such date, so that the parties are, to the extent practicable, in the same position that they would have been if no portion of the Redemption Transactions had been completed and will continue to be bound by the terms of the Unanimous Shareholder Agreement. Sun Parties and Kodak Parties further agree that all costs of unwinding the Redemption Transactions, if any, shall be borne by Sun Parties.

Section 2.3. Closing. The Closing shall take place at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004 at 10:00 a.m. New York City time, on the later of (i) the third Business Day following the date on which the last of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) has been satisfied or waived or (ii) April 1, 2005, or at such later time or other place as Kodak Parties and Sun Parties may mutually agree. The date on which the Closing occurs is called the “Closing Date.”

Section 2.4. Deliveries and Payment by Kodak Parties. At the Closing, Kodak Parties shall deliver, or cause to be delivered, to Sun Parties or their applicable Affiliates (and, with respect to the deliveries referred to in Section 2.4(a), to the Persons specified in Section 2.1 and 2.2) the following:

- (a) the amount of the cash payments and the documents required to be delivered by Kodak Parties and their Affiliates pursuant to Sections 2.1 and 2.2.
- (b) the certificates and other documents to be delivered pursuant to Section 6.3;
- (c) all documents required by Sun Parties in connection with the transfer of the Avranches Facility to any one of Sun Parties or their Affiliates, as requested by Sun Parties, in form and substance reasonably acceptable to Sun Parties and Kodak Parties;
- (d) the Distribution Agreement, executed by such Kodak Parties and their Affiliates as are parties to the Distribution Agreement;
- (e) the Polychrome Trademark Assignment, executed by such Kodak Parties and their Affiliates as are parties to the Polychrome Trademark Assignment;
- (f) the Plate Technology License Agreement, executed by such Kodak Parties and their Affiliates as are parties to the Plate Technology License Agreement;
- (g) the modified, amended or restated Continuing Intercompany Agreements entered into pursuant to Section 5.11(c), executed by such Kodak Parties and their Affiliates as are parties thereto; and
- (h) such other instruments or documents, in form and substance reasonably acceptable to Sun Parties, as may be reasonably requested by Sun Parties and necessary to give effect to the transactions contemplated by this Agreement and the Ancillary Agreements; provided, that all such documentation implementing the Redemption Transactions shall be subject to Section 2.2(b).

Section 2.5. Deliveries by Sun Parties. At the Closing, Sun Parties shall deliver, or cause to be delivered, to Kodak Parties or their applicable Affiliates (and, with respect to the deliveries referred to in Section 2.5(a), to the Persons specified in Section 2.1 and 2.2) the following:

- (a) the documents required to be delivered by Sun Parties and their Affiliates pursuant to Sections 2.1 and 2.2;
- (b) the certificates and other documents to be delivered pursuant to Section 6.2;
- (c) the resignations, effective as of the Closing, of (i) such members of the board of managers of KPG LLC as were appointed by Sun Parties or their Affiliates; (ii) such directors of Barbados Co. as were appointed by Sun Parties or their Affiliates; and (iii) such managers, directors or persons holding similar positions with respect to any Affiliates of KPG LLC or Barbados Co. as were appointed by Sun Parties or their Affiliates;
- (d) a certificate from SCC substantially in the form of Schedule 2.5(d), hereto certifying that it is not a foreign person for U.S. Federal income tax purposes in accordance with Treas. Regs. 1.1445-2(b)(2)(iv)(B);
- (e) the Avranches Assumption Agreement;
- (f) the Distribution Agreement, executed by such Sun Parties and their Affiliates as are parties to the Distribution Agreement;

- (g) the Polychrome Trademark Assignment, executed by such Sun Parties and their Affiliates as are parties to the Polychrome Trademark Assignment;
- (h) the Plate Technology License Agreement, executed by such Sun Parties and their Affiliates as are parties to the Plate Technology License Agreement;
- (i) the modified, amended or restated Continuing Intercompany Agreements entered into pursuant to Section 5.11(c), executed by such Sun Parties and their Affiliates as are parties thereto; and
- (j) such other instruments or documents, in form and substance reasonably acceptable to Kodak Parties, as may be reasonably required by Kodak Parties and necessary to give effect to the transactions contemplated by this Agreement and the Ancillary Agreements; provided, that all such documentation implementing the Redemption Transactions shall be subject to Section 2.2(b).

Section 2.6. Guarantees.

(a) Kodak hereby irrevocably and unconditionally (i) guarantees to Sun Parties, and their respective Affiliates, successors and permitted assigns under this Agreement and the Ancillary Agreements, full and timely payment of all amounts that Kodak SPV, Kodak ForCo or any of Kodak's other Affiliates is required to make pursuant to this Agreement and the Ancillary Agreements, and the full and timely performance of all their covenants and obligations under this Agreement and the Ancillary Agreements, and (ii) covenants with and warrants to Sun Parties, and their respective Affiliates, successors and permitted assigns under this Agreement and the Ancillary Agreements, that upon any default by Kodak SPV, Kodak ForCo or any of Kodak's other Affiliates in the payment, when due, of any amount payable by Kodak SPV, Kodak ForCo or any of Kodak's other Affiliates under this Agreement or the Ancillary Agreements, or in the performance of any covenant or obligation under this Agreement or the Ancillary Agreements, Kodak shall immediately pay such amount or cause such covenant or obligation to be satisfied or performed. This guarantee constitutes an absolute, unconditional, present and continuing guarantee of payment, and not of collectibility, and Kodak waives any and all rights to require that Sun Parties or any of their respective Affiliates, successors or permitted assigns under this Agreement or the Ancillary Agreements resort to or make demand on Kodak SPV, Kodak ForCo or any of Kodak's other Affiliates under this Agreement or the Ancillary Agreements in respect thereof. Kodak shall pay all reasonable costs and expenses (including reasonable attorneys' fees) that may be incurred by Sun Parties, or any of their respective Affiliates, successors or permitted assigns under this Agreement and the Ancillary Agreements, in successfully enforcing this guarantee, by suit or otherwise.

(b) Sun hereby irrevocably and unconditionally (i) guarantees to Kodak Parties, and their respective Affiliates, successors and permitted assigns under this Agreement and the Ancillary Agreements, full and timely payment of all amounts that SCC or any of Sun's other Affiliates is required to make pursuant to this Agreement and the Ancillary Agreements, and the full and timely performance of all their covenants and obligations under this Agreement and the Ancillary Agreements, and (ii) covenants with and warrants to Kodak Parties, and their respective Affiliates, successors and permitted assigns under this Agreement and the Ancillary Agreements, that upon any default by SCC or any of Sun's other Affiliates in the payment, when due, of any amount payable by SCC or any of Sun's other Affiliates under this Agreement or the Ancillary Agreements, or in the performance of any covenant or obligation under this Agreement or the Ancillary Agreements, Sun shall immediately pay such amount or cause such covenant or obligation to be satisfied or performed. This guarantee constitutes an absolute, unconditional, present and continuing guarantee of payment, and not of collectibility, and Sun waives any and all rights to require that Kodak Parties or any of their respective Affiliates, successors or permitted assigns under this Agreement or the Ancillary Agreements resort to or make demand on SCC or any of Sun's other Affiliates under this Agreement or the Ancillary Agreements in respect thereof. Sun shall pay all reasonable costs and expenses (including reasonable attorneys' fees) that may be incurred by Kodak Parties, or any of their respective Affiliates, successors or permitted assigns under this Agreement and the Ancillary Agreements, in successfully enforcing this guarantee, by suit or otherwise.

Section 2.7. Acceleration of Payments under KPG Note and Kodak ForCo Note in Certain Circumstances. In the event that Kodak Parties or their Affiliates, after the Closing Date and prior to the date that is 18 months after the Closing Date, consummate a Sale Transaction with a Person or Persons who are not Affiliates of Kodak Parties, then, at the election of Sun Parties, the aggregate amount of all payments to be made to Sun Parties pursuant to the KPG Note and the Kodak ForCo Note on or after the date on which the Sale Transaction is consummated shall become immediately due and payable to Sun Parties upon the consummation of such Sale Transaction.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF SUN PARTIES

As of the date hereof and as of the Closing Date, Sun Parties jointly and severally represent and warrant to Kodak Parties as to the matters below, except with respect to any representations and warranties that are expressly made as of a specific date, which Sun Parties jointly and severally represent and warrant only as of such date.

Section 3.1. Organization and Qualification. Each Sun Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements has been duly organized, and is validly existing and in good standing under the laws of the jurisdiction of its respective organization, and has all requisite corporate or similar power and authority to own and operate its properties and assets and to carry on its business as is now being conducted, and each Sun Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements is duly qualified to do business and is in good standing in each jurisdiction where either the ownership or operation of its properties and assets or the conduct of its business requires such qualification, except for failures to be so duly organized, validly existing, qualified or in good standing that, in the aggregate, would not reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by this Agreement. Sun Parties have heretofore delivered to Kodak Parties true and complete copies of the certificate of incorporation and by-laws (or similar organizational documents), as in effect as of the date hereof, of each Sun Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements.

Section 3.2. LLC Interests and Shares; No Violation.

(a) SCC owns and will own immediately prior to the transaction referred to in Section 2.1(b), beneficially and of record, the LLC Interests free and clear of all Encumbrances. To the Knowledge of SCC, no Person other than SCC and Kodak owns any limited liability company interest in KPG LLC. To the Knowledge of SCC, there are no preemptive or other outstanding rights, options, warrants, conversion rights or agreements or commitments to issue or sell any limited liability company interest in KPG LLC or any securities or obligations convertible into or exchangeable for, or giving any Person a right to subscribe for or acquire, any limited liability company interest in KPG LLC, and no securities or obligations evidencing such rights are outstanding.

(b) Sun owns and will own immediately prior to the transaction referred to in Section 2.2(a)(ii)(D), beneficially and of record, three common shares, no par value, of Barbados Co. (the "Shares") free and clear of all Encumbrances. To the Knowledge of Sun, no Person other than Sun and Kodak SPV owns any capital stock or other equity interest of Barbados Co. To the Knowledge of Sun, there are no preemptive or other outstanding rights, options, warrants, conversion rights or agreements or commitments to issue or sell any shares of capital stock or other equity interest of Barbados Co. or any securities or obligations convertible into or exchangeable for, or giving any Person a right to subscribe for or acquire, any shares of capital stock or other equity interest of Barbados Co., and no securities or obligations evidencing such rights are outstanding.

(c) To the Knowledge of Sun Parties, the LLC Interests and the Shares are duly authorized, validly issued, fully paid and non-assessable.

(d) SCC is in compliance with and has not breached or violated any of the provisions of the LLC Agreement. Sun is in compliance with and has not breached or violated any of the provisions of the Unanimous Shareholder Agreement.

Section 3.3. Corporate Authorization. Each Sun Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements has all requisite corporate or similar power and authority to execute and deliver, as applicable, this Agreement, the agreements or other documents to be executed or delivered pursuant to Article II by such Person and the Ancillary Agreements, at or prior to the Closing, and to perform its obligations hereunder and thereunder. The execution, delivery and performance by Sun Parties of this Agreement have been, and the execution, delivery and performance by each Sun Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements, as applicable, at or prior to the Closing, will have been duly and validly authorized, and no additional corporate or shareholder authorization or consent is or will be, as applicable, required in connection with the execution, delivery and performance by any Sun Party or any of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements, as applicable, of this Agreement, the agreements or other documents to be executed or delivered pursuant to Article II or the Ancillary Agreements, as applicable, at or prior to the Closing.

Section 3.4. Barbados Residency. To the Knowledge of Sun Parties, Barbados Co. is a resident of Barbados under Barbadian and Dutch tax Laws.

Section 3.5. Consents and Approvals. Except (a) as required by U.S. Antitrust Laws, EU Competition Laws and Other Competition Laws and (b) as may be required by any works council or similar entity or organization relating to employee matters, no Governmental Authorization or Non-Governmental Authorization is required to be obtained by any Sun Party or KPG LLC or Barbados Co. or any of their respective Affiliates from, and no notice or filing is required to be given by any Sun Party or KPG LLC or Barbados Co. or any of their respective Affiliates to, or made by any Sun Party or KPG LLC or Barbados Co. or any of their respective Affiliates with, any Governmental Entity or other Person in connection with the execution, delivery and performance by any Sun Party or KPG LLC or Barbados Co. or any of their respective Affiliates of (x) this Agreement and the agreements or other documents to be executed or delivered pursuant to Article II by any Sun Party or KPG LLC or Barbados Co. or any of their Affiliates, and (y) solely with respect to Sun Parties and their Affiliates, each of the Ancillary Agreements to which it is a party.

Section 3.6. Non-Contravention. The (x) execution, delivery and performance by Sun Parties, KPG LLC, Barbados Co. and any of their respective Affiliates, as applicable, of this Agreement and the agreements or other documents to be executed or delivered pursuant to Article II by Sun Parties, KPG LLC, Barbados Co. or their respective Affiliates, and the consummation by Sun Parties, KPG LLC, Barbados Co. and their respective Affiliates of the transactions contemplated hereby and thereby, and (y) execution, delivery and performance by Sun Parties and any of their Affiliates, as applicable, of each of the Ancillary Agreements, and the consummation by Sun Parties and their Affiliates of the transactions contemplated thereby, in each case, do not and will not (i) violate any provision of the charter, by-laws or other organizational documents of each Sun Party or any of its Affiliates which is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements, (ii) result in the creation or imposition of any Encumbrance on the LLC Interests or the Shares or any other equity interests or any assets of KPG LLC, Barbados Co. or their Affiliates, or (iii) assuming consents, approvals, waivers, notices, authorizations or filings set forth in Section 3.5 and 4.5 are granted or made, as the case may be, violate, or result in a breach of, or constitute a default under, or give any Governmental Entity or Person the right to challenge any of the transactions contemplated by this Agreement or the Ancillary Agreements, or to exercise any remedy or obtain any relief under, any Law of any Governmental Entity to which any Sun Party, KPG LLC, Barbados Co. or any of their respective Affiliates is subject, including any Governmental Authorization, other than, in the case of clause (iii), any violation, breach or default that would not, in the aggregate, prevent or materially delay the ability of Sun Parties, KPG LLC, Barbados Co. or their respective Affiliates to perform their obligations hereunder or the ability of those Affiliates of Sun Parties which are parties to any of the Ancillary Agreements to perform their respective obligations under the Ancillary Agreements.

Section 3.7. Binding Effect. Each of this Agreement and the agreements or other documents to be executed or delivered pursuant to Article II by Sun Parties, KPG LLC, Barbados Co. or their respective Affiliates constitutes or will constitute a valid and legally binding obligation of each Sun Party and KPG LLC and Barbados Co. and each of their respective Affiliates which is a party thereto enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles. Each of the Ancillary Agreements, when executed and delivered by the parties thereto, will constitute a valid and legally binding obligation of each Sun Party or any of its Affiliates which is a party thereto, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

Section 3.8. Intercompany Agreements; Assets of Sun Parties. Except for the Ancillary Agreements, the Contracts listed on Schedule 3.7(a) (the "Intercompany Agreements") constitute all the Contracts between or among any Sun Party or any Affiliate of a Sun Party, on the one hand, and KPG LLC or Barbados Co. or any of their Affiliates or Kodak Parties or any of their Affiliates, on the other hand, which relate to the Business. Except pursuant to the terms of the Intercompany Agreements, and as set forth on Schedule 3.7(b), no properties, assets, rights or employees of Sun Parties or any of their Affiliates are used in or reasonably necessary for the operation of the Business as conducted as of the date of this Agreement. Each employee of Sun Parties or their Affiliates that performs or has performed work for KPG LLC, Barbados Co. or their Affiliates has entered into a valid and binding agreement providing that all right, title and interest in and to all Intellectual Property created or developed, in whole or in part, by him or her in the course of or in connection with such work (the "Sun Parties' Employees Intellectual Property") has vested in, has been duly assigned to, or otherwise is owned exclusively by Sun Parties or their Affiliates or by KPG LLC, Barbados Co. or their Affiliates. Except with respect to the Sun Chemical 401(k) Pension Benefit Plan, no employees of KPG LLC or Barbados Co. or any of their Affiliates are currently contributing to or accruing benefits under any benefit and compensation plans, contracts, policies or arrangements, including "employee benefit plans" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, or deferred compensation, stock option, stock purchase, stock appreciation rights, stock based, incentive and bonus plans ("Benefit Plans") that are maintained by or were established by Sun Parties or their Affiliates or in which employees of Sun Parties or their Affiliates participate. No employees of KPG LLC, Barbados Co. or their Affiliates are contributing to, or having money contributed to on their behalf, the Sun Chemical 401(k) Pension Benefit Plan. No employees or former employees of Sun Parties or any of their Affiliates (other than current or former employees of KPG LLC or Barbados Co. or any of their Affiliates) are members of or participants or beneficiaries under any Benefit Plan maintained by KPG LLC or Barbados Co. or any of their Affiliates. Since September 30, 2004, Sun Parties and their Affiliates have not hired any person who had previously been an employee of KPG LLC or Barbados Co. or any of their Affiliates.

Section 3.9. No Unauthorized, Out of the Ordinary Course of Business or Non-Arm's Length Transactions. Since the respective dates of formation of KPG LLC, Barbados Co. and their Affiliates, there have been no unauthorized transactions, transactions out of the ordinary course of business or transactions on other than arm's length terms between or among any Sun Party or any Affiliate of a Sun Party, on the one hand, and KPG LLC, Barbados Co., or any of their Affiliates, on the other hand.

Section 3.10. Tax Matters. None of Sun Parties or any of their Affiliates that are or were owners of the LLC Interests (and no other Affiliate of any Sun Party, whether or not required under the relevant Tax law to take into account any Tax items of KPG LLC on any of its Tax Returns) have taken any position in any Tax Return that is inconsistent with any Tax Return (including any information return) filed by or with respect to KPG LLC or any financial report delivered by or with respect to the LLC Interests (taking into account any book-tax differences reflected on Schedule M-1 to IRS Form 1065). There are no tax allocation agreements in effect between any of Sun Parties and their Affiliates, on the one hand, and any of KPG LLC, Barbados Co. and their Affiliates, on the other hand.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF KODAK PARTIES

As of the date hereof and as of the Closing Date, Kodak Parties jointly and severally represent and warrant to Sun Parties as to the matters below, except with respect to any representations and warranties that are expressly made as of a specific date, which Kodak Parties jointly and severally represent and warrant only as of such date.



Section 4.1. Organization and Qualification. Each Kodak Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements has been duly organized, and is validly existing and in good standing under the laws of the jurisdiction of its respective organization, and has all requisite corporate or similar power and authority to own and operate its properties and assets and to carry on its business as is now being conducted, and each Kodak Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements is duly qualified to do business and is in good standing in each jurisdiction where either the ownership or operation of its properties and assets or the conduct of its business requires such qualification, except for failures to be so duly organized, validly existing, qualified or in good standing that, in the aggregate, would not reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by this Agreement.

Section 4.2. No Violation. Kodak is in compliance with and has not breached or violated any of the provisions of the LLC Agreement. Kodak SPV is in compliance with and has not breached or violated any of the provisions of the Unanimous Shareholder Agreement.

Section 4.3. Corporate Authorization. Each Kodak Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements has all requisite corporate or similar power and authority to execute and deliver, as applicable, this Agreement, the agreements or other documents to be executed or delivered pursuant to Article II by such Person and the Ancillary Agreements, at or prior to the Closing, and to perform its obligations hereunder and thereunder. The execution, delivery and performance by Kodak Parties of this Agreement have been, and the execution, delivery and performance by each Kodak Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements, as applicable, at or prior to the Closing, will have been duly and validly authorized, and no additional corporate or shareholder authorization or consent is or will be, as applicable, required in connection with the execution, delivery and performance by any Kodak Party or any of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements, as applicable, of this Agreement, the agreements or other documents to be executed or delivered pursuant to Article II or the Ancillary Agreements, as applicable, at or prior to the Closing.

Section 4.4. Barbados Residency. To the knowledge of Kodak Parties, Barbados Co. is a resident of Barbados under Barbadian and Dutch tax Laws.

Section 4.5. Consents and Approvals. Except (a) as required by U.S. Antitrust Laws, EU Competition Laws and Other Competition Laws and (b) as may be required by any works council or similar entity or organization relating to employee matters, no Governmental Authorization or Non-Governmental Authorization is required to be obtained by any Kodak Party or any of its Affiliates from, and no notice or filing is required to be given by any Kodak Party or any of its Affiliates to, or made by any Kodak Party or any of its Affiliates with, any Governmental Entity or other Person in connection with the execution, delivery and performance by any Kodak Party or any of its Affiliates of this Agreement, the agreements or other documents to be executed or delivered pursuant to Article II by any Kodak Party or any of their Affiliates and the Ancillary Agreements, except where the failure to do so would not be reasonably expected to prevent or materially delay the consummation of the transactions contemplated by this Agreement.

Section 4.6. Non-Contravention. The execution, delivery and performance by Kodak Parties and any of their Affiliates, as applicable, of this Agreement, the agreements or other documents to be executed or delivered pursuant to Article II by Kodak Parties or their Affiliates and the Ancillary Agreements, and the consummation by Kodak Parties and their Affiliates of the transactions contemplated hereby and thereby, do not and will not (i) violate any provision of the charter, by-laws or other organizational documents of each Kodak Party or any of its Affiliates which is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements, or (ii) assuming consents, approvals, waivers, notices, authorizations or filings set forth in Section 3.5 and 4.5 are granted or made, as the case may be, violate, or result in a breach of, or constitute a default under, or give any Governmental Entity or Person the right to challenge any of the transactions contemplated by this Agreement or the Ancillary Agreements, or to exercise any remedy or obtain any

relief under, any Law of any Governmental Entity to which any Kodak Party or any of its Affiliates is subject, including any Governmental Authorization, other than, in the case of clause (ii), any violation, breach or default that would not, in the aggregate, prevent or materially delay the ability of Kodak Parties or their Affiliates to perform their obligations hereunder or the ability of those Affiliates of Kodak Parties which are parties to any of the Ancillary Agreements to perform their respective obligations under the Ancillary Agreements.

Section 4.7. Binding Effect. Each of this Agreement and the agreements or other documents to be executed or delivered pursuant to Article II by Kodak Parties or their Affiliates constitutes or will constitute a valid and legally binding obligation of each Kodak Party and each of its Affiliates which is a party thereto enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles. Each of the Ancillary Agreements, when executed and delivered by the parties thereto, will constitute a valid and legally binding obligation of each Kodak Party or any of its Affiliates which is a party thereto, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

## ARTICLE V

### COVENANTS

#### Section 5.1. Access.

(a) Prior to the Closing, Sun Parties shall, and shall cause their Affiliates to, and Kodak Parties and Sun Parties shall jointly cause KPG LLC and Barbados Co. and their Affiliates to, (i) provide Kodak Parties, any of their designated Affiliates and their and their Affiliates' Representatives with reasonable access, upon reasonable prior notice and during normal business hours, to KPG LLC's and Barbados Co.'s and their Affiliates' offices, properties, Books and Records and employees, subject to any applicable Laws, (ii) promptly furnish, or cause to be furnished, to Kodak Parties and their Representatives any financial and operating data and other information that is available with respect to the Business as Kodak Parties or their Representatives shall from time to time reasonably request and (iii) cooperate, and instruct all employees and Representatives of KPG LLC and Barbados Co. and their Affiliates to cooperate, with Kodak Parties and their Representatives in their reasonable investigation of the Business.

(b) The access rights described in Section 5.1(a) shall include access to information reasonably necessary to facilitate post-Closing compliance with the certification requirements under Section 13(a) of the Exchange Act (the "Sarbanes Oxley Certification Requirements"). To the extent reasonably related to Kodak Parties' post-Closing compliance with the Sarbanes Oxley Certification Requirements, Kodak Parties and Sun Parties shall jointly cause KPG LLC, Barbados Co. and their Affiliates to use commercially reasonable efforts to (i) audit, and permit Kodak Parties and their Representatives to audit, the books and records of third party service providers, through the enforcement of existing contractual rights under the relevant service agreements or by seeking to obtain additional rights and consents to perform such audits, and (ii) obtain reports with respect to third party service providers, in each case prepared by a nationally recognized independent accounting and audit firm which is reasonably satisfactory to Kodak Parties, pursuant to the Statement on Auditing Standards No. 70 Type II as adopted by the American Institute of Certified Public Accountants, through the enforcement of existing contractual rights under the relevant service agreements or by otherwise requesting or negotiating rights to obtain such reports.

(c) Kodak Parties and their Affiliates and Sun Parties and their Affiliates, respectively, shall retain all Books and Records in existence on the Closing Date that may reasonably relate to the other parties' rights or obligations under this Agreement for a period of seven (7) years. Kodak Parties and their Affiliates shall notify Sun Parties prior to the destruction of any Books and Records in existence on the Closing Date that constitute environmental records or product or formulation records and that are reasonably related to ongoing liabilities of Sun Parties, and shall give Sun Parties a reasonable opportunity to collect and remove such Books and Records. Following the Closing, Kodak Parties and their Affiliates and Sun Parties and their Affiliates shall provide each other and their respective Representatives with reasonable access, upon reasonable prior notice and during normal

business hours, to the Books and Records and other data and documentation relating to the Business and make personnel available in their review thereof subject to reasonable rules and regulations of Kodak Parties or Sun Parties, as the case may be, including any antitrust or competition Law, to the extent such access is reasonably necessary for Sun Parties or Kodak Parties to comply with the terms of this Agreement or any applicable Law in respect of the Business.

(d) Without limiting the generality of Section 5.1(a), prior to the Closing, Sun Parties and Kodak Parties shall jointly cause KPG LLC and Barbados Co. and their Affiliates to permit Kodak Parties and their Representatives to discuss and negotiate with officers and senior management of KPG LLC, Barbados Co. and their Affiliates the employment arrangements of such officers and senior management, with a view to any new employment arrangements or amendments to existing employment arrangements becoming effective as of the Closing; provided, that Kodak Parties shall be solely responsible for all obligations arising out of or relating to such discussions and negotiations and Kodak Parties shall indemnify Sun Parties and their Affiliates for all costs imposed on, sustained or incurred or suffered by or asserted against any of Sun Parties or their Affiliates with respect thereto.

Section 5.2. Conduct of Business; No Discontinuance.

(a) Sun Parties and Kodak Parties shall, between the date hereof and the Closing Date, jointly cause the members or directors on the respective Boards of KPG LLC and Barbados Co. to:

- (i) except for the performance of the Redemption Transactions, cause KPG LLC, Barbados Co. and their Affiliates to conduct their business in the ordinary course, consistent with past practice;
- (ii) permit the officers and senior managers of KPG LLC, Barbados Co. and their Affiliates to manage the Business in a manner and with a scope of discretion and authority consistent with past practice;
- (iii) cause KPG LLC, Barbados Co. and their Affiliates to use their reasonable best efforts to preserve intact the Business, to keep available the services of the current officers and employees of KPG LLC, Barbados Co. and their Affiliates, and to preserve the current relationships of KPG LLC, Barbados Co. and their Affiliates with customers, suppliers, employees and other Persons with which they have significant business relations; and
- (iv) use their reasonable best efforts to procure that Barbados Co. continue to qualify as a resident of Barbados under Barbadian and Dutch tax Laws (including under the effective place of management test) and cause Barbados Co. to take all commercially reasonable efforts to continue to be a resident of Barbados under Barbadian and Dutch tax Laws (including under the effective place of management test).

(b) Each Kodak Party and Sun Party agrees that if the arbitration provisions of Section 3.9 of the LLC Agreement or Section 3.14 of the Unanimous Shareholder Agreement become applicable as a result of any matter brought before the applicable Board by a member or director, as applicable, designated by it then, notwithstanding the provisions of the LLC Agreement and the Unanimous Shareholder Agreement, it shall not submit such matter to an arbitrator for resolution under Section 3.9 of the LLC Agreement or Section 3.14 of the Unanimous Shareholder Agreement, as applicable; provided, however, that on the date of termination of this Agreement in accordance with its terms, (i) it may submit such matter to arbitration pursuant to Section 3.9 of the LLC Agreement or Section 3.14 of the Unanimous Shareholder Agreement, as applicable, within two weeks after such date and the other member or shareholder, as applicable, shall not object in any manner to such submission, and (ii) except as set forth in this proviso, the provisions of this Section 5.2(b) shall have no further force and effect.

(c) Each of Kodak Parties and Sun Parties shall not, and shall cause its respective Affiliates not to, take any action that could reasonably be expected to cause or permit the occurrence of an "Event of Discontinuance," as such term is defined in the LLC Agreement and the Unanimous Shareholder Agreement, with respect to it.

Section 5.3. Reasonable Best Efforts; Regulatory Approval.

(a) Subject to the terms and conditions hereof, Sun Parties and Kodak Parties shall, and shall cause their respective Affiliates and shall jointly cause KPG LLC and Barbados Co. and their Affiliates to, use reasonable best efforts to take all necessary, proper or advisable actions to consummate and make effective the transactions contemplated in this Agreement and in the Ancillary Agreements, including fulfilling the conditions precedent to the other party's obligations hereunder, securing as promptly as practicable all Governmental Authorizations and Non-Governmental Authorizations, and, as promptly as practicable (in the case of initial filings under U.S. Antitrust Laws, EU Competition Laws and Other Competition Laws, not later than 14 Business Days after the date hereof), preparing and making any Competition Filings (and promptly filing any supplemental or additional information requested as soon as practicable after receipt of request thereof), in each case, as are required in connection with the transactions contemplated by this Agreement and the Ancillary Agreements and agree to use such foregoing efforts to effect the Closing on such date as is provided in Section 2.3. The parties shall use their reasonable best efforts (but shall not be obligated to engage in litigation) to resolve any objections as may be asserted with respect to the Competition Filings; provided, however, that in no event shall Kodak Parties or their Affiliates or KPG LLC or Barbados Co. or their Affiliates be obligated, in order to secure the consents, approvals or absence of objections under the Competition Filings, to agree to divest, license, hold separate or otherwise restrict (i) the use, operation or ownership of any business or assets of Kodak Parties or any of their Affiliates or (ii) the use, operation or ownership of any business or assets of KPG LLC, Barbados Co. or any of their Affiliates or of the Business.

(b) Sun Parties and Kodak Parties shall, and shall cause their respective Affiliates and shall jointly cause KPG LLC and Barbados Co. and their Affiliates to, use reasonable best efforts to cooperate with each other and shall furnish to the other party or parties all information reasonably necessary or desirable and reasonable assistance as any other party or parties may request in connection with making any Competition Filing that is required for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, and in connection with resolving any investigation or other inquiry by any Governmental Entity under any U.S. Antitrust Laws, EU Competition Laws and Other Competition Laws that is required for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements. Each of the parties shall promptly inform the other parties of any communication with, and any proposed understanding, undertaking or agreement with, any Governmental Entity regarding any such Competition Filing or any such investigation or other inquiry. None of the parties shall participate in any meeting with any Governmental Entity in respect of any such Competition Filing, investigation or other inquiry without giving the other parties prior notice of the meeting. The parties will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party in connection with all meetings, actions and proceedings under or relating to U.S. Antitrust Laws, EU Competition Laws and Other Competition Laws that are required for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements (including, with respect to the party or parties making a particular filing, by providing copies of all such documents to the non-filing party or parties and their advisors prior to filing and, if requested, giving due consideration to all reasonable additions, deletions or changes suggested in connection therewith).

Section 5.4. No Breaches. Each party hereto shall, in the event of, or promptly after the occurrence of, or promptly after obtaining knowledge of the occurrence of or the impending or threatened occurrence of, any fact or event which would cause or constitute a breach as of the Closing Date of any of the representations and warranties in this Agreement made by Sun Parties or Kodak Parties, as applicable, give detailed notice thereof to the other parties hereto; and such notifying party shall use its reasonable best efforts to prevent or promptly to remedy such breach. No disclosure by any party pursuant to this Section 5.4 shall be deemed to cure any misrepresentation or breach of warranty.

Section 5.5. Tax Matters.

(a) Taxes for Which Sun Parties are Liable. Notwithstanding Section 5.5(d), Sun Parties shall be jointly and severally liable for and indemnify Kodak Parties Indemnified Parties for all Taxes (including all Transfer Taxes and any obligation to contribute to the payment of a Tax determined on an affiliated, consolidated, combined, or unitary basis with respect to a group of persons) imposed upon Kodak, Barbados Co. or any of their Subsidiaries or Affiliates as a result of or in connection with the Redemption Transactions, except to the extent that such Tax directly results from any action or inaction of any of Kodak Parties (including an action or inaction of any of Kodak Parties that causes Barbados Co. to be treated as a “controlled foreign corporation” within the meaning of Section 957(a) of the Code for more than 29 days) subsequent to the Closing Date; provided, however, that Sun Parties shall not be liable under this Section 5.5(a) for an amount of Taxes that is attributable to a transaction described in Section 2.2(a)(i)(B).

(b) Taxes for Which Kodak Parties are Liable. Kodak Parties shall be jointly and severally liable for and indemnify Sun Parties Indemnified Parties for (i) except as provided in Section 5.5(d), all Taxes (including any obligation to contribute to the payment of a Tax determined on an affiliated, consolidated, combined, or unitary basis with respect to a group of persons) imposed on or payable by KPG LLC, by Barbados Co. or by Subsidiaries of Barbados Co. or (ii) any withholding obligation of a Sun Party or any Affiliate of a Sun Party resulting from the failure of the Kodak ForCo Note to qualify as a “registered obligation” within the meaning of Section 881(c) of the Code.

(c) Treatment of KPG LLC. The parties agree that the transfer of the LLC Interests described in Section 2.1 will be treated by the parties to this Agreement in accordance with Revenue Ruling 99-6, 1999-1 CB 432 (Jan 15, 1999) for United States federal income tax purposes and result in a termination of KPG LLC as a partnership and a closing of its taxable year for U.S. Federal, state and local tax purposes pursuant to Section 708(b)(1) of the Code and the corresponding provisions of any relevant state and local tax laws. In accordance with Sections 5.2 and 5.3(k) of the LLC Agreement and the applicable Tax Laws, the parties agree that there will be an interim closing of the books of KPG LLC as of the close of the Closing Date for all Tax purposes.

(d) Transfer Taxes. Subject to Section 5.5(a), all excise, sales, use, transfer (including real property transfer or gains), stamp, documentary, filing, recordation and other similar taxes and fees (together with any interest, additions or penalties relating thereto) (collectively, “Transfer Taxes”) that may be imposed or assessed by any Governmental Entity anywhere in the world as a result of the sales, transfers, assignments, conveyances and purchases of the LLC Interests and the BV-1 Shares pursuant to this Agreement or any transaction pursuant to any Ancillary Agreement shall be borne equally by Kodak Parties and Sun Parties. Kodak Parties and Sun Parties shall cooperate in the timely completion and filing of all Tax Returns relating to Transfer Taxes and payment of all Transfer Taxes. Such Tax Returns, to the extent appropriate, shall be prepared consistent with Sections 2.1 and 2.2 and any Exhibits referenced therein. Each party shall use reasonable efforts to obtain any available exemption from any Transfer Taxes and to cooperate with the other party in providing any information or documentation that may be necessary to obtain such exemptions. Prior to and after the Closing, the parties shall cooperate in good faith to agree on what Tax Return filing and Transfer Tax payment obligations may be imposed under applicable Law given the terms of the transactions set forth in Article II, including the payments for the LLC Interests and the BV-1 Shares being made in multiple installments over time, and on a procedure for how such obligations will be complied with. Each Tax Return relating to any Transfer Taxes shall be prepared by the party liable for the payment of such Taxes pursuant to this Agreement unless the parties agree otherwise and all Tax Returns relating to Transfer Taxes shall be subject to the review and consent of the other party (which shall not be unreasonably withheld) prior to being filed.

(e) Refunds, Reimbursements and Increases of Taxes. Any refunds, reimbursements or increase of Taxes (arising from an amended Tax Return, a Tax audit or a Tax controversy) shall be for the account of the party to which liability for such Taxes is assigned under this Section 5.5.

(f) Tax Returns (Other than Transfer Tax Returns). All Tax Returns (including any amended Tax Returns) due (or filed) by or with respect to KPG LLC, Barbados Co. or any Subsidiary of either of them (i) prior to the Closing Date, shall be prepared and filed in accordance with current practice, and (ii) on or after the Closing Date, shall be prepared and filed as Kodak Parties shall direct.

(g) Contest Provisions. Each of Kodak Parties and Sun Parties (and any of their Affiliates) shall promptly notify the other in writing upon receipt of notice of any pending or threatened audits or assessments with respect to Taxes for which such other party (or such other party's Affiliates) may be liable hereunder or which are reasonably expected to have an effect on the Tax liability of such other party or any of its Affiliates for any period. Kodak Parties shall have the sole right to control the defense on behalf of KPG LLC, Barbados Co. and all of their respective Subsidiaries, and, in accordance with the LLC Agreement, to act as the tax matters partner with respect to KPG LLC, and to employ counsel and other advisors of its choice. Sun Parties shall be entitled to participate, at their expense, in the defense of such audit or proceeding if the outcome could affect the liability of Sun Parties or any Affiliate of Sun Parties under this Agreement or applicable Tax Law, and Kodak Parties shall consider in good faith any suggestions made or points raised by Sun Parties. Neither Kodak Parties nor Sun Parties nor any of their respective Affiliates may agree to settle any claim for Taxes for which the other party may be liable or which may affect the other party's or any of their respective Affiliates' liability for any Tax (including any liability attributable to such party's obligations under this Section 5.5) without the prior written consent of such other party, which shall not be unreasonably withheld.

(h) Determination and Allocation of Consideration. The parties to this Agreement agree to allocate the total consideration transferred by Kodak Parties and Barbados Co. to Sun Parties pursuant to this Agreement (the "Consideration") in accordance with Sections 2.1 and 2.2 (including any Exhibits referenced therein) and agree that such allocation is made according to the relative fair market value of KPG LLC and Barbados Co. The parties shall file all applicable Tax Returns consistent with this allocation of the Consideration. This allocation of the Consideration shall be binding on Sun Parties and Kodak Parties for all U.S. Tax purposes. The parties shall further cooperate in good faith to agree on the allocation of the Consideration for all other relevant Tax purposes. In the event that any allocation made pursuant to this Section 5.5(h) is disputed by any taxing authority, the party receiving notice of the dispute shall promptly notify the other party hereto, and both parties (and their Affiliates) agree to use their reasonable best efforts to defend such allocation in any audit or similar proceeding.

