

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

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

For the quarterly period ended September 30, 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**

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

Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Number of Shares Outstanding at October 31, 2004
Common Stock, \$2.50 par value	286,679,276

**Part I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**Eastman Kodak Company**

**CONSOLIDATED STATEMENT OF EARNINGS**

(in millions, except per share data)

	Three Months Ended September 30		Nine Months Ended September 30	
	2004	2003	2004	2003
Net sales	\$ 3,364	\$ 3,346	\$ 9,752	\$ 9,245
Cost of goods sold	2,289	2,241	6,750	6,243
Gross profit	1,075	1,105	3,002	3,002
Selling, general and administrative expenses	633	630	1,798	1,895
Research and development costs	219	192	628	563
Restructuring costs and other	227	152	412	228
(Loss) earnings from continuing operations before interest, other income (charges), net, and income taxes	(4)	131	164	316
Interest expense	43	33	130	104
Other income (charges), net	20	(9)	26	(39)
(Loss) earnings from continuing operations before income taxes	(27)	89	60	173
Benefit for income taxes	(72)	(26)	(144)	(36)
Earnings from continuing operations	45	115	204	209
Earnings from discontinued operations, net of income taxes	434	7	457	37
<b>NET EARNINGS</b>	<b>\$ 479</b>	<b>\$ 122</b>	<b>\$ 661</b>	<b>\$ 246</b>
Basic and diluted net earnings per share:				
Continuing operations	\$ .16	\$ .40	\$ .72	\$ .73
Discontinued operations	1.51	.02	1.59	.13
<b>NET EARNINGS</b>	<b>\$ 1.67</b>	<b>\$ .42</b>	<b>\$ 2.31</b>	<b>\$ .86</b>
Number of common shares used in basic earnings per share	286.6	286.5	286.6	286.5
Incremental shares from assumed conversion of options	0.1	0.1	0.1	0.1
Number of common shares used in diluted earnings per share	286.7	286.6	286.7	286.6
<b>CONSOLIDATED STATEMENT OF RETAINED EARNINGS</b>				
Retained earnings at beginning of period	\$ 7,636	\$ 7,462	\$ 7,527	\$ 7,611
Net earnings	479	122	661	246
Cash dividends declared	—	(72)	(72)	(330)
Loss from issuance of treasury stock	—	(3)	(1)	(18)
Retained earnings at end of quarter	\$ 8,115	\$ 7,509	\$ 8,115	\$ 7,509

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

**Eastman Kodak Company**  
**CONSOLIDATED STATEMENT OF FINANCIAL POSITION**  
(in millions)

	Sept. 30, 2004	Dec. 31, 2003
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 1,113	\$ 1,250
Receivables, net	2,500	2,328
Inventories, net	1,427	1,073
Deferred income taxes	726	602
Other current assets	146	130
Assets of discontinued operations	30	72
<b>Total current assets</b>	<b>5,942</b>	<b>5,455</b>
Property, plant and equipment, net	4,683	5,051
Goodwill	1,448	1,364
Other long-term assets	3,037	2,883
Assets of discontinued operations	—	65
<b>TOTAL ASSETS</b>	<b>\$ 15,110</b>	<b>\$ 14,818</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable and other current liabilities	\$ 3,825	\$ 3,614
Short-term borrowings	711	946
Accrued income taxes	816	654
Liabilities of discontinued operations	—	36
<b>Total current liabilities</b>	<b>5,352</b>	<b>5,250</b>
<b>OTHER LIABILITIES</b>		
Long-term debt, net of current portion	1,953	2,302
Postretirement liabilities	3,217	3,344
Other long-term liabilities	797	650
Liabilities of discontinued operations	—	8
<b>Total liabilities</b>	<b>11,319</b>	<b>11,554</b>
<b>SHAREHOLDERS' EQUITY</b>		
Common stock at par	978	978
Additional paid in capital	850	850
Retained earnings	8,115	7,527
Accumulated other comprehensive loss	(294)	(231)
Unearned restricted stock	(4)	(8)
	9,645	9,116
Less: Treasury stock at cost	5,854	5,852
<b>Total shareholders' equity</b>	<b>3,791</b>	<b>3,264</b>
<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>	<b>\$ 15,110</b>	<b>\$ 14,818</b>