(i) Certain Distributions. Neither Sun Parties nor any Affiliate of Sun Parties shall be entitled to any distribution from KPG LLC or Barbados Co. made after the Closing, including all or any portion of any distribution pursuant to Section 5.6 of the LLC Agreement.

(j) Withholding Taxes. All payments made by Kodak Parties, Barbados Co. or any of their Affiliates to Sun Parties pursuant to this Agreement will be made net of any applicable withholding Taxes that Kodak Parties reasonably believe are required to be withheld therefrom, and such withheld Taxes will be timely paid to the relevant Governmental Entity with evidence of such payment provided to Sun Parties; except that Sun Parties shall bear no liability for any incremental withholding Taxes attributable to an actual or deemed change in the residency of the obligor on the Kodak ForCo Note.

(k) Assistance and Cooperation. After the Closing Date:

(i) The parties shall assist (and cause their respective Affiliates to assist) the other parties in preparing any Tax Returns with respect to KPG LLC, Barbados Co. and their respective Subsidiaries;

(ii) The parties shall cooperate fully in preparing for and defending against any audits of, or disputes with taxing authorities regarding, any Tax Returns and payments in respect thereof, including making available all relevant documents and information reasonably requested;

(iii) Each party shall provide timely notice to the other in writing of any pending or proposed audits or assessments with respect to Taxes for which such other party or any of its Affiliates may have a Tax liability under this Section 5.5, or the outcome of which is reasonably expected to have an effect on the Tax liability of such other party or any of its Affiliates under this Section 5.5, and shall furnish the other with copies of all relevant correspondence received from any taxing authority in connection with any such audit or assessment or any information request with respect to any such Taxes; and

(iv) The party requesting assistance or cooperation shall bear the other party's out-of-pocket expenses in complying with such request to the extent that those expenses are attributable to fees and other costs of unaffiliated third party service providers.

Section 5.6. Further Assurances; Taxes. (a) From time to time after the Closing Date, Sun Parties shall, and shall cause their Affiliates to, and Kodak Parties shall, and shall cause their Affiliates to, promptly take such actions and execute, acknowledge and deliver any other assurances or documents reasonably requested by any other party hereto and necessary for such party to obtain the benefits contemplated hereby.

(b) The parties to this Agreement acknowledge and agree to use reasonable best efforts to preserve the residency of Barbados Co. in Barbados and to cause Barbados Co. to take all commercially reasonable efforts to preserve such residency as provided in Section 5.2(a)(iv). Kodak Parties further agree to use reasonable best efforts to preserve such residency for all periods subsequent to the Closing Date and through the earlier of (i) the liquidation of Barbados Co. or (ii) December 31, 2005.

(c) Each of SCC, Sun, Kodak and Kodak SPV will satisfy in a timely manner such party's respective obligations for Taxes imposed on such party and attributable to such party's ownership of the LLC Interests or Shares.

Section 5.7. Non-Competition. Sun Parties agree that for a period of three years following the Closing Date they shall not, and they shall cause each of their Affiliates not to, directly or indirectly, in any manner whatsoever, including, either individually or in association with any other Person, or as principal, licensor, agent, representative, equity holder, distributor, manufacturer, co-venturer, director or partner, or by agreeing not to assert against a third party any of Sun Parties' or any of their Affiliates' Intellectual Property rights, engage or participate in the Lithographic Plate Business or the Proofing Business (collectively or individually, a "Competing Business"); provided that Sun Parties and their Affiliates shall be entitled to (i) be a beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of not more than 5% of the total debt and equity interests, in the aggregate, in a Competing Business so long as no directorship or other governance rights are held by Sun Parties or any of their Affiliates in conjunction with the ownership of such interest; (ii) sell products and provide services that they currently sell or provide, or that result from development activities that they are currently undertaking, provided that in the event that Sun or any of its Affiliates develops a commercial product or products in the Lithographic Plate Business during the non-competition period provided for in this Section 5.7, Sun or its Affiliate, as the case may be, shall grant to Kodak and its Affiliates an exclusive (including as to Sun and its Affiliates) distribution agreement for worldwide territory except Japan, where the Distribution Agreement dated April 1, 1999 as amended March 22, 2004 by and between Dainippon Ink and Chemicals, Inc. and Kodak Polychrome Graphics Japan Ltd. will be applied, with respect to such product or products on such terms as the parties shall reasonably agree, the exclusivity provisions of which agreement will expire at the same time as the non-competition period provided for in this Section 5.7; and (iii) engage in activities expressly contemplated by this Agreement and the Ancillary Agreements or any other agreement between Sun Parties and their Affiliates, on the one hand, and Kodak Parties and their Affiliates, on the other hand.

Section 5.8. Non-Solicitation and Non-Hire of Employees.

(a) From the date hereof until the date that is two years following the Closing Date, Sun Parties agree that they shall not, and they shall cause their Affiliates not to, directly or indirectly, in any manner whatsoever, including either individually or in association with any other Person, or as principal, agent, director or partner of another Person, (i) solicit, induce, recruit, encourage or assist, or agree or attempt to do any of the foregoing, any person who was an officer, director or employee of KPG LLC, Barbados Co. or any of their Subsidiaries as of the date hereof or as of the Closing to terminate or not renew any relationship of such person with Kodak Parties, KPG LLC, Barbados Co. or any of their respective Affiliates, (ii) solicit, induce, recruit, encourage or assist, or agree or attempt to do any of the foregoing, any person who was an officer, director or employee of KPG LLC, Barbados Co. or any of their Subsidiaries as of the date hereof or as of the Closing to be employed by Sun Parties or their Affiliates, or (iii) employ or otherwise engage or retain as an employee, consultant or independent contractor or otherwise any person who was an officer, director or employee of KPG LLC, Barbados Co. or any of their Subsidiaries as of the date hereof or as of the Closing, except, in the case of each of clauses (i), (ii), and (iii) above, (A) with respect to any director of KPG LLC, Barbados Co. or any of their Subsidiaries who is employed by any Sun Party or any of its Affiliates as of the date hereof, and (B) otherwise with the prior written consent of Kodak Parties.

(b) Notwithstanding anything to the contrary in this Section 5.8, none of Sun Parties or their Affiliates will be precluded from (i) making non-targeted, general solicitations of employment by public advertisement or other public media or (ii) engaging in the activities prohibited by Section 5.8(a) above with respect to an employee who ceased to be an employee of Kodak Parties, KPG LLC, Barbados Co. or any of their respective Affiliates prior to such action other than as a result of voluntary termination or non-renewal of employment by the employee.

Section 5.9. Notices of Certain Events. Sun Parties shall promptly notify Kodak Parties, and Kodak Parties shall promptly notify Sun Parties, of:

(a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements; and

(b) any notice or other communication from any Governmental Entity in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements.

Section 5.10. Confidentiality. From and after the date hereof, Sun Parties, their Affiliates, and their respective Representatives will not, directly or indirectly, disclose, use or authorize, or license to use in a way that is detrimental in any material respect to Kodak Parties, any of their Affiliates or the Business, any trade secrets or other information of KPG LLC, Barbados Co. or their Affiliates which is confidential, proprietary or otherwise not publicly available, including any confidential data, know-how or information relating to the business practices, products, distributors, customers, prospects, suppliers, research and development, ideas, designs, discoveries, inventions, techniques, equipment, marketing, sales, methods, manuals, strategies or financial affairs of KPG LLC or Barbados Co. or their Affiliates, including any such materials that are stored on computer systems of Sun Parties or any of their Affiliates (collectively, the “Confidential Information”). In the event of a breach of the obligations hereunder by Sun Parties, their Affiliates or their respective Representatives, Sun Parties and Kodak Parties agree that, in addition to all other available remedies, Kodak Parties will be entitled to seek injunctive relief to enforce such obligations in any court of competent jurisdiction. Notwithstanding the foregoing, Confidential Information will not include such information which (A) at the time of disclosure is publicly available or after the time of disclosure becomes publicly available other than as a result of an unauthorized act or omission of any of Sun Parties, their Affiliates or their respective Representatives; (B) is disclosed by Sun Parties, their Affiliates or their respective Representatives under compulsion of Law; provided that Sun Parties provide Kodak Parties with notice and an opportunity to contest or limit such disclosure with the applicable entity requiring disclosure, to the extent reasonably practicable; or (C) is independently developed by Sun Parties or their Affiliates without access to Confidential Information.

Section 5.11. Intercompany Agreements.

(a) Sun Parties and Kodak Parties shall, and shall cause their respective Affiliates and shall jointly cause KPG LLC and Barbados Co. and their Affiliates to, terminate for all purposes, effective at and conditioned upon consummation of the Closing, each Intercompany Agreement (other than those Intercompany Agreements listed on Schedule 5.11(a) (the “Continuing Intercompany Agreements”)) and each and every term, provision, right and obligation contained therein, notwithstanding any post-termination or post-expiration survival provisions or any other provisions contained therein, which provisions as of the Closing shall be deemed amended to be of no effect and void for all purposes.

(b) Sun Parties shall, and shall cause their Affiliates to, waive any and all rights to terminate the Continuing Intercompany Agreements to the extent that such rights would otherwise arise as a result of the Closing or the consummation of the other transactions contemplated by this Agreement, and Sun Parties agree that the Continuing Intercompany Agreements shall continue in full force and effect, subject to Section 5.11(c),



notwithstanding the Closing or the consummation of the other transactions contemplated by this Agreement. Without limiting the generality of the foregoing, nothing contained in this Agreement shall be deemed to amend, modify or supersede any provision of the Distributorship Agreement, dated as of April 1, 1999, between DIC and Kodak Polychrome Graphics Japan Ltd. (“KPG-J”), as amended by Memorandum of Understanding among DIC and KPG-J and its subsidiaries and Kodak Polychrome Graphics Company Ltd. and its subsidiaries, dated as of March 22, 2004, listed on Schedules 3.7(a) and 5.11(a).

(c) Sun Parties and Kodak Parties agree that at the Closing, Sun Parties and Kodak Parties shall, and shall cause their respective Affiliates and shall jointly cause KPG LLC and Barbados Co. and their Affiliates to, modify, amend or restate the Continuing Intercompany Agreements listed on Schedule 5.11(c), to reflect the terms set forth on Schedule 5.11(c).

(d) Nothing contained in this Section 5.11 shall prohibit or excuse any Person from fulfilling its obligations in the ordinary course of business consistent with past practice under the Intercompany Agreements prior to termination of the applicable Intercompany Agreement.

(e) If at any time following the date hereof, Kodak Parties or Sun Parties determine that there exists a Contract that should have been included on Schedule 3.7(a) pursuant to terms of Section 3.7, then, at the option of Kodak Parties, such Contract shall, in whole or in part, either (i) be deemed to be a Continuing Intercompany Agreement and shall remain in full force and effect with such modifications or amendments thereto or restatements thereof as Kodak Parties shall reasonably require, or (ii) shall be terminated, and shall be deemed to have been terminated effective as of the Closing, pursuant to the terms of Section 5.11(a).

Section 5.12. Discussions Regarding DIC Agreements. After the date hereof, Representatives of Kodak Parties and their Affiliates and Representatives of KPG LLC, Barbados Co. and their Affiliates will meet with Representatives of Dainippon Ink and Chemical, Incorporated (“DIC”) to discuss in good faith potentially mutually beneficial amendments that may be made to the Contracts in effect on the date hereof between Barbados Co. and its Affiliates, on the one hand, and DIC and its Affiliates, on the other hand, relating to the business conducted by Barbados Co. and its Affiliates in Japan. Any such amendments shall be binding on the parties thereto only if and to the extent that definitive written Contracts setting forth the terms of such amendments are agreed and executed by the parties thereto in their respective sole discretion.

Section 5.13. Transfer of Assets Related to the Business.

(a) Subject to Section 5.13(b), if, at any time following the date hereof, Kodak Parties and Sun Parties, in their respective reasonable judgment, agree that any properties, assets or rights held by Sun Parties or any of their Affiliates, other than those that are subject to any of the Continuing Intercompany Agreements, are used primarily in or related primarily to the Business, Sun Parties and their Affiliates will take all actions reasonably necessary to cause such properties, assets or rights to be transferred at no cost to one of KPG LLC, Barbados Co. or one of their Affiliates or, following the Closing, Kodak Parties or one of their Affiliates, as directed by Kodak Parties.

(b) Without limiting the generality of Section 5.13(a), at and after the Closing, Sun Parties and their Affiliates shall execute or cause to be executed such Contracts and other documents and shall do all such other things as shall be reasonably requested by Kodak Parties to (i) cause all Intellectual Property that Sun Parties and Kodak Parties, in their respective reasonable judgment, agree is Sun Parties’ Employees Intellectual Property that is owned by Sun Parties or their Affiliates to be vested in, duly assigned to, or otherwise exclusively owned by Kodak Parties or their Affiliates, and (ii) use their reasonable best efforts to cause all Intellectual Property that Sun Parties and Kodak Parties, in their respective reasonable judgment, agree is Sun Parties’ Employees Intellectual Property that is owned by employees of Sun Parties or their Affiliates to be vested in, duly assigned to, or otherwise exclusively owned by Kodak Parties or their Affiliates.

Section 5.14. Employment Matters.

(a) Kodak Parties shall be solely responsible for, and shall indemnify Sun Parties and their Affiliates for, all costs of any payment (including severance, change in control payments, etc.) that becomes payable to any employee or former employee of KPG LLC, Barbados Co. or any of their Affiliates (i) as a result of the transactions contemplated by this Agreement (including any resignation pursuant to Section 2.5(c)) other than the transactions contemplated by the Redemption Transactions (A) by operation of applicable Law or (B) pursuant to any Contract to which such employee or former employee is a party, or (ii) as a result of any post-Closing transaction or action involving KPG LLC, Barbados Co. or any of their Affiliates or any employee thereof (including termination, constructive termination, change in position or status or change in business location).

(b) Sun Parties shall be solely responsible for, and shall indemnify Kodak Parties, KPG LLC, Barbados Co. and their respective Affiliates for, all costs of any payment (including severance, change in control payments, etc.) that becomes payable to any employee or former employee of KPG LLC, Barbados Co. or any of their Affiliates as a result of the transactions contemplated by the Redemption Transactions, unless such payment would have been payable as a result of the consummation of the transactions contemplated by this Agreement other than the Redemption Transactions, (i) by operation of applicable Law or (ii) pursuant to any Contract to which such employee or former employee is a party.

(c) Sun Parties shall retain and indemnify Kodak Parties for any Liabilities arising under or related to any Contract between Marco Querci and Sun Parties or their Affiliates and under any Benefit Plan provided to Mr. Querci by Sun Parties or their Affiliates. Kodak Parties shall retain and indemnify Sun Parties for any Liabilities arising under or related to any Contract between Mr. Querci and KPG LLC, Barbados Co. or their Affiliates and under any Benefit Plan provided to Mr. Querci by KPG LLC, Barbados Co. or their Affiliates.

Section 5.15. Transactions by Kodak Parties. (a) Sun Parties understand and acknowledge that Kodak Parties and their Affiliates, at any time prior to the Closing, may discuss, investigate, negotiate, enter into or consummate an asset purchase, stock purchase, tender offer, exchange offer, merger, joint venture, business combination, distribution or other commercial arrangement or other transaction with any Persons, including any such Person engaged in a business similar to or that competes with the Business (each such action, a "Kodak Party Transaction Activity"). Sun Parties agree that employees of KPG LLC, Barbados Co. and their Affiliates may assist Kodak Parties in the conduct of Kodak Party Transaction Activities, provided that such assistance shall not unduly interfere with the professional responsibilities of such employees. Sun Parties, on their own behalf and on behalf of all their Affiliates, hereby (i) consent to, permit and agree not to object to, obstruct, or otherwise delay or interfere with any and all Kodak Party Transaction Activities, and (ii) irrevocably waive any claim that any Kodak Party Transaction Activity constitutes a breach or violation of (A) this Agreement, the LLC Agreement, the Unanimous Shareholder Agreement or any other agreement among Kodak Parties or their Affiliates or KPG LLC, Barbados Co. or their Affiliates, on the one hand, and Sun Parties or their Affiliates, on the other hand, or (B) the Delaware Limited Liability Company Act or any similar statutes applicable to Barbados Co. or any of the Affiliates of KPG LLC or Barbados Co. or, in each case, any regulations or judicial decisions related to or interpreting such statutes.

(b) If (i) Kodak Parties consummate, prior to July 11, 2005, any asset purchase, stock purchase, tender offer, exchange offer, merger, joint venture, business combination or similar transaction of or involving a Person that was considered as an acquisition candidate at a meeting of the Board of Members of KPG LLC or the Board of Directors of Barbados Co. at any time from January 1, 2004 until December 20, 2004, (ii) Sun Parties provide written notice to Kodak Parties that Sun Parties believe that all of the conditions contained in Section 6.1 and Section 6.2 have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing) and that all of the conditions contained in Section 6.3 (other than those conditions that by their nature are to be satisfied at the Closing) have been satisfied or will be waived by Sun Parties, (iii) Kodak Parties assert that such conditions contained in Section 6.1 or Section 6.2 have not been satisfied and refuse to consummate the transactions contemplated by this Agreement, and (iv) an arbitrator mutually chosen by Kodak Parties and Sun Parties (the "Arbitrator") makes a determination (the "Arbitration Determination") that all of the conditions contained in Section 6.1 and Section 6.2 (other than those conditions that by their nature are to be satisfied at the Closing) were satisfied and that Kodak Parties breached their obligation to consummate the transactions contemplated by this Agreement, then at any time prior to the thirtieth (30th) day following the receipt of the Arbitration Determination Sun Parties may provide written notice to Kodak Parties that Sun Parties have elected to

cause a Sales Process (as defined below) to occur. For purposes hereof, "Sales Process" shall mean a process to sell the assets or equity interests of KPG LLC and Barbados Co. and their Affiliates as follows: (a) Sun Parties and Kodak Parties shall jointly engage an investment banking firm (or if no firm can be agreed upon, Sun Parties and Kodak Parties shall each choose an investment banking firm and the two firms shall jointly choose a third investment banking firm, which third firm will be engaged by Sun Parties and Kodak Parties), (b) the engaged investment banking firm shall identify and contact potential acquirors (including Sun Parties and Kodak Parties), distribute offering memoranda and other customary marketing material and information to such potential acquirors and conduct an auction process to determine the bidder willing to pay the highest price to acquire all of the assets or equity interests of KPG LLC, Barbados Co. and their Affiliates, and (c) Sun Parties and Kodak Parties shall, or shall cause KPG LLC, Barbados Co. and their respective Affiliates to, enter into and consummate a definitive agreement relating to such acquisition. In the event that Sun Parties elect to initiate a Sales Process and Kodak Parties comply with their obligations under the preceding sentence, Sun Parties hereby acknowledge that they shall be deemed to have waived and released any and all claims, causes of action, judgments and awards, whether under this Agreement, at common law, in equity or otherwise, that Sun Parties or any of their Affiliates may have in connection with, arising out of or resulting from, the breach by Kodak Parties of this Agreement. As used herein, Arbitration Determination shall be accomplished as follows: (x) the Arbitrator shall be selected by the parties, (y) within thirty (30) days after its selection, the Arbitrator shall review the relevant facts and positions of each of Kodak Parties and Sun Parties, as presented in writing and (if requested by the Arbitrator) orally before the Arbitrator, and (z) the Arbitrator shall make the Arbitration Determination within ten (10) days after the completion of the presentation made pursuant to Clause (y). The Arbitration Determination shall have the sole purpose and effect of determining whether Sun Parties are entitled to cause a Sales Process to occur. Without limiting the generality of the preceding sentence, the Arbitration Determination shall have no force and effect, and no evidence of the Arbitration Determination may be introduced, in connection with any proceeding initiated by Sun Parties or Kodak Parties in accordance with Section 10.8, including any proceeding initiated by Sun Parties seeking monetary damages or specific performance in connection with any alleged breach of this Agreement by Kodak Parties.

Section 5.16. Columbus Facility. Sun Parties shall take and shall cause its Affiliates to take all such actions as are necessary, desirable or as shall be reasonably requested by Kodak Parties to carry out the intent of the resolutions and effect the transactions regarding KPG LLC's Columbus manufacturing facility outlined to and adopted by the Finance Committee of the Board of Directors of KPG LLC at its September 1, 2004 meeting, as ratified by the Board of Managers of KPG LLC at its September 24, 2004 meeting.

Section 5.17. Pension Plan.

(a) Sun Parties shall procure that each of Sun Chemical Osterode Druckfarben GmbH and Sun Chemical Lasfelde GmbH will, and Kodak Parties shall procure that, subject to subparagraph (b) below, KPG Germany will, (i) continue as a participating carrier of the Pensionskasse Polychrome und Sun Chemical V.V.a.G. (the "German Pension Fund") and (ii) make its regular contributions to the German Pension Fund in accordance with past practice as required by valuations of the current actuary, Dr. Richard Herrmann of Heubeck AG or a designated actuary provided by Heubeck AG in the event Dr. Herrmann is unavailable or cannot provide such information or, in the event that Heubeck AG is unavailable or cannot provide such information, another independent actuary (such valuations to reflect all current and future legal and statutory requirements) in respect of its respective officers, directors, employees, retirees and other beneficiaries.

The parties shall procure that the assets of the German Pension Fund shall be allocated and attributed to each of KPG Germany, Sun Chemical Osterode Druckfarben GmbH and Sun Chemical Lasfelde GmbH on an accounting basis in accordance with past practice and as determined by the valuation of independent actuaries in accordance with the preceding paragraph of this Section. The parties agree that the best estimate of the fair market value of the assets attributable to KPG Germany ("KPG Plan Assets") as of January 1, 2004 ("Asset Measurement Date") was no less than EUR 27,719,207 ("Starting Value") in accordance with an actuarial report under Statement of Financial Accounting Standards No. 87 prepared by Heubeck AG and dated February 10, 2004. Going forward, the fair market value of KPG Plan Assets shall be determined as follows as of any future Date D:

1. Starting Value, plus
2. cumulative contributions paid by KPG Germany to the German Pension Fund from Asset Measurement Date to Date D, plus (or less, as applicable)
3. an equitable share of the investment return (gain or loss) on the total assets that are attributable to the KPG Plan Assets (including the above contributions, in accordance with their timing) from Asset Measurement Date to Date D, less
4. benefit payments made to officers, directors, employees, retirees and other beneficiaries of KPG Germany (“KPG Beneficiaries”) from Asset Measurement Date to Date D, and less
5. an equitable share of any other costs of the German Pension Fund, such as administrative expenses and insurance costs, from Asset Measurement Date to Date D.

The fair market value of the assets attributable to Sun Chemical Osterode Druckfarben GmbH and Sun Chemical Lasfelde GmbH shall be determined in the same manner.

(b) In the event that either KPG Germany or Sun Chemical Osterode Druckfarben GmbH and Sun Chemical Lasfelde GmbH decide to exit from the German Pension Fund, the Kodak Parties or the Sun Parties, as applicable, will provide all reasonable assistance to help the exiting party expedite the process (including, without limitation, assistance with respect to obtaining any required Governmental Authorization or Non-Governmental Authorization), recognizing that any costs of exiting the German Pension Fund will be born by each party to the extent that those costs relate to the portion of the assets of the German Pension Fund attributable to that party. All KPG Beneficiaries and all Sun Chemical V.V. a. G. (Pensionkasse) beneficiaries shall then have a vested interest in such benefits as have been earned by them and accrued up until the exit date. Payment of benefits shall be made in accordance with the statutes of the German Pension Fund and the Kodak Parties and the Sun Parties shall take all reasonable steps to ensure that all assets of the German Pension Fund shall be used to pay their respective beneficiaries, and that any surplus assets shall be used to increase the benefits of each party’s beneficiaries in accordance with the respective share of the assets of the German Pension Fund attributable to each party as of the applicable exit date.

Section 5.18. Distribution Agreement. Between the date hereof and the Closing, the parties will negotiate in good faith and draft a distribution agreement containing the terms set forth on Schedule 5.18 (the “Distribution Agreement”) and, at the Closing, the parties to the Distribution Agreement will execute and deliver the Distribution Agreement.

Section 5.19. Avranches Facility. From and after the date hereof, Sun Parties and Kodak Parties shall, and shall cause their Affiliates to, cooperate to complete all actions and execute and deliver all documents necessary to transfer the ownership of the Avranches Facility from Barbados Co. (or its Affiliate of Barbados Co. that owns the Avranches Facility) to any one of Sun Parties or their Affiliates immediately following the Closing Date. Without limiting the generality of the foregoing, the parties shall, as soon as practicable following the date hereof, execute and deliver a *promesse de vente*, which shall be governed by the laws of France and shall provide for the transfer of the Avranches Facility in accordance with French Law and shall provide that, among other things, (a) the transfer of the Avranches Facility shall be subject only to the requirements of French Law and the consummation of the Closing, (b) Kodak Parties, KPG LLC, Barbados Co. and their respective Affiliates make no representations or warranties with respect to the Avranches Facility, (iii) Sun Parties and their Affiliates, as applicable, shall perform all of their obligations relating to the Avranches Facility as set forth in Section 7.3(a)(iii) and Section 7.6(a) and in the Avranches Assumption Agreement and (iv) Barbados Co. (or its Affiliate of Barbados Co. that owns the Avranches Facility) shall deliver on or prior to the Closing Date a certificate stating that Barbados Co. (or its Affiliate of Barbados Co. that owns the Avranches Facility) deems the fair market value of the Avranches Facility to be received as of the date of such certificate. All costs and expenses of the transactions referred to in this Section 5.19, including notary and filing fees, shall be borne equally by Sun Parties and Kodak Parties.

Section 5.20. Watford Property. Kodak Parties and Sun Parties agree that, following the Closing until the termination of the existing lease effective August 11, 1980 between The Strathclyde Regional Council and Polychrome Limited (the “Watford Lease”) for the property located at Sandown Road, Watford, Hertfordshire (the “Watford Property”), Barbados Co. and its Affiliates and Sun Parties and their Affiliates shall continue to occupy and use the Watford Property consistently with their occupancy and use immediately prior to the date hereof.

Following the termination of the Watford Lease, Kodak Parties shall reimburse Sun Parties for the portion of the delapidation charges paid by Sun Parties to the landlord under the Watford Lease (as documented by Sun Parties to the reasonable satisfaction of Kodak Parties) that is equal to a fraction, the numerator of which is the number of days from January 1, 1998 to the date of termination of the Watford Lease, and the denominator of which is the number of days from the date of commencement of the Watford Lease to the date of termination of the Watford Lease.

Section 5.21. Car Leases. Following the Closing Date, Kodak Parties (and their Affiliates, as applicable) agree to purchase from General Motors Fleet and Commercial Operations (i) a minimum of 80 vehicles, in the aggregate, of the vehicles offered to SCC by General Motors Fleet and Commercial Operations pursuant to the 2005 Model Year Competitive Assistance Program for SCC (provided, that all vehicles purchased by KPG LLC and Barbados Co. and their Affiliates in the model year 2005 whether before or after the Closing shall be credited against the obligation contained in this clause (i)) and (ii) a minimum of 80 vehicles, in the aggregate, of the vehicles offered to SCC by General Motors Fleet and Commercial Operations pursuant to the 2006 Model Year Competitive Assistance Program for SCC.

Section 5.22. Plate Technology License Agreement. Between the date hereof and the Closing, the parties will negotiate in good faith and draft a license agreement containing the terms set forth on Schedule 5.22 (the "Plate Technology License Agreement") and, at the Closing, the parties to the Plate Technology License Agreement will execute and deliver the Plate Technology License Agreement, the provisions of which shall be in addition to any other right or remedy to which Sun Parties may be entitled at law, in equity or under this Agreement.

## ARTICLE VI

### CONDITIONS TO CLOSING

Section 6.1. Conditions to the Obligations of Kodak Parties and Sun Parties. The obligations of the parties hereto to effect the Closing are subject to the satisfaction (or waiver) prior to the Closing of the following conditions:

(a) HSR Act, EU Competition Laws and Other Competition Laws. All Competition Filings shall have been made and any required waiting period under such Laws applicable to the transactions contemplated by this Agreement and the Ancillary Agreements shall have expired or been earlier terminated and any required approval or consent under such Laws applicable to the transactions contemplated by this Agreement and the Ancillary Agreements shall have been received.

(b) Work Council and Employee Matters. Any and all Governmental Authorizations and Non-Governmental Authorizations required by any works council or similar entity or organization relating to employee matters to be obtained in connection with the execution, delivery and performance by each party of this Agreement and each of the Ancillary Agreements shall have been obtained.

(c) No Injunctions. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, or non-appealable judgment, decree, injunction or other order that is in effect on the Closing Date and prohibits the consummation of any transactions contemplated by this Agreement or the Ancillary Agreements.

Section 6.2. Conditions to the Obligations of Kodak Parties. The obligation of Kodak Parties to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of Sun Parties contained in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined as of the specified date, and except for changes resulting from the performance of the Redemption Transactions), and Kodak Parties shall have received a certificate signed on behalf of Sun Parties by a senior officer of Sun Parties to the effect that such senior officer has read this Section 6.2(a) and that to the best of his knowledge the condition set forth in this Section 6.2(a) has been satisfied (which certificate shall not impose any personal liability on such officer).

(b) Covenants. The covenants and agreements of Sun Parties to be performed on or prior to the Closing shall have been duly performed in all material respects, and Kodak Parties shall have received a certificate signed on behalf of Sun Parties by a senior officer of Sun Parties to the effect that such senior officer has read this Section 6.2(b) and that to the best of his knowledge the condition set forth in this Section 6.2(b) has been satisfied (which certificate shall not impose any personal liability on such officer).

(c) No Proceedings. There shall not be pending or in effect by or before any Governmental Entity any proceeding, any judgment, decree, injunction or other order or any condition: (i) challenging or seeking to restrain or prohibit any transactions contemplated by this Agreement or the Ancillary Agreements, (ii) seeking to impose or imposing limitations on the ability of Kodak Parties or any of their Affiliates to acquire or hold, or exercise full rights of ownership of, the LLC Interests, the Shares, the BV-1 Shares or any other assets of Kodak Parties or any of their Affiliates or KPG LLC or Barbados Co. or any of their Affiliates, or (iii) seeking to prohibit or prohibiting Kodak Parties or any of their Affiliates or KPG LLC or Barbados Co. or any of their Affiliates from effectively controlling, in any material respect, the Business.

(d) Deliveries. Kodak Parties shall have received each of the deliveries to be made pursuant to Section 2.5.

(e) Consents. Sun Parties, Kodak Parties, KPG LLC and Barbados Co. shall have received all consents set forth on Schedule 6.2(e).

(f) Ancillary Agreements. Each of Sun Parties and their Affiliates and each other Person (other than Kodak Parties and their Affiliates) that is a party to an Ancillary Agreement shall have executed and delivered such Ancillary Agreement and each such Ancillary Agreement shall be in full force and effect, subject to the consummation of the transactions contemplated by this Agreement.

(g) Opinion. Kodak Parties shall have received an opinion from counsel to Sun Parties substantially in the form of Schedule 6.2(g).

(h) Material Adverse Effect. Since the date hereof, there shall not have occurred any Force Majeure Event or Force Majeure Events that, individually or in the aggregate, have had or are reasonably likely to have an effect that is materially adverse to the business, condition (financial or otherwise), assets or results of operations of the Business, taken as a whole.

Section 6.3. Conditions to the Obligations of Sun Parties. The obligation of Sun Parties to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of Kodak Parties contained in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined as of the specified date, and except for changes resulting from the performance of the Redemption Transactions), and Sun Parties shall have received a certificate signed on behalf of Kodak Parties by an officer of Kodak Parties to the effect that such officer has read this Section 6.3(a) and that to the best of his knowledge the condition set forth in this Section 6.3(a) has been satisfied (which certificate shall not impose any personal liability on such officer).

(b) Covenants. The covenants and agreements of Kodak Parties to be performed on or prior to the Closing shall have been duly performed in all material respects, and Sun Parties shall have received a certificate signed by an officer of Kodak Parties to the effect that such officer has read this Section 6.3(b) and that to the best of his knowledge the condition set forth in this Section 6.3(b) has been satisfied (which certificate shall not impose any personal liability on such officer).

(c) Deliveries. Sun Parties shall have received each of the deliveries to be made pursuant to Section 2.4.

(d) Ancillary Agreements. Each of Kodak Parties and their Affiliates and each other Person (other than Sun Parties and their Affiliates) that is a party to an Ancillary Agreement shall have executed and delivered such Ancillary Agreement and each such Ancillary Agreement shall be in full force and effect, subject to the consummation of the transactions contemplated by this Agreement.

(e) Opinion. Sun Parties shall have received an opinion from counsel to Kodak Parties substantially in the form of Schedule 6.3(e).

(f) Release of Guarantees. The guarantees entered into by Sun Parties and their Affiliates with respect to the debt of KPG LLC and Barbados Co. in effect on the date hereof shall have been released and terminated effective as of the Closing.

## ARTICLE VII

### SURVIVAL; INDEMNIFICATION; CERTAIN REMEDIES

Section 7.1. Survival. The representations and warranties of Sun Parties and Kodak Parties contained in this Agreement shall survive the Closing and shall terminate upon the expiration of the applicable statute of limitations; provided, however, that the representations and warranties of Sun Parties contained in Sections 3.7 and 3.8 shall terminate upon expiration of 18 months after the Closing Date. Notwithstanding anything in the foregoing to the contrary, in the event notice of any claim for indemnification under this Agreement shall have been given (in accordance with this Article VII and Section 10.1) within the applicable survival period, the representations and warranties that are the subject of such indemnification claim shall survive with respect to such claim until such time as such claim is finally resolved.

Section 7.2. Indemnification by Kodak Parties. Kodak Parties, jointly and severally, shall indemnify, defend and hold harmless each Sun Party, its Affiliates, and their respective directors, officers, shareholders, partners, agents and employees and their heirs, successors and assigns (the "Sun Parties Indemnified Parties") from, against and in respect of any damages, liabilities, claims, losses, charges, corrective or remedial actions, actions, suits, proceedings, deficiencies, Taxes, interest, penalties, and reasonable costs and expenses (including reasonable attorneys' fees and expenses) (collectively, "Losses") imposed on, sustained, incurred or suffered by or asserted against any of the Sun Parties Indemnified Parties, to the extent relating to or arising out of (i) any breach of any representation or warranty made by Kodak Parties contained in this Agreement, (ii) the breach of any covenant or agreement of any Kodak Party contained in this Agreement (other than in Section 5.5, for which separate and exclusive provision is made in Section 5.5), (iii) any Liabilities of KPG LLC, Barbados Co. or their Affiliates arising after the Closing, other than as specifically retained or assumed by Sun Parties pursuant to the terms of this Agreement or any Ancillary Agreement (it being understood that such indemnification shall not limit or otherwise affect the indemnification obligations of Sun Parties pursuant to Section 7.3), and (iv) any Liabilities relating to, arising out of or resulting from the violation of any Environmental Law as a result of the ownership or operation of the Other Sun Contributed Properties by any Person or the investigation, removal, remediation, containment, cleanup or abatement of the presence, release or threatened release of any Hazardous Substance from the Other Sun Contributed Properties, whether before or after the Closing.

Section 7.3. Indemnification by Sun Parties.

(a) Sun Parties, jointly and severally, shall indemnify, defend and hold harmless each Kodak Party, its Affiliates, and their respective directors, officers, shareholders, partners, agents and employees and their heirs, successors and assigns (the "Kodak Parties Indemnified Parties") and, collectively with the Sun Parties Indemnified Parties, the "Indemnified Parties") from, against and in respect of any Losses imposed on, sustained, incurred or suffered by or asserted against any of the Kodak Parties Indemnified Parties, to the extent relating to or arising out of (i) any breach of any representation or warranty made by Sun Parties contained in this Agreement, (ii) the breach of any covenant or agreement of any Sun Party contained in this Agreement (other than in Section 5.5, for which separate and exclusive provision is made in Section 5.5), and (iii) any Liabilities relating to, arising out of or resulting from the violation of any Environmental Law as a result of the ownership or operation of the Avranches Facility by any Person or the investigation, removal, remediation, containment, cleanup or abatement of the presence, release or threatened release of any Hazardous Substance from the Avranches Facility, whether before or after the Closing.

(b) To the extent any amount has been agreed by Sun Parties and Kodak Parties or has been finally adjudged, without further right of appeal, by a court of competent jurisdiction to be owed by any Sun Party or any of its Affiliates to Kodak Parties, any of their Affiliates or to the Kodak Parties Indemnified Parties under this Agreement, the Kodak Parties Indemnified Parties may, exercisable at their option by written notice to Sun Parties, elect to satisfy any portion or all of such amount by offsetting any such portion or all of such amount against payments otherwise owed by Kodak Parties or any of their Affiliates to Sun Parties and their Affiliates under this Agreement, including under Sections 2.1 and 2.2 (including any Exhibits referenced therein) and this Article VII; provided that such offset against such payments otherwise owed by Kodak Parties to Sun Parties shall not affect the recovery by the Kodak Parties Indemnified Parties of any indemnity payment or portion thereof which has not been so discharged at Kodak Parties' election under this Section 7.3(b).

Section 7.4. Indemnification Procedures. With respect to third party claims, all claims for indemnification under this Article VII by any Indemnified Party hereunder shall be asserted and resolved as set forth in this Section 7.4. In the event that any written claim or demand for which an indemnifying party (an "Indemnifying Party") would be liable to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a third party, such Indemnified Party shall promptly, but in no event more than thirty (30) days following such Indemnified Party's receipt of such claim or demand, notify the Indemnifying Party in writing of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand) (the "Claim Notice"); provided, however, that any failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure has had a prejudicial effect on the defenses or other rights available to the Indemnifying Party with respect to such claim or demand. The Indemnifying Party shall have forty-five (45) days from the personal delivery or mailing of the Claim Notice (the "Notice Period") to notify the Indemnified Party (a) whether or not the Indemnifying Party disputes the liability of the Indemnifying Party to the Indemnified Party hereunder with respect to such claim or demand and (b) whether or not it desires to defend the Indemnified Party against such claim or demand. Should (i) any Indemnifying Party assume or control any defense, as aforesaid, and (ii) any one or more Indemnified Parties reasonably determine that there is or may be a conflict of interest between, or substantially different defenses for, the Indemnified Party and the Indemnifying Party, then such Indemnified Parties shall have the right to employ no more than one firm of attorneys (plus necessary local counsel) to represent their separate interests and such expenses shall be a liability of, and shall be paid by, the Indemnifying Party. All costs and expenses incurred by the Indemnifying Party in defending such claim or demand shall be a liability of, and shall be paid by, the Indemnifying Party. Except as hereinafter provided, in the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such claim or demand, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings and shall have the sole power to direct and control such defense.



If any Indemnified Party desires to participate in any such defense it may do so at its sole cost and expense. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle, compromise or offer to settle or compromise any such claim or demand on a basis that would expressly admit wrongdoing or would not release the Indemnified Party from all Liabilities and obligations with respect to such claim or that would result in the imposition of a consent order, injunction or decree that would restrict the future activity or conduct of the Indemnified Party or any Subsidiary or affiliate thereof. If the Indemnifying Party elects not to defend the Indemnified Party against such claim or demand, whether by not giving the Indemnified Party timely notice as provided above or otherwise, then the portion of any such claim or demand as to which the defense by the Indemnified Party is unsuccessful (and all reasonable costs and expenses pertaining to such defense) shall be the liability of the Indemnifying Party hereunder. The Indemnified Party shall use its reasonable best efforts in the defense of all claims and demands that it defends. To the extent the Indemnifying Party shall direct, control or participate in the defense or settlement of any third party claim or demand, the Indemnified Party shall give the Indemnifying Party and its counsel access to, during normal business hours, the relevant business records and other documents, and shall permit them to consult with and obtain the testimony of the employees and counsel of the Indemnified Party and otherwise cooperate in the Indemnifying Party's defense or settlement of the third party claim or demand; provided that the Indemnifying Party will reimburse the Indemnified Party for its reasonable and documented out-of-pocket costs and expenses arising from such access and cooperation.

Section 7.5. Characterization of Indemnification Payments. All amounts paid by Sun Parties or Kodak Parties, as the case may be, under Article II, Section 5.5 or this Article VII shall be treated as (i) adjustments to the payments made pursuant to Sections 2.1 and 2.2 (including any Exhibits referenced therein) for U.S. Tax purposes, and (ii) as adjustments to the payments made pursuant to Sections 2.1 and 2.2 (including any Exhibits referenced therein) for all other relevant Tax purposes, except to the extent such treatment would be inconsistent with applicable Law, in which case the relevant Kodak Parties and Sun Parties shall in good faith seek to reach an agreement as to the appropriate treatment.

Section 7.6. Release of Contribution Rights for Environmental Claims.

(a) Sun Parties (on their own behalf and on behalf of their Affiliates) hereby waive any right to seek contribution or other recovery from Kodak Parties or from any of their Affiliates with respect to the Avranches Facility that any of them may now or in the future ever have under any Environmental Laws, as such Laws were in the past or are currently in effect, or may in the future be enacted or be in effect. Sun Parties (on their own behalf and on behalf of their Affiliates) hereby further unconditionally release Kodak Parties and their Affiliates from any and all claims, demands and causes of action with respect to the Avranches Facility that any of them may now or in the future ever have against Kodak Parties or any of their Affiliates for recovery under any Environmental Laws as such Laws were in the past or are currently in effect, or may in the future be enacted or be in effect. Nothing in this Section 7.6(a) shall affect the rights that Kodak Parties may have under Section 7.3(a)(iii).

(b) Kodak Parties (on their own behalf and on behalf of their Affiliates) hereby waive any right to seek contribution or other recovery from Sun Parties or from any of their Affiliates with respect to the Other Sun Contributed Properties that any of them may now or in the future ever have under any Environmental Laws, as such Laws were in the past or are currently in effect, or may in the future be enacted or be in effect. Kodak Parties (on their own behalf and on behalf of their Affiliates) hereby further unconditionally release Sun Parties and their Affiliates from any and all claims, demands and causes of action with respect to the Other Sun Contributed Properties that any of them may now or in the future ever have against Sun Parties or any of their Affiliates for recovery under any Environmental Laws as such Laws were in the past or are currently in effect, or may in the future be enacted or be in effect. Nothing in this Section 7.6(a) shall affect the rights that Sun Parties may have under Section 7.2(iv).

Section 7.7. Exclusive Remedy. After the Closing, to the extent permitted by Law, the indemnities set forth in this Article VII shall be the exclusive remedies of the Kodak Parties Indemnified Parties and Sun Parties Indemnified Parties for any misrepresentation, breach of warranty or breach of any covenant or agreement contained in this Agreement (other than in Section 5.5, for which separate and exclusive provision is made in Section 5.5) or otherwise with respect to the transactions contemplated by this Agreement and the parties shall not be entitled to a rescission of this Agreement or to any further indemnification or other rights or claims of any nature whatsoever in respect thereof, all of which the parties hereto hereby waive; provided, however, that the limitations set forth in this Section 7.7 shall not apply to any claims involving allegations of fraud.

## ARTICLE VIII

### TERMINATION

Section 8.1. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual agreement of Kodak Parties and Sun Parties;

(b) by either Kodak Parties or Sun Parties, by giving written notice of such termination to the other, if (i) subject to clause (ii), the Closing shall not have occurred on or prior to July 11, 2005, or (ii) the Closing shall not have occurred on or prior to October 11, 2005 if all conditions to Closing other than the conditions set forth in Section 6.1(a) and Section 6.1(c) have been satisfied on or prior to July 11, 2005; provided that, in each case, the terminating party is not in material breach of its obligations under this Agreement in a manner that shall have contributed to the occurrence of the failure of the Closing to occur; or

(c) by either Kodak Parties or Sun Parties if there shall be in effect any Law that prohibits the Closing or if the Closing would violate any non-appealable final order, decree or judgment of any Governmental Entity having competent jurisdiction.

The party desiring to terminate this Agreement pursuant to clause (b) or (c) of this Section 8.1 shall give written notice of such termination to the other parties.

Section 8.2. Effect of Termination. In the event of the termination of this Agreement in accordance with Section 8.1, this Agreement shall thereafter become void and have no effect, and no party hereto shall have any liability to any other party hereto or their respective Affiliates, directors, officers or employees, except for the obligations of the parties hereto contained in this Section 8.2 and in Section 2.2(c) (paragraph (c) under Redemption of Shares), Section 5.5(a) (paragraph (a) under Tax Matters), Section 5.15 (Transactions by Kodak Parties), Section 10.1 (Notices), Section 10.4 (Entire Agreement; Termination of Certain Agreements; Representations and Warranties), Section 10.6 (Public Disclosure), Section 10.7 (Expenses) and Section 10.8 (Governing Law; Submission to Jurisdiction; Selection of Forum; Specific Performance) (and any related definitional provisions set forth in Article I), and except that nothing in this Section 8.2 shall relieve any party from liability for any willful breach of this Agreement that arose prior to such termination, for which liability the provisions of Article VII shall remain in effect in accordance with the provisions and limitations of such Article.

## ARTICLE IX

### RELEASES

Section 9.1. Release by Sun Parties and their Affiliates. Sun Parties, on behalf of themselves and on behalf of their respective Affiliates, successors, executors, trustees, stock or interest holders, employees or other representatives and assigns (all such Persons, together with Sun Parties, the "Sun Parties Release Parties"), effective as of the Closing, hereby release and forever discharge Kodak Parties, and their Affiliates, successors, executors, trustees, stock or interest holders, employees or other representatives and assigns (all such Persons, together with Kodak Parties, the "Kodak Parties Release Parties"), from any and all Liabilities which the Sun Parties Release Parties may have or may have had, known or unknown, from the beginning of the world to the end of time, arising out of, under or relating to the ownership and operation of KPG LLC and Barbados Co. and their Affiliates, including any and all Liabilities arising out of, under or relating to the LLC Agreement (other than Section 6.4 thereof), the Unanimous Shareholder Agreement (other than Section 6.4 thereof) and the Contribution Agreement; provided that nothing herein constitutes a release from, waiver of, or otherwise applies to the terms of this Agreement (including any matters for which Kodak Parties have indemnification obligations pursuant to the provisions of this Agreement), the agreements or other documents to be executed or delivered pursuant to Article II, the Ancillary Agreements or any Continuing Intercompany Agreement or any enforcement thereof.

Section 9.2. Release by Kodak Parties and Their Affiliates. Kodak Parties, on behalf of themselves and on behalf of the other Kodak Parties Release Parties (including KPG LLC, Barbados Co., and their Affiliates), effective as of the Closing, hereby release and forever discharge all Sun Parties Release Parties from any and all Liabilities which the Kodak Parties Release Parties may have or may have had, known or unknown, from the beginning of the world to the end of time, arising out of, under or relating to the ownership and operation of KPG LLC and Barbados Co. and their Affiliates, including any and all Liabilities arising out of, under or relating to the LLC Agreement, the Unanimous Shareholder Agreement and the Contribution Agreement; provided that nothing herein constitutes a release from, waiver of, or otherwise applies to the terms of this Agreement (including any matters for which Sun Parties have indemnification obligations pursuant to the provisions of this Agreement), the agreements or other documents to be executed or delivered pursuant to Article II, the Ancillary Agreements or any Continuing Intercompany Agreement or any enforcement thereof.

## ARTICLE X

### MISCELLANEOUS

Section 10.1. Notices. Any notice or other communication hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a reputable courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

To Sun Parties until  
February 1, 2005:

SUN CHEMICAL CORPORATION  
222 Bridge Plaza South  
Fort Lee, NJ 07024  
Telephone: (201) 224-4600  
Telecopy: (201) 224-2439  
Attn: General Counsel

To Sun Parties on and after  
February 1, 2005:

SUN CHEMICAL CORPORATION  
35 Waterview Boulevard  
Parsippany, New Jersey 07054  
Telephone: (973) 404-6500  
Telecopy: (973) 404-6439  
Attn: General Counsel

In each case,

with a copy to:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Telephone: (212) 373-3000  
Telecopy: (212) 757-3990  
Attn: Marc E. Perlmutter, Esq.  
Judith R. Thoyer, Esq.

To Kodak Parties:

EASTMAN KODAK COMPANY  
343 State Street  
Rochester, New York 14650  
Telephone: (585) 724-4332  
Telecopy: (585) 724-9549  
Attn: General Counsel

With a copy to:

SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, New York 10004  
Telephone: (212) 558-4000  
Telecopy: (212) 558-3588  
Attn: Stephen M. Kotran, Esq.

Section 10.2. Amendment; Waiver. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Kodak Parties and Sun Parties, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as provided in Section 7.7, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 10.3. No Assignment or Benefit to Third Parties. Except as set forth in the following sentence, no party to this Agreement may assign any of its rights or delegate any of its obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other parties hereto. Kodak Parties may assign any or all of their rights and obligations hereunder to any of their Affiliates; provided that any such assignment shall not relieve Kodak Parties from their obligations hereunder. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than Kodak Parties, Sun Parties, the Indemnified Parties (in their capacity as such) or their respective successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 10.4. Entire Agreement; Termination of Certain Agreements; Representations and Warranties. This Agreement (including the Exhibits and Schedules hereto), the agreements or other documents to be executed or delivered pursuant to Article II, the Continuing Intercompany Agreements and the Ancillary Agreements contain

the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters. Without limiting the generality of the foregoing, but subject to Section 5.11, the LLC Agreement, the Unanimous Shareholder Agreement and the Contribution Agreement shall terminate, and be of no further force and effect, as of the Closing, notwithstanding anything to the contrary contained therein, except that Section 6.4 of each of the LLC Agreement and the Unanimous Shareholder Agreement shall survive this Agreement and the consummation of the transactions contemplated hereby. Except for the representations and warranties contained in Article III or in any of the agreements or other documents to be executed or delivered pursuant to Article II, and subject to Section 5.11 hereof, none of Sun Parties nor any other Person makes any other express or implied representation or warranty on behalf of Sun Parties. Except for the representations and warranties contained in Article IV or in any of the agreements or other documents to be executed or delivered pursuant to Article II, none of Kodak Parties nor any other Person makes any other express or implied representation or warranty on behalf of Kodak Parties.

Section 10.5. Fulfillment of Obligations. Any obligation of any party to any other party under this Agreement, the agreements or other documents to be executed or delivered pursuant to Article II or any of the Ancillary Agreements, which obligation is performed, satisfied or fulfilled by an Affiliate of such party, shall be deemed to have been performed, satisfied or fulfilled by such party.

Section 10.6. Public Disclosure. Notwithstanding anything herein to the contrary, each of the parties to this Agreement hereby agrees with the other parties hereto that, except as may be required to comply with the requirements of any applicable Law or the rules and regulations of each stock exchange upon which the securities of one of the parties is listed, in which case the disclosing party will give the other parties hereto advance notice of the release and an opportunity to comment, no press release or similar public announcement or communication shall ever, whether prior to or subsequent to the Closing, be made or caused to be made concerning the execution or performance of this Agreement or the Ancillary Agreements unless specifically approved in advance by all parties hereto.

Section 10.7. Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including the costs and expenses of any due diligence investigations undertaken in connection therewith, shall be borne by the party incurring such costs and expenses. Notwithstanding the previous sentence, the parties acknowledge and agree that all costs and expenses incurred by Sun Parties, Kodak Parties, KPG LLC, Barbados Co. or their respective Affiliates in connection with the Redemption Transactions shall be borne solely by Sun Parties, except that all expenses occurring in connection with Section 2.2(a)(i)(B) shall be borne solely by Kodak Parties. Sun Parties and Kodak Parties shall each pay 50% of the filing fees related to any Competition Filings made pursuant to this Agreement.

Section 10.8. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM; SPECIFIC PERFORMANCE. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. SUBJECT TO SECTION 5.15, EACH PARTY HERETO AGREES THAT IT SHALL BRING ANY ACTION OR PROCEEDING IN RESPECT OF ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS, WHETHER IN TORT OR CONTRACT OR AT LAW OR IN EQUITY, EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR THE SUPREME COURT OF THE STATE OF NEW YORK FOR NEW YORK COUNTY (THE "CHOSEN COURTS") AND SOLELY IN

CONNECTION WITH CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS (I) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE CHOSEN COURTS, (II) WAIVES ANY OBJECTION TO LAYING VENUE IN ANY SUCH ACTION OR PROCEEDING IN THE CHOSEN COURTS, (III) WAIVES ANY OBJECTION THAT THE CHOSEN COURTS ARE AN INCONVENIENT FORUM OR DO NOT HAVE JURISDICTION OVER ANY PARTY HERETO, (IV) AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE IF NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 10.1 OF THIS AGREEMENT AND (V) ACKNOWLEDGES THAT THE OTHER PARTIES WOULD BE IRREPARABLY DAMAGED IF ANY OF THE PROVISIONS OF THIS AGREEMENT ARE NOT PERFORMED IN ACCORDANCE WITH THEIR SPECIFIC TERMS AND THAT ANY BREACH OF THIS AGREEMENT COULD NOT BE ADEQUATELY COMPENSATED IN ALL CASES BY MONETARY DAMAGES ALONE AND THAT, IN ADDITION TO ANY OTHER RIGHT OR REMEDY TO WHICH A PARTY MAY BE ENTITLED, AT LAW OR IN EQUITY, IT SHALL BE ENTITLED TO ENFORCE ANY PROVISION OF THIS AGREEMENT BY A DECREE OF SPECIFIC PERFORMANCE AND TO TEMPORARY, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF TO PREVENT BREACHES OR THREATENED BREACHES OF ANY OF THE PROVISIONS OF THIS AGREEMENT, WITHOUT POSTING ANY BOND OR OTHER UNDERTAKING.

Section 10.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

Section 10.10. Headings. The heading references herein and the table of contents hereto are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

Section 10.11. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 10.12. Schedules. The disclosure of any matter in any Schedule to this Agreement shall be deemed to be a disclosure for all purposes of this Agreement to which such matter could reasonably be expected to be pertinent, but shall expressly not be deemed to constitute an admission by Sun Parties or Kodak Parties or to otherwise imply that any such matter is material for the purposes of this Agreement. Each of Sun Parties and Kodak Parties may, from time to time prior to Closing, by written notice to the other in accordance with the terms of this Agreement, supplement or amend any Schedule, including one or more supplements or amendments to correct any matter which would constitute a breach of any representation or warranty of such party contained herein. No such supplemental or amended Schedule shall be deemed to cure any breach for purposes of Section 6.2(a) and Section 6.3(a).

*[The remainder of this page intentionally left blank; Signature page follows]*

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

SUN CHEMICAL CORPORATION

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

Name:

Title:

SUN CHEMICAL GROUP B.V.

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

Name:

Title:

EASTMAN KODAK COMPANY

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

Name:

Title:

KODAK GRAPHICS HOLDINGS, INC.

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

Name:

Title:

EXHIBIT A

FORM OF TRADEMARK ASSIGNMENT AND LICENSE TERMINATION AGREEMENT

This Trademark Assignment and License Termination Agreement (this "Agreement"), dated as of [April 1], 2005 (the "Effective Date"), is made by and between Sun Chemical Corporation, a Delaware corporation with an office at 35 Waterview Boulevard, Parsippany, New Jersey 07054 ("Assignor"), and Kodak Polychrome Graphics LLC, a Delaware limited liability company with an office at 401 Merritt 7, Norwalk, Connecticut 06851 ("Assignee").

**WHEREAS**, Assignor, Assignee and certain other companies under common control with Assignee and as approved by Assignor in writing from time to time are parties to that certain Trademark License Agreement, dated as of December 31, 1997, as amended by Amendment No. 1, dated as of December 12, 2002 (the "Trademark License Agreement");

**WHEREAS**, Assignor owns all right, title and interest in the trade name "Polychrome", the trademark POLYCHROME, each of the trademarks, service marks, trade names and trade dress which are the subject of the applications and registrations set forth in Annex A, the applications and registrations set forth in Annex A, and any other trademarks, service marks, trade names and trade dress specified in writing by Assignor from time to time pursuant to the Trademark License Agreement (collectively, the "Trademarks");

**WHEREAS**, Assignor, [Name of SC USA Transferee], Sun Chemical Group B.V., Eastman Kodak Company and Kodak Graphics Holdings Inc. have entered into that certain Purchase Agreement, dated as of December [ ], 2004 (the "Purchase Agreement");

**WHEREAS**, capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Purchase Agreement;

**WHEREAS**, Assignor, Assignee and the other parties thereto wish to terminate the Trademark License Agreement; and

**WHEREAS**, Assignor desires to sell, assign and transfer, and Assignee desires to receive, the Trademarks.

**NOW, THEREFORE**, for good and valuable consideration, including the premises and covenants set forth in the Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor hereby sells, assigns and transfers irrevocably to Assignee, and Assignee hereby accepts the sale, assignment and transfer from assignor of, all right, title and interest in and to the trademarks, and all goodwill associated therewith and symbolized thereby, for Assignee's and its Affiliates' own use and enjoyment, and for the use and enjoyment of Assignee's and its Affiliates' successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by the Assignor if this Agreement and sale had not been made, together with all rights of priority and renewals, and all income, royalties or payments due or payable as of the Effective Date or thereafter, and all past, present and future claims, counterclaims, credits, causes of action, choses in action, rights of recovery and rights of setoff against third persons for infringement or other violation of the trademarks, together with the right to sue for and collect any resulting recovery of damages, lost profits, legal fees and costs, including from acts which may have occurred prior to the Effective Date for Assignee's own use and enjoyment and for the use and enjoyment of its successors, assigns or other legal representatives (collectively, the "Trademark Rights"). Assignor shall cooperate with Assignee as reasonably requested to effect and record such assignment with the United States Patent and Trademark office and any other applicable governmental authorities at the sole expense of Assignee.



2. Trademark Rights. Solely to the extent necessary to perfect the assignment to Assignee of the Trademarks, Assignor shall provide to Assignee and its Affiliates and their respective successors, assigns or other legal representatives, cooperation and assistance at assignee's reasonable request and expense (including, without limitation, the execution and delivery of any and all affidavits, declarations, oaths, samples, exhibits, specimens and other documentation as may be reasonably required): (1) in the prosecution of any application existing as of the Effective Date for registration of the Trademark Rights, or the renewal or continued maintenance of any registration existing as of the Effective Date of the Trademark Rights (provided that Assignor makes no representation or warranty that any unregistered Trademarks are capable of being registered, or that any registration of trademarks can be renewed or maintained); and (2) in the prosecution or defense of any interference, opposition, cancellation, infringement or other proceedings that may arise in connection with any of the Trademark Rights existing as of the Effective Date, including, without limitation, testifying as to any facts relating to the Trademark Rights assigned herein and this Agreement.
3. Representations and Warranties of Assignor. Assignor represents and warrants that it owns the Trademarks exclusively, free and clear of all Encumbrances and licenses, and that to its knowledge the Trademarks do not violate and have not at any time violated the rights of any third Person as currently or previously used in the Business. No claims have been asserted or threatened in writing by any third Person against Assignor or its Affiliates concerning the validity, ownership, enforceability, registerability, scope or use of the Trademarks. Assignor represents and warrants that the Trademarks constitute all trademarks, designations and filings owned by Assignor or its Affiliates throughout the world immediately prior to the Effective Date that are similar to the Trademarks and used or held for use in the Business, or that are otherwise confusingly similar to the Trademarks.
4. Representations and Warranties of each of Assignor and Assignee. Assignor and Assignee each represents and warrants to the other that (1) it has all requisite corporate or similar power and authority, and has taken all corporate action necessary, in order to execute, deliver and perform its obligations under this Agreement and (2) this Agreement is a valid and binding agreement, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.
5. Termination of Trademark License Agreement. Assignor and Assignee acknowledge that, pursuant to and in accordance with the terms of the Purchase Agreement, as of the Effective Date, the Trademark License Agreement shall be terminated. Assignor and Assignee agree that, upon execution of this Agreement and notwithstanding the provisions of Article 6 of the Trademark Agreement, Assignee shall have no obligation to pay to Assignor royalties owing under Article 6 of the Trademark License Agreement with respect to any period after December 31, 2004; provided that Assignee shall pay Assignor on the date hereof, to the extent not paid prior to the date hereof, the amount of all such royalties accrued up to December 31, 2004.
6. Future Assurances. Each party agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements and to give such further written assurances as may be reasonably requested by any other party to evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.
7. Governing Law. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State of New York, without giving effect to principles of conflicts of laws.

8. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.
9. Modifications. This Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement executed by the parties hereto.
10. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF**, this Agreement has been duly executed and delivered by Assignor and Assignee as of the date first above written.

*[Notary Seal for Assignor]*

**SUN CHEMICAL CORPORATION**

By \_\_\_\_\_

Name:

Title:

**KODAK POLYCHROME GRAPHICS LLC**

By \_\_\_\_\_

Name:

Title:

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

ss.:

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally came [*name*], to me known to be the person who executed the foregoing instrument, and who, being duly sworn by me, did depose and say that he is the [*office held*] of Sun Chemical Corporation, a Delaware corporation, and that he executed the foregoing instrument in the firm name of Sun Chemical Corporation, and that he had authority to sign the same, and he acknowledged to me that he executed the same as the act and deed of said firm for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public - State of \_\_\_\_\_

Printed Name \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

Annex A: Trademarks

All of Sun's worldwide right, title and interest in and to the following trademarks:

ADDISET  
AQUALITH  
CLEARPROOF  
CROMAX  
DLC  
DLD  
EASYPRINT  
FOTOMER  
FOTOPOS  
IJP  
MASTERPRINT  
MILLENNIUM  
PC & DESIGN  
POLYCARE  
POLYCHROME  
POLYCHROME EASIRUN  
POLYCHROME PC  
POLYCHROME PC & DES  
POLYCHROME SUPERUN  
POLYCHROME WEBRUNNER  
POLYCHROME WINNER  
POLYPROOF  
POLYTINT  
POSAL  
POSIMATTE  
QUANTUM  
SUPERPOS  
VANTAGE  
VECTOR  
VISTAR & DESIGN  
VITESSE  
WEBRUNNER

including without limitation the following applications for registration and registrations of such trademarks, service marks, trade names and trade dress:

Marks owned by Rhone-Polunc

Matter	Status	Application No	Filing Date	TM NO	Issue Date
CROMAX-BX	REGISTERED	0000000000	4/18/1986	505166	9/12/1986
CROMAX-CA	REGISTERED			TMA340857	5/27/1988
CROMAX-CH	REGISTERED	0000000000	4/18/1986	505166	9/12/1986
CROMAX-DE	REGISTERED	0000000000	4/18/1986	505166	9/12/1986
CROMAX-FI	REGISTERED	2932/86	7/21/1986	118289	4/21/1992
CROMAX-FR	REGISTERED	0000000000	4/18/1986	505166	9/12/1986
CROMAX-GB	REGISTERED	1,272,465	4/18/1986	1272465	4/18/1983
CROMAX-IT	REGISTERED	0000000000	4/18/1986	505166	9/12/1986
CROMAX-NZ	REGISTERED	166,746	7/18/1986	166746	7/18/1986
CROMAX-US	REGISTERED	610,843	7/22/1986	1443739	6/23/1987

Marks owned by Polychrome GmbH

Matter	Status	Application No	Filing Date	TM NO	Issue Date
POLYCHROME PC-AT	REGISTERED		7/16/1981	461768	
POLYCHROME PC-BX	REGISTERED		7/16/1981	461768	
POLYCHROME PC-CH	REGISTERED		7/16/1981	461768	
POLYCHROME PC-ES	REGISTERED		7/16/1981	461768	
POLYCHROME PC-IT	REGISTERED		7/16/1981	461768	
POLYCHROME PC-LI	REGISTERED		7/16/1981	461768	
POLYCHROME PC-WO	REGISTERED		7/16/1981	461768	
POLYCHROME-DE	REGISTERED	P25404/1WZ	6/27/1978	1050009	6/22/1983
POLYCHROME-DK	REGISTERED	5494/80	12/10/1980	882-1982	2/19/1982
POLYCHROME-FI	REGISTERED	6619/80	12/9/1980	97107	12/5/1986
POLYCHROME-NO	REGISTERED	803,479	12/5/1980	116,052	3/29/1984

Marks owned by Polychrome Corporation - NJ

<b>Matter</b>	<b>Status</b>	<b>Application No</b>	<b>Filing Date</b>	<b>TM NO</b>	<b>Issue Date</b>
VISTAR & DESIGN-HK	REGISTERED	2358/88	4/28/1988	501/90	2/28/1990
VISTAR & DESIGN-MX	REGISTERED	42,157	5/19/1988	360659	4/10/1989

Marks owned by Sun Chemical Corporation

Matter	Status	Application No	Filing Date	TM NO	Issue Date
ADDISET-FR	RENEWED	660186		1234756	
CLEARPROOF-US	REGISTERED	75/157,639	8/29/1996	2144111	3/17/1998
EASYPRINT-US	PENDING	75/762,584	7/28/1999		
IJP-US	ISSUED	75/281,172	4/25/1997	2290779	11/9/1999
MASTERPRINT-CTM	FILED				
MASTERPRINT-US	ISSUED	75488725	5/20/1998	2264758	7/27/1999
MILLENNIUM-US	REGISTERED	74/304,704	8/17/1992	1762269	4/6/1993
POLYCARE-US	ISSUED	75/308,625	6/13/1997	2245407	5/18/1999
POLYCHROME-CN	PENDING	960129294	11/22/1996		
POLYCHROME-CN	PENDING	960129299	11/22/1996		
POLYCHROME-CN	PENDING	960129298	11/22/1996		
POLYCHROME-GB	RENEWED	1483809	11/27/1991	1483809	7/24/1991
POLYCHROME-IN	FILED	827762	12/17/1998		
POLYCHROME-IN7	FILED	827763	12/17/1998		
POLYCHROME-US	REGISTERED	74/188,007	7/24/1991	1867887	12/20/1994
POLYCHROME-US	REGISTERED	116,069	3/20/1961	722906	10/17/1961
QUANTUM-US	REGISTERED	75/281,173	4/25/1997	2210287	12/15/1998
VANTAGE-FR	REGISTERED	92 414587	4/10/1992	924414587	4/10/1992
VECTOR-DE	REGISTERED	S54210/1WZ	4/9/1992	2029714	2/5/1993
VECTOR-FR	REGISTERED	92 414588	4/10/1992	92414588	4/10/1992
VISTAR & DESIGN-AT	REGISTERED	AM2216/88	5/16/1988	122247	11/4/1988
VISTAR & DESIGN-IT	RENEWED	20299/88	5/3/1988	849997	5/28/1990
VITESSE-US	REGISTERED	74/534,233	5/27/1994	1906990	7/25/1995



Marks owned by Polychrome Japan

<b>Matter</b>	<b>Status</b>	<b>Application No</b>	<b>Filing Date</b>	<b>TM NO</b>	<b>Issue Date</b>
POLYCHROME-JP	REGISTERED	10-36353	5/1/1998	4339399	11/26/1999

Marks owned by Polychrome Corporation - Yonkers, NY

Matter	Status	Application No	Filing Date	TM NO	Issue Date
ADDISET-US	REGISTERED	660,186	4/1/1983	1234756	4/1/1983
AQUALITH-GB	REGISTERED	1,162,476	10/6/1981	1162476	10/6/1981
AQUALITH-IE	REGISTERED	123077	10/6/1981	123077	10/6/1981
DLC-US	REGISTERED	513,710	12/14/1984	1357467	9/3/1985
DLD-US	REGISTERED	513,709	12/14/1984	1357466	9/3/1985
FOTOMER-GB	REGISTERED	1162477	10/6/1981	1162477	10/6/1981
FOTOMER-IE	REGISTERED	123076	10/6/1981	123076	10/6/1981
FOTOPOS-GB	REGISTERED	1,162,478	10/6/1981	B1162478	10/6/1981
FOTOPOS-IE	REGISTERED	123079	10/6/1981	123079	10/6/1981
PC & DESIGN-CA	REGISTERED	247,234		114314	6/5/1959
PC & DESIGN-CA	REGISTERED	247,235	6/5/1959	114316	6/5/1959
PC & DESIGN-SK	REGISTERED	17587	8/5/1988	187388	1/19/1990
PC & DESIGN-SK	REGISTERED	14675/87	7/27/1987	162380	11/15/1988
PC & DESIGN-SK	REGISTERED	17588/88	8/5/1988	180657	10/5/1989
POLYCHROME EASIRUN-GB	REGISTERED	1,313,457A	6/16/1987	1313457	6/16/1987
POLYCHROME PC & DES.-AU	REGISTERED			B212259	8/2/1967
POLYCHROME SUPERUN-GB	REGISTERED	1,162,479	10/6/1981	1162479	10/6/1981
POLYCHROME SUPERUN-IE	REGISTERED	123080	10/6/1981	123,080	10/6/1981
POLYCHROME WEBRUNNER-GB	REGISTERED	1,162,480	10/6/1981	1162480	10/6/1981
POLYCHROME WINNER-GB	REGISTERED	1,162,481	10/6/1981	1162481	10/6/1981
POLYCHROME WINNER-IE	REGISTERED	2799/81	10/6/1981	B123081	10/6/1981
POLYCHROME-AT	REGISTERED	1 050 009	6/27/1978	584510	11/21/1991
POLYCHROME-BX	REGISTERED	1 050 009	6/27/1978	584510	11/21/1991
POLYCHROME-BX	REGISTERED	575	1/4/1971	575	3/12/1982
POLYCHROME-CA	REGISTERED	388,431	8/5/1975	226054	2/17/1978

Matter	Status	Application No	Filing Date	TM NO	Issue Date
POLYCHROME-CA	REGISTERED	388,431	8/5/1975	226,054	2/17/1978
POLYCHROME-CH	REGISTERED	1 050 009	6/27/1978	584510	11/21/1991
POLYCHROME-CH	REGISTERED	1 050 009	6/27/1978	584,510	11/21/1991
POLYCHROME-ES	REGISTERED	1 050 009	6/27/1978	584510	11/21/1991
POLYCHROME-FR	REGISTERED		7/16/1981	461768	
POLYCHROME-FR	REGISTERED	1 050 009	6/27/1978	584510	11/21/1991
POLYCHROME-GB	REGISTERED	1,145,209		1145209	12/8/1980
POLYCHROME-GB	REGISTERED	1,145,210	8/12/1980	1145210	12/8/1980
POLYCHROME-IE	REGISTERED	2638/81	9/18/1981	115777	9/18/1981
POLYCHROME-IE	REGISTERED	2639/81	9/18/1981	115,778	9/18/1981
POLYCHROME-IE	REGISTERED	2640/81	9/18/1981	115779	9/18/1981
POLYCHROME-LI	REGISTERED	1 050 009	6/27/1978	584510	11/21/1991
POLYCHROME-RU	PENDING	95712454	11/2/1995		
POLYCHROME-ZA	REGISTERED	95/09733	8/1/1995	95/09733	8/8/1995
POLYPROOF-US	REGISTERED	74219589	11/7/1991	1717314	9/22/1992
POLYTINT-US	REGISTERED	181,405	11/18/1963	794,553	8/17/1965
POSAL-GB	PENDING	1,162,480	10/6/1981		
POSIMATTE-US	REGISTERED	73/415,003	2/25/1983	1281981	6/19/1984
SUPERPOS-GB	REGISTERED	B1,199,525	7/12/1983	B1199525	7/12/1983
VANTAGE-DE	PENDING	S54211/1WZ	4/9/1992		
VISTAR & DESIGN-AR	REGISTERED	1,645,423	11/19/1987	1331681	2/13/1989
VISTAR & DESIGN-AR	REGISTERED	1,645,422	5/2/1988	1,396,606	5/29/1992
VISTAR & DESIGN-AU	REGISTERED	486,036	4/28/1988	486036	4/28/1988
VISTAR & DESIGN-AU	REGISTERED	486035	4/28/1988	486,035	4/28/1988
VISTAR & DESIGN-BR	PENDING	814259650	5/9/1988		
VISTAR & DESIGN-BR	RENEWED	814259634	5/9/1988	814259634	10/16/1990
VISTAR & DESIGN-BX	REGISTERED	714,548	4/22/1988	447615	4/22/1988
VISTAR & DESIGN-CA	REGISTERED	607,231	5/18/1988	362785	11/10/1989
VISTAR & DESIGN-CH	REGISTERED	2685	4/20/1988	362059	4/20/1988

Matter	Status	Application No	Filing Date	TM NO	Issue Date
VISTAR & DESIGN-CN	REGISTERED			350,379	5/30/1989
VISTAR & DESIGN-CN	REGISTERED	8829560	8/30/1988	360368	9/10/1989
VISTAR & DESIGN-CR	REGISTERED		8/18/1988	70,404	8/9/1989
VISTAR & DESIGN-CR	REGISTERED	71,184	12/9/1988	71,184	12/18/1989
VISTAR & DESIGN-DE	REGISTERED	P36476/1WZ	4/22/1988	1151286	12/13/1989
VISTAR & DESIGN-DK	REGISTERED	88.2796	4/22/1988	887/91	2/8/1991
VISTAR & DESIGN-ES	PENDING	1,255,086	5/26/1988		
VISTAR & DESIGN-FI	REGISTERED	881,722	4/25/1988	107674	5/21/1990
VISTAR & DESIGN-FI	REGISTERED	881,723	4/25/1988	107675	5/21/1990
VISTAR & DESIGN-FR	REGISTERED	924,355	5/3/1988	1463290	5/3/1988
VISTAR & DESIGN-GB	REGISTERED	1,342,471	11/19/1987	1342471	11/19/1987
VISTAR & DESIGN-GB	REGISTERED	1,342,470	11/27/1987	1342470	11/27/1987
VISTAR & DESIGN-GR	REGISTERED	89.138	5/18/1988	89.138	10/17/1991
VISTAR & DESIGN-GR	REGISTERED	89.138	5/18/1988	89138	10/17/1991
VISTAR & DESIGN-GU	REGISTERED	5203/88	9/26/1988	59078/446/129	9/7/1989
VISTAR & DESIGN-GU	REGISTERED	5204/88	9/26/1988	59079/447/129	9/8/1989
VISTAR & DESIGN-HK	REGISTERED	2359/88	4/28/1988	502/90	2/28/1990
VISTAR & DESIGN-ID	REGISTERED	247,932	5/10/1988	432272	3/23/1989
VISTAR & DESIGN-ID	REGISTERED	247,931	5/10/1988	432271	3/23/1989
VISTAR & DESIGN-IE	REGISTERED	1749/88	5/4/1988	129,251	11/27/1987
VISTAR & DESIGN-IE	REGISTERED	1750/88	5/4/1988	129252	11/19/1987
VISTAR & DESIGN-JP	REGISTERED	63-56945	5/19/1988	2717661	11/29/1996
VISTAR & DESIGN-KR	PENDING	89-11505	5/11/1989		
VISTAR & DESIGN-MX	REGISTERED	42,158	5/19/1988	354632	10/31/1988
VISTAR & DESIGN-NO	REGISTERED	88.1724	4/20/1988	137201	6/22/1989
VISTAR & DESIGN-NZ	REGISTERED	183,616	11/19/1987	183,616	2/12/1991
VISTAR & DESIGN-NZ	REGISTERED	183,615	11/27/1987	183615	2/25/1991

Matter	Status	Application No	Filing Date	TM NO	Issue Date
VISTAR & DESIGN-SE	REGISTERED	88-03569	4/22/1988	224505	6/28/1991
VISTAR & DESIGN-SG	REGISTERED	2427/88	5/19/1988	2427/88	11/27/1987
VISTAR & DESIGN-SG	REGISTERED	2426/88	5/19/1988	2426/88	11/19/1987
VISTAR & DESIGN-TH	REGISTERED	177,707	6/22/1988	KOR89644	2/22/1989
VISTAR & DESIGN-TH	REGISTERED	177,706	6/22/1988	KOR89715	3/16/1989
VISTAR & DESIGN-TW	REGISTERED	77019499	5/3/1988	00425796	1/15/1989
VISTAR & DESIGN-TW	REGISTERED	77017972	4/26/1988	419634	11/1/1988
VISTAR & DESIGN-US	REGISTERED	696,427	11/19/1987	1491966	6/14/1988
VISTAR & DESIGN-US	REGISTERED	698,001	11/27/1987	1516920	12/20/1988
VISTAR & DESIGN-VE	REGISTERED	8144/88	1/29/1992	147621	5/25/1992
VISTAR & DESIGN-VE	REGISTERED	8143/88	1/29/1992	147620	5/26/1992
VITESSE-US	REGISTERED	74/534,233	5/27/1994	1906990	7/25/1995
WEBRUNNER-IE	REGISTERED	2796/81	10/6/1981	123078	10/6/1981

**EXHIBIT B-1**

**KPG NOTE TERM SHEET**

1. Payor: Kodak.
2. Payee: SCC.
3. Payor shall pay to Payee the following amounts (net of any required withholding taxes) on the following dates, except to the extent such payments are accelerated pursuant to Section 2.7:
  - (a) on September 1, 2006, cash in the amount of US\$40,000,000;
  - (b) on September 1, 2008, cash in the amount of US\$10,000,000;
  - (c) on September 1, 2009, cash in the amount of US\$10,000,000;
  - (d) on September 1, 2010, cash in the amount of US\$10,000,000;
  - (e) on September 1, 2011, cash in the amount of US\$10,000,000;
  - (f) on September 1, 2012, cash in the amount of US\$10,000,000; and
  - (g) on September 1, 2013, cash in the amount of US\$10,000,000.
4. Notes will be assignable in whole by Payee and its permitted assigns, in each event subject to the prior written consent of Payor, not to be unreasonably withheld. Payee will notify Payor prior to any assignment of the identity of any proposed assignee and the proposed price. The notes will provide that any assignment will be made in accordance with and subject to evidence of compliance with applicable securities law and may require the note to be surrendered to Payor in exchange for reissuance of a like note.

**EXHIBIT B-2**

**KODAK FORCO NOTE TERM SHEET**

1. Payor: Kodak ForCo.
2. Payee: Irish Newco.
3. Payor shall pay to Payee the following amounts (net of any required withholding taxes) on the following dates, except to the extent such payments are accelerated pursuant to Section 2.7:
  - (a) on September 1, 2006, cash in the amount of US\$160,000,000;
  - (b) on September 1, 2008, cash in the amount of US\$40,000,000;
  - (c) on September 1, 2009, cash in the amount of US\$40,000,000;
  - (d) on September 1, 2010, cash in the amount of US\$40,000,000;
  - (e) on September 1, 2011, cash in the amount of US\$40,000,000;
  - (f) on September 1, 2012, cash in the amount of US\$40,000,000; and
  - (g) on September 1, 2013, cash in the amount of US\$40,000,000.
4. Customary provisions that the note will be a debt obligation in “registered form” for U.S. federal income tax purposes.
5. Notes will be assignable in whole by Payee and its permitted assigns, in each event subject to the prior written consent of Payor, not to be unreasonably withheld. Payee will notify Payor prior to any assignment of the identity of any proposed assignee and the proposed price. The notes will provide that any assignment will be made in accordance with and subject to evidence of compliance with applicable securities law and may require the note to be surrendered to Payor in exchange for reissuance of a like note.

## EXHIBIT C

### ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT, dated as of \_\_\_\_\_, 2005 (this "Assumption Agreement"), is made by and between Kodak Polychrome Graphics Company Ltd., a company incorporated under the laws of Barbados ("Barbados Co."), Sun Chemical Group B.V., a Netherlands limited liability company ("SCGBV"), and \_\_\_\_\_, a *société anonyme* organized under the laws of France and [a wholly owned, indirect subsidiary of SCGBV] ("Sun SA"). Each capitalized term used herein and not otherwise defined shall have the respective meaning assigned to such term in the Redemption Agreement, dated as of January 11, 2005 (the "Agreement"), among Sun Chemical Corporation, a Delaware corporation, SCGBV, Eastman Kodak Company, a New Jersey corporation, and Kodak Graphics Holdings Inc., a Delaware corporation.

WHEREAS, the Agreement provides, among other things, that Sun Parties will deliver, or cause to be delivered, the Avranches Assumption Agreement pursuant to Section 2.6(e) of the Agreement.

NOW, THEREFORE, in consideration of the transactions contemplated by the Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. On the terms and subject to the conditions set forth in this Assumption Agreement and the Agreement, Sun SA, on the date hereof, does hereby assume from Barbados Co. and its Affiliates all Liabilities related to, arising out of or resulting from the ownership and operation at any time of the Avranches Facility.
2. Each party hereto shall execute, deliver, file and record, or cause to be executed, delivered, filed and recorded, such further agreements, instruments and other documents, and take, or cause to be taken, such further actions, as the other parties hereto may reasonably request as being necessary or advisable to effect or evidence the transactions contemplated by this Assumption Agreement.
3. This Assumption Agreement is being delivered pursuant to and in satisfaction of Section 2.6(e) of the Agreement.
4. This Assumption Agreement and the Agreement constitute the entire understanding and agreement among the parties with regard to all matters herein, and there are no other agreements, conditions or representations, oral or written, express or implied, with regard thereto. This Assumption Agreement may be amended only by an instrument in writing signed by a duly authorized representative of each party.
5. THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.
6. The acknowledgements, covenants, agreements and obligations hereunder of each of the parties hereto shall survive until satisfied in full.



7. This Assumption Agreement may be executed by facsimile in one or more counterparts, which shall, collectively and separately, constitute one agreement.
8. This Assumption Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
9. If any provision of this Assumption Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions of this Assumption Agreement shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Assumption Agreement to be duly executed on the date first above written.

KODAK POLYCHROME GRAPHICS COMPANY LTD.

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

Name:  
Title:

SUN CHEMICAL GROUP B.V.

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

Name:  
Title:

[ \_\_\_\_\_ ]

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

Name:  
Title:

**SECTION 1445(b)(2) TAX CERTIFICATE**

Section 1445 of the Internal Revenue Code of 1986, as amended, (the "Code") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform Eastman Kodak Company, a New Jersey corporation ("Kodak"), that withholding of tax is not required upon the undersigned's disposition of a U.S. real property interest pursuant to the Redemption Agreement, dated as of January 11, 2005, by and among Kodak, Sun Chemical Corporation, a Delaware corporation ("SCC"), Sun Chemical Group B.V., a Netherlands limited liability company, and Kodak Graphics Holdings, Inc., a Delaware corporation, and solely with regard to Section 2.5(d) of the Redemption Agreement, **[Officer of SCC]**, as **[TITLE]** Officer of SCC, hereby certifies the following:

1. SCC is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Treasury Regulations thereunder) for purposes of U.S. income taxation;
2. SCC is not a disregarded entity as defined in Treasury Regulations Section 1.1445-2(b)(2)(iii);
3. The U.S. taxpayer identification number of SCC is 22-2761297; and
4. The address of SCC is 222 Bridge Plaza South; Fort Lee, NJ 07024.

SCC understands that this disclosure may be disclosed to the Internal Revenue Service by Kodak and that any false statement the undersigned has made here could be punished by fine, imprisonment or both.

Under penalties of perjury, I declare that I have examined this certification and, to the best of my knowledge and belief, it is true, correct and complete as of the date hereof, and I further declare that I have the authority to sign this document on behalf of SCC.

SUN CHEMICAL CORPORATION

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

[Name]

[Title]

Dated: [\_\_\_\_], 2005

## Schedule 3.7(a)

### Intercompany Agreements

The following agreements, to the extent they are in effect on the date hereof and subject to any amendments or modifications entered into subsequent to the date of such agreements and prior to the date hereof:

1. Customer Agreement, dated November 3, 2001, between KPG LLC and Sun Graphics.
2. Distributor Agreement, to be entered into between Kohl & Madden Printing Ink Corporation (an Affiliate of SCC), KPG LLC and Barbados Co., which shall be subject to execution by all parties.
3. Formation Agreement, dated April 1, 1999, between Kodak, DIC, Sun, Barbados Co., KPG-J, Kodak Japan Ltd., and Kodak Polychrome Graphics (Madeira) Serviços Lda.
4. Distributorship Agreement, dated as of April 1, 1999, between DIC and KPG-J, as amended by Memorandum of Understanding among DIC and KPG-J and its subsidiaries and Kodak Polychrome Graphics Company Ltd. and its subsidiaries, dated as of March 22, 2004.
5. Land and Building Lease Agreement, dated April 1, 1999, between DIC and KPG-J.
6. Memorandum of Temporary Transfer, dated April 1, 1999, between DIC and KPG-J, regarding DIC employees.
7. Services Agreement, dated as of April 1, 1999, by and between KPG-J and DIC.
8. Contribution and Asset Purchase Agreement, dated as of November 24, 1997, among Kodak, Sun and KPG LLC and any agreements entered into in connection therewith between any Sun Party or its Affiliates, and any of KPG LLC, Barbados Co. or any Affiliate.
9. Non-Exclusive Distribution Agreement, dated August 2, 1999, between Kodak Polychrome Graphics Cono Sur S.A. and Sun Chemical (Chile) S.A.
10. Letter Agreement, dated February 22, 2000, between Kodak Polychrome Graphics México S. de R.L. de C.V. and Sun Chemical S.A. de C.V.
11. Distribution Agreement, dated as of February 1, 2000, between Kodak Polychrome Graphics México S. de R.L. de C.V. and Sun Chemical S.A. de C.V.
12. Agency Agreement, dated April 1, 1999, between DIC and KPG-J.

13. Memorandum, dated June 6, 2003, between DIC and KPG-J, regarding the Agency Agreement set forth in paragraph 12 above.
14. Confidentiality Agreement, dated March 28, 2000, among DIC, KPG-J and Dainippon Screen Manufacturing Co. Ltd.
15. Memorandum for Confidentiality, dated June 1, 2003, among DIC, KPG-J and Fujitsu Corporation.
16. Memorandum, dated December 26, 2002, between DIC and KPG-J, regarding the assignment of a patent.
17. Confirmation, dated October 31, 2001, among DIC, KPG-J and Apex Funding Corporation, regarding Distributorship Agreement set forth in paragraph 4 above.
18. Toll Manufacturing Agreement, dated June 1, 1990, between DIC and Polychrome Japan Corp., Ltd.
19. Confirmation, dated April 1, 1998, between DIC and KPG-J, regarding purchase of chemicals/raw materials.
20. Commission of authority for evaluation test, dated April 1, 1999, between DIC and KPG-J.

**Schedule 3.7(b)**

**Properties, Assets, Rights and Employees Used in the Business**

1. DIC employees referenced in the Memorandum of Temporary Transfer, dated April 1, 1999, between DIC and KPG-J.
2. Land, buildings and other assets subject to the Land and Building Lease Agreement, dated April 1, 1999, between DIC and KPG-J.
3. Land, buildings and other assets subject to the Watford Lease.

## Schedule 5.11(a)

### Continuing Intercompany Agreements

The following agreements, to the extent they are in effect on the date hereof and subject to any amendments or modifications entered into subsequent to the date of such agreements and prior to the date hereof:

1. Distributorship Agreement between Dic And Kpg-J, dated as of April 1, 1999, as amended by Memorandum of Understanding among Dic and Kpg-J and its subsidiaries and Kodak Polychrome Graphics Company Ltd. and its subsidiaries, dated as of March 22, 2004.
2. Services Agreement, dated as of April 1, 1999, by and between KPG-J and DIC.
3. Land and Building Lease Agreement between DIC and KPG-J, dated as of April 1, 1999.
4. Memorandum of Temporary Transfer between DIC and its subsidiary companies and KPG-J, dated as of April 1, 1999.
5. All existing indemnification provisions of Sun under Article XIII of the Contribution and Asset Purchase Agreement among Kodak, Sun and KPG LLC, dated as of November 24, 1997, as amended (the "Contribution Agreement"), including all terms defined in the Contribution Agreement and used in Article XIII of the Contribution Agreement, will continue in full force and effect and Sun's obligations under such provisions will continue notwithstanding the termination of the Contribution Agreement; provided that Sections 13.2(i), 13.2(iii) (but only to the extent that it does not conflict with the indemnification provisions of the Contribution Agreement that otherwise survive pursuant to this Schedule 5.11(a)), 13.2(iv) and 13.2(v) (but only with respect to the properties located at Columbus, Osterode and Sofia referred to in the Contribution Agreement) shall be terminated and of no further force and effect.
6. All indemnification provisions of Sun for tax liabilities contained in Section 8.9 and Article X of the Contribution Agreement will continue in full force and effect and Sun's obligations under such provisions of the Contribution Agreement will continue notwithstanding the termination of the Contribution Agreement.
7. All existing indemnification provisions of Kodak under Article XIII of the Contribution Agreement, including all terms defined in the Contribution Agreement and used in Article XIII of the Contribution Agreement, will continue in full force and effect and Kodak's obligations under such provisions will continue notwithstanding the termination of the Contribution Agreement; provided that Sections 13.3(i), 13.3(iii) (but only to the extent that it does not conflict with the indemnification provisions of the Contribution Agreement that otherwise survive pursuant to this Schedule 5.11(a)), 13.3(iv) and 13.3(v) shall be terminated and of no further force and effect.
8. All indemnification provisions of Kodak for tax liabilities contained in Section 7.9 and Article X of the Contribution Agreement will continue in full force and effect and Kodak's obligations under such provisions of the Contribution Agreement will continue notwithstanding the termination of the Contribution Agreement.

9. Formation Agreement dated April 1, 1999 between Kodak, DIC, Sun, Barbados Co., Kodak Polychrome Graphics Japan Ltd., Kodak Japan Ltd, and Kodak Polychrome Graphics (Madeira) Serviços Lda.
10. Customer Agreement dated November 3, 2001 between KPG LLC and Sun Graphics.
11. Distributor Agreement, to be entered into between Kohl & Madden Printing Ink Corporation (an Affiliate of SCC), KPG LLC and Barbados Co., which shall be subject to execution by all parties.
12. Non-Exclusive Distribution Agreement, dated August 2, 1999, between Kodak Polychrome Graphics Cono Sur S.A. and Sun Chemical (Chile) S.A.
13. Letter Agreement, dated February 22, 2000, between Kodak Polychrome Graphics México S. de R.L. de C.V. and Sun Chemical S.A. de C.V.
14. Distribution Agreement, dated as of February 1, 2000, between Kodak Polychrome Graphics México S. de R.L. de C.V. and Sun Chemical S.A. de C.V.
15. Agency Agreement, dated April 1, 1999, between DIC and KPG-J.
16. Memorandum, dated June 6, 2003, between DIC and KPG-K, regarding the Agency Agreement set forth in paragraph 15 above.
17. Confidentiality Agreement, dated March 28, 2000, among DIC, KPG-J and Dainippon Screen Manufacturing Co. Ltd.
18. Memorandum for Confidentiality, dated June 1, 2003, among DIC, KPG-J and Fujitsu Corporation.
19. Memorandum, dated December 26, 2002, between DIC and KPG-J, regarding the assignment of a patent.
20. Confirmation, dated October 31, 2001, among DIC, KPG-J and Apex Funding Corporation, regarding Distributorship Agreement set forth in paragraph 1 above.
21. Toll Manufacturing Agreement, dated June 1, 1990, between DIC and Polychrome Japan Corp., Ltd.
22. Confirmation, dated April 1, 1998, between DIC and KPG-J, regarding purchase of chemicals/raw materials.
23. Commission of authority for evaluation test, dated April 1, 1999, between DIC and KPG-J.



**Schedule 5.11(c)**

**Terms of Amendment to Continuing Intercompany Agreements**

1. Land and Building Lease Agreement (the “Japanese Lease”) between DIC and Kodak Polychrome Graphics Japan Ltd. (“KPG-J”), dated as of April 1, 1999 (the “Japanese Lease”). The Japanese Lease will be amended to provide for the following:
  - a term of 15 years from the Closing Date
  - the scheduled rent payments will increase by 5% based on the current lease calculation scheme following the Closing
  - the parties will agree to negotiate in good faith a renewal of the lease
  - KPG-J will be responsible for the payment of any residual book value remaining on DIC’s books following the termination or expiration of the lease
  - KPG-J will not be responsible for demolition of any building or for the restoration of the leased property following the termination or expiration of the lease
  
2. Services Agreement, dated as of April 1, 1999, by and between KPG-J and DIC. The Services Agreement will be amended to provide for a term equal to the term of the Japanese Lease and to provide that it may not be terminated by DIC or its Affiliates prior to the expiration of such term.

## Schedule 5.18

### Term Sheet for Distribution Agreement between Kodak Parties and Sun Parties regarding Printing Inks

The Distribution Agreement to be entered into between Kodak Parties and Sun Parties shall provide for the following principal terms:

Kodak Parties shall, and shall cause their Affiliates to, for a term of three years market, distribute or sell exclusively Sun Parties' (and their Affiliates') Printing Ink for use in the Lithographic Plate Business. The Distribution Agreement will not be terminable by any party prior to the end of its term. Kodak Parties and their Affiliates shall have no minimum volume purchase obligations or any obligation to undertake marketing, distribution or selling activities under the Distribution Agreement. In connection with the marketing, distribution and sale exclusively of such Printing Ink for use in the Lithographic Plate Business, Kodak Parties agree that for the term of the Distribution Agreement they shall not, and they shall cause each of their Affiliates not to, directly or indirectly, in any manner whatsoever, including, either individually or in association with any other Person, or as principal, licensor, agent, representative, equity holder, distributor, manufacturer, co-venturer, director or partner, or by agreeing not to assert against a third party any of its or its Affiliates' Intellectual Property rights, engage or participate in the Printing Ink Business; provided that they and their Affiliates shall be entitled to (i) be a beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of not more than 5% of the total debt and equity interests, in the aggregate, of a Person engaged in the Printing Ink Business so long as no directorship or other governance rights are held by it or any of its Affiliates in conjunction with the ownership of such interest; and (ii) engage in activities expressly contemplated by the Distribution Agreement.

Defined terms to be used in Distribution Agreement:

“Lithographic Imaging Material” shall mean material (a) that has primarily physical-chemical properties for attracting or repelling Printing Ink, and that is suited to be applied on a substrate in an imagewise configuration to form an intermediate master for Printing, or (b) that is coated on a substrate and has primarily physical-chemical properties that can be activated to attract or repel Printing Ink in an imagewise configuration to form an intermediate master for Printing; provided that such definition shall not include materials that are used in electrophotographic or direct marking (including, without limitation, ink jet) processes.

“Lithographic Plate Business” shall mean the business of developing, designing, commercializing, manufacturing, marketing, distributing and selling Offset Printing Plates and the film and prepress chemistry, excluding inkjet and toner chemistries developed primarily for the production of a final image, used in processing Offset Printing Plates.

“Lithographic Process” shall mean a process for applying ink to selected areas of an intermediate master which has primarily physical-chemical properties that attract or repel inks in selected areas to retain the ink in an imagewise configuration for Printing.

“Offset Printing Plates” shall mean plates or drums or flexible substrates having Lithographic Imaging Material coated or applied thereon for forming an intermediate image master for offset Printing.

“Printing” shall mean the process of transferring inks in an imagewise configuration to a receiving surface using the Lithographic Process.

“Printing Ink” shall mean an image-forming material that contains a colorant and is adapted (a) to be attracted to or repelled by selected areas of an intermediate master primarily by the physical and/or physical-chemical properties of that master, and (b) for transfer to a final print-receiving surface for Printing; provided that such definition shall not include materials that are used in electrophotographic or direct marking (including, without limitation, ink jet) processes.

“Printing Ink Business” shall mean the business of developing, designing, commercializing, manufacturing, marketing, distributing and selling Printing Ink for use in the Lithographic Plate Business.

## Schedule 5.22

### **Term Sheet for Plate Technology License Agreement between Kodak Parties and Sun Parties regarding Offset Printing Plates**

The Plate Technology License Agreement to be entered into between Kodak Parties and Sun Parties shall provide for the following principal terms:

License: Kodak will grant to Sun and its Affiliates a perpetual (subject to the termination provision described below), non-cancelable, royalty-free, non-exclusive license to use the Intellectual Property owned by Kodak relating to Offset Printing Plates to manufacture, have manufactured or sell Offset Printing Plates in Japan, Asia, and Oceania.

Manufacturing Arrangement: Kodak shall manufacture or cause to be manufactured at the Gunma, Japan plant, to DIC's order such Offset Printing Plates as are then being manufactured at the Gunma, Japan plant at the prices and volumes that are in effect with respect to DIC immediately prior to the effectiveness of the license, or on such other terms as may be agreed by the parties based on the spirit of toll manufacturing.

Condition: The license will be conditional upon, and will only be effective following, any failure of Kodak or its Affiliates to make when due any payment required to be made under the Kodak ForCo Note or the KPG Note for a period of 7 days following written notice of such failure.

Termination: The license will terminate automatically, and will be of no further force and effect, immediately upon the earlier of (a) the payment of all past due amounts owed under the Kodak ForCo Note and the KPG Note, together with any amounts scheduled for payment under the Kodak ForCo Note and the KPG Note during the year in which such past due amounts are paid, provided, however, that, notwithstanding any such prior termination of the license, the license shall again become effective following such termination upon the failure of Kodak or its Affiliates to make when due any payment required to be made under the Kodak ForCo Note or the KPG Note for a period of 7 days following written notice of such failure, or (b) the payment of all amounts payable under the Kodak ForCo Note and the KPG Note.

## SCHEDULE 6.2(E)

### CONSENTS

All consents required pursuant to the terms of the following agreements, or the failure to obtain which would result in a violation, breach, default, right to accelerate or terminate or the loss or impairment of any material rights pursuant to the terms of the following agreements, in each case in connection with the entering into of the Agreement and the consummation of the transactions contemplated thereby:

1. Distribution Agreement between Presstek, Inc. And Kodak Polychrome Graphics LLC, dated as of March 10, 2003.
2. Intellectual Property Agreement among RealTimeImage Ltd., RealTimeImage, Inc., KPG Hungary, Ltd. And Kodak Polychrome Graphics LLC, dated as of May 13, 2004.
3. Second Amended and Restated Credit Agreement, dated as of August 4, 2000, as initially amended and restated as of October 12, 2001, and as amended and restated as of December 31, 2002, among KPG LLC, and KPG Finance (Barbados) SRL, as Borrowers, Kodak, and Sun, as Guarantors, the lenders party thereto, Mizuho Corporate Bank, Ltd. (formerly known as the Fuji Bank, Limited), as Agent, and The Bank of Tokyo, Mitsubishi Ltd., acting through its New York Branch, as syndication Bank Credit Facility (the "Bank Credit Facility"), in connection with the release of guarantees entered into by Sun with respect to the debt of KPG LLC and Barbados Co. Pursuant to the Bank Credit Facility.

[SC USA LETTERHEAD]

[Date]

Eastman Kodak Company  
343 State Street  
Rochester, New York 14650  
As representative of Kodak Parties (as defined below)

Ladies and Gentlemen:

I am [title] of Sun Chemical Corporation, a Delaware corporation ("SC USA"). In this capacity, I have had an opportunity to make a reasonable examination of such corporate records, certificates and other documents, and such questions of law, as I have considered necessary or appropriate for purposes of rendering this opinion. This opinion is being rendered pursuant to Section 6.2(g) of the Redemption Agreement (the "Agreement"), dated as of [January 11], 2004, by and among SC USA, Sun Chemical Group B.V. ("Sun," and together with SC USA, "Sun Parties"), Eastman Kodak Company ("Kodak") and Kodak Graphics Holdings Inc. ("Kodak SPV," and together with Kodak, "Kodak Parties"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement.

Based on the foregoing, it is my opinion that<sup>1</sup>:

1. Each Sun Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement or any of the Ancillary Agreements has been duly organized, and is validly existing and in good standing under the laws of the jurisdiction of its respective organization;
2. Each Sun Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement or the Ancillary Agreements has all requisite corporate or similar power and authority to execute and deliver, as applicable, the Agreement, the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement by such Person and the Ancillary Agreements, at or prior to the Closing, and to perform its obligations thereunder;
3. The execution, delivery and performance by Sun Parties and any of their Affiliates, as applicable, of the Agreement and the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement by Sun Parties or their Affiliates and the Ancillary Agreements have been duly and validly authorized, and no

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<sup>1</sup> Opinions may be modified to the extent necessary to reflect equivalent language for foreign jurisdictions.

additional corporate or shareholder authorization or consent is required in connection with the execution, delivery and performance by Sun Parties or any of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement or any of the Ancillary Agreements, as applicable, of this Agreement, the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement or the Ancillary Agreements, as applicable, at the Closing; and

4. Each of the Agreement and the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement by Sun Parties and the Ancillary Agreements constitutes a valid and legally binding obligation of each Sun Party and each of their Affiliates which is a party thereto, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

The foregoing opinion is limited to [appropriate jurisdictional restriction to be added.]

In rendering the foregoing opinion, I have relied as to certain matters on information obtained from public officials, other officers of Sun Parties and their Affiliates and other sources reasonably believed by me to be responsible.

Very truly yours,

---

Name:

Title:

**[KODAK LETTERHEAD]**

[Date]

Sun Chemical Corporation  
35 Waterview Boulevard  
Parsippany, New Jersey 07054  
As representative of the Sellers (as defined below)

Ladies and Gentlemen:

I am Assistant General Counsel & Vice President of Eastman Kodak Company, a New Jersey corporation ("Kodak"). In this capacity, I have had an opportunity to make a reasonable examination of such corporate records, certificates and other documents, and such questions of law, as I have considered necessary or appropriate for purposes of rendering this opinion. This opinion is being rendered pursuant to Section 6.3(e) of the Redemption Agreement (the "Agreement"), dated as of [January 11], 2004, by and among Sun Chemical Corporation ("SC USA"), Sun Chemical Group B.V. ("Sun," and together with SC USA, "Sun Parties"), Kodak, and Kodak Graphics Holdings Inc. ("Kodak SPV," and together with Kodak, "Kodak Parties"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement.

Based on the foregoing, it is my opinion that<sup>1</sup>:

1. Each Kodak Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement or any of the Ancillary Agreements has been duly organized, and is validly existing and in good standing under the laws of the jurisdiction of its respective organization;
2. Each Kodak Party and each of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement or the Ancillary Agreements has all requisite corporate or similar power and authority to execute and deliver, as applicable, the Agreement, the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement by such Person and the Ancillary Agreements, at or prior to the Closing, and to perform its obligations thereunder;
3. The execution, delivery and performance by Kodak Parties and any of their Affiliates, as applicable, of the Agreement and the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement by Kodak Parties or their Affiliates and the Ancillary Agreements have been duly and validly authorized, and no additional corporate or shareholder authorization or consent is required in connection with the execution, delivery and performance by Kodak Parties or any of their Affiliates that is a party to any of the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement or any of the Ancillary Agreements, as applicable, of this Agreement, the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement or the Ancillary Agreements, as applicable, at the Closing; and



4. Each of the Agreement and the agreements or other documents to be executed or delivered pursuant to Article II of the Agreement by Kodak Parties and the Ancillary Agreements constitutes a valid and legally binding obligation of each Kodak Party and each of their Affiliates which is a party thereto, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

The foregoing opinion is limited to the Federal laws of the United States and the laws of the State of New York, and I am expressing no opinion as to the effect of the laws of any other jurisdiction.

In rendering the foregoing opinion, I have relied as to certain matters on information obtained from public officials, other officers of Kodak Parties and their Affiliates and other sources reasonably believed by me to be responsible.

Very truly yours,

---

Kenneth Doolittle  
Assistant General Counsel  
& Vice President

ARRANGEMENT AGREEMENT

among

EASTMAN KODAK COMPANY,

4284488 CANADA INC.,

and

CREO INC.

Dated January 30, 2005

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ARRANGEMENT AGREEMENT, dated January 30, 2005 (this “*Agreement*”), among Eastman Kodak Company, a New Jersey corporation (“*Parent*”), 4284488 Canada Inc., a corporation organized under the Canada Business Corporations Act and a wholly-owned subsidiary of Parent (“*Acquisition Sub*”), and Creo Inc., a corporation organized under the Canada Business Corporations Act (the “*Company*”).

WHEREAS, subject to the terms and conditions hereof, Parent, through its wholly-owned subsidiary, Acquisition Sub, is offering to acquire all of the outstanding Common Shares (as hereinafter defined) for \$16.50 per Common Share in cash (the “*Purchase Price*”);

WHEREAS the Company intends to propose to its securityholders a statutory plan of arrangement under section 192 of the *Canada Business Corporations Act* as a result of which Acquisition Sub will acquire all of the outstanding Common Shares for the Purchase Price per Common Share on the terms set out in the Plan of Arrangement (as hereinafter defined);

WHEREAS the boards of directors of Parent, Acquisition Sub and the Company have each determined that it is in the best interests of their respective shareholders for Acquisition Sub to make an offer to acquire all of the issued and outstanding Common Shares upon the terms and subject to the conditions of this Arrangement Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Parent, Acquisition Sub and the Company hereby agree as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

SECTION 1.01 *Certain Defined Terms.* For purposes of this Agreement:

“*Acquisition Proposal*” means (i) any direct or indirect acquisition through one or more transactions of (A) a substantial portion of the assets of the Company and the Subsidiaries taken as a whole or (B) more than 20% of the outstanding Common Shares, (ii) any tender offer, exchange offer, take-over bid or agreement that, if consummated, would result in any Person beneficially owning more than 20% of the outstanding Common Shares, (iii) any merger, amalgamation, arrangement, consolidation or other business combination with the Company other than the Arrangement, (iv) any recapitalization of the Company or similar transaction that, if consummated, would result in any Person beneficially owning more than 20% of the outstanding Common Shares or (v) any proposal or offer to, or public announcement of an intention to, do any of the foregoing from any Person other than Parent or Acquisition Sub.

“*Acquisition Proposal Assessment Period*” has the meaning set forth in Section 6.02(c).

“*Acquisition Sub*” has the meaning set forth in the Preamble.

“*Action*” means any litigation, suit, claim, action, proceeding or investigation.

“*affiliate*” means, with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

“*Agreement*” has the meaning set forth in the Preamble and includes any Exhibits or Schedules attached hereto.

“*Arrangement*” means the proposed arrangement under the provisions of section 192 of the CBCA as set out in the Plan of Arrangement, subject to any amendments or variations thereto made in accordance with Section 8.04 hereof or Article 5 of the Plan of Arrangement or made at the direction of the Court in the Final Order.

“*Arrangement Resolution*” means the special resolution approving the Plan of Arrangement to be considered at the Special Meeting, substantially in the form of Exhibit B.

“*Articles of Arrangement*” means the articles of arrangement in respect of the Arrangement, required by the CBCA to be sent to the Director after the Final Order is made in order for the Arrangement to become effective.

“*beneficial ownership*” means, with respect to any security, having beneficial ownership of such security as determined under Rule 13d-3 of the Exchange Act.

“*business day*” means any day (other than a Saturday or Sunday) on which banks are not required or authorized to close in Vancouver, British Columbia; Toronto, Ontario or the City of New York, United States of America.

“*Canadian GAAP*” means Canadian generally accepted accounting principles.

“*Canadian Investment Regulations*” means, collectively, the *Competition Act* (Canada) and the *Investment Canada Act* (Canada), as amended.

“*CBCA*” means the Canada Business Corporations Act, as amended.

“*Certificate of Arrangement*” means a certificate of arrangement issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement.

“*Circular*” means the notice of the Special Meeting and accompanying management proxy circular, including all schedules thereto, to be sent by the Company to Shareholders in connection with the Special Meeting.

“*Code*” has the meaning set forth in Section 3.09(c).

“*Common Shares*” means each common share, without par value, in the capital of the Company.

“*Company*” has the meaning set forth in the Preamble.

“*Company Board*” means the board of directors of the Company.

“*Company Disclosure Letter*” means the Company Disclosure Letter, dated the date hereof, delivered by the Company to Parent and Acquisition Sub in connection with the execution and delivery of this Agreement.

“*Company Employees*” means all persons employed or retained by the Company or its Subsidiaries, including, for greater certainty, those employees on short-term or long-term disability leave or any other leaves of absence.

“*Company Stock Plans*” means, collectively, the Company’s Amended and Restated Stock Option Plan, the Company’s 2004 Employee Equity Award Plan and the Company’s 2004 Qualified Directors’ Equity Award Plan.

“*Competition Act Approval*” means that the waiting period under section 123 of the *Competition Act* (Canada) shall have expired, and Parent shall have been advised in writing by the Commissioner of Competition that the Commissioner has determined not to make an application for an order under section 92 or section 100 of the *Competition Act* (Canada) in respect of the Transactions.

“*Confidential Material Contracts*” has the meaning set forth in Section 3.13(b).

“*Confidentiality Agreement*” means the confidentiality agreement, dated November 30, 2004, between Parent and the Company, as amended.

“*control*” (including the terms “*controlled by*” and “*under common control with*”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

“*Court*” means the Ontario Superior Court of Justice (Commercial List).

“*Director*” means the Director appointed pursuant to section 260 of the CBCA.

“*Dissenting Holder*” has the meaning set forth in the Plan of Arrangement.

“*Dissent Rights*” means the rights of dissent in respect of the Arrangement described in section 3.1 of the Plan of Arrangement.

“*EC Merger Regulation*” means Council Regulation (EC) No. 139/2004 of the European Community, as amended.



“*Effect*” has the meaning set forth in the definition of Material Adverse Effect.

“*Effective Date*” means the date shown in the Certificate of Arrangement issued by the Director giving effect to the Arrangement.

“*Effective Time*” means 12:01 a.m. (Toronto time) on the Effective Date.

“*Employee Stock Option*” means any option to purchase Common Shares granted under any Company Stock Plan.

“*Environmental Claim*” has the meaning set forth in Section 3.12(a).

“*Environmental Laws*” has the meaning set forth in Section 3.12(a).

“*Environmental Permits*” means any Permit issued or required pursuant to Environmental Law.

“*Equity Compensation Awards*” means all outstanding awards of Common Shares granted by the Company under the Company’s 2004 Employee Equity Award Plan and the Company’s 2004 Qualified Directors’ Equity Award Plan.

“*Exchange Act*” means the United States Securities Exchange Act of 1934, as amended.

“*Final Order*” means the order of the Court approving the Arrangement, as such order may be amended at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or denied, as affirmed or as amended on appeal.

“*Governmental Authority*” means any federal, national, supranational, provincial, regional, municipal, state, local or foreign government, governmental, regulatory or administrative authority, agency, bureau, department, instrumentality or commission or any court, tribunal, board, authority or judicial or arbitral body of competent jurisdiction.

“*Hazardous Substance*” means any toxic or hazardous materials or substances, including asbestos, buried contaminants, flammable explosives, radioactive materials, petroleum and petroleum products and any substances defined as, or included in the definition of, “hazardous substances”, “hazardous wastes”, “hazardous materials” or “toxic substances” or otherwise regulated under any Environmental Law.

“*HSR Act*” means the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“*IIC*” has the meaning set forth in Section 3.19(b).

“*Intellectual Property*” means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), improvements, patents, patent rights, patent applications (including all reissues, divisions, continuations, continuations-in-part, reexaminations and extensions of any patent or patent application), industrial

designs and applications for registration of industrial designs; (b) all trade names, trade dress and service marks (whether registered or unregistered), trademarks (whether registered or unregistered or used with goods or services and including goodwill of the Company and the Subsidiaries attaching to such trademarks), registrations, applications for trademarks (and all future income therefrom), domains and domain names, (c) all published and unpublished works of authorship, whether copyright or not (including databases and other compilations of information), copyrights therein and thereto and registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof, (d) all trade secrets, know-how, technologies in development, computer programs and other computer software (including software systems and applications), web sites, related software, user interfaces, topographies, source code, object code, algorithms, display screens, layouts, development tools, instructions, templates, evaluation software and hardware, information, manufacturing, engineering, and other drawings and manuals, technology, processes, business and other methods, designs, lab journals, notebooks, schematics, data, plans, blue prints, research and development reports, agency agreements, technical information, technical assistance, engineering data, design and engineering specifications, and similar materials recording or evidencing expertise or information, (e) all customer and supplier lists, pricing and cost information and business and marketing plans and proposals, (f) all rights of publicity and privacy, (g) all other intellectual property rights, (h) all licenses of the intellectual property listed in clauses (a) through (g), and (i) all rights to recovery of damages and profits by reason of the infringement of any of the intellectual property listed in clauses (a) through (h).

“*Interim Order*” means the interim order of the Court, as contemplated by Section 2.02, providing for, among other things, the calling and holding of the Special Meeting, as the same may be amended.

“*Investment Canada Approval*” means the approval or deemed approval pursuant to the *Investment Canada Act* (Canada) by the Minister of Industry.

“*Knowledge of the Company*” means the actual knowledge of Amos Michelson, Dan Gelbart, Mark Dance, Judi Hess and Paul Kacir and, solely as it relates to Section 3.18, Harry Booyens.

“*Law*” means any Canadian, United States or other jurisdiction statute, law, ordinance, regulation, rule, code, policy, guideline, common law standard of conduct, executive order, injunction, judgment, decree, ruling, award or other order, whether temporary or final of any Governmental Authority.

“*Letter of Transmittal*” means the letter of transmittal forwarded by the Company to Shareholders in connection with the Arrangement, in the form accompanying the Circular.

“*Lien*” means any pledge, lien, charge, mortgage, easement, encumbrance, option, right of first refusal or offer or security interest or adverse claim of any kind or nature whatsoever.

“*Material Adverse Effect*” means any event, circumstance, change or effect (any such item, an “*Effect*”) that, individually or in the aggregate, is or is reasonably likely to be materially adverse to the business, condition (financial or otherwise), operations, assets, liabilities (contingent or otherwise) or results of operations of the Company and the Subsidiaries taken as a whole; *provided, however*, that in no event shall the following be deemed to constitute, nor shall the following be taken into account in determining whether there has been, a “Material Adverse Effect”: any Effect that results from changes in general economic conditions or changes in securities markets in general unless such Effect disproportionately affects the Company and the Subsidiaries taken as a whole.

“*Material Contracts*” has the meaning set forth in Section 3.13(a).

“*Merrill Lynch*” means Merrill Lynch Canada Inc.

“*OCS*” has the meaning set forth in Section 3.19(a).

“*Optionholders*” means the holders of Employee Stock Options.

“*OSC*” means the Ontario Securities Commission.

“*OSC Reports*” has the meaning set forth in Section 3.07(a).

“*Parent*” has the meaning set forth in the Preamble.

“*Parent Expenses*” means all of Parent’s and Acquisition Sub’s actual out-of-pocket expenses incurred in connection with the transactions contemplated in this Agreement, including in connection with preparing and negotiating the Agreement and carrying out its due diligence of the Company and the Subsidiaries, and their respective assets and liabilities (including in connection with each of the foregoing, regulatory filing fees and reasonable attorneys’, accountants’, investment bankers’, experts’ and consultants’ fees and expenses), up to a limit of \$8,000,000.

“*Permits*” has the meaning set forth in Section 3.06.

“*Permitted Liens*” means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced and as to which none of the Company or the Subsidiaries is otherwise subject to criminal liability due to its existence and which are not, individually or in the aggregate, material: (a) statutory liens for current Taxes not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings, (b) liens imposed by Law, such as materialmen’s, mechanic’s, carrier’s, workmen’s and repairmen’s liens and other similar liens arising in the ordinary course of business, (c) Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business and (d) pledges or deposits to secure statutory obligations.

“*Person*” means an individual, corporation, partnership, limited partnership, limited liability company, joint venture, estate, association, trust, unincorporated

organization or other entity of any kind or nature, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“*Personal Information*” means any information in the possession of the Company or any of the Subsidiaries about an identifiable individual other than the name, title or business address or telephone number of an employee.

“*Plan of Arrangement*” means the plan of arrangement as set forth in Exhibit A to this Agreement, as amended in accordance with this Agreement or the Plan of Arrangement or made at the direction of the Court in the Final Order.

“*Plans*” has the meaning set forth in Section 3.09(a).

“*Pre-Acquisition Reorganization*” has the meaning set forth in Section 6.11.

“*Preferred Share*” means each preferred share, without par value, in the capital of the Company.

“*Public Disclosure Documents*” has the meaning set forth in Section 3.07(a).

“*R&D Law*” has the meaning set forth in Section 3.19(a).

“*Representatives*” has the meaning set forth in Section 6.01(a).

“*Rights Plan*” means the Shareholder Rights Plan Agreement dated as of November 13, 2002 between the Company and Computershare Trust Company of Canada, as it may be amended from time to time.

“*Rights Plan Resolution*” means the ordinary resolution to be considered at the Special Meeting, substantially in the form of Exhibit C, waiving the terms of the Rights Plan and all of the provisions thereof in respect of the Arrangement.

“*Sarbanes-Oxley Act*” means the United States Sarbanes-Oxley Act of 2002, as amended.

“*SEC*” means the United States Securities and Exchange Commission.

“*SEC Reports*” has the meaning set forth in Section 3.07(a).

“*Securities Act*” means the *Securities Act* (Ontario).

“*Securities Regulators*” means the SEC, the OSC, and the securities regulatory authorities in each of the other Provinces of Canada.

“*SEDAR*” means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators.

“*Settlement Agreement*” has the meaning set forth in Section 3.19(a).

“*Shareholders*” means the holders of Common Shares.

“*Significant Subsidiary*” means, at any date, each Subsidiary which, either alone or together with the Subsidiaries of such Subsidiary, meets any of the following conditions: (a) as of the end of the most recently ended fiscal quarter for which financial statements of the Company are publicly available, the investments of, and advances by, the Company and the Subsidiaries in or to, or their proportionate share (based on their equity interests) of the book value of the total assets (after intercompany eliminations) of, the Subsidiary in question exceeds 10% of the book value of the total assets of the Company and its consolidated Subsidiaries; or (b) for the period of four consecutive fiscal quarters most recently ended for which financial statements of the Company are publicly available, the equity of the Company and the Subsidiaries in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the Subsidiary in question exceeds 10% of the income of the Company and the Subsidiaries consolidated for such four consecutive fiscal quarters most recently ended.

“*Special Meeting*” means the special meeting of Shareholders to be held to consider the Arrangement Resolution and the Rights Plan Resolution, including any adjournment or postponement thereof.

“*Specified Time*” has the meaning set forth in Section 6.02(b).

“*subsidiary*” means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof is owned, directly or indirectly, by such Person or one or more other subsidiaries of such Person or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is owned, directly or indirectly, by such Person or one or more other subsidiaries of such Person or a combination thereof and, for purposes of this clause (ii), a Person shall be deemed to own a majority ownership interest in such a business entity if such Person (alone or with one or more of its subsidiaries) shall be allocated a majority of such business entity’s gains or losses or shall be the managing director or general partner of such business entity.

“*Subsidiary*” means a subsidiary of the Company.

“*Superior Proposal*” means any *bona fide* Acquisition Proposal (substituting for the purposes of this definition a threshold of 50% in place of 20% where used in the definition and “all or substantially all assets” in place of “a substantial portion of the assets” where used in the definition) on terms that the Company Board determines, in its good faith judgment (after consultation with its outside legal counsel and financial advisors), are more favorable from a financial point of view to Shareholders than the terms of the Arrangement as set forth in this Agreement (taking into account all the terms and conditions of such proposal and this Agreement (including any changes to the

financial terms of the Plan of Arrangement proposed by Parent in response to such offer or otherwise)) and, would, if accepted, be reasonably likely to be consummated, taking into account all legal, financial and regulatory aspects of the Acquisition Proposal and the Person making it.

“*Tax Returns*” means any and all returns, reports, declarations, elections, notices, filings and forms required to be filed with any taxing authority (including any schedule or attachment thereto) whether in tangible or electronic form in connection with the determination, assessment or collection of any Taxes of the Company or any Subsidiary.

“*Taxes*” means (i) all taxes, charges, duties, fees, levies or other assessments, including income, excise, capital, gross receipts, property, goods and services, harmonized sales, sales, use, value added, profits, registration, license, customs, withholding (with respect to compensation or otherwise), payroll, employment, net worth, transfer, stamp, social security, Canadian or Quebec Pension Plan Premiums, occupation and franchise taxes, imposed by any Governmental Authority or taxing authority, and including any interest, penalties and additional amounts imposed with respect thereto and (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.

“*Third Party Acquisition*” means any of the following transactions or any agreement by the Company to enter into or support one of the following transactions: (i) any direct or indirect acquisition through one or more transactions of (A) all or substantially all of the assets of the Company and the Subsidiaries taken as a whole or (B) more than 50% of the outstanding Common Shares, (ii) any tender offer, exchange offer, take-over bid or agreement that, if consummated, would result in any Person beneficially owning more than 50% of the outstanding Common Shares, (iii) any merger, amalgamation, arrangement, consolidation or other business combination with the Company other than the Arrangement, or (iv) any recapitalization of the Company or similar transaction that, if consummated, would result in any Person beneficially owning more than 50% of the outstanding Common Shares.

“*Transaction Documents*” means collectively, this Agreement and the Plan of Arrangement.

“*Transactions*” means collectively, the transactions contemplated herein and in the Plan of Arrangement.

“*33 Act*” means the United States Securities Act of 1933, as amended.

SECTION 1.02 *Interpretation*. In this Agreement, except to the extent that the context otherwise requires:

(a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

(c) whenever the words “include”, “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”;

(d) the words “hereof”, “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

(f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

(g) (i) the rule known as the *ejusdem generis* rule shall not apply and accordingly general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and (ii) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;

(h) references to the time of day are (unless otherwise expressly provided) to Toronto, Ontario time and references to a day are to a period of 24 hours running from midnight on the previous day;

(i) if any date on which any action is required or permitted to be taken hereunder is not a business day, such action shall be required or permitted to be taken on or by the next succeeding day which is a business day;

(j) all references to cash or currency in this Agreement are to United States dollars unless otherwise indicated; and

(k) any reference to a statute shall mean the statute in force as at the date hereof and any regulation in force thereunder, unless otherwise expressly provided.

## **ARTICLE II**

### **THE ARRANGEMENT**

SECTION 2.01 *Implementation Steps by the Company.* The Company agrees that it shall:

(a) as soon as reasonably practicable, apply to the Court in a manner acceptable to Parent, acting reasonably, under section 192 of the CBCA for the Interim Order, and thereafter proceed with and diligently pursue the obtaining of the Interim Order;

(b) convene and hold the Special Meeting as soon as practicable after the date hereof, but in any case before March 31, 2005, for the purpose of considering the Arrangement Resolution and the Rights Plan Resolution (and for any other proper purpose as may be set out in the notice for such meeting and agreed to by Parent, acting reasonably; provided that the Arrangement Resolution and the Rights Plan Resolution shall be voted on before any other matter at the Special Meeting, unless otherwise agreed by Parent);

(c) except as required for quorum purposes or otherwise permitted under this Agreement, not adjourn (except as required by Law or by valid Shareholder action), postpone or cancel (or propose for adjournment, postponement or cancellation) the Special Meeting without Parent's prior written consent, such consent not to be unreasonably withheld or delayed;

(d) use commercially reasonable efforts to solicit from Shareholders proxies in favor of the Arrangement Resolution and the Rights Plan Resolution, including, if so requested by Parent, using the services of dealers and proxy solicitation services, and take all other action that is necessary or desirable to secure the approval of the Arrangement Resolution and the Rights Plan Resolution by Shareholders;

(e) subject to obtaining such approvals as are required by the Interim Order, as soon as reasonably practicable after the Special Meeting apply to the Court under section 192 of the CBCA for the Final Order approving the Arrangement, and thereafter proceed with and diligently pursue the obtaining of the Final Order;

(f) subject to obtaining the Final Order, as soon as reasonably practicable thereafter and subject to the satisfaction or waiver of the other conditions herein contained in favor of each party, deliver to the Director, for endorsement and filing by the Director, the Articles of Arrangement and such other documents as may be required in connection therewith under the CBCA to give effect to the Arrangement;

(g) instruct counsel acting for it to bring the applications referred to in Sections 2.01(a) and 2.01(e) in cooperation with counsel to Parent;

(h) permit Parent and its counsel to review and comment upon drafts of all material to be filed by the Company with the Court in connection with the Arrangement, including the Circular and any supplement or amendment contemplated by Section 2.05(c), and provide counsel to Parent on a timely basis with copies of any notice of appearance and evidence served on the Company or



its counsel in respect of the application for the Interim Order and the Final Order or any appeal therefrom and of any notice (written or oral) received by the Company indicating any intention to oppose the granting of the Interim Order or the Final Order or to appeal the Interim Order or the Final Order; and

(i) not (i) file any material with the Court in connection with the Arrangement or serve any such material, and not agree to modify or amend materials so filed or served, or (ii) send to the Director, for endorsement and filing by the Director, the Articles of Arrangement, except in either case as contemplated hereby or with Parent's prior written consent, such consent not to be unreasonably withheld or delayed.

SECTION 2.02 *Interim Order*: The notice of motion for the application referred to in Section 2.01(a) shall request that the Interim Order provide:

(a) for the class of Persons to whom notice is to be provided in respect of the Arrangement and the Special Meeting and for the manner in which such notice is to be provided;

(b) that the requisite approval for the Arrangement Resolution shall be two-thirds of the votes cast on the Arrangement Resolution by Shareholders present in person or represented by proxy at the Special Meeting;

(c) that, in all other respects, the terms, restrictions and conditions of the Company's Articles of Incorporation and By-Laws, each as amended prior to the date of this Agreement, including quorum requirements and all other matters, shall apply in respect of the Special Meeting;

(d) for the grant of the Dissent Rights; and

(e) for the notice requirements with respect to the presentation of the application to the Court for the Final Order.

SECTION 2.03 *Articles of Arrangement*. The Articles of Arrangement shall implement the Plan of Arrangement. On the third business day after the satisfaction or waiver (subject to applicable Laws) of the conditions (excluding conditions that, by their terms, cannot be satisfied until the Effective Date, but subject to the satisfaction or, where permitted, waiver of those conditions as of the Effective Date) set forth in Article VII, and unless another time or date is agreed to in writing by the parties hereto, the Articles of Arrangement shall be filed with the Director. From and after the Effective Time, the Plan of Arrangement will have all of the effects provided by applicable Laws, including the CBCA. The closing of the Transactions will take place at the offices of Cravath, Swaine & Moore LLP, 825 Eighth Avenue, New York, New York 10019 at 10:00 a.m. Eastern Standard Time on the Effective Date.

SECTION 2.04 *Circular and Related Materials*. As promptly as reasonably practicable after the execution of this Agreement, the Company shall prepare and complete, in consultation with Parent, the Circular together with any other documents

required by the Securities Act, the CBCA or other applicable Laws in connection with the Transactions and the Special Meeting, and all reasonable comments made by Parent and its counsel shall be accepted and incorporated into the Circular and such other documents. As promptly as reasonably practicable thereafter and after receipt of the Interim Order, the Company shall cause the Circular and other documentation required in connection with the Special Meeting to be sent to each Shareholder and filed as required by the Interim Order or applicable Laws. In any event the Company will have prepared all materials necessary for filing the application for the Interim Order with the Court and the Director within 30 days after the date of this Agreement, except to the extent any delay beyond such period is due to Parent's failure to comply on a timely basis with its obligations under Section 2.05(b) in respect of the Circular.

**SECTION 2.05 *Securities and Corporate Compliance.*** (a) The Company shall (with Parent and Parent's counsel) diligently do all such acts and things as may be necessary to comply, in all material respects, with National Instrument 54-101 of the Canadian Securities Administrators in relation to the Special Meeting and, without limiting the generality of the foregoing, shall, in consultation with Parent, use all reasonable efforts to benefit from the accelerated timing contemplated by such policy.

(b) Each of Parent and the Company shall furnish to the other all such information concerning it, its affiliates (including, in the case of Parent, Acquisition Sub) and its shareholders and, in the case of the Company, the Optionholders, as may be required to effect the actions described in Sections 2.04 and 2.05, and each covenants that no information furnished by it in connection with such actions or otherwise in connection with the consummation of the Arrangement and the other Transactions will contain any untrue statement of a material fact or omit to state a material fact required to be stated in any such document or necessary in order to make any information so furnished for use in any such document not misleading in the light of the circumstances in which it is furnished or to be used.

(c) Parent and the Company shall each promptly notify the other if at any time before the Effective Time it becomes aware that the Circular or any application for an order hereunder contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made, or that otherwise requires an amendment or supplement to the Circular or such application. In any such event, Parent and the Company shall cooperate in the preparation of a supplement or amendment to the Circular or such other document, as required and as the case may be, and, if required by applicable Law or the Court, shall cause the same to be distributed to Shareholders and filed with the applicable Securities Regulators.

(d) The Company shall ensure that the Circular complies with all applicable Laws and, without limiting the generality of the foregoing, that the Circular does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made (other than with respect to any information relating to and provided by Parent or Acquisition Sub). Without limiting the

generality of the foregoing, the Company shall ensure that the Circular provides Shareholders with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the Special Meeting.

SECTION 2.06 *Dissent*. The Company shall give Parent prompt notice of any written notice of dissent, withdrawal of such notice, and any other instruments received by the Company pursuant to the Dissent Rights.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

As an inducement to Parent and Acquisition Sub to enter into this Agreement, the Company hereby represents and warrants to Parent and Acquisition Sub that, except as set forth in the Company Disclosure Letter:

SECTION 3.01 *Organization and Qualification; Subsidiaries*. (a) Each of the Company and each Subsidiary is duly organized, validly existing and, to the extent such concept is legally recognized, in good standing under the laws of the jurisdiction of its incorporation or organization, as the case may be, and has the requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted. Each of the Company and each Subsidiary is duly qualified or licensed to do business and is, to the extent such concept is legally recognized, in good standing in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified, licensed or in good standing has not had and could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate. Section 3.01(a) of the Company Disclosure Letter sets forth a correct and complete list of each jurisdiction where the Company and each Significant Subsidiary is qualified or licensed to do business.

(b) Section 3.01(b) of the Company Disclosure Letter sets forth a list of each Subsidiary, together with its jurisdiction of incorporation or organization and the names of the holders of all its capital stock or other equity interests. All the outstanding shares of capital stock of each Subsidiary have been validly issued and are fully paid and nonassessable and, except as set forth in Section 3.01(b) of the Company Disclosure Letter, are as of the date of this Agreement owned by the Company, by another Subsidiary or by the Company and another Subsidiary, free and clear of all Liens.

(c) Except for its interests in the Subsidiaries and except for the ownership interests set forth in Section 3.01(c) of the Company Disclosure Letter, the Company does not as of the date of this Agreement own, directly or indirectly, any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any Person.

SECTION 3.02 *Articles of Incorporation and By-Laws*. The Company has made available to Parent and Acquisition Sub a copy of the Articles of Incorporation and

By-Laws or equivalent organizational documents, each as amended through the date of this Agreement, of the Company and each Significant Subsidiary.

SECTION 3.03 *Capitalization.* The authorized capital of the Company consists of (i) an unlimited number of Common Shares and (ii) an unlimited number of Preferred Shares issuable in series. As of January 28, 2005, (i) 57,417,941 Common Shares were issued and outstanding and (ii) 6,888,634 Common Shares were reserved for future issuance pursuant to outstanding Employee Stock Options. The Company has not issued any Common Shares or granted any Employee Stock Options since such date and prior to the date hereof. As of December 31, 2004, 56,765,996 Common Shares were issued and outstanding. Section 3.03 of the Company Disclosure Letter sets forth a list of all Employee Stock Options outstanding as of December 31, 2004, including the exercise price for each such Employee Stock Option. As soon as possible after the date hereof, the Company will provide a list of all Employee Stock Options outstanding as of January 28, 2005, including the exercise price for each such Employee Stock Option. As of the date of this Agreement, no Preferred Shares are issued and outstanding. Except as set forth in this Section 3.03, as of the date of this Agreement, no shares of capital stock or other voting security or equity interests of the Company were issued, reserved for issuance or outstanding. Except as set forth in this Section 3.03 or in Section 3.03 of the Company Disclosure Letter, there are no options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, preemptive rights or other rights, agreements, arrangements or commitments of any character to which the Company or any Subsidiary is a party relating to the issued or unissued capital stock of the Company or any Subsidiary or obligating the Company or any Subsidiary to issue or sell any shares of capital stock of, or other equity interests in, the Company or any Subsidiary. There are no outstanding or authorized share appreciation, phantom shares, profit participation or similar rights with respect to the capital of the Company or any Subsidiary. There are no voting trusts, proxies, unanimous shareholder agreements or other agreements or understandings with respect to the voting of any shares of any capital stock of the Company or any Subsidiary to which the Company or any Subsidiary is a party. All Common Shares outstanding on the date hereof, and all such Common Shares that may be issued prior to the Effective Time will be when issued, on the terms and conditions specified in the instruments pursuant to which they are issuable, duly authorized, validly issued, fully paid and nonassessable. Except as set forth in Section 3.03 of the Company Disclosure Letter, (i) there are no outstanding Common Shares in respect of which the Company has a right under specified circumstances to repurchase such shares at a fixed purchase price and (ii) there are no outstanding contractual obligations of the Company or any Subsidiary to repurchase, redeem or otherwise acquire any Common Shares or any capital stock of any Subsidiary or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any Subsidiary or any other Person. There are no bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which Shareholders may vote.

SECTION 3.04 *Authority Relative to this Agreement.* The Company has all necessary corporate power and authority to execute and deliver this Agreement and the other Transaction Documents, to perform its obligations hereunder and thereunder and to

consummate the Arrangement. The execution and delivery of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the Arrangement have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or the Transaction Documents or to consummate the Arrangement (other than the receipt of approval of Shareholders required by the Interim Order and the approval of the Court). Each of this Agreement and the other Transaction Documents has been duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Acquisition Sub, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by Law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought.

SECTION 3.05 *No Conflict; Required Filings and Consents.* (a) The execution and delivery of this Agreement and the other Transaction Documents by the Company do not, and the consummation of the Transactions and the performance of this Agreement by the Company will not, (i) conflict with or violate the Articles of Incorporation or By-laws or equivalent organizational documents of the Company or any Subsidiary, (ii) assuming that all consents, approvals, authorizations and other actions described in Section 3.05(b) have been obtained and that all filings and obligations described in Section 3.05(b) have been made, conflict with or violate any Law applicable to the Company or any Subsidiary or by which any property or asset of the Company or any Subsidiary is bound, or (iii) except as set forth in Section 3.05(a) of the Company Disclosure Letter, result in any breach of, or constitute a default (or an event which, with notice or lapse of time or both, would become a default) under, or give to others any right of termination, amendment, acceleration or cancellation of, or create, give rise to or change any rights or obligations of any Person under, or result in the creation of a Lien (other than a Permitted Lien) on any property or asset of the Company or any Subsidiary pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary or any property or asset of the Company or any Subsidiary is bound, except, with respect to clauses (ii) and (iii), for any such conflicts, violations, breaches, defaults or other occurrences that could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or materially impair the ability of the Company to complete the Transactions.

(b) No consent, approval, license, permit, order or authorization of, or registration, declaration or filing with, or permit from, any Governmental Authority is required to be obtained or made by or with respect to the Company or any Subsidiary in connection with the execution, delivery and performance of any Transaction Document to which it is a party or the consummation of the Transactions, other than (i) compliance with and filings under (A) the HSR Act, (B) the EC Merger Regulation and (C) the Canadian Investment Regulations, (ii) the approval of or notification to, as applicable, (A) the Office of the Chief Scientist of the Israeli Ministry of Trade & Industry, (B) the Israeli Investment Centre of the Israeli Ministry of Trade & Industry and (C) the Director

of Restrictive Trade Practices of the Israeli Ministry of Trade & Industry, (iii) the filing on SEDAR and with the SEC on Form 6-K of the Circular, (iv) the receipt from the Court of the Interim Order and the Final Order, (v) the filing by the Director of the Articles of Arrangement and such other documents as may be required in connection therewith under the CBCA to give effect to the Arrangement, (vi) compliance with and such filings as may be required under applicable Environmental Laws, (vii) filings under any applicable state takeover Law and (viii) such other items (A) that may be required solely by reason of the participation of Parent and Acquisition Sub (as opposed to any third party) in the Transactions, (B) that may be required under any applicable Law of any country outside Canada and the United States and that would not reasonably be expected to materially impair or delay the ability of the Company to consummate the Transactions or (C) as are set forth in Section 3.05(b) of the Company Disclosure Letter.

SECTION 3.06 *Permits; Compliance.* Each of the Company and each Subsidiary is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Authority necessary for each of the Company or any Subsidiary to own, lease and operate its properties and assets and to carry on its business as it is now being conducted (the “*Permits*”), except where the failure to have any of the Permits have not had and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Company and each Subsidiary is in compliance with such Permits, except where the failure to be in compliance have not had and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No suspension or cancellation of any of the Permits is pending or, to the Knowledge of the Company, threatened, except where the suspension or cancellation of any of the Permits have not had and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as set forth in Section 3.06 of the Company Disclosure Letter, neither the Company nor any Subsidiary is in conflict with, or in default, breach or violation of, (a) any Law applicable to the Company or any Subsidiary or by which any property or asset of the Company or any Subsidiary is bound, or (b) any note, bond, mortgage, indenture, contract, agreement, lease, license, Permit, franchise or other instrument or obligation to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary or any property or asset of the Company or any Subsidiary is bound, except, with respect to clauses (a) and (b), for any such conflicts, defaults, breaches or violations that have not had and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. This Section 3.06 does not relate to matters with respect to Taxes, which are the subject of Section 3.11, or to environmental matters, which are the subject of Section 3.12.

SECTION 3.07 *Public Disclosure Documents; Financial Statements; Books and Records.* (a) The Company is, and at all times since August 5, 1999 has been, a foreign private issuer (as such term is defined in Rule 405 under the 33 Act and Rule 3b-4 under the Exchange Act). Since October 1, 2002, the Company has filed all forms, reports, statements and documents required to be filed by it under the Securities Act (the “*OSC Reports*”) and the Exchange Act and the Sarbanes-Oxley Act (collectively, the “*SEC Reports*”) and together with the OSC Reports, the “*Public Disclosure Documents*”) on SEDAR, in the case of the OSC Reports and with or, if permissible, furnished by it to, the

SEC, in the case of the SEC Reports. Except as set forth in Section 3.07 of the Company Disclosure Letter, the Public Disclosure Documents (i) were prepared in accordance with the applicable requirements of the Securities Act, the Exchange Act or the Sarbanes-Oxley Act, as the case may be, and the rules and regulations promulgated thereunder, and (ii) did not, at the time they were filed, or, if amended prior to the date hereof, as of the date of such amendment, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. No Subsidiary is required to file or furnish any form, report or other document with or to the OSC or the SEC.

(b) Except as set forth in Section 3.07(b) of the Company Disclosure Letter, (i) each of the consolidated financial statements (including, in each case, any notes thereto) contained or incorporated by reference in the Public Disclosure Documents was prepared in accordance with Canadian GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto), and (ii) each fairly presents, in all material respects, the consolidated financial position, results of operations and cash flows of the Company and its consolidated Subsidiaries as at the respective dates thereof and for the respective periods indicated therein except as otherwise noted therein (subject, in the case of unaudited statements, to normal year-end audit adjustments and absence of notes).

(c) The Company is in compliance in all material respects with (i) the provisions of the Sarbanes-Oxley Act applicable to it and (ii) the applicable listing and corporate governance rules and regulations of the Toronto Stock Exchange and NASDAQ. Except as permitted by the Exchange Act, including Sections 13(k)(2) and (3), since the enactment of the Sarbanes-Oxley Act, neither the Company nor any of its affiliates has made, arranged or modified (in any material way) personal loans to any executive officer or director of the Company.

(d) The Company (i) has designed disclosure controls and procedures to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the management of the Company by others within those entities, and (ii) has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's auditors and the audit committee of the Company Board any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls. The Company has made available to Parent a summary of any such disclosure made by management to the Company's auditors and audit committee since October 1, 2002.

(e) The financial books, records and accounts of the Company and the Subsidiaries (i) have been maintained in accordance with good business practices on a basis consistent with prior years, (ii) are stated in reasonable detail and accurately and fairly reflect the material transactions and dispositions of the assets of the Company and the Subsidiaries and (iii) accurately and fairly reflect the basis for the financial statements of the Company. The Company has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that (x) transactions are

executed in accordance with managements' general or specific authorization; and (y) transactions are recorded as necessary to permit preparation of financial statements in conformity with Canadian GAAP. The Company's and the Subsidiaries' corporate records and minute books have been maintained substantially in compliance with applicable Laws and are complete and accurate in all material respects, and full access thereto has been provided to Parent.

SECTION 3.08 *Absence of Certain Changes or Events.* Since September 30, 2004, there has not been any Material Adverse Effect. During the period since September 30, 2004 through the date of this Agreement, except as set forth in Section 3.08 of the Company Disclosure Letter, (a) the Company and the Subsidiaries have conducted their businesses only in the ordinary course consistent with past practice, (b) there has not been any material damage, destruction or other casualty loss with respect to any material asset owned, leased or otherwise used by the Company or any Subsidiary, whether or not covered by insurance and (c) neither the Company nor any Subsidiary has taken any action that, if taken after the date of this Agreement, would be prohibited by or constitute a breach or violation of any of the covenants set forth in Section 5.01.

SECTION 3.09 *Employee Benefit Plans.* (a) Section 3.09(a) of the Company Disclosure Letter lists (i) all employee benefit plans, bonus, stock option, stock purchase, restricted stock, incentive, deferred compensation, retiree medical or life insurance, supplemental retirement, severance or other benefit plans, programs or arrangements and material written personnel policies, rules or procedures and (ii) all employment, termination, severance or other material contracts or agreements to which the Company or any Subsidiary is a party, with respect to which the Company or any Subsidiary has any obligation or which are maintained, contributed to or sponsored by the Company or any Subsidiary for the benefit of any current or former employee, officer or director of the Company or any Subsidiary (in each of clauses (i) and (ii), other than as required by statute) (collectively, the "Plans"), other than Plans that are not material. Except as set forth in Section 3.09(a) of the Company Disclosure Letter, the Company has made available to Parent current and complete copies of all written Plans as amended to date and has made available to Parent a copy of (i) each trust or other funding arrangement prepared in connection with any applicable Plan, (ii) current insurance contracts or policies, investment management agreements, subscription and participation agreements, benefit administration contracts, and any financial administration contracts relating to any Plan, (iii) all summaries in the Company's possession or control distributed or made available to any employee or former employee concerning any Plans, (iv) all financial and accounting statements for each of the last three years together with the four most recent quarterly investment reports with respect to any Plan, (v) all annual information returns and material correspondence with, any Governmental Authority within the last three years with respect to any Plan, and (vi) all valuations and other documentation for each of the last three years which materially affect premiums, contributions, refunds, deficits or reserves under any Plan.

(b) Each Plan is, and has been, established, registered, qualified, amended, administered, and where applicable, funded, and invested, in material compliance with



the terms of such Plan, all applicable Laws and any collective agreements, as applicable. Neither the Company nor any of the Subsidiaries has received, in the last six years, any notice from any Person or Governmental Authority questioning or challenging such compliance (other than in respect of any claim related solely to that Person).

(c) There has been no amendment to, announcement by the Company or any of the Subsidiaries relating to, or change in employee participation or coverage under, any Plan which would increase the expense of maintaining all Plans by more than five percent above the level of the expense incurred thereunder for the most recent fiscal year. Except as set forth in Section 3.09(c) of the Company Disclosure Letter, neither the execution of this Agreement, Shareholder approval of this Agreement nor the consummation of the Transactions will (i) entitle any employees of the Company or any of the Subsidiaries to severance pay or any increase in severance pay, (ii) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other material obligation pursuant to, any of the Plans, (iii) limit or restrict the right of the Company or, after the consummation of the Transactions, Parent to merge, amend or terminate any of the Plans or (iv) result in payments under any of the Plans which would not be deductible under Section 162(m) or Section 280G of the Internal Revenue Code of 1986, as amended (the "Code").

(d) The Company and the Subsidiaries are in material compliance with all of their obligations in respect of the Plans. The Company and the Subsidiaries have not been notified of any default or violation by any other Person in relation to obligations under any Plan. All employer or employee payments, contributions or premiums required to be remitted, paid to or in respect of each Plan have been paid or remitted in a timely fashion in accordance with its terms and all applicable Laws in all material respects. No Taxes, penalties or fees are owing or exigible under or in relation to any Plan.

(e) There is no investigation by any Governmental Authority, or claim (other than routine claims for payment of benefits) pending or, to the Knowledge of the Company, threatened involving any Plan or their assets.

(f) Except for the Company Employees, there are no Persons other than the Company or the Subsidiaries sponsoring, participating in or contributing to any Plan. None of the Plans is required to be established and maintained pursuant to a collective bargaining agreement and no participants in any Plan are covered by a collective bargaining agreement. None of the Plans is a "multi-employer" plan as defined by applicable Laws. There are no material unfunded liabilities in respect of any Plan, including going-concern unfunded liabilities, solvency deficiencies or wind-up deficiencies.

(g) None of the Plans, other than any pension plan or registered retirement savings plan, provide benefits beyond retirement or other termination of service to Company Employees or former employees or to the beneficiaries or dependants of such employees other than benefits provided pursuant to Section 4980B of the Code and Sections 601 et. seq. of the United States Employee Retirement Income Security Act of 1974, as amended, and benefits in respect of which the full premium costs are borne by employees and their dependent beneficiaries.

(h) The level of insurance reserves, if any, under any insured Plan is reasonable and sufficient to provide for all incurred but unreported claims thereunder.

SECTION 3.10 *Labor and Employment Matters.* (a) Section 3.10(a) of the Company Disclosure Letter lists all agreements between the Company or any Subsidiary and trade unions or representative bodies (including union recognition agreements, collective agreements and works council agreements). Except as disclosed in Section 3.10(a) of the Company Disclosure Letter, the consultation of or the rendering of formal advice by any such trade union or representative body is not required to consummate the Transactions.

(b) Except for those employment contracts with salaried Company Employees set forth in Section 3.10(b) of the Company Disclosure Letter, there are no contracts of employment entered into by the Company or any Subsidiary with any Company Employee which would entitle a Company Employee to receive enhanced benefits or payments upon the Company entering into this Agreement or any of the other Transaction Documents to which the Company is a party or upon the consummation of the Transactions. The Company has provided Parent with copies of all material employment policies, form nondisclosure agreements and form agreements used by the Company and the Subsidiaries in connection with the employment of Company Employees and, except as disclosed in Section 3.10(b) of the Company Disclosure Letter, no Company Employee has been employed on terms and conditions materially different from such policies, form nondisclosure agreements and form agreements.

(c) Except as have not had and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or as set forth in Section 3.10(c) of the Company Disclosure Letter, (i) there are no controversies pending or, to the Knowledge of the Company, threatened between the Company or any Subsidiary and any Company Employee, (ii) neither the Company nor any Subsidiary has breached or otherwise failed to comply with any provision of any collective agreement or similar contract, and there are no grievances outstanding against the Company or any Subsidiary under any such agreement or contract, (iii) there is no strike, slowdown, work stoppage, lockout, industrial dispute or trade dispute, or, to the Knowledge of the Company, threat thereof, by or with respect to any Company Employee, (iv) to the Knowledge of the Company, there is no union organizing campaign, (v) to the Knowledge of the Company, no executive or manager of the Company or any Subsidiary, is a party to any confidentiality, non-competition, proprietary rights or other such agreement with any Person other than the Company or any Subsidiary that would be material to the performance of such employee's employment duties, or the ability of the Company or any Subsidiary to conduct its business, and (vi) there is no labor or employment-related charge, complaint, grievance, investigation, inquiry or obligation of any kind, pending or, to the Knowledge of the Company, threatened before or by any Governmental Authority, relating to an alleged violation or breach by the Company or any Subsidiary (or by their respective officers or directors) of any Law or contract.

(d) All current assessments under workers compensation legislation in relation to the Company Employees have been paid or accrued by the Company or any applicable Subsidiary and the business of the Company and the Subsidiaries has not been and is not (i) subject to any additional or penalty assessment under such legislation which has not been paid, or (ii) subject to any audit in connection with such legislation. The accident cost experience of the Company and the Subsidiaries is such that there are no pending nor, to the Knowledge of the Company, potential penalty assessments, experience rating changes or claims which could materially adversely affect the premium payments or accident cost experience of the Company or any Subsidiary or result in material additional payments in connection with the business of the Company and the Subsidiaries.

SECTION 3.11 *Taxes*. (a) Except as set forth in Section 3.11(a) of the Company Disclosure Letter, to the Knowledge of Company, the Company and the Subsidiaries (i) have filed or caused to be filed on a timely basis (taking into account any extension of time to file granted or obtained) all material Tax Returns required to be filed and all such Tax Returns are true, complete and correct in all material respects, (ii) have timely paid or caused to be paid all material amounts of Taxes due (whether or not shown or required to be shown on a Tax Return) and (iii) have made adequate provisions on their most recently published financial statements for all Taxes payable in respect of each period covered by such financial statements and all prior periods to the extent such Taxes have not been paid, whether or not due and whether or not shown as being due on any Tax Returns and have made adequate provisions in their books and records for any Taxes accruing in respect of any accounting period which has ended subsequent to the period covered by such financial statements. There are no currently effective waivers of statutes of limitations that have been provided or requested with respect to any Taxes of the Company or any Subsidiary. All material amounts of Taxes required to have been withheld by or with respect to the Company and the Subsidiaries have been or shall be timely withheld and remitted to the applicable taxing authority. The material Tax Returns of the Company have been examined by the relevant taxing authorities for all years to and including September 30, 2001, or the period for assessment of the Taxes in respect of which such Tax Returns were required to be filed has expired.

(b) Except as set forth in Section 3.11(b) of the Company Disclosure Letter, (i) neither the Company nor any Subsidiary has received any written notification that any issues involving any material amount of Taxes have been raised (and are currently pending) nor has any deficiency for a material amount of Tax been asserted (other than deficiencies that have been either satisfied, withdrawn or settled) by the Canada Revenue Agency, the United States Internal Revenue Service or any other taxing authority, including any sales tax authority, in connection with any of the Tax Returns referred to above and (ii) there are no Liens for Taxes in any material amount on any assets of the Company or any Subsidiary (other than any Liens for Taxes not yet due and payable for which adequate reserves have been made in accordance with Canadian GAAP or for Taxes being contested in good faith).

(c) Except as set forth in Section 3.11(c) of the Company Disclosure Letter, neither the Company nor any Subsidiary is a party to any Tax allocation or Tax sharing agreement or is required by any Tax allocation or Tax sharing agreement to make any payment to any Person.

(d) Section 3.11(d) of the Company Disclosure Letter sets forth a list of estimated Tax loss carryforwards in U.S. dollars prepared for financial statements purposes as of September 30, 2004 of the Company and the Subsidiaries organized by entity subject to filing of relevant Tax Returns and audit adjustments or reassessments by the relevant taxing authority.

SECTION 3.12 *Environmental Matters*. (a) Except as set forth in Section 3.12(a) of the Company Disclosure Letter and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) the Company and the Subsidiaries have complied at all times with all applicable Laws relating to any matter of pollution, protection of health or safety (as relating to exposure to Hazardous Substances) or the environment, environmental regulation or control or regarding Hazardous Substances on or under any of the Company's or any Subsidiaries' properties or any other properties (collectively, "*Environmental Laws*"), (ii) neither the Company nor any Subsidiary has received any written notice (A) of any violation of any Environmental Law, (B) of any suit, action, claim, proceeding or investigation by any Governmental Authority or any third party based on or arising under any Environmental Law (an "*Environmental Claim*"), (C) requiring the response to or remediation of Hazardous Substances at or arising from any of the Company's or any Subsidiary's properties or any other properties, or (D) demanding payment for response to or remediation of Hazardous Substances at or arising from any of the Company's or any Subsidiary's properties or any other properties, except in each case for the notices set forth in Section 3.12(a) of the Company Disclosure Letter, (iii) neither the Company nor any Subsidiary has placed, held, located, released, transported or disposed of any Hazardous Substances on, under, from or at any of the Company's or any Subsidiary's properties or any other properties, other than in material compliance with applicable Environmental Laws and in a manner that would not reasonably be expected to result in an Environmental Claim, (iv) no property currently or to the Knowledge of the Company formerly owned or operated by the Company or any Subsidiary (including soils, groundwater, surface water, buildings or other structures) has been contaminated with any Hazardous Substance that would reasonably be expected to require remediation pursuant to any applicable Environmental Law, (v) none of the properties of the Company or any Subsidiary contain any underground storage tanks, asbestos-containing material, lead products, or polychlorinated biphenyls that require remediation pursuant to any applicable Environmental Law, (vi) to the Knowledge of the Company there are no other circumstances or conditions involving the Company or any Subsidiary, including any indemnity, that would reasonably be expected to result in an Environmental Claim against the Company or any Subsidiary and (vii) the Company has delivered or made available to Parent copies of all material environmental reports, studies, assessments and sampling data in its possession relating to the Company or any Subsidiary or any of their current or former properties or operations.

(b) Except as set forth in Section 3.12(b) of the Company Disclosure Letter, no Environmental Law imposes any obligation upon the Company or any Subsidiary arising

out of or as a condition to any Transaction, to file any notice or other submission with any Governmental Authority, the placement of any notice, acknowledgment or covenant in any land records, or the modification of or provision of notice under any agreement, consent order or consent decree, but excluding any requirement to transfer any permit or license. No Lien has been placed upon any of the Company's or any Subsidiary's properties under any Environmental Law.

SECTION 3.13 *Material Contracts*. (a) Section 3.13(a) of the Company Disclosure Letter lists each of the following types of contracts and agreements to which the Company or any Subsidiary is a party (such contracts and agreements, the "*Material Contracts*"), other than the Confidential Material Contracts:

(i) any contract or agreement relating to indebtedness for borrowed money (including any guarantee of or obligation to guarantee the indebtedness for borrowed money of any Person other than a Subsidiary) having an outstanding principal amount in excess of \$500,000, and, for each such contract or agreement, the aggregate principal amount outstanding as of the date of this Agreement;

(ii) any contract or agreement relating to a Lien imposed on any asset or property of the Company or a Subsidiary, other than Permitted Liens;

(iii) any currency exchange, interest rate exchange, commodity exchange or similar contract or agreement;

(iv) any contract or agreement with any supplier, distributor or customer for the furnishing of services or purchase or sale of goods, equipment, inventory or other assets to or by the Company or any Subsidiary requiring payment of or receipt over the remaining life of such contract or agreement of more than \$1,000,000;

(v) any contract manufacturing or original equipment manufacturing contract or agreement requiring payment of or receipt over the remaining life of such contract or agreement of more than \$1,000,000;

(vi) any contract or agreement between the Company or any Subsidiary, on the one hand, and any or [commercially sensitive information redacted] or any of their respective affiliates, on the other hand;

(vii) any partnership, joint venture or similar agreement or arrangement;

(viii) any contract or agreement that limits or purports to limit the ability of the Company or any Subsidiary to compete with any Person or in any line of business or in any geographic area or during any period of time;

(ix) any contract or agreement (other than dealer, reseller or distributor agreements) that creates or imposes any exclusivity right or obligation with respect to the Company or the Subsidiaries or the other party to such contract or agreement;

(x) any contract or agreement between or among the Company or any Subsidiary, on the one hand, and any director, officer or affiliate of the Company (other than a Subsidiary) or any Person that beneficially owns 5% or more of the outstanding Common Shares (including, in each case, any “associates” or members of the “immediate family” (as such terms are defined in Rule 12b-2 and Rule 16a-1 of the Exchange Act, respectively) of any such Person), on the other hand;

(xi) any contract, agreement or arrangement between the Company or any Subsidiary and any Governmental Authority, including an arrangement for receipt or repayment of any grant, subsidy or financial assistance (including any advantageous Tax treatment) from any Governmental Authority, other than (i) ordinary course agreements relating to the sale of products or services of the Company and the Subsidiaries; (ii) any Tax incentives or financial assistance from any Governmental Authority relating to the development or manufacturing of any products to be sold by the Company and the Subsidiaries; and (iii) any agreements covered by Section 3.19;

(xii) any contract or agreement pursuant to which any Person is funding or subsidizing research and development or commercialization activity by the Company or any Subsidiary requiring payment of or receipt over the remaining life of such contract or agreement of more than \$1,000,000;

(xiii) any agreement (or group of related agreements) for the lease or sublease of real or personal property to or from any Person providing for lease payments in excess of \$500,000 per annum;

(xiv) any agreement under which the Company or any Subsidiary has advanced or loaned or has committed to advance or loan any other Person (other than intercompany indebtedness or arrangements) amounts in the aggregate exceeding \$500,000; and

(xv) any other agreement to which the Company or any Subsidiary is a party requiring payment of or receipt over the remaining life of such agreement of more than \$500,000 per annum that is not otherwise disclosed in Section 3.13(a) of the Company Disclosure Letter and other than any contract or agreement of the type described above that would be disclosed in Section 3.13(a) of the Company Disclosure Letter if it involved the payment of or receipt of any amount in excess of any applicable threshold set forth above.

(b) Each Material Contract is a valid and binding obligation of the Company or any Subsidiary, as the case may be, and, to the Knowledge of the Company, a valid and binding obligation of each other party thereto. None of the Company, any Subsidiary or, to the Knowledge of the Company, any other party is in breach of, or in default under, or has repudiated, and no event has occurred which, with notice or lapse of time or both, would constitute a breach of, or a default under, any Material Contract, except for such breach, default or repudiation that has not had and could not be reasonably expected to

have, individually or in the aggregate, a Material Adverse Effect. Except as set forth in Section 3.13(b) of the Company Disclosure Letter there are no material disputes pending, or to the Knowledge of the Company, threatened under any Material Contract. The Company has made available to Parent a true and correct copy of each (i) dealer, reseller or distributor agreement to which the Company or any of its Subsidiaries is a party and (ii) Material Contract, as amended to date, other than those Material Contracts set forth in Section 3.13(b) of the Company Disclosure Letter (“*Confidential Material Contracts*”). No Confidential Material Contract during 2004 represented or related to or during 2005 is expected to represent or relate to more than 1% of the expenses of the Company and the Subsidiaries, on a consolidated basis. The Confidential Material Contracts, in the aggregate, during 2004 did not represent or relate to and during 2005 are not expected to represent or relate to more than 2% of the expenses of the Company and the Subsidiaries, on a consolidated basis. The Company has informed Parent of the general nature of the Confidential Material Contracts to the full extent it is permitted to do so. Neither the Company nor any Subsidiary is a party to any material oral contract.

SECTION 3.14 *Board Approval; Shareholder Vote Required.* (a) The Company Board, at a meeting duly called and held prior to the execution and delivery of this Agreement, has duly adopted resolutions: (i) authorizing and approving this Agreement, the other Transaction Documents, the Arrangement and the other Transactions, (ii) authorizing the Company to execute and deliver this Agreement, (iii) authorizing the Company and the Subsidiaries to consummate the Transactions on the terms set forth herein and in the Plan of Arrangement, (iv) determining that this Agreement and the Transactions are fair to Shareholders and are in the best interests of the Company, (v) directing that the approval of this Agreement and the other Transaction Documents be submitted to a vote at a meeting of Shareholders, to be duly called in accordance with the Interim Order and (vi) recommending that Shareholders approve the Arrangement Resolution and the Rights Plan Resolution, which resolutions have not been subsequently rescinded, modified or withdrawn in any way prior to the date of this Agreement.

(b) The Company Board has received an opinion from Merrill Lynch, financial advisors to the Company, that the Consideration is fair from a financial point of view to Shareholders.

(c) As of the date hereof, all of the directors of the Company have advised that they intend to vote all Common Shares held by them in favor of the Arrangement Resolution and the Rights Plan Resolution and will, accordingly, so represent in the Circular.

SECTION 3.15 *Brokers.* No broker, finder or investment banker (other than Merrill Lynch) is entitled to any brokerage, finder’s or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of the Company or any of the Subsidiaries and all such fees or commissions paid or payable to Merrill Lynch are disclosed in Section 3.15 of the Company Disclosure Letter.

SECTION 3.16 *Litigation and Liabilities.* Except as set forth in Section 3.16 of the Company Disclosure Letter, there is no Action pending or, to the Knowledge of the

Company, threatened against the Company or any Subsidiary or any of their respective assets or properties before any Governmental Authority that, if adversely decided, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary nor any asset or property of the Company or any Subsidiary is subject to any continuing order of, or consent decree, settlement agreement or similar written agreement with, any Governmental Authority, or to any order, judgment, injunction or decree of any Governmental Authority that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth in Section 3.16 of the Company Disclosure Letter or in the unaudited consolidated balance sheet of the Company as of December 31, 2004 contained in the Public Disclosure Documents filed prior to the date hereof, there are no material obligations or liabilities, whether or not accrued, contingent or otherwise and whether or not required to be disclosed in a balance sheet or in the notes thereto prepared in accordance with Canadian GAAP, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.17 *Title to Properties.* (a) Except as set forth in Section 3.17(a) of the Company Disclosure Letter, each of the Company and the Subsidiaries has good and valid title to, or valid leasehold interests in, all its properties and assets except for such as are no longer used in the conduct of its businesses or as have been disposed of in the ordinary course of business and except for defects in title, easements, restrictive covenants and similar encumbrances or impediments that, in the aggregate, have not had and could not reasonably be expected to have a Material Adverse Effect. All such properties and assets, other than properties and assets in which the Company or any Subsidiary has leasehold interests, are free and clear of all Liens other than those set forth in Section 3.17(a) of the Company Disclosure Letter and except for Permitted Liens and Liens that, in the aggregate, have not had and could not reasonably be expected to have a Material Adverse Effect. Except as set forth in Section 3.17(a) of the Company Disclosure Letter, none of the real property owned by the Company or the Subsidiaries is subject to any lease or license. Section 3.17(a) of the Company Disclosure Letter sets forth a description of all the real property owned, leased or subleased by the Company or any Subsidiary, including, with respect to any lease or sublease, the name of the other parties thereto and the term thereof.

(b) Except as set forth in Section 3.17(b) of the Company Disclosure Letter, each of the Company and each Subsidiary has complied in all material respects with the terms of all material leases to which it is a party and under which it is in occupancy, and all such leases are in full force and effect. Each of the Company and each Subsidiary enjoys peaceful and undisturbed possession under all such material leases.

SECTION 3.18 *Intellectual Property.* The Company and the Subsidiaries own, or are validly licensed or otherwise have the right to use, all Intellectual Property which is material to the conduct of the business of the Company and the Subsidiaries taken as a whole, free and clear of all material Liens, and such Intellectual Property is not subject to any outstanding orders, judgments, or decrees adversely affecting the Company's and the Subsidiaries' use thereof or rights thereto. Section 3.18 of the Company Disclosure Letter contains a complete and true list of all of the following that are owned or used by



the Company or a Subsidiary in the conduct of its business: (a) registered Intellectual Property, (b) pending patent applications or other applications for registrations of other Intellectual Property, (c) computer software (other than mass-marketed software purchased or licensed for less than a cost of \$500,000), and (d) trade or corporate names, Internet domain names and material unregistered trademarks and service marks. Except as set forth in Section 3.18 of the Company Disclosure Letter, the Company or a Subsidiary owns all right, title and interest in and to the Intellectual Property set forth in Section 3.18 of the Company Disclosure Letter, free and clear of all material Liens, and such Intellectual Property is not subject to any outstanding orders, judgment or decree adversely affecting the Company's and the Subsidiaries' use thereof or rights thereto. To the Knowledge of the Company, the Company and the Subsidiaries have not infringed, misappropriated or otherwise violated any third party Intellectual Property and neither the Company nor any Subsidiary has received any notices regarding the same. To the Knowledge of the Company, no third party or Intellectual Property owned or claimed by a third party has infringed, misappropriated or otherwise conflicted with or harmed, or challenged the validity, enforceability or ownership of, any of the Intellectual Property that the Company or a Subsidiary owns or uses in the conduct of its business, in each case, except for such infringements, misappropriations or conflicts that could not reasonably be expected to have a Material Adverse Effect. The Company and the Subsidiaries have taken all reasonable steps in accordance with normal industry practice to maintain the confidentiality of the Company's and the Subsidiaries' trade secrets and information received from third persons which the Company or the Subsidiaries are obligated to treat as confidential. The Company or the Subsidiaries have taken all reasonable steps in accordance with normal industry practice to obtain the ownership of all works of authorship and inventions made by its employees, consultants and contractors. No material contract or agreement relating to Intellectual Property to which the Company or any Subsidiary is a party is either unenforceable or impaired, and neither the Company or any Subsidiary nor any counterparty to any such contract is in material breach of such contract, or has repudiated the contract or given notice of an intention to terminate, cancel, fail to renew or change the terms of such contract, and to the Knowledge of the Company, all Intellectual Property rights obtained or used by the Company pursuant to such a contract or agreement are valid, subsisting and enforceable and not subject to any outstanding order, judgment or decree adversely affecting the use thereof.

#### SECTION 3.19 *State Sponsored Assistance.*

(a) The Company's Israeli Subsidiary has received research and development funding from the Israeli Office of the Chief Scientist of the Ministry of Trade, Industry and Labor ("OCS") and is entitled to receive additional funding in the aggregate amount of NIS 2,800,000 for year 2004 in the context of certificates of approval that the OCS already issued to it (subject to fulfillment of the conditions of those certificates of approval). On January 27, 2002 the Company's Israeli Subsidiary signed a Settlement Agreement (the "*Settlement Agreement*") with the OCS, according to which the Company's Israeli Subsidiary's entire obligation to the OCS for repayment of royalties in the context of grants previously received and of grants to be received afterward was NIS 98,577,713. This amount was updated on July 14, 2003 to NIS 97,524,904 and all future

payments were based on such updated amount. All the grants that the Company's Israeli Subsidiary received from the OCS after the signature of the Settlement Agreement and that it remains entitled to receive as aforesaid are not, nor will be, royalty bearing or otherwise repayable. Pursuant to the Company's Israeli Subsidiary's request dated February 27, 2002, to pay the amount owing to the OCS in 10 equal installments during five years, the currently outstanding balance owing by the Company's Israeli Subsidiary to the OCS under the Settlement Agreement is NIS 47,275,921 (plus linkage and interest that may accrue hereafter), to be paid in a series of up to four equal bi-yearly installments. The Company's Israeli Subsidiary participated in the DPI 2000 and Re-Use Consortia organized by the OCS and in no other such consortia. The Company's Israeli Subsidiary is entitled to receive additional funding in the aggregate amount of NIS 780,000 with respect to the DPI 2000 Consortium. The Company's Israeli Subsidiary has provided true and complete copies of the Settlement Agreement and all significant documents related thereto and related to those consortia in which it participated. The Company's Israeli Subsidiary is in compliance with all of the provisions of its certificates of approval and the Settlement Agreement and with the Law for the Encouragement of Research and Development in Industry, 5744-1984 (the "R&D Law") and of the regulations promulgated in accordance with it and has not received any notice from the OCS that alleges any violation of those certificates of approval or the R&D Law. The Company's Israeli Subsidiary is up to date in its reporting obligations to the OCS. Section 3.19 of the Company Disclosure Letter sets forth a description of Intellectual Property of the Company that does not derive from technology generated in the course of research and development funded by the OCS and is, therefore, not limited by the provisions of the R&D Law.

(b) Various parts of the Company's Israeli Subsidiary's business have been accorded Approved Enterprise status by the Israel Investments Center ("IIC") in the context of various certificates of approval. The Company has agreed to the termination of its Approved Enterprise status in accordance with Plan number 323-21461 of July 3, 1996. With the exception of the certificate of approval so terminated, the Company's Israeli Subsidiary is in compliance with all of the provisions of its certificates of approval and of the Law for the Encouragement of Capital Investments, 5719-1959, and the regulations promulgated in accordance with it and has not received any notice from the IIC that alleges any violation of those certificates of approval or such law. With the exception of the Approved Enterprise so terminated, the Company's Israeli Subsidiary is up to date in its reporting obligations to the IIC. To the date hereof, the tax benefits period of the Company in accordance with those certificates of approval has not commenced. The Company has made no distribution of any sort that could be classified as a dividend in accordance with Section 51(h) of the Law for the Encouragement of Capital Investments.

SECTION 3.20 *Personal Information*. Except as set forth in Section 3.20 of the Company Disclosure Letter:

(a) The Company and each of the Subsidiaries, to the extent required by Law, have a written privacy policy which governs their collection, use and disclosure of Personal Information and the Company and each of the Subsidiaries is in compliance with their respective privacy policy.

(b) All required consents to the collection, use or disclosure of Personal Information in connection with the conduct of the Company's and the Subsidiaries' businesses (including disclosure to affiliates of the Company or any of the Subsidiaries) have been obtained.

SECTION 3.21 *Insurance*. Section 3.21 of the Company Disclosure Letter sets forth a complete and accurate list of all insurance policies of the Company and the Subsidiaries in effect on the date hereof. The Company has provided to Parent copies of all such insurance policies prior to the date hereof.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF PARENT AND ACQUISITION SUB

As an inducement to the Company to enter into this Agreement, Parent and Acquisition Sub hereby jointly and severally represent and warrant to the Company that:

SECTION 4.01 *Corporate Organization*. Each of Parent and Acquisition Sub is duly organized and validly existing and, to the extent such concept is legally recognized, in good standing under the laws of the jurisdiction of its incorporation or organization, as the case may be. Each of Parent and Acquisition Sub has the requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted and is duly qualified or licensed to do business and is, to the extent such concept is legally recognized, in good standing in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified, licensed or in good standing or to have such power and authority would not, individually or in the aggregate, prevent or materially delay consummation of the Arrangement, or otherwise prevent or materially delay Parent or Acquisition Sub from performing their respective obligations under this Agreement.

SECTION 4.02 *Articles of Incorporation and By-laws*. Parent has made available to the Company a copy of the Articles or Certificate of Incorporation and By-laws or equivalent organizational documents, each as amended through the date of this Agreement, of Parent and Acquisition Sub.

SECTION 4.03 *Authority Relative to this Agreement*. Each of Parent and Acquisition Sub has all necessary corporate power and authority to execute and deliver this Agreement and the other Transaction Documents, to perform its obligations hereunder and thereunder and to consummate the Arrangement. The execution and delivery of this Agreement and the other Transaction Documents by Parent and Acquisition Sub and the consummation by Parent and Acquisition Sub of the Arrangement have been duly and validly authorized by all necessary corporate action,

and no other corporate proceedings on the part of Parent or Acquisition Sub are necessary to authorize this Agreement or the other Transaction Documents or to consummate the Arrangement. Each of this Agreement and the other Transaction Documents has been duly and validly executed and delivered by Parent and Acquisition Sub and, assuming the due authorization, execution and delivery by the Company, constitutes a legal, valid and binding obligation of each of Parent and Acquisition Sub, enforceable against each of Parent and Acquisition Sub in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by Law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought.

SECTION 4.04 *No Conflict; Required Filings and Consents.* (a) The execution and delivery of this Agreement and the other Transaction Documents by Parent and Acquisition Sub do not, and the consummation of the Transactions and the performance of this Agreement by Parent and Acquisition Sub will not, (i) conflict with or violate the Articles or Certificate of Incorporation or By-Laws or equivalent organizational documents of Parent, Acquisition Sub or any of their respective subsidiaries, (ii) assuming that all consents, approvals, authorizations and other actions described in Section 4.04(b) have been obtained and that all filings and obligations described in Section 4.04(b) have been made, conflict with or violate any Law applicable to Parent, Acquisition Sub or any of their respective subsidiaries or by which any property or asset of either of them is bound, or (iii) result in any breach of, or constitute a default (or an event which, with notice or lapse of time or both, would become a default) under, or give to others any right of termination, amendment, acceleration or cancellation of, or create or change any rights or obligations of any Person under, or result in the creation of a Lien on any property or asset of Parent or Acquisition Sub pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Parent, Acquisition Sub or any of their respective subsidiaries is a party or by which Parent or Acquisition Sub or any property or asset of either of them is bound, except, with respect to clauses (ii) and (iii), for any such conflicts, violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, prevent or materially delay consummation of the Arrangement, or otherwise prevent or materially delay Parent, Acquisition Sub or any of their respective subsidiaries from performing their respective obligations under this Agreement.

(b) No consent, approval, license, permit, order or authorization of, or registration, declaration or filing with, or permit from, any Governmental Authority is required to be obtained or made by or with respect to the Parent, Acquisition Sub or any of their respective subsidiaries in connection with the execution, delivery and performance of any Transaction Document to which it is a party or the consummation of the Transactions, other than (i) compliance with and filings under (A) the HSR Act, (B) the EC Merger Regulation and (C) the Canadian Investment Regulations, (ii) the approval of or notification to, as applicable, (A) the Office of the Chief Scientist of the Israeli Ministry of Trade & Industry, (B) the Israeli Investment Centre of the Israeli Ministry of Trade & Industry and (C) the Director of Restrictive Trade Practices of the Israeli Ministry of Trade & Industry, (iii) the filing on SEDAR and with the SEC of the Circular, (iv) the receipt from the Court of the Interim Order and the Final Order, (v) the filing by

the Director of the Articles of Arrangement and such other documents as may be required in connection therewith under the CBCA to give effect to the Arrangement, (vi) compliance with and such filings as may be required under applicable Environmental Laws, (vii) filings under any applicable state takeover Law and (viii) such other items (A) that may be required solely by reason of the participation of the Company (as opposed to any third party) in the Transactions, (B) that may be required under any applicable Law of any county outside Canada and the United States and that would not reasonably be expected to materially impair or delay the ability of Parent and Acquisition Sub to consummate the Transactions or (C) that, individually or in the aggregate, have not and could not reasonably be expected to materially impair the ability of either Parent, Acquisition Sub or any of their respective subsidiaries, as the case may be, to consummate the Transactions.

SECTION 4.05 *Parent Approval.* The board of directors of Parent, after considering the Transactions, has determined:

(a) to authorize Parent and its Subsidiaries (including Acquisition Sub) to consummate the Transactions on the terms set forth herein and in the Plan of Arrangement; and

(b) to authorize Parent to execute and deliver this Agreement.

SECTION 4.06 *Acquisition Sub Approval.* Parent, being the sole shareholder of Acquisition Sub, after considering the Transactions, has determined:

(a) to authorize Acquisition Sub and its Subsidiaries to consummate the Transactions on the terms set forth herein and in the Plan of Arrangement; and

(b) to authorize Acquisition Sub to execute and deliver this Agreement.

SECTION 4.07 *Financing.* At the Effective Time, Parent shall have caused Acquisition Sub to have the funds necessary to pay the aggregate Consideration required to be paid pursuant to the Plan of Arrangement.

SECTION 4.08 *No Vote Required.* No vote of shareholders of Parent is required by Law, the Articles or Certificate of Incorporation or By-Laws or equivalent organizational documents of Parent or otherwise in order for Parent and Acquisition Sub to consummate the Arrangement.

SECTION 4.09 *Operations of Acquisition Sub.* Acquisition Sub is a wholly owned subsidiary of Parent and was formed solely for the purpose of engaging in the Arrangement and has not engaged in any other business activities or conducted any other operations.

SECTION 4.10 *Brokers.* Neither the Company nor any Subsidiary shall be responsible for any brokerage, finder's or other fee or commission to any broker, finder or investment bank in connection with the Transactions based upon arrangements made by or on behalf of Parent, Acquisition Sub or any of their respective subsidiaries. No broker, finder or investment banker (other than Goldman, Sachs & Co.) is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of the Parent or Acquisition Sub.

## ARTICLE V

### CONDUCT OF BUSINESS PENDING THE ARRANGEMENT

SECTION 5.01 *Conduct of Business by the Company Pending the Arrangement.* The Company agrees that, between the date of this Agreement and the earlier of the Effective Time and the date upon which this Agreement is terminated pursuant to Article VIII, except as set forth in Section 5.01 of the Company Disclosure Letter or as expressly contemplated by any other provision of this Agreement, the businesses of the Company and the Subsidiaries shall be conducted in, and the Company and the Subsidiaries shall not take any action except in, the ordinary course of business and consistent with past practice, and the Company shall use its commercially reasonable efforts to preserve substantially intact the business organization of the Company and the Subsidiaries and to preserve the current relationships of the Company and the Subsidiaries with customers, suppliers, distributors, licensors, employees and other Persons with which the Company or any Subsidiary has significant business relations. Without limiting the generality of the foregoing, except as set forth in Section 5.01 of the Company Disclosure Letter or as contemplated by any other provision of this Agreement, neither the Company nor any Subsidiary shall, between the date of this Agreement and the Effective Time, directly or indirectly, do, or propose to do, any of the following without the prior written consent of Parent (which in the case of clauses (d)(iv) and (k) shall not be unreasonably withheld or delayed):

(a) amend or otherwise change its Articles of Incorporation or By-laws or equivalent organizational documents;

(b) issue, sell, pledge, dispose of, grant or encumber, or authorize the issuance, sale, pledge, disposition, grant or encumbrance of, (i) any shares of any class of capital stock or other voting securities of the Company or any Subsidiary, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of such capital stock or voting securities, or any other ownership interest (including any phantom interest or other right linked to the price of the Common Shares), of the Company or any Subsidiary (except for the issuance of Common Shares issuable pursuant to Employee Stock Options outstanding on the date of this Agreement in accordance with their terms as in effect of the date of this Agreement or (ii) any assets of the Company or any Subsidiary, except pursuant to agreements existing prior to the execution of this Agreement and set forth in Section 5.01 of the Company Disclosure Letter and except sales of inventory and excess or obsolete assets in the ordinary course of business consistent with past practice;

(c) (i) reclassify, combine, split, subdivide or redeem any of its capital stock, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or (ii) purchase, redeem or otherwise acquire, directly or indirectly, any of its capital stock or other equity or voting interests or securities of the Company or any Subsidiary or any rights, warrants, calls or options to acquire any such shares or other equity or voting interests or securities;

(d) (i) acquire (including by merger, amalgamation, plan of arrangement, consolidation or acquisition of stock or assets or any other business combination) any corporation, partnership, other business organization or any division thereof or any assets except purchases of inventory in the ordinary course of business consistent with past practice and except for capital expenditures contemplated by the capital budget of the Company attached to Section 5.01 of the Company Disclosure Letter, (ii) incur any indebtedness for borrowed money or issue any debt securities or rights, warrants, calls or options to acquire any debt securities of the Company or any Subsidiary or assume, guarantee or endorse, or otherwise become responsible for, the obligations of any Person, or make any loans or advances, or grant any security interest in any of its assets except for borrowings under existing credit facilities in the ordinary course of business, (iii) repay, redeem, repurchase or retire, or otherwise make any payment in respect of, any indebtedness for borrowed money or any debt securities, or any rights, warrants, calls or options to acquire any debt securities, other than in the ordinary course of business consistent with past practice or as required by their terms as in effect on the date of this Agreement or (iv) except for capital expenditures contemplated by the capital budget of the Company attached to Section 5.01 of the Company Disclosure Letter, authorize, or make any commitment to, any new capital expenditure or expenditures in excess of \$5,000,000 in the aggregate;

(e) (i) increase the compensation payable to its directors, officers or employees, except with respect to employees in the ordinary course of business or in connection with new hires and promotions, (ii) grant any severance or termination pay to (other than as required by applicable Law or employment agreements, collective agreements or severance plans, agreements or arrangements in existence on the date hereof), or enter into, amend or modify any employment, bonus, change of control or severance agreement with, any director, officer or other employee of the Company or of any Subsidiary, except with respect to employees in connection with new hires and promotions, or (iii) establish, adopt, enter into or amend any collective agreement or Plan for the benefit of any director, officer or employee except as required by Law;

(f) take any action or make any change, other than actions or changes required by Canadian GAAP or by applicable Law, with respect to accounting policies or procedures;

(g) pay, discharge or satisfy any material claim, liability or obligation (whether absolute, accrued, asserted or unasserted, contingent or otherwise), other than in the ordinary course of business and consistent with past practice;

(h) unless otherwise required by applicable Law (i) make, change or revoke any election relating to Taxes, (ii) change any annual accounting period, adopt or change any accounting method, (iii) take any action, or omit to take any action, in either case inconsistent with past practice, relating to the filing of any Tax Return or the payment of any Tax, (iv) settle any material Tax claim or assessment, (v) surrender any right to claim a Tax refund or (vi) amend any of its transfer pricing policies;

(i) take any action to cause any of its representations or warranties set forth in Article III to be untrue in any respect such that the condition set forth in Section 7.02(a) would not be satisfied;

(j) amend or modify in any material respect or terminate any Material Contract or enter into any contract or agreement that would be a Material Contract if in effect on the date hereof, except for (i) any contract or agreement for the sale of goods and services entered into on arm's length terms with a customer of the Company or any Subsidiary and (ii) any Material Contract (other than one contemplated by Sections 3.13(a)(viii), (ix) and (x)) that does not require payment of or receipt over the remaining life of such contract of an amount in excess of \$1,000,000;

(k) enter into any union recognition agreement, collective agreement, works council agreement or similar agreement with any trade union or representative body;

(l) (i) cancel any material indebtedness, (ii) waive, transfer, grant or release any claims or potential claims of material value or (iii) waive any benefits of, or agree to modify in any respect, or terminate, release or fail to enforce, or consent to any material matter with respect to which consent is required under, any confidentiality, standstill or similar agreement to which the Company or any Subsidiary is a party or of which the Company or any Subsidiary is a beneficiary;

(m) take any action to exempt from, waive or make not subject to (including redemption of outstanding rights) the Rights Plan, any Person (other than Parent and Acquisition Sub) or any action taken thereby, including any Take-over Bid (as defined in the Rights Plan), which Person or action would have otherwise been subject to the restrictive provisions thereof and not exempt therefrom;

(n) amend, modify or terminate any insurance policy of the Company or the Subsidiaries in effect on the date hereof, except for the scheduled renewal of the Company's current directors' and officers' liability insurance policy for a period of not more than one year, on the terms (including price) currently in effect under such policy, or the most similar terms then available, as permitted by the terms of such policy and except for scheduled renewals of any other insurance policy of the Company or the Subsidiaries in effect on the date hereof in the ordinary course of business consistent with past practice;

(o) license or commit to license or otherwise acquire or transfer any Intellectual Property or rights in or respect thereto, other than in the ordinary course; and

(p) announce an intention, enter into any formal or informal agreement or otherwise make a commitment to do any of the foregoing.

SECTION 5.02 *Parent Approval of Dividends.* The Company shall obtain the prior written agreement of Parent before declaring, setting aside, making or paying any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock.



SECTION 5.03 *Conduct by Parent and Acquisition Sub Pending the Arrangement.* Each of Parent and Acquisition Sub agrees that, between the date of this Agreement and the Effective Time, it shall not, directly or indirectly, take, or propose to take, without the prior written consent of the Company, any action to cause any of the representations or warranties set forth in Article IV to be untrue in any respect such that the condition set forth in Section 7.03(a) would not be satisfied.

SECTION 5.04 *Advice of Changes.* The Company shall promptly advise Parent in writing of any material change or event occurring after the date of this Agreement that, individually or in the aggregate, has had or in the good faith judgment of the Company is reasonably likely to have a Material Adverse Effect.

## ARTICLE VI ADDITIONAL AGREEMENTS

SECTION 6.01 *Access to Information; Confidentiality.* (a) Subject to applicable Law (including competition and antitrust Law), from the date of this Agreement until the Effective Time, the Company shall, and shall use all commercially reasonable efforts to cause the Subsidiaries and the respective officers, directors, employees and agents of the Company and the Subsidiaries to, afford Parent and its directors, officers, employees, agents and advisors (including financial advisors, counsel and accountants) (collectively, “*Representatives*”) reasonable access, during normal business hours and upon reasonable notice by Parent, to the respective officers, employees, agents, properties, assets, offices and other facilities, books and records of the Company and each Subsidiary, and shall furnish Parent with such financial, operating and other data and information as Parent or its Representatives may reasonably request; *provided, however*, that the Company and the Subsidiaries may withhold any Confidential Material Contract. If any material is withheld by the Company or a Subsidiary pursuant to the proviso to the preceding sentence, the Company or such Subsidiary shall inform Parent as to the general nature of what is being withheld.

(b) All information obtained by Parent or any other Person pursuant to this Section 6.01 shall be kept confidential in accordance with, and shall be subject to, the Confidentiality Agreement.

SECTION 6.02 *No Solicitation of Transactions.* (a) The Company shall, and shall direct and cause its Representatives and the Subsidiaries and their Representatives to, immediately cease and cause to be terminated any discussions or negotiations with any parties that may be ongoing with respect to an Acquisition Proposal. The Company shall not, and shall cause the Subsidiaries not to, directly or indirectly, and the Company shall instruct and use its best efforts to cause its Representatives and the Subsidiaries’ Representatives not to, directly or indirectly, (i) encourage, solicit or initiate the submission of any Acquisition Proposal, (ii) participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or otherwise cooperate in any way with, any Acquisition Proposal or (iii) amend or waive the terms of any standstill or confidentiality agreement in effect with respect to any Person in any manner that would facilitate the making or implementation of any Acquisition Proposal.

(b) Notwithstanding anything to the contrary in this Agreement, at any time prior to the approval of the Arrangement by the Shareholders at the Special Meeting (the “*Specified Time*”), the Company Board and its Representatives may (i) furnish information to any Person that has made an unsolicited *bona fide* written Acquisition Proposal, provided that such Person has entered into a confidentiality agreement with the Company on terms no more favorable to such Person than the Confidentiality Agreement and (ii) participate in discussions or negotiations with any Person that has made an unsolicited *bona fide* written Acquisition Proposal, where the Company Board has (A) in the case of each of clauses (i) and (ii) of this Section 6.02(b), determined, in its good faith judgment (after consultation with its outside legal counsel and its financial advisors), that such Acquisition Proposal constitutes, or is reasonably likely to lead to, a Superior Proposal, and (B) in the case of clause (ii), provided written notice to Parent of its intent to participate in discussions or negotiations with such Person.

(c) The Company Board shall not, and shall cause its Representatives and the Subsidiaries and their Representatives not to: (i) withdraw or modify, in a manner adverse to Parent or Acquisition Sub, or propose publicly to withdraw or modify, in a manner adverse to Parent or Acquisition Sub, the approval, recommendation or declaration of advisability by the Company Board with respect to this Agreement or the Arrangement (it being understood that publicly taking a neutral position or no position with respect to an Acquisition Proposal shall be considered an adverse modification, except that publicly taking a neutral position or no position with respect to an Acquisition Proposal for a period of time not in excess of 10 business days after the first public announcement of such Acquisition Proposal shall not be considered an adverse modification (such time period, an “*Acquisition Proposal Assessment Period*”) unless such position continues beyond the expiration of the Acquisition Proposal Assessment Period), (ii) enter into or approve any letter of intent, agreement in principle, acquisition agreement, arrangement agreement or similar agreement relating to any Acquisition Proposal (other than a confidentiality agreement referred to in Section 6.02(b)), or (iii) approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal. Notwithstanding the foregoing, prior to the Specified Time, the Company Board may withdraw or modify any such recommendation with respect to this Agreement or the Arrangement and approve or recommend any Superior Proposal made or received after the date hereof and not solicited, initiated or encouraged in breach of this Agreement if the Company Board determines, in its good faith judgment (after consultation with its outside legal counsel), that its failure to do so would be inconsistent with its fiduciary duties under applicable Law.

(d) The Company shall promptly (within 24 hours) advise Parent, orally and in writing, of receipt by the Company of any Acquisition Proposal or any inquiry or request for information in connection with any Acquisition Proposal, and provide copies of any such Acquisition Proposal, inquiry or request, together with the material terms and conditions thereof (including any amendment thereto) and the identity of the Person making any such request, Acquisition Proposal or inquiry. The Company shall keep Parent reasonably informed of the status and the material terms and conditions (including any amendment thereto) of any such Acquisition Proposal, inquiry or request.

(e) Nothing contained in this Section 6.02 shall prohibit the Company from making any disclosure to Shareholders, if the Company Board determines, in its good faith judgment (after consultation with its outside legal counsel), the failure to make such disclosure would be inconsistent with the fiduciary duties of the Company Board under applicable Law.

(f) The Company may terminate this Agreement pursuant to Section 8.01(h) only if (i) the Specified Time has not occurred, (ii) the Company Board has received a Superior Proposal, (iii) in light of such Superior Proposal the Company Board shall have determined in good faith, after consultation with outside counsel, that it is necessary for the Company Board to withdraw or modify its approval or recommendation of this Agreement or approve or recommend such Superior Proposal, in order to comply with its fiduciary duty under applicable Law, (iv) the Company has notified Parent in writing of the determinations described in clause (iii) above, (v) at least three business days following receipt by Parent of the notice referred to in clause (iv) above, and taking into account any revised proposal made by Parent since receipt of the notice referred to in clause (iv) above, such Superior Proposal remains a Superior Proposal and the Company Board has again made the determinations referred to in clause (iii) above, (vi) the Company is in compliance with this Section 6.02, (vii) the Company has previously paid the fee due under Section 8.02 and (viii) the Company Board concurrently approves, and the Company concurrently enters into, a definitive agreement providing for the implementation of such Superior Proposal. Each successive modification of any Acquisition Proposal or Superior Proposal shall constitute a new Acquisition Proposal or Superior Proposal for purposes of Section 6.02(d) and Section 6.02(f), as applicable, and shall require independent compliance with the terms of Section 6.02(d) and Section 6.02(f), as applicable.

SECTION 6.03 *Employee Benefits Matters.* During the period commencing at the Effective Time and ending on December 31, 2006, Parent shall and shall cause the Company and the Subsidiaries to (a) maintain and honor, in accordance with their terms, all employment, severance and termination contracts and agreements between individual Company Employees, on the one hand, and the Company or any Subsidiary, on the other hand, as in effect immediately prior to the Effective Time; *provided, however,* that nothing shall prevent Parent from terminating any such contract or agreement that is terminable in accordance with its terms, and (b) provide current and former Company Employees and the directors of the Company or any Subsidiary with benefits which in the aggregate are substantially comparable to those currently provided to such employees (other than stock options or other plans involving the issuance of securities of Parent, the Company or any Subsidiary); *provided, however,* that employees covered by collective bargaining agreements need not be provided with such benefits and; *provided, further;* that nothing herein shall obligate Parent or the Company to provide a particular type of benefit. Company Employees shall receive credit for purposes of eligibility, participation and vesting (but not for benefit accruals) under any employee benefit plan, program or

arrangement established or maintained by Parent or any of its subsidiaries for service accrued or deemed accrued prior to the Effective Time with the Company or any Subsidiary; *provided, however*, that such crediting of service shall not operate to duplicate any benefit or the funding of any such benefit. In addition, Parent shall waive, or cause to be waived, any limitations on benefits relating to any pre-existing conditions to the same extent such limitations are waived under any comparable plan of Parent or its subsidiaries and recognize, for purposes of annual deductible and out-of-pocket limits under its medical and dental plans, deductible and out-of-pocket expenses paid by employees of the Company and the Subsidiaries in the calendar year in which the Effective Time occurs. Nothing in this Section 6.03 is intended to restrict or prohibit Parent, the Company or any Subsidiary after the Effective Time from amending, modifying or terminating any Plan, to the extent permitted under the terms of such Plan.

SECTION 6.04 *Directors' and Officers' Indemnification and Insurance.* (a) Parent shall and shall cause the Company to honor all the Company's and the Subsidiaries' obligations to indemnify (including any obligations to advance funds for expenses) the current or former directors and officers of the Company and the Subsidiaries for acts or omissions by such directors and officers occurring at or prior to the Effective Time to the extent that such obligations of the Company or any Subsidiary exist on the date of this Agreement, whether pursuant to the Articles of Incorporation or By-laws of the Company, individual indemnity agreements or otherwise, and such obligations shall survive the Arrangement and shall continue in full force and effect in accordance with the terms of such Articles of Incorporation and By-laws and such individual indemnity agreements from the Effective Time.

(b) Parent shall cause to be maintained in effect for six years from the Effective Time the current directors' and officers' liability insurance policies maintained by the Company (*provided* that Parent may cause to be substituted therefor policies of at least substantially comparable coverage with reputable and financially sound carriers and containing terms and conditions that in the aggregate are not less favorable) with respect to claims arising from or related to facts or events that occurred at or prior to the Effective Time; *provided, however*, that in satisfying their obligations under this Section 6.04(b), neither the Company nor Parent shall be obligated to pay annual premiums in excess of \$1,200,000. Alternatively, the Company may, at its option, and shall, at the request of Parent, purchase, as an extension of the Company's current insurance policies, prepaid non-cancelable run-off directors' and officers' liability insurance providing coverage (on terms comparable to those contained in the Company's current insurance policies) for six years from the Effective Time with respect to claims arising from or related to facts or events that occurred at or prior to the Effective Time in the same manner as such claims would have been covered if they arose prior to the Effective Time, and any such policy purchased by the Company shall cover the interest of Parent in respect of its indemnification obligations under this Section 6.04, *provided, however*, that in exercising its option under this Section 6.04(b) the Company shall not pay more than \$2,400,000 for such insurance unless Parent consents otherwise.

(c) In the event the Company or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving

corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that such successors and assigns of the Company or, at Parent's option, Parent, shall assume the obligations set forth in this Section 6.04.

(d) The Company shall not amend the By-laws of the Company after the Effective Time if such action would adversely affect the rights of individuals who, on or prior to the Effective Time, were entitled to advances, indemnification or exculpation thereunder for actions or omissions by such individuals at any time at or prior to the Effective Time. The individuals referred to in the preceding sentence shall include any individuals who served at any time as directors or officers of any Subsidiary at the Company's request, it being acknowledged by the parties hereto that each director or officer of a Subsidiary is or was doing so at such request of the Company.

SECTION 6.05 *No Personal Liability*. (a) No director or officer of the Parent or Acquisition Sub shall have any personal liability whatsoever to the Company under this Agreement, or any other document delivered in connection with the Transactions on behalf of the Parent or Acquisition Sub.

(b) No director or officer of the Company shall have any personal liability whatsoever to the Parent or Acquisition Sub under this Agreement, or any other document delivered in connection with the Transactions on behalf of the Company.

SECTION 6.06 *Further Action; Commercially Reasonable Efforts*. (a) Upon the terms and subject to the conditions set forth in this Agreement, each of the parties shall use all commercially reasonable efforts to take, or cause its subsidiaries and Representatives to take, all actions (and to refrain from taking, or to cause its subsidiaries and Representatives to refrain from taking, any inconsistent actions), and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things (and to refrain from doing, or to cause its subsidiaries and Representatives to refrain from doing, any inconsistent things) necessary, proper or advisable to consummate and make effective, in a reasonably timely manner, the Arrangement and the other Transactions, including (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Authorities and the making of all necessary registrations and filings (including filings with Governmental Authorities, if any) and the taking of all commercially reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Authority, (ii) the obtaining of all consents, approvals or waivers from third parties in connection with the Transactions, including those the failure to obtain which would result in any breach of, or constitute a default (or an event which, with notice or lapse of time or both, would become a default) under, or give to others any right of termination, amendment, acceleration or cancellation of, or create, give rise to or change any rights or obligations of any Person under, or result in the creation of a Lien (other than a Permitted Lien) on any property or asset of the parties pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation, (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or any other Transaction Document or the consummation of the Transactions,

including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, (iv) the carrying out of the terms of the Interim Order and Final Order applicable to it and (v) the execution and delivery of any additional instruments necessary to consummate the Transactions and to fully carry out the purposes of the Transaction Documents; *provided, however* that nothing in this Section 6.06 shall require Parent or its subsidiaries to take, or Parent to agree to have Parent or its subsidiaries or the Company or the Subsidiaries take, any actions if such actions are reasonably likely, individually or in the aggregate, to have a material and adverse effect on the benefits to be received by Parent from the Transactions.

(b) The parties hereto agree to cooperate and assist one another in connection with all actions to be taken pursuant to Section 6.06(a), including the preparation and making of the filings referred to therein and, if requested, amending or furnishing additional information thereunder, including providing copies of all related documents to the non-filing party and its advisors prior to filing, and, to the extent practicable, neither of the parties will file any such document or have any communication with any Governmental Authority without prior consultation with the other party. Each party shall keep the other apprised of the content and status of any communications with, and communications from, any Governmental Authority with respect to the Arrangement. To the extent practicable and permitted by a Governmental Authority, each party hereto shall permit representatives of the other party to participate in meetings and calls with such Governmental Authority. Each of the parties shall provide to the other parties or, if competitively sensitive, such party's external antitrust counsel, with all information it reasonably requests for purposes of obtaining the Competition Act Approval, the expiration or termination of the waiting period under the HSR Act, and all other required competition or antitrust consents and approvals.

**SECTION 6.07 *Public Announcements.*** Except to the extent required by applicable Law or the rules or regulations of any Canadian, United States or other securities exchange or national securities quotation system, each of Parent and the Company shall each consult with the other, provide such other party the opportunity to review and comment, and, to the extent such release contains information regarding such other party, obtain the consent of such other party (such consent not to be unreasonably withheld or delayed) before issuing any press release or otherwise making any public statements with respect to this Agreement or the Transactions.

**SECTION 6.08 *Notice of Developments.*** The Company shall give prompt notice to Parent, and Parent or Acquisition Sub shall give prompt notice to the Company, of (i) any representation or warranty made by it contained in any Transaction Document becoming untrue or inaccurate in any respect such that the condition set forth in Section 7.02(a) or 7.03(a), as applicable, would not be satisfied or (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under any Transaction Document; *provided, however*, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under the Transaction Documents.

SECTION 6.09 *Resignations*. The Company shall use its commercially reasonable efforts to obtain and deliver to Parent evidence reasonably satisfactory to Parent of the resignation, effective as of the Effective Time, of each director of the Company and the Subsidiaries other than those whom Parent shall have specified in writing at least 20 business days prior to the Effective Date.

SECTION 6.10 *Company Stock Plans*. As soon as reasonably practicable following the date of this Agreement, the Company Board (or, if appropriate, any committee or other Person administering the Company Stock Plans or otherwise having the authority to do so) shall adopt such resolutions or take such other actions as may be required to:

(a) accelerate the vesting schedule of all Equity Compensation Awards such that all such Equity Compensation Awards shall, at or immediately before the Effective Time, be fully vested;

(b) accelerate the vesting schedule of all Employee Stock Options such that:

(i) all Employee Stock Options issued prior to January 12, 2005 shall, at or immediately before the Effective Time, be fully vested; and

(ii) any Employee Stock Options issued on or after January 12, 2005 shall, at or before the Effective Time, be vested as to  $X/365$  of such Employee Stock Options, where "X" shall equal the actual number of days that have elapsed between January 12, 2005 and the Effective Date, and all such Employee Stock Options that are not vested shall be forfeited on the Effective Date for no payment; and

(c) terminate as of the Effective Time the Company Stock Plans and the provisions in any other Plan providing for the issuance, transfer or grant of any capital stock of the Company or any interest in respect of any capital stock of the Company and ensure that following the Effective Time no holder of an Employee Stock Option or any participant in any Company Stock Plan or other Plan shall have any right thereunder to acquire any capital stock of the Company.

SECTION 6.11 *Pre-Acquisition Reorganizations*. The Company will agree to effect such reorganization of its business, operations and assets or such other transactions (each, a "*Pre-Acquisition Reorganization*") as Parent may reasonably request prior to the Effective Date, and the Plan of Arrangement, if required, shall be modified accordingly; *provided, however*, that the Company need not effect a Pre-Acquisition Reorganization which in the opinion of the Company, acting reasonably, (i) would require the Company to obtain the approval of the Shareholders in respect of such Pre-Acquisition Reorganization other than at the Special Meeting, (ii) would prejudice the Company's Shareholders, (iii) would impede or materially delay the consummation of the Transactions or (iv) cannot either be completed immediately prior to or contemporaneously with the Effective Time, or cannot be reversed or unwound without adversely affecting the Company and the Subsidiaries. If the Arrangement is not

completed, Parent shall forthwith reimburse the Company for all reasonable fees and expenses (including any professional fees and expenses) incurred by the Company and the Subsidiaries in considering or effecting a Pre-Acquisition Reorganization and shall be responsible for any costs of the Company and the Subsidiaries in reversing or unwinding any Pre-Acquisition Reorganization that was effected prior to termination of this Agreement at Parent's request.

SECTION 6.12 *Proxies Received*. The Company shall advise Acquisition Sub as reasonably requested, and on a daily basis on each of the last seven business days prior to the Special Meeting, as to the aggregate tally of the proxies and votes received in respect of the Special Meeting and all matters to be considered at such meeting.

SECTION 6.13 *Change of Control Agreements*. The Company shall use commercially reasonable efforts to amend its existing change of control agreements in the manner contemplated by Section 6.13 of the Company Disclosure Letter.

## ARTICLE VII

### CONDITIONS TO THE ARRANGEMENT

SECTION 7.01 *Conditions to the Obligations of Each Party*. The respective obligations of the Company, Parent and Acquisition Sub to consummate the Arrangement are subject to the satisfaction or, if permissible, waiver of the following conditions:

(a) *Shareholder Approval*. The Arrangement Resolution shall have been approved, adopted and authorized by Shareholders at the Special Meeting in accordance with the Interim Order.

(b) *Interim Order*. The Interim Order shall have been granted in form and substance satisfactory to the Company and Parent, acting reasonably, and shall not have been set aside or modified in a manner unacceptable to such Parties, acting reasonably, on appeal or otherwise.

(c) *Final Order*. The Final Order shall have been granted in form and substance satisfactory to the Company and Parent, acting reasonably, and shall not have been set aside or modified in a manner unacceptable to such Parties, acting reasonably, on appeal or otherwise.

(d) *No Order*. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law which is then in effect and has the effect of making the Arrangement illegal or otherwise preventing or prohibiting consummation of the Arrangement.

(e) *Governmental Approvals*. The Competition Act Approval and the Investment Canada Approval shall have been obtained, the waiting period (and any extension thereof) under the HSR Act shall have expired or been terminated, and any consent, approval or waiting period under the antitrust or competition legislation of any other relevant jurisdiction applicable to the Arrangement shall have been obtained or shall have



expired or been terminated, as applicable. The approvals of or notifications to, as applicable, the Office of the Chief Scientist of the Israeli Ministry of Trade & Industry and the Israeli Investment Centre of the Israeli Ministry of Trade & Industry shall have been obtained or made. The approvals or notifications that may be required under any applicable Law of any country outside Canada and the United States shall have been obtained or made. Such compliance with and filings under applicable Environmental Laws as required in connection with the performance of the Transactions shall have been performed or made.

SECTION 7.02 *Conditions to the Obligations of Parent and Acquisition Sub.* The obligations of Parent and Acquisition Sub to consummate the Arrangement are subject to the satisfaction or, if permissible, waiver of the following additional conditions:

(a) *Representations and Warranties.* The representations and warranties of the Company contained (i) Sections 3.01(a) and (b), 3.02, 3.03, 3.04, 3.14 and 3.15 shall be true and correct in all material respects, (ii) in the first sentence of Section 3.08 shall be true and correct and (iii) all other Sections in this Agreement shall be true and correct disregarding for this purpose all qualifications as to “Material Adverse Effect”, “material” or “materially”, except for failures to be so true and correct that, individually and in the aggregate, have not had and could not reasonably be expected to have a Material Adverse Effect, in the case of each of clauses (i), (ii) and (iii) as if made as of the Effective Date, except to the extent expressly made as of a specified date, in which case as of such date.

(b) *Agreements and Covenants.* The Company shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by the Company at or prior to the Effective Time.

(c) *Officer’s Certificate.* The Company shall have delivered to Parent a certificate, dated the Effective Date, signed by an officer of the Company, certifying as to the satisfaction or, if permissible, waiver of the conditions specified in Sections 7.02(a) and 7.02(b).

(d) *Consents.* The consents, approvals and waiting period expirations or terminations contemplated by Section 7.01(e) shall have been obtained without any conditions or requirements being imposed in connection therewith that are reasonably likely, individually or in the aggregate, to have a material and adverse effect on the benefits to be received by Parent from the Transactions.

(e) *Dissent.* Dissent Rights shall not have been exercised with respect to more than 12.5% of the Common Shares in connection with the Arrangement.

(f) *No Injunctions.* No Governmental Authority shall have instituted (or, if instituted, shall not have withdrawn) any proceeding or threatened to institute any proceeding seeking an injunction, judgment, decree or other order to prevent or prohibit consummation of the Arrangement.

(g) *Rights Plan*. The Rights Plan Resolution shall have been approved and authorized by the Shareholders at the Special Meeting and the Rights Plan shall have been rescinded.

SECTION 7.03 *Conditions to the Obligations of the Company*. The obligations of the Company to consummate the Arrangement are subject to the satisfaction or, if permissible, waiver of the following additional conditions:

(a) *Representations and Warranties*. The representations and warranties of Parent and Acquisition Sub in this Agreement that are qualified by materiality shall be true and correct in all respects, and the representations and warranties of Parent and Acquisition Sub contained in this Agreement that are not so qualified shall be true and correct in all material aspects, in each case as if made on the Effective Date, except to the extent expressly made as of a specified date, in which case as of such date, other than for such failures to be true and correct that, individually and in the aggregate, have not and would not, individually or in the aggregate, prevent or materially delay consummation of the Arrangement, or otherwise prevent or materially delay Parent or Acquisition Sub from performing their respective obligations under this Agreement.

(b) *Agreements and Covenants*. Parent and Acquisition Sub shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by Parent or Acquisition Sub at or prior to the Effective Time.

(c) *Officer's Certificate*. Parent shall have delivered to the Company a certificate, dated the Effective Date, signed by an officer of Parent, certifying as to the satisfaction or, if permissible, waiver of the conditions specified in Sections 7.03(a) and 7.03(b).

## ARTICLE VIII

### TERMINATION, AMENDMENT AND WAIVER

SECTION 8.01 *Termination*. This Agreement may be terminated and the Arrangement may be abandoned at any time prior to the Effective Time, notwithstanding any requisite approval and authorization of this Agreement by Shareholders:

(a) by mutual written consent of Parent and the Company duly authorized by the board of directors of Parent and the Company Board;

(b) by either Parent or the Company if the Effective Time shall not have occurred on or before September 30, 2005; *provided, however*, that the right to terminate this Agreement under this Section 8.01(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Effective Time to occur on or before such date;

(c) by either Parent or the Company if any Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law which has become final and

nonappealable and has the effect of making the Arrangement illegal or otherwise preventing or prohibiting consummation of the Arrangement;

(d) by either Parent or the Company if the Arrangement Resolution shall have failed to receive the requisite vote for approval at the Special Meeting or at any adjournment or postponement thereof in accordance with the Interim Order or by Parent if the Rights Plan Resolution shall have failed to receive the requisite vote for approval at the Special Meeting or at any adjournment or postponement thereof in accordance with the Interim Order;

(e) by Parent if, prior to the Effective Time, the Company Board shall have (i) withdrawn, withheld, qualified or modified in a manner adverse to Parent or Acquisition Sub its recommendation of this Agreement (it being understood that the taking of a neutral position or no position with respect to an Acquisition Proposal beyond the Acquisition Proposal Assessment Period shall be considered an adverse modification), (ii) approved or recommended, or proposed publicly to approve or recommend, any Acquisition Proposal or (iii) after the end of an Acquisition Proposal Assessment Period, the Company Board shall have failed to reaffirm its approval or recommendation of this Agreement and the Arrangement as promptly as practicable (but in any event within 10 business days) after receipt of any written request to do so from Parent;

(f) by Parent, if there has been a breach of or failure to perform any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, which breach or failure to perform (i) would cause the conditions set forth in Section 7.02(a) or 7.02(b) not to be satisfied and (ii) is incapable of being cured;

(g) by the Company, if there has been a breach of or failure to perform any representation, warranty, covenant or agreement on the part of Parent or Acquisition Sub set forth in this Agreement, which breach or failure to perform (i) would cause the conditions set forth in Section 7.03(a) or 7.03(b) not to be satisfied and (ii) is incapable of being cured; or

(h) by the Company in accordance with Section 6.02(f).

SECTION 8.02 *Effect of Termination.* (a) In the event of the termination of this Agreement pursuant to Section 8.01, written notice thereof shall forthwith be given by the terminating party to the other party specifying the provision pursuant to which such termination is made, this Agreement shall be of no further force or effect, and there shall be no liability under this Agreement on the part of any party hereto after such termination (except that Sections 3.15, 4.10, 6.01(b), 8.02, 8.03 and Article IX and all related definitions set forth in Article I shall survive any such termination); *provided, however,* that nothing herein shall relieve any party from liability for any willful breach of any of its representations, warranties, covenants or agreements set forth in this Agreement.

(b) The Company shall pay to Parent a fee equal to \$31,500,000 if:

(i) (A) Parent or the Company terminates this Agreement pursuant to Section 8.01(b) (but only if the Special Meeting has not been held by the date that is five business days prior to the date of termination), (B) after the date of this Agreement and prior to such termination, an Acquisition Proposal was made or publicly disclosed and not publicly withdrawn prior to such termination, and (C) within 12 months after such termination, the Company shall have entered into a definitive agreement to consummate, or shall have consummated, a Third Party Acquisition;

(ii) (A) Parent or the Company terminates this Agreement pursuant to Section 8.01(d), (B) after the date of this Agreement and prior to the date of the Special Meeting, an Acquisition Proposal was made or publicly disclosed and not publicly withdrawn prior to such date, and (C) within 12 months after such termination, the Company shall have entered into a definitive agreement to consummate, or shall have consummated, a Third Party Acquisition;

(iii) Parent terminates this Agreement pursuant to Section 8.01(e); and

(iv) Company terminates this Agreement pursuant to Section 8.01(h).

Any fee due under this Section 8.02(b) shall be paid by wire transfer of same-day funds to an account designated in writing by Parent (x) in the case of termination pursuant to clause (i) or (ii) above, within two business days after date of execution of such definitive agreement or, if earlier, consummation of such Third Party Acquisition; (y) in the case of termination pursuant to clause (iii) above, within two business days after the termination of this Agreement; and (z) in the case of termination pursuant to clause (iv) above, prior to the termination of this Agreement.

(c) The Company shall reimburse Parent for Parent Expenses actually incurred in connection with this Agreement if this Agreement is terminated pursuant to Section 8.01(b), 8.01(d), 8.01(e) or 8.01(h) upon demand upon such termination.

(d) Each party acknowledges and agrees that if the amounts required to be paid to Parent by the Company pursuant to Section 8.02 are paid by the Company and accepted by the Parent, the amounts so paid and accepted are in lieu of any damages or any other payment or remedy which Parent may be entitled to and shall constitute payment of liquidated damages which are a genuine estimate of the damages which Parent and Acquisition Sub will suffer or incur as a result of the event giving rise to such damages and resultant termination of this Agreement and are not penalties. The Company irrevocably waives any right it may have to raise as a defense that any such liquidated damages are excessive or punitive. For greater certainty, the parties agree that the payment of the amounts pursuant to Section 8.02 is the sole monetary remedy available to Parent and Acquisition Sub and Parent and Acquisition Sub shall not have any alternative right or remedy against the Company. Notwithstanding anything in this Section 8.02(d) to the contrary, payment by the Company and acceptance by Parent of the amounts required to be paid pursuant to Section 8.02 shall not be in lieu of any damages or any other payment or remedy available in the event of any willful or intentional breach by the Company of any of its obligations under this Agreement.

SECTION 8.03 *Expenses*. Except as set forth in Section 8.02, and except that Parent and the Company shall each pay half of all antitrust and competition Law filing fees, all costs and expenses incurred in connection with this Agreement and the Arrangement shall be paid by the party incurring such costs and expenses, whether or not the Arrangement is consummated.

SECTION 8.04 *Amendment*. This Agreement may be amended by the parties hereto by action taken by or on behalf of their respective boards of directors at any time prior to the Effective Time; *provided, however*, that, after receipt of approval of Shareholders there shall be made no amendment that by Law requires further approval by Shareholders without the further approval of such holders. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto.

SECTION 8.05 *Waiver*. At any time prior to the Effective Time, any party hereto may (a) extend the time for the performance of any obligation or other act of any other party hereto, (b) waive any inaccuracy in the representations and warranties of any other party contained herein or in any document delivered pursuant hereto or (c) waive compliance with any agreement of any other party or any condition to its own obligations contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby.

## ARTICLE IX

### GENERAL PROVISIONS

SECTION 9.01 *Non-Survival of Warranties, Covenants and Agreements*. The representations, warranties, covenants and agreements in this Agreement and in any certificate delivered pursuant hereto shall terminate at the Effective Time or upon the termination of this Agreement pursuant to Section 8.01, as the case may be, except that the covenants and agreements set forth in Sections 6.03, 6.04, 6.05 and in Articles II and IX shall survive the Effective Time, and the representations, warranties, covenants and agreements set forth in Sections 3.15, 4.10, 6.01(b), 8.02, 8.03 and Article IX shall survive termination.

SECTION 9.02 *Notices*. All notices, requests, claims, demands and other communications hereunder shall be in writing in the English language and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in Person, by an internationally recognized overnight courier service (postage prepaid), by telecopy or email or by registered or certified mail (postage prepaid, return receipt requested), to the respective parties at the following addresses (or at such other address or telecopy number for a party as shall be specified in a notice given in accordance with this Section 9.02):

if to Parent or Acquisition Sub:

Eastman Kodak Company  
343 State Street  
Rochester, NY 14650  
USA  
Telephone: (585) 724-4332  
Telecopy: (585) 724-9549  
Attention: General Counsel

with copies (which shall not constitute notice) to:

Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004  
USA  
Telephone: (212) 558-4000  
Telecopy: (212) 558-3588  
Attention: Stephen M. Kotran

and to:

Osler, Hoskin & Harcourt LLP  
PO Box 50  
1 First Canadian Place  
Toronto, ON M5X 1B8  
CANADA  
Telephone: (416) 362-2111  
Telecopy: (416) 862-6666  
Attention: Donald C. Ross

if to the Company:

Creo Inc.  
3700 Gilmore Way  
Burnaby, BC V5G 4M1  
CANADA  
Telephone: (604) 451-2700  
Telecopy: (604) 437-9891  
Attention: General Counsel

with copies (which shall not constitute notice) to:

Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
USA  
Telecopy: (212) 474-3700  
Attention: John T. Gaffney

and to:

Stikeman Elliott LLP  
Suite 1700  
666 Burrard Street  
Vancouver, BC V6C 2X8  
CANADA  
Telecopy: (604) 631-1300  
Attention: John E. Stark

SECTION 9.03 *No Other Warranties*. The parties do not rely on and have not been induced to enter into this Agreement on the basis of any representations, warranties, covenants, undertakings, indemnities or other statements whatsoever other than the representations and warranties contained in this Agreement.

SECTION 9.04 *Separate Warranties*. Each of the representations and warranties contained in this Agreement shall be construed as a separate and independent representation and warranty and (except where expressly provided to the contrary) shall not be limited or restricted by reference to or inference from the terms of any other representation or warranty or any other term of this Agreement.

SECTION 9.05 *Entire Agreement*. This Agreement and the Confidentiality Agreement set out the entire agreement between the parties hereto in relation to the subject matter hereof and thereof and, except in the case of fraud, supersede any previous written or oral agreements, understandings, undertakings, representations, warranties and arrangements of any nature between the parties in relation to the matters set forth in this Agreement. Without prejudice to the generality of the foregoing, Parent and Acquisition Sub acknowledge and agree that, except as expressly set forth in this Agreement, no representation, warranty or other assurance has been given by the Company in respect of any projection, forecast or other forward-looking information.

SECTION 9.06 *Remedies and Waivers*. (a) No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by Law or under this Agreement or any other documents referred to herein shall affect that right, power or remedy or operate as a waiver thereof. The single or partial exercise of any right, power or remedy provided by Law or under this Agreement shall not preclude any further exercise of such right, power or remedy or the exercise of any other right, power or remedy. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies (express or implied) provided by common law, statute, custom or otherwise.

(b) The parties agree that irreparable damage would occur, and that the parties would not have any adequate remedy at law, in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

SECTION 9.07 *Assignment*. This Agreement is personal to the parties to it. Accordingly, neither Parent nor Acquisition Sub on the one hand nor the Company on the other hand may, without the prior written consent of the other, assign, hold in trust or otherwise transfer the benefit of all or any of the other's obligations under this Agreement, or any benefit arising under or out of this Agreement; *provided, however*, that the Acquisition Sub may assign any of or all its rights, interests and obligations under this Agreement to Parent or any direct or indirect wholly-owned subsidiary of Parent without the prior written consent of the Company, but no such assignment shall relieve Acquisition Sub of any of its obligations under this Agreement. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

SECTION 9.08 *Third Party Rights*. This Agreement shall not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and permitted assigns; *provided, however*, that (a) the provisions in Article II above concerning payment of the Consideration are intended for the benefit of Shareholders and (b) the provisions in Section 6.04 above concerning insurance and indemnification and the provisions of Section 6.05 above concerning personal liability are intended for the benefit of the individuals specified therein and their respective legal representatives.

SECTION 9.09 *Time of Essence*. Except as otherwise expressly provided in this Agreement, time is of the essence in this Agreement, both in respect of any dates and periods mentioned and in respect of any dates and periods which may be substituted for them in accordance with this Agreement or by agreement in writing between the parties.

SECTION 9.10 *Severability*. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law, or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Arrangement is consummated as originally contemplated to the greatest extent possible.

SECTION 9.11 *Governing Law and Submission to Jurisdiction*. This Agreement shall be governed by, and construed in accordance with, the laws of the province of Ontario and the federal Laws of Canada applicable therein. The parties hereto hereby submit to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of all matters arising under or in relation to this Agreement.

SECTION 9.12 *Waiver of Jury Trial*. Each of the parties hereto hereby waives to the fullest extent permitted by applicable Law any right it may have to a trial by jury with



respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement or the Transactions. Each of the parties hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and the Transactions, as applicable, by, among other things, the mutual waivers and certifications in this Section 9.12.

SECTION 9.13 *Appointment of Process Agent.* The parties hereto irrevocably appoint the Persons named below as their respective agents to accept service of process in Toronto in any legal action or proceedings arising out of or in connection with this Agreement, service upon whom shall be deemed completed whether or not forwarded to or received by the relevant party:

for Parent and Acquisition Sub:

Osler, Hoskin & Harcourt LLP  
PO Box 50  
1 First Canadian Place  
Toronto, ON M5X 1B8  
CANADA  
Telecopy: (416) 862-6666  
Attention: Donald C. Ross

for the Company:

Stikeman Elliott LLP  
199 Bay Street  
Suite 5300  
Commerce Court West  
Toronto, ON M5L 1B9  
CANADA  
Telecopy: (416) 947-0866  
Attention: John Ciardullo

Each party hereto shall inform each other party in writing of any change in the address of its process agent within 28 calendar days of such change. If such process agent ceases to be able to act as such or to have an address in Toronto, the relevant party irrevocably agrees to appoint a new process agent in Toronto acceptable to the other parties and to deliver to the other parties within 14 calendar days of receipt by the appointing party of written acceptance of such appointment a copy of a written acceptance of appointment by the new process agent. Nothing in this Agreement shall affect the right to serve process in any other manner permitted by Law.

SECTION 9.14 *Binding Effect.* This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

SECTION 9.15 *Counterparts*. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, Parent, Acquisition Sub and the Company have caused this Agreement to be executed on the date first written above by their respective officers thereunto duly authorized.

EASTMAN KODAK COMPANY

By: /s/ DAVID G. MONDERER

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Name: David G. Monderer  
Title: Vice President

4284488 CANADA INC.

By: /s/ DAVID G. MONDERER

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Name: David G. Monderer  
Title: President

CREO INC.

By: /s/ AMOS MICHELSON

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Name: Amos Michelson  
Title: Chief Executive Officer

By: /s/ MARK DANCE

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Name: Mark Dance  
Title: Chief Financial Officer/  
Chief Operating Officer

**EXHIBIT A**  
**PLAN OF ARRANGEMENT**  
**UNDER SECTION 192**  
**OF THE CANADA BUSINESS CORPORATIONS ACT**  
**INTERPRETATION**

**1.1 Definitions**

In this Plan of Arrangement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

**“Acquisition Sub”** means 4284488 Canada Inc., a corporation incorporated under the CBCA and being a wholly-owned subsidiary of Parent;

**“affiliate”** means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, unless otherwise expressly stated herein;

**“Arrangement”** means the arrangement under section 192 of the CBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with section 8.04 of the Arrangement Agreement or Article 5 hereof;

**“Arrangement Agreement”** means the agreement dated January 30, 2005 among the Parent, Acquisition Sub and the Company, as amended in accordance with Section 8.04 thereof, providing for, among other things, the Arrangement;

**“Articles of Arrangement”** means the articles of arrangement of the Company in respect of the Arrangement that are required by the CBCA to be sent to the Director after the Final Order is made;

**“Business Day”** means any day (other than a Saturday or Sunday) on which banks are not required or authorized to close in Vancouver, British Columbia, Toronto, Ontario or the City of New York, United States of America;

**“CBCA”** means the Canada Business Corporations Act, as amended;

**“Certificate of Arrangement”** means the certificate of arrangement issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement;

**“Circular”** means the notice of the Special Meeting and accompanying management proxy circular, including all schedules thereto, to be sent by the Company to Shareholders in connection with the Special Meeting;

**“Common Shares”** means the common shares, without par value, in the capital of the Company;

**“Company”** means Creo Inc., a corporation continued under the CBCA;

**“Company Stock Plans”** means, collectively, the Company’s Amended and Restated Stock Option Plan, the Company’s 2004 Employee Equity Award Plan and the Company’s 2004 Qualified Directors’ Equity Award Plan;

**“Court”** means the Ontario Superior Court of Justice (Commercial List);

**“Depositary”** means Computershare Trust Company of Canada at its offices set out in the Letter of Transmittal;

**“Director”** means the Director appointed pursuant to section 260 of the CBCA;

**“Dissent Rights”** means the rights of dissent in respect of the Arrangement described in section 3.1;

**“Dissenting Holder”** means any Shareholder who has duly exercised its Dissent Rights and has not withdrawn or been deemed to have withdrawn such Dissent Rights;

**“Effective Date”** means the date shown on the Certificate of Arrangement giving effect to the Arrangement;

**“Effective Time”** means 12:01 a.m. (Toronto time) on the Effective Date;

**“Employee Stock Option”** means any option to purchase Common Shares granted under any Company Stock Plan;

**“Exchange Act”** means the United States Securities Exchange Act of 1934, as amended;

**“Final Order”** means the order of the Court approving the Arrangement as such order may be amended at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended on appeal;

“**Governmental Authority**” means any federal, national, supranational, provincial, regional, municipal, state, local or foreign government, governmental, regulatory or administrative authority, agency, bureau, department, instrumentality or commission or any court, tribunal, board, authority or judicial or arbitral body of competent jurisdiction;

“**Interim Order**” means the interim order of the Court providing for, among other things, the calling and holding of the Special Meeting, as such order may be amended, as contemplated by section 2.02 of the Arrangement Agreement;

“**ITA**” means the *Income Tax Act* (Canada), as amended;

“**Letter of Transmittal**” means the letter of transmittal forwarded by the Company to Shareholders in connection with the Arrangement, in form accompanying the Circular;

“**Mailing Date**” means the date of mailing of the Circular to Shareholders;

“**Notice of Dissent**” means a notice given in respect of the exercise of Dissent Rights as contemplated in the Interim Order and as described in Article 3;

“**Optionholders**” means the holders of Employee Stock Options;

“**Parent**” means Eastman Kodak Company, a corporation existing under the laws of the State of New Jersey;

“**Person**” means an individual, corporation, partnership, limited partnership, limited liability company, joint venture, estate, association, trust, unincorporated organization or other entity of any kind or nature, as well as any syndicate or group that would be deemed to be a person under section 13(d)(3) of the Exchange Act;

“**Shareholders**” means the holders of Common Shares whose names appear in the register of holders of Common Shares maintained by or on behalf of the Company and, where the context so provides, includes joint holders of such Common Shares; and

“**Special Meeting**” means the special meeting of Shareholders to be held to consider the Arrangement Resolution, including any adjournment or postponement thereof, to be called and held in accordance with the Interim Order.

## **1.2 Interpretation Not Affected by Headings, Etc.**

The division of this Plan of Arrangement into articles, sections and other portions and the insertion of headings are for reference purposes only and shall not affect the interpretation of this Plan of Arrangement. Unless otherwise indicated, any reference in this Plan of Arrangement to “**Article**” or “**section**” followed by a number refers to the specified Article or section of this Plan of Arrangement. The terms “**this Plan of**

**Arrangement**", **"hereof"**, **"herein"**, **"hereunder"** and similar expressions refer to this Plan of Arrangement, including any appendices hereto, and any amendments, variations or supplements hereto made in accordance with the terms hereof or the Arrangement Agreement or made at the direction of the Court in the Final Order and do not refer to any particular Article, section or other portion of this Plan of Arrangement.

### **1.3 Rules of Construction**

In this Plan of Arrangement, unless the context otherwise requires, (a) words importing the singular number include the plural and vice versa, (b) words importing any gender include all genders, and (c) **"include"**, **"includes"** and **"including"** shall be deemed to be followed by the words "without limitation".

### **1.4 Date of Any Action**

In the event that any date on which any action is required to be taken hereunder by any of the parties hereto is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

### **1.5 Time**

Time shall be of the essence in every matter or action contemplated hereunder. All times expressed herein or in the Letter of Transmittal are local time (Toronto, Ontario) unless otherwise stipulated herein or therein.

### **1.6 Currency**

Unless otherwise stated, all references in this Plan of Arrangement to sums of money are expressed in lawful money of United States.

### **1.7 Statutes**

Any reference to a statute includes all rules and regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulations or rule which amends, supplements or supersedes any such statute, regulation or rule.

## **ARTICLE 2 ARRANGEMENT**

### **2.1 Arrangement Agreement**

This Plan of Arrangement is made pursuant to, is subject to the provisions of and forms part of the Arrangement Agreement.

## 2.2 Binding Effect

This Plan of Arrangement will become effective at, and be binding at and after, the Effective Time on (i) the Company, (ii) the Parent and Acquisition Sub, (iii) all Shareholders and beneficial owners of Common Shares and (iv) all registered and beneficial owners of Employee Stock Options.

## 2.3 Arrangement

Commencing at the Effective Time, the following shall occur and shall be deemed to occur in the following order without any further act or formality, in each case effective at the Effective Time:

- (a) each Common Share outstanding at the Effective Time and held by a Shareholder other than (i) a Dissenting Holder who is ultimately entitled to be paid the fair value of the Common Shares held by such Dissenting Holder or (ii) the Parent, Acquisition Sub or any affiliate thereof (which shall not be exchanged under the Arrangement and shall remain outstanding as a Common Share held by the Parent, Acquisition Sub or any affiliate thereof), shall be transferred to Acquisition Sub in exchange for \$16.50 per Common Share in cash;
- (b) the names of the holders of the Common Shares transferred to Acquisition Sub shall be removed from the applicable registers of holders of Common Shares and Acquisition Sub shall be recorded as the registered holder of the Common Shares so acquired and shall be deemed the legal and beneficial owner thereof;
- (c) all Employee Stock Options that have not been duly exercised prior to the Effective Time shall be canceled; and
- (d) the Company Stock Plans shall be terminated.

## ARTICLE 3 RIGHTS OF DISSENT

### 3.1 Rights of Dissent

(a) Shareholders may exercise pursuant to and in the manner set forth in section 190 of the CBCA and this section 3.1 the right of dissent in connection with the Arrangement, as the same may be modified by the Interim Order or the Final Order (the “**Dissent Rights**”) and holders who duly exercise such Dissent Rights and who:

- (i) are ultimately entitled to be paid fair value for their Common Shares shall be deemed to have transferred such Common Shares to Acquisition Sub on the Effective Date contemporaneously with the event described in section 2.3(a) in exchange for the fair value of such Common Shares; or



(ii) are ultimately not entitled, for any reason, to be paid fair value for their Common Shares shall be deemed to have participated in the Arrangement on the same basis as a non-dissenting Shareholder.

(b) In no circumstances shall the Company, Acquisition Sub or any other Person be required to recognize a Person exercising Dissent Rights unless such Person is a registered holder of those Common Shares in respect of which such rights are sought to be exercised.

(c) For greater certainty, in no case shall Parent, Acquisition Sub, the Company or any other Person be required to recognize Dissenting Holders as holders of Common Shares after the Effective Time, and the names of such Dissenting Holders shall be deleted from the register of Shareholders on the Effective Date at the same time as the events described in sections 2.3(a) and (b) occur.

#### **ARTICLE 4 CERTIFICATES AND PAYMENTS**

##### **4.1 Exchange of Certificates for Cash**

(a) At or before the Effective Time, Acquisition Sub shall deposit sufficient cash with the Depositary for the benefit of Shareholders to give effect to this Plan of Arrangement. Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Common Shares that were exchanged for cash, together with a duly completed and executed Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require, the Shareholder of such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such Shareholder, the cash which such Shareholder has the right to receive under the Arrangement for such Common Shares, less any amounts withheld pursuant to section 4.3 and any certificate so surrendered shall forthwith be cancelled. The cash deposited with the Depositary shall be held in an interest-bearing account, and any interest earned on such funds shall be for the account of Acquisition Sub.

(b) Until surrendered as contemplated by this section 4.1, each certificate which immediately prior to the Effective Time represented Common Shares shall be deemed after the Effective Time to represent only the right to receive upon such surrender a cash payment in lieu of such certificate as contemplated in this section 4.1, less any amounts withheld pursuant to section 4.3. Any such certificate formerly representing Common Shares not duly surrendered on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former Shareholder of any kind or nature against or in the Company, the Parent or Acquisition Sub. On such date, all Common Shares to which the former holder of such certificate was entitled shall be deemed to have been surrendered to Acquisition Sub and cash to which such former holder was entitled shall be deemed to have been surrendered to the Parent.

## 4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Common Shares that were exchanged pursuant to section 2.3 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, cash deliverable in accordance with such holder's Letter of Transmittal. When authorizing such payment in exchange for any lost, stolen or destroyed certificate, the Person to whom such cash is to be delivered shall as a condition precedent to the delivery of such cash, give a bond satisfactory to Acquisition Sub and the Depositary in such sum as Acquisition Sub may direct, or otherwise indemnify Acquisition Sub and the Company in a manner satisfactory to Acquisition Sub and the Company, against any claim that may be made against Acquisition Sub and the Company with respect to the certificate alleged to have been lost, stolen or destroyed.

## 4.3 Withholding Rights

The Company, Acquisition Sub, Parent and the Depositary shall be entitled to deduct and withhold from any consideration otherwise payable to any Shareholder such amounts as the Company, Acquisition Sub, Parent or the Depositary is required or permitted to deduct and withhold with respect to such payment under the ITA, the United States *Internal Revenue Code of 1986* or any provision of federal, provincial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the Common Shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority.

## ARTICLE 5 AMENDMENTS

### 5.1 Amendments to Plan of Arrangement

- (a) The Company may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, *provided* that each such amendment, modification and/or supplement must (i) be set out in writing, (ii) be approved by Parent and Acquisition Sub, (iii) filed with the Court and, if made following the Special Meeting, approved by the Court, and (iv) communicated to Shareholders if and as required by the Court.
- (b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Company at any time prior to the Special Meeting (provided that the Parent and Acquisition Sub shall have consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Special Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.

- (c) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Special Meeting shall be effective only if (i) it is consented to by each of the Company, Parent and Acquisition Sub (in each case, acting reasonably) and (ii) if required by the Court, it is consented to by Shareholders voting in the manner directed by the Court.
- (d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by Parent, *provided* that it concerns a matter which, in the reasonable opinion of Parent, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former Shareholder.

**ARTICLE 6  
FURTHER ASSURANCES**

**6.1** Notwithstanding that the transactions and events set out herein shall occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order further to document or evidence any of the transactions or events set out herein.

**EXHIBIT B**

**ARRANGEMENT RESOLUTION**

**SPECIAL RESOLUTION FOR CONSIDERATION AT THE SPECIAL MEETING OF SECURITYHOLDERS OF  
CREO INC.  
(the "Company")**

BE IT RESOLVED, as a special resolution, THAT:

1. The arrangement (the "Arrangement") under section 192 of the *Canada Business Corporations Act* (the "CBCA") involving the Company, as more particularly described and set forth in the management information circular (the "Circular") of the Company accompanying the notice of this meeting (as the Arrangement may be modified or amended) be and is hereby authorized, approved and adopted.
2. The plan of Arrangement (the "Plan of Arrangement") involving the Company, the full text of which is set out as Exhibit A to the Arrangement Agreement made as of January 30, 2005 between Eastman Kodak Company, 4284488 Canada Inc. and the Company (the "Arrangement Agreement"), as the Plan of Arrangement may be or may have been amended, is hereby approved and adopted.
3. The Arrangement Agreement, the actions of the directors of the Company in approving the Arrangement Agreement and the actions of the officers of the Company in executing and delivering the Arrangement Agreement and any amendments thereto are hereby ratified and approved.
4. Notwithstanding that this resolution has been passed (and the Arrangement adopted) by the shareholders of the Company or that the Arrangement has been approved by the Ontario Superior Court of Justice (Commercial List), the directors of the Company be and are hereby authorized and empowered without further approval of the shareholders of the Company (i) to amend the Arrangement Agreement or the Plan of Arrangement to the extent permitted by the Arrangement Agreement or the Plan of Arrangement, and (ii) subject to the terms of the Arrangement Agreement, not to proceed with the Arrangement or the Plan of Arrangement.
5. Any director or officer of the Company be and is hereby authorized and directed for and on behalf of the Company to execute, under the corporate seal of the Company or otherwise, and to deliver to or file with the Director under the CBCA articles of arrangement and such other documents as are necessary or desirable to give effect to the Arrangement and the Plan of Arrangement in accordance with the Arrangement Agreement.
6. Any director or officer of the Company be and is hereby authorized and directed for and on behalf of the Company to execute or cause to be executed, under the corporate seal of the Company or otherwise, and to deliver or cause to be delivered, all such other documents and instruments and to perform or cause to be performed all such other acts and things as in such person's opinion may be necessary or desirable to give full effect to the foregoing resolutions and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of such document, agreement or instrument or the doing of any such act or thing.

**EXHIBIT C**

**RIGHTS PLAN RESOLUTION**

**RESOLUTION FOR CONSIDERATION AT THE SPECIAL MEETING OF SECURITYHOLDERS OF  
CREO INC.  
(the “Company”)**

BE IT RESOLVED THAT:

1. The Company be and is hereby authorized, pursuant to Section 5.4(b) of the Shareholder Rights Plan Agreement dated as of November 13, 2002 (the “Rights Plan”) between the Company and Computershare Trust Company of Canada (as Rights Agent), to waive the application of the Rights Plan to the acquisition of common shares of the Company pursuant to the Arrangement Agreement dated January 30, 2005 between Eastman Kodak Company, 4284488 Canada Inc. and the Company, as such Arrangement Agreement may be amended or restated from time to time (the “Arrangement Agreement”) and, for greater certainty, any transactions contemplated by the Arrangement Agreement, shall be deemed not to trigger a Separation Event or a Flip-In Event (as those terms are defined in the Rights Plan).
2. The rescission of the Rights Plan, and all of the provisions thereof, immediately prior to the effective time, is hereby consented to and approved.
3. Any director or officer of the Company be and is hereby authorized and directed for and on behalf of the Company to execute or cause to be executed, under the corporate seal of the Company or otherwise, and to deliver or cause to be delivered, all such documents, agreements and instruments and to perform or cause to be performed all such other acts and things as in such person’s opinion may be necessary or desirable to give full effect to the foregoing resolution and the matters authorized hereby, such determination to be conclusively evidenced by the execution and delivery of any such documents, agreements or instruments and the taking of any such actions.

**NOTICE OF AWARD OF NON-QUALIFIED STOCK OPTIONS**

**GRANTED TO \_\_\_\_\_**

**EFFECTIVE \_\_\_\_\_**

**PURSUANT TO THE**

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**PLAN**

APPROVED BY:

Action of the Executive Compensation and Development  
Committee effective \_\_\_\_\_, \_\_\_\_\_

**NOTICE OF AWARD OF NON-QUALIFIED STOCK OPTIONS**  
**GRANTED TO \_\_\_\_\_**  
**EFFECTIVE \_\_\_\_\_**  
**PURSUANT TO THE**

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**PLAN**

**1. Background**

Under Article \_\_\_\_\_ of \_\_\_\_\_ Plan (the "Plan"), the Committee may, among other things, award non-qualified stock options of the Company's Common Stock to those Employees as the Committee in its discretion may determine, subject to such terms, conditions and restrictions as it deems appropriate.

**2. Award**

The Committee granted, effective \_\_\_\_\_ (the "Grant Date"), \_\_\_\_\_ (the "Participant") an award of \_\_\_\_\_ (\_\_\_\_\_) non-qualified stock options (the "Award"). One option provides for the ability to purchase a single share of Common Stock. The Award is granted under the Plan, subject to the terms and conditions of the Plan and those set forth in this Notice of Award of Non-Qualified Stock Options ("Award Notice"). To the extent there is any inconsistency between the terms of this Award Notice and the Plan, the terms of the Plan will control.

**3. Terms and Conditions of Award**

The following terms and conditions will apply to the Award:

- (a) **Option Price.** The option price for the options evidenced by way of this Award Notice will be the mean between the high and low at which Kodak Common Stock trades on the New York Stock Exchange on the Grant Date, i.e., \$\_\_\_\_\_.
- (b) **Duration of Option.** Subject to Section 3(i) below, each option will expire at the close of business on the day immediately prior to the seventh anniversary of the Grant Date, unless sooner terminated or forfeited in accordance with the terms and conditions of this Award Notice or the Plan.
- (c) **Vesting.** No option will be exercisable prior to the date on which it vests.

The options will vest in three (3) substantially equal consecutive annual installments on the first, third and fifth anniversaries of the Grant Date. The options must be exercised by written notice to the Committee stating the number of options to be exercised.

- (d) **Payment of Option Price.** The option price for the share for which an option is exercised by the Participant will be paid by the Participant on the date the option is exercised in cash, in shares of Common Stock owned by the Participant, or a combination of the foregoing. Any share of Common Stock delivered in payment of the option price will be valued at its Fair Market Value on the date of exercise.
- (e) **Withholding.** The Participant will pay the amount of taxes required to be withheld upon exercise of his or her options by delivering a check made payable to the Company.
- (f) **Rights as a Shareholder.** The Participant will not have any of the rights of a shareholder with respect to the shares of Common Stock covered by an option except to the extent one or more certificates for such shares will be delivered to him or her upon the exercise of such option.
- (g) **Broker Assisted Exercise.** Notwithstanding Sections 3(d) and 3(e) above, the Participant may, subject to Section 5 hereof, exercise any option granted to him or her under this Award Notice by way of the Company's broker-assisted stock option exercise program, to the extent such program is available at the time of such exercise. Pursuant to the terms of such program, the amount of any taxes required to be withheld upon exercise of any options must be paid in cash directly to the Company.
- (h) **Termination of Employment.**
  - (i) **Forfeiture.**
    - (A) **Within One Year of Grant.** The provisions of this Section 3(h)(i)(A) will apply insofar as the Participant's employment is terminated for any reason, whether voluntarily or involuntarily, prior to the first anniversary of the Grant Date. In such event, absent termination of the Participant's employment for a Permitted Reason or due to death, the Participant will, effective upon the date of his or her termination of employment, forfeit all of the nonqualified stock options granted to him or her under this Award Notice. In the event of termination of the Participant's employment for a Permitted Reason or due to death, the options will, unless sooner forfeited in accordance with another provision of this Award Notice or the provisions of the Plan, expire on the third anniversary of the date of the Participant's termination of employment.
    - (B) **On or After First Anniversary of Grant Date.**



- (I) **In General.** The provisions of this Section 3(h)(i)(B) will apply insofar as the Participant's employment is terminated for any reason, whether voluntarily or involuntarily, on or after the first anniversary of the Grant Date.
- (II) **Unvested Options.** Effective upon the date of the Participant's termination of employment, all of the unvested portion of the Participant's options will be immediately forfeited; provided, however, if the Participant's employment is terminated by reason of death, Disability, Retirement, or an Approved Reason, the unvested options will expire on the third anniversary of the date of the Participant's termination of employment, unless sooner forfeited in accordance with the terms of this Award Notice or the Plan.
- (III) **Vested Options.** On the sixtieth (60) day after the date of the Participant's termination, all of the vested portion of the Participant's options will expire; provided, however, if the Participant's employment is terminated by reason of death, Disability, Retirement or an Approved Reason, the vested options will expire on the third anniversary of the date of the Participant's termination of employment, unless sooner forfeited in accordance with the terms of this Award Notice or the Plan.

(ii) **Vesting.** Notwithstanding Section 3(c) above to the contrary, if the Participant dies prior to the vesting of all of the nonqualified stock options granted to him or her under this Award Notice, all of such unvested options will immediately vest on the date of the Participant's death and may be exercised, subject to the Plan's terms and conditions, at any time between such date and the third anniversary of the date of the Participant's death.

(i) **Exercise Upon Expiration.**

- (i) Notwithstanding Section 3(b) hereof to the contrary, if on the options' scheduled expiration date (A) any options remain unexercised and (B) the Fair Market Value of a share of Common Stock exceeds the option price, then the provisions of Section 3(i)(ii) below will apply.
- (ii) The Participant may exercise any of his or her unexercised options as of the date they are scheduled to expire, unless already forfeited under the terms and conditions of this Award Notice or the Plan, by providing written notice thereof to the Committee within sixty (60) days after such scheduled expiration date. In such event, such options will, for purposes

of this Award Notice and the Plan, be treated as exercised prior to the close of business on their scheduled expiration date; provided, however, the Participant will not be the record owner of the shares acquired upon exercise of such options until the one or more certificates for the shares have been delivered to the Participant. The strike price of any options exercised pursuant to the provisions of this Section 3(i) will be the mean between the high and low at which the Common Stock trades on the New York Stock Exchange on the options' scheduled expiration date, or, if such day is not a trading day, the immediately preceding trading day.

- (iii) Notwithstanding Section 3(g) above to the contrary, any options exercised pursuant to this Section 3(i) will not, without the Committee's prior approval, be exercised by way of the Company's broker-assisted stock option program.

#### 4. Definitions

Any defined term used in this Award Notice, other than those set forth below, will have the same meaning for purposes of this document as that ascribed to it under the terms of the Plan. The following definitions will apply to this Award Notice:

- (a) **Approved Reason.** The Committee may, in its sole and absolute discretion, determine what other circumstances, if any, besides those specifically described in this subsection constitute a termination of employment for an Approved Reason. The following types of terminations of employment will be for an Approved Reason:
  - (i) **Divestiture.** The Participant terminates employment as a direct result of a Divestiture; provided, however, that following the Divestiture the Participant is not employed by an entity within Kodak's controlled group for financial reporting purposes.
  - (ii) **Layoff.** The Participant terminates employment as a result of a Layoff; provided, however, the Participant complies with all of the applicable conditions required in order to receive severance benefits under the terms of the benefit plan providing the severance benefits due to the Layoff and, in particular, in those cases where the receipt of severance benefits is conditioned on the execution of a general release, the Participant signs and does not revoke the general release.
  - (iii) **Special Separation Program.** The Participant terminates employment under a Special Separation Program; provided, however, the Participant complies with all of the applicable conditions of the program.

- (iv) **Transfer.** The Participant terminates employment as a result of a Transfer.
- (v) **Individual Retirement Plan.** The Participant retires pursuant to the terms of a Individual Retirement Plan; provided, however, the Participant complies with all of the applicable conditions of the plan.
- (b) **Fair Market Value.** The opening price of the Common Stock on the New York Stock Exchange on the relevant date; provided, however, if the Common Stock is not traded on the relevant date, then the opening price on the immediately preceding date on which the Common Stock is traded will be used.
- (c) **Divestiture.** “Divestiture” means any one or more of the following transactions: (A) the sale or other transfer to an unrelated entity of all or substantially all of the assets used by the Participant’s employer in a trade or business conducted by the Participant’s employer; (B) if the Participant was employed by a subsidiary corporation (within the meaning of Code section 424(f)) of Kodak, or by a corporation that is a member of a controlled group of corporations (within the meaning of Code section 414(b) as modified by Code section 415(h)) that includes Kodak, the liquidation, sale, or other means of terminating the parent-subsidiary or controlled group relationship of the Participant’s employer with Kodak; (C) the loss or expiration of a contract with a government agency and the entry into a successor contract by an unrelated entity and such government agency; (D) the sale or other transfer of all or substantially all of the assets used by the Participant’s employer at a plant, facility, or other business location of the Participant’s employer; (E) any other sale, transfer, or disposition of assets of the Participant’s employer to an unrelated entity; or (F) any change in the contractual arrangements governing the performance of the Participant’s services where, immediately following the change in the contractual arrangements, the Participant continues to perform primarily the same services for the same recipient.
- (d) **Layoff.** “Layoff” means a layoff under the terms of Kodak’s Termination Allowance Plan (“TAP”) or any similar plan or program adopted by the Participant’s employer.
- (e) **Special Separation Program.** A “Special Separation Program” means either (i) a “Special Separation Program” as defined in Section 4.02 of the Termination Allowance Plan (“TAP”); or (ii) an involuntary termination of employment for other than Cause pursuant to the terms of a written special letter agreement between the Participant and his or her employer. In the case where Kodak is the Participant’s employer, the written letter agreement must be executed on behalf of Kodak by the Director, Human Resources and Vice President, Eastman Kodak Company. In all other cases, prior to its execution the written letter agreement must be reviewed and approved prior to execution by the Director, Human Resources and Vice President, Eastman Kodak Company.

- (f) **Transfer.** “Transfer” means a transfer of employment of a Participant that is initiated by the Participant’s employer, which for financial reporting purposes is an entity within Kodak’s controlled group, to an entity in which Kodak has an ownership interest, but is not a member of Kodak’s controlled group for financial reporting purposes.
- (g) **Cause.** “Cause” means:
- (i) the Participant’s failure to perform his or her duties in a manner deemed satisfactory by the Participant’s supervisor; or
  - (ii) the Participant’s failure to follow a lawful written directive of Eastman Kodak Company’s Chief Executive Officer, the Participant’s supervisor or any other person to whom the Participant has a reporting relationship in any capacity; or
  - (iii) the Participant’s violation of any material rule, regulation, or policy that may be established from time to time for the conduct of his or her employer’s business; or
  - (iv) the Participant’s unlawful possession, use or sale of narcotics or other controlled substances, or performing job duties while illegally used controlled substances are present in the Participant’s system; or
  - (v) any act of omission or commission by the Participant in the scope of his or her employment (a) which results in the assessment of a civil or criminal penalty against the Participant or the Participant’s employer, or (b) which in the reasonable judgment of the Participant’s supervisor could result in a material violation of any foreign or U.S. federal, state or local law or regulation having the force of law; or
  - (vi) the Participant’s conviction of, or plea of, guilty or no contest to any crime involving moral turpitude;
  - (vii) any misrepresentation of a material fact to, or concealment of a material fact from, the Participant’s supervisor or any other person to whom the Participant has a reporting relationship in any capacity; or
  - (viii) the Participant’s breach of his or her Eastman Kodak Company Employee’s Agreement or any similar agreement required of the Participant’s employer or the Participant’s breach of the Eastman Kodak Company Business Conduct Guide.

A Participant may be treated as terminating employment for Cause for purposes of this subsection even though the Participant may not be considered by his or her employer as terminating employment for cause for any other purpose.

- (h) **Individual Retirement Plan.** “Individualized Retirement Plan” means a special individualized pension arrangement between the Participant and the Participant’s employer that is approved in writing by the Director, Human Resources and Vice President, Eastman Kodak Company and grants the Participant deemed years of age and/or service such that when combined with the Participant’s actual years of age and service, the Participant is eligible for Retirement.
- (i) **Permitted Reason.** The CEO may, in his sole and absolute discretion, determine what other circumstances, if any, besides those specifically described in this subsection constitute a termination of employment for a Permitted Reason. Subject to the following rules, a Participant’s termination of employment will be for a Permitted Reason unless the Participant’s termination of employment is voluntary or for Cause. The following rules will apply for purposes of this subsection:
  - (i) **Retirement.** If a Participant’s termination of employment is due to Retirement, the Participant’s termination will be voluntary.
  - (ii) **Layoff.** In the event the Participant’s termination of employment is a result of a Layoff, the Participant’s termination of employment will be for a Permitted Reason only if the Participant complies with all of the applicable terms and conditions required in order to receive severance benefits under the terms of the Layoff, and, in particular, in those situations where the receipt of severance benefits is conditioned on the execution of a general release, the Participant executes and does not revoke the general release.
  - (iii) **Special Separation Program.** In the event the Participant terminates employment under a Special Separation Program, the Participant’s termination of employment will only be for a Permitted Reason if the Participant complies with all of the applicable conditions of such program, and, in particular, in those situations where the receipt of benefits under the program is conditioned on the execution of a general release, the Participant executes and does not revoke the general release.

## 5. Section 16 of the Exchange Act

In order to avoid any Exchange Act violations, the Committee may, at any time and from time to time, impose additional restrictions upon the Award, including, but not by way of limitation, restrictions regarding the Participant’s ability to exercise options under the Company’s broker-assisted stock option exercise program under Section 3(g).

**6. Non-Assignability**

- (a) **In General.** Except as specified in Section 6(b), the Award will not in any manner be subject to alienation, anticipation, sale, transfer, assignment, pledge or encumbrance.
- (b) **Transfers.** The non-qualified stock options granted pursuant to this Award Notice are transferable in accordance with, and subject to, the terms and conditions set forth in Section 19.1(b) of the Plan.

**7. Effect of Award Notice**

This Award Notice, including its reference to the Plan, constitutes the entire understanding between the Company and the Participant concerning the Award and supersedes any prior notices, letters, statements or other documents issued by the Company relating to the Award and all prior agreements and understandings between the Company and the Participant, whether written or oral, concerning the Award.

**8. Miscellaneous**

- (a) **Headings.** The headings of the Sections of this Award Notice have been prepared for convenience and reference only and will not control, affect the meaning, or be taken as the interpretation of any provision of the Award Notice.
- (b) **Applicable Law.** All matters pertaining to this Award Notice (including its interpretation, application, validity, performance and breach) will be governed by, construed and enforced in accordance with the laws of the State of New York (except as superseded by applicable Federal Law) without giving effect to principles of conflicts of laws.
- (c) **Amendment.** The Committee may, from time to time, amend this Award Notice in any manner.

**9. Administration**

The Committee will have full and absolute authority and discretion, subject to the provisions of the Plan, to interpret, construe and implement this Award Notice, to prescribe, amend and rescind rules and regulations relating to it, and to make all other determinations necessary, appropriate or advisable for its administration. All such Committee determinations will be final, conclusive and binding upon any and all interested parties and their heirs, successors, and personal representatives.

**10. Impact on Benefits**

The nonqualified stock options granted pursuant to this Award Notice (either at the date of their grant or at the time the shares are vested) will not be includible as compensation or earnings for purposes of any compensation or benefit plan offered by the Company.

[Version 3.0]

**NOTICE OF AWARD OF RESTRICTED STOCK**

**GRANTED TO \_\_\_\_\_**

\_\_\_\_\_

**PURSUANT TO THE**

\_\_\_\_\_

**PLAN**

APPROVED BY:

Action by or on behalf of the  
Executive Compensation and  
Development Committee

\_\_\_\_\_



**NOTICE OF AWARD OF RESTRICTED STOCK****GRANTED TO \_\_\_\_\_**

\_\_\_\_\_

**PURSUANT TO THE****PLAN**

1. **Background.** Under Article 10 of the \_\_\_\_\_ Plan (the "Plan"), the Executive Compensation and Development Committee ("the Committee") may, among other things, award restricted shares of Kodak's Common Stock to those Key Employees as the Committee in its discretion may determine, subject to such terms, conditions and restrictions as it deems appropriate. The Committee's charter permits delegation of its authority to grant certain awards pursuant to the terms contained therein.
2. **Award.** Effective \_\_\_\_\_, (the "Grant Date") the Committee or its designee granted to \_\_\_\_\_ (the "Participant") an Award of \_\_\_\_\_ (\_\_\_\_\_) restricted shares of Common Stock ("Restricted Shares"). This Award was granted under the Plan, subject to the terms and conditions of the Plan and those set forth in this Notice of Award of Restricted Stock ("Award Notice"). To the extent there are any inconsistencies between the terms of the Plan and this Award Notice, the terms of the Plan will control.
3. **Terms and Conditions of Restricted Shares.** The following terms and conditions will apply to the Restricted Shares:
  - (a) **Issuance.** The Restricted Shares awarded to the Participant will be evidenced by a book entry recorded by Kodak's transfer agent in an account established by the transfer agent on behalf of the Participant. This book entry will indicate that the Restricted Shares are restricted under the terms of this Award Notice. The Participant will be a shareowner of all the shares represented by this book entry. As such, the Participant will have all the rights of a shareowner with respect to the Restricted Shares, including but not limited to, the right to vote such shares and to receive all dividends and other distributions (subject to Section 3(b)) paid with respect to them, provided, however, that the Restricted Shares will be subject to the restrictions in Section 3(d).

- (b) Stock Splits, Dividends, etc. If under Section 6.2 of the Plan, entitled "Adjustment to Shares," the Participant, as the owner of the Restricted Shares, becomes entitled to new, additional, or different shares of stock or securities: (i) Kodak's transfer agent will adjust its book entry for the Participant to reflect such new, additional, or different shares of stock or securities; and (ii) such new, additional, or different shares of stock or securities will be subject to the restrictions provided for in Section 3(d) below.

(c) Restriction Period. The Restricted Shares will be subject to \_\_\_\_\_ “Restriction Periods.” The Restriction Periods for the Restricted Shares will be as follows: \_\_\_\_\_

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(d) Restrictions on Restricted Shares. The restrictions to which the Restricted Shares are subject are:

(i) Nonalienation. During their Restriction Period, the Restricted Shares may not be sold, exchanged, transferred, assigned, pledged, hypothecated, or otherwise disposed of except by will or the laws of descent and distribution. Any attempt by the Participant to dispose of a Restricted Share in any such manner will result in the immediate forfeiture of such Restricted Share and all other Restricted Shares then held by Kodak’s transfer agent on the Participant’s behalf.

(ii) Continuous Employment. The Participant must remain continuously employed by Kodak throughout a Restriction Period in order to receive the Restricted Shares that are subject to that Restriction Period. Thus, except as set forth in Section 4 below, if the Participant’s employment terminates for any reason, whether voluntarily or involuntarily, during a Restriction Period, the Participant will immediately forfeit all of the Restricted Shares subject to that Restriction Period. If the Participant’s employment terminates during more than one Restriction Period, the Participant will, except as set forth in Section 4 below, forfeit all of the Restricted Shares subject to those Restriction Periods.

(e) Lapse of Restrictions. The restrictions set forth in Section 3(d) above, with respect to a Restricted Share, will, unless the Restricted Share is forfeited sooner, lapse upon the expiration of such Restricted Share’s Restriction Period.

4. Termination of Employment.

(a) Within One Year of Grant. Notwithstanding Section 3 above to the contrary, if the Participant’s employment is terminated by reason of a Permitted Reason prior to the first anniversary of the Award’s grant, the Restricted Shares will not be forfeited by reason of such termination, but will, unless sooner forfeited under the terms and conditions of this Award Notice or the Plan, continue to remain subject to the restrictions set forth in Section 3(d) above until the expiration of such Restricted Shares’ applicable Restriction Period.

- (b) On or After the First Anniversary of Grant. Notwithstanding Section 3 above to the contrary, if the Participant's employment is terminated by reason of Disability or an Approved Reason on or after the first anniversary of the Award's grant, the Restricted Shares will not be forfeited by reason of such termination, but will, unless sooner forfeited under the terms and conditions of the Award Notice or the Plan, continue to remain subject to the restrictions set forth in Section 3(d) above until the expiration of the Restriction Period(s) to which such Restricted Shares are subject.
- (c) Death. Notwithstanding Section 3(c) above to the contrary, if the Participant's employment is terminated by reason of death prior to the \_\_\_\_\_ anniversary of the Grant Date, the Participant's estate will receive a pro-rata share of the Restricted Shares then held on the Participant's behalf by Kodak's transfer agent and the Restriction Period(s) on such pro-rata share of the Restricted Shares will terminate as of the date of the Participant's death. Such pro-rata share will be determined by multiplying the total number of Restricted Shares granted under the Award by a fraction the numerator of which is the number of full months that have elapsed since the date of the Award's grant, and the denominator of which is \_\_\_\_\_, and then subtracting from such result the number, if any, of shares of Common Stock of the Award for which the restrictions set forth in Section 3(d) above previously lapsed prior to the date of the Participant's death.
- (d) Death After Termination of Employment. In the event the Participant terminates employment due to a Permitted Reason, an Approved Reason or Disability and then subsequently dies prior to the \_\_\_\_\_ anniversary of the Grant Date, the Participant's estate will be entitled to a pro-rata share of the Restricted Shares then held on the Participant's behalf by Kodak's transfer agent and, notwithstanding Section 3(c) above to the contrary, the Restriction Period(s) on such pro-rata share of the Restricted Shares will terminate as of the date of the Participant's death. Such pro-rata share will be determined by multiplying the total number of Restricted Shares granted under the Award by a fraction the numerator of which is the number of full months that have elapsed since the date of the Award's grant, and the denominator of which is \_\_\_\_\_, and then subtracting from such result the number, if any, of shares of Common Stock of the Award for which the restrictions set forth in Section 3(d) above previously lapsed prior to the date of the Participant's death.

5. Issuance of Shares of Common Stock. Upon the lapse of a Restriction Period, Kodak will, unless the Restricted Shares are sooner forfeited, promptly instruct its transfer agent to reflect on its books those Restricted Shares that are no longer restricted. The transfer agent will then subtract from the Participant's account the number of shares that are withheld for taxes under Section 6 below. Upon the Participant's request, the transfer agent will deliver to the Participant a stock certificate for the remaining number of unrestricted shares held in the Participant's account.
6. Withholding. Kodak will pay the taxes required to be withheld upon the lapse of a Restriction Period by withholding a portion of the shares of Common Stock otherwise due the Participant as a result of the lapse of such restrictions. The portion of the shares withheld will equal in amount the taxes required to be withheld. The Common Stock which is so withheld will be valued at its Fair Market Value on the date of the lapse of the restrictions on the Restricted Shares.
7. Definitions.
  - (a) Any defined term used in this Award Notice, other than that set forth in Section 7(b) below, will have the same meaning for purposes of this document as that ascribed to it under the terms of the Plan.
  - (b) The following definitions will apply to this Award Notice:
    - (i) Permitted Reason. The CEO will, in the exercise of his or her sole discretion, determine under what circumstances, if any, a termination of employment will be for a "Permitted Reason." In the event, however, the Participant is the CEO, then such determination will be made by the Committee.
    - (ii) Fair Market Value. "Fair Market Value" will mean the opening price of the Common Stock on the New York Stock Exchange; provided, however, if the Common Stock is not traded on the date in question, then the opening price on the immediately preceding date on which the Common Stock is traded will be used.
8. Effect of Award Notice. This Award Notice, including its reference to the Plan, constitutes the entire understanding between the Company and the Participant concerning the Award and supersedes any prior notices, letters, statements or other documents issued by the Company relating to the Award and all prior agreements and understandings between the Company and the Participant, whether written or oral, concerning the Award.

9. Administration. The Committee will have full and absolute authority and discretion, subject to the provisions of the Plan, to interpret, construe and implement this Award Notice, to prescribe, amend and rescind rules and regulations relating to it, and to make all other determinations necessary, appropriate or advisable for its administration. All such Committee determinations will be final, conclusive and binding upon any and all interested parties and their heirs, successors, and personal representatives.
10. Impact on Benefits. The Restricted Shares (either at the date of their grant or at the time their restrictions lapse) will not be includible as compensation or earnings for purposes of any other compensation or benefit plan offered by Kodak.
11. Miscellaneous.
  - (a) Headings. The headings of the Sections of the Award Notice have been prepared for convenience and reference only and will not control, affect the meaning, or be taken as the interpretation of any provision of the Award Notice.
  - (b) Applicable Law. This Award Notice, and its interpretation and application, will be governed and controlled by the laws of the State of New York (except as superseded by applicable Federal Law), applicable as though to a contract made in New York by residents of New York and wholly to be performed in New York without giving effect to principles of conflicts of laws.
  - (c) Amendment. The Committee may, from time to time, amend this Award Notice in any manner.
12. Tax Consequences. No person connected with this Award Notice in any capacity, including, but not limited to, Kodak and its Subsidiaries and their respective directors, officers, agents and employees makes any representation, commitment, or guarantee that any tax treatment, including, but not limited to, federal, state and local income, estate and gift tax treatment, will be applicable with respect to the Award.

**Eastman Kodak Company**  
**Computation of Ratio of Earnings to Fixed Charges**  
(in millions, except for ratios)

Year Ended December 31

	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
	(Restated)				
(Loss) earnings from continuing operations before provision for income taxes	\$ (94)	\$ 104	\$ 894	\$ 83	\$ 2,097
Adjustments:					
Minority interest in income/(loss) of subsidiaries with fixed charges	2	24	17	(11)	11
Undistributed (earnings)/ loss of equity method investees	(30)	41	107	77	36
Interest expense	168	147	173	218	178
Interest component of rental expense (1)	54	53	53	42	52
Amortization of capitalized interest	25	27	28	28	28
Earnings as adjusted	<u>\$ 125</u>	<u>\$ 396</u>	<u>\$ 1,272</u>	<u>\$ 437</u>	<u>\$ 2,402</u>
Fixed charges:					
Interest expense	168	147	173	218	178
Interest component of rental expense (1)	54	53	53	42	52
Capitalized interest	2	2	3	12	40
Total fixed charges	<u>\$ 224</u>	<u>\$ 202</u>	<u>\$ 229</u>	<u>\$ 272</u>	<u>\$ 270</u>
Ratio of earnings to fixed charges	0.6x	2.0x	5.6x	1.6x	8.9x

(1) Interest component of rental expense is estimated to equal 1/3 of such expense, which is considered a reasonable approximation of the interest factor.

## Subsidiaries of Eastman Kodak Company

Companies Consolidated	Organized Under Laws of
Eastman Kodak Company	New Jersey
Cinesite, Inc.	Delaware
Laser-Pacific Media Corporation	Delaware
PracticeWorks, Inc.	Delaware
FPC, Inc.	California
Qualex Inc.	Delaware
Qualex Canada Photofinishing Inc.	Canada
Eastman Gelatine Corporation	Massachusetts
ENCAD, Inc.	Delaware
NexPress Solutions, Inc.	Delaware
Kodak Versamark, Inc.	Delaware
Pakon, Inc.	Indiana
Kodak Imaging Network, Inc. (formerly Ofoto, Inc.)	Delaware
Eastman Canada Company	Canada
Kodak Canada Inc.	Canada
Kodak Argentina S.A.I.C.	Argentina
Kodak Chilena S.A. Fotografica	Chile
Kodak Panama, Ltd.	New York
Kodak Americas, Ltd.	New York
Kodak Venezuela, S.A.	Venezuela
Kodak (Near East), Inc.	New York
Kodak (Singapore) Pte. Limited	Singapore
Kodak Philippines, Ltd.	New York
Kodak Limited	England
Cinesite (Europe) Limited	England
Kodak India Limited	India
Kodak International Finance Limited	England
Kodak Polska Sp.zo.o	Poland
Kodak OOO	Russia
Kodak Czech Spol s.r.o.	Czech Republic
Kodak-Pathe SAS	France
Kodak Verwaltung GmbH	Germany
Eastman Kodak Holdings B.V.	Netherlands
Kodak Brasileira Comercio E Industria Ltda.	Brazil
Kodak Nederland B.V.	Netherlands
Algotec Systems Ltd.	Israel
Kodak (China) Investment Company Ltd.	China
Kodak Korea Ltd.	South Korea
Kodak New Zealand Limited	New Zealand
Kodak (Australasia) Pty. Ltd.	Australia
Kodak (South Africa) (Proprietary) Limited	South Africa
Kodak (Kenya) Limited	Kenya
Kodak (Egypt) S.A.E.	Egypt
Kodak (Malaysia) Sdn.Bhd.	Malaysia
Kodak (Taiwan) Limited	Taiwan



Companies Consolidated	Organized Under Laws of
Eastman Kodak Company	
Eastman Kodak International Capital Company, Inc.	Delaware
Kodak de Mexico S.A. de C.V.	Mexico
Kodak Export de Mexico, S. de R.L. de C.V.	Mexico
Kodak Mexicana, S.A. de C.V.	Mexico
N.V. Kodak S.A.	Belgium
Kodak A/S	Denmark
Kodak Norge A/S	Norway
Kodak Societe Anonyme	Switzerland
Kodak (Hong Kong) Limited	Hong Kong
Kodak (Thailand) Limited	Thailand
Kodak Gesellschaft m.b.H.	Austria
Kodak Kft.	Hungary
Kodak Oy	Finland
Kodak S.p.A.	Italy
Kodak Portuguesa Limited	New York
Kodak, S.A.	Spain
Kodak Nordic AB	Sweden
Eastman Kodak SA	Switzerland
Kodak Japan Ltd.	Japan
K.K. Kodak Information Systems	Japan
Kodak Digital Product Center, Japan Ltd.	Japan
Kodak Japan Industries Ltd.	Japan
Kodak (China) Limited	Hong Kong
Kodak Electronic Products (Shanghai) Company Limited	China
Kodak (China) Company Limited	China
Kodak (Wuxi) Company Limited	China
Kodak (Xiamen) Company Limited	China
Kodak (Shanghai) International Trading Co. Ltd.	China
Shanghai Da Hai Camera Co., Ltd.	China
Trophy Radiologie S.A.	France

Note: Subsidiary Company names are indented under the name of the parent company.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Prospectuses constituting part of the Registration Statements on Form S-3 (No. 33-48258, No. 33-49285, No. 33-64453, No. 333-31759, No. 333-56964, No. 333-108562 and No. 333-111726) and S-8 (No. 33-5803, No. 33-35214, No. 33-56499, No. 33-65033, No. 33-65035, No. 333-57729, No. 333-57659, No. 333-57663, No. 333-57665, No. 333-23371, No. 333-43526, No. 333-43524, and No. 333-64366), of Eastman Kodak Company of our report dated April 6, 2005 relating to the financial statements, financial statement schedule, management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting, which appears in this Annual Report on Form 10-K.

/s/ PRICEWATERHOUSECOOPERS LLP

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PricewaterhouseCoopers LLP  
Rochester, New York  
April 6, 2005

**CERTIFICATION PURSUANT TO  
18 U.S.C. Section 1350,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Daniel A. Carp, certify that:

1. I have reviewed this annual report on Form 10-K;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 6, 2005

/s/ DANIEL A. CARP

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Daniel A. Carp  
Chief Executive Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. Section 1350,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Robert H. Brust, certify that:

1. I have reviewed this annual report on Form 10-K;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 6, 2005

/s/ ROBERT H. BRUST

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Robert H. Brust  
Chief Financial Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. Section 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Eastman Kodak Company (the "Company") on Form 10-K for the period ended December 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Daniel A. Carp, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- 1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ DANIEL A. CARP

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Daniel A. Carp  
Chief Executive Officer  
April 6, 2005

**CERTIFICATION PURSUANT TO  
18 U.S.C. Section 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Eastman Kodak Company (the "Company") on Form 10-K for the period ended December 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert H. Brust, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- 1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ ROBERT H. BRUST

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Robert H. Brust  
Chief Financial Officer  
April 6, 2005