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

**Eastman Kodak Company**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**  
(in millions)

	Nine Months Ended September 30	
	2004	2003
<b>Cash flows relating to operating activities:</b>		
Net earnings	\$ 661	\$ 246
<b>Adjustments to reconcile to net cash (used in) provided by operating activities:</b>		
Earnings from discontinued operations	(457)	(37)
Equity in (earnings) losses from unconsolidated affiliates	(9)	43
Depreciation	653	616
Purchased research and development	16	21
Gain on sales of businesses/assets	(9)	(12)
Restructuring costs, asset impairments and other non-cash charges	44	41
Benefit for deferred taxes	(121)	(4)
Increase in receivables	(78)	(34)
Increase in inventories	(244)	(70)
Decrease in liabilities excluding borrowings	(43)	(63)
Other items, net	31	94
<b>Total adjustments</b>	<b>(217)</b>	<b>595</b>
<b>Net cash provided by continuing operations</b>	<b>444</b>	<b>841</b>
<b>Net cash provided by discontinued operations</b>	<b>22</b>	<b>24</b>
<b>Net cash provided by operating activities</b>	<b>466</b>	<b>865</b>
<b>Cash flows relating to investing activities:</b>		
Additions to properties	(283)	(346)
Net proceeds from sales of businesses/assets	20	19
Acquisitions, net of cash acquired	(358)	(119)
Investments in unconsolidated affiliates	(31)	(54)
Marketable securities - purchases	(92)	(62)
Marketable securities - sales	91	62
<b>Net cash used in continuing operations</b>	<b>(653)</b>	<b>(500)</b>
<b>Net cash provided by (used in) discontinued operations</b>	<b>708</b>	<b>(5)</b>
<b>Net cash provided by (used in) investing activities</b>	<b>55</b>	<b>(505)</b>
<b>Cash flows relating to financing activities:</b>		
Net (decrease) increase in borrowings with original maturity of 90 days or less	(291)	61
Proceeds from other borrowings	111	865
Repayment of other borrowings	(403)	(641)
Dividend payments	(72)	(258)
Exercise of employee stock options	—	12
<b>Net cash (used in) provided by financing activities</b>	<b>(655)</b>	<b>39</b>
<b>Effect of exchange rate changes on cash</b>	<b>(3)</b>	<b>15</b>
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>(137)</b>	<b>414</b>
Cash and cash equivalents, beginning of year	1,250	569
<b>Cash and cash equivalents, end of quarter</b>	<b>\$ 1,113</b>	<b>\$ 983</b>

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

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

**NOTE 1: BASIS OF PRESENTATION**

The consolidated interim financial statements are unaudited, and certain information and footnote disclosure related thereto normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been omitted in accordance with Rule 10-01 of Regulation S-X. In the opinion of management, the accompanying unaudited consolidated financial statements were prepared following the same policies and procedures used in the preparation of the audited financial statements and reflect all adjustments (consisting of normal recurring adjustments) necessary to present fairly the results of operations, financial position, and cash flows of Eastman Kodak Company and its subsidiaries (the Company). The results of operations for the interim periods are not necessarily indicative of the results for the entire fiscal year. These consolidated financial statements should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2003.

**RECENT ACCOUNTING PRONOUNCEMENTS**

In May 2004, the Financial Accounting Standards Board (FASB) issued FASB Staff Position (FSP) No. 106-2, "Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the "Act")." The Act, which was signed into law on December 8, 2003, authorizes Medicare to provide prescription drug benefits to retirees. Under the Act, the federal government will begin to make subsidy payments to employers that sponsor postretirement benefit plans under which retirees receive prescription drug benefits that are actuarially equivalent to the prescription drug benefits provided by Medicare. Accordingly, the FSP provides guidance on accounting for the effects of the subsidy. As of and for the year ended December 31, 2003 and the quarter ended March 31, 2004, the Company had deferred the recognition of the effects of the Act in accordance with FSP No. 106-1, "Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003," (that was issued in January 2004), which permitted employers to either (1) recognize the effects of the Act as of the enactment date or (2) defer recognition until the earlier of the FASB's issuance of final rules on how to account for the subsidy or any remeasurement of plan obligations after January 31, 2004 due to a plan amendment, curtailment, or other significant event. FSP 106-2 supersedes FSP 106-1. The provisions of FSP 106-2 are effective for the first interim or annual period beginning after June 15, 2004 (third quarter of 2004 for Kodak); however early adoption is encouraged. Accordingly, the Company adopted the provisions of FSP 106-2 effective April 1, 2004 (second quarter of 2004) on a prospective basis. The impacts of the adoption of FSP 106-2 are discussed in detail in Note 9, "Retirement Plans and Other Postretirement Benefits."

Emerging Issues Task Force (EITF) Issue No. 04-08, "The Effect of Contingently Convertible Debt on Diluted Earnings per Share," states that, if an instrument is convertible to equity securities if either a market or other contingency is satisfied, then the securities should be included in the diluted earnings per share computation (if dilutive) regardless of whether the market price trigger (or other contingent feature) has been met. The Company will adopt EITF No. 04-08 effective for periods ending after December 15, 2004 (fourth quarter) with restatement of prior periods presented, as required.

**NOTE 2: RECEIVABLES, NET**

(in millions)

	September 30, 2004	December 31, 2003
Trade receivables	\$ 2,124	\$ 2,003
Miscellaneous receivables	376	325
<b>Total (net of allowances of \$109 and \$112)</b>	<b>\$ 2,500</b>	<b>\$ 2,328</b>

Of the total trade receivable amounts of \$2,124 million and \$2,003 million as of September 30, 2004 and December 31, 2003, respectively, approximately \$450 million and \$528 million 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)

	September 30, 2004	December 31, 2003
Finished goods	\$ 1,027	\$ 818
Work in process	320	300
Raw materials	402	317
	1,749	1,435
LIFO reserve	(322)	(362)
<b>Total</b>	<b>\$ 1,427</b>	<b>\$ 1,073</b>

The full-year 2004 estimated inventory usage is expected to result in the liquidation of LIFO inventory quantities. In the aggregate, these inventories are carried at the lower costs prevailing in prior years as compared with the cost of current purchases. The effect of these expected LIFO liquidations was to reduce cost of goods sold by \$17 million and \$50 million in the three and nine months ended September 30, 2004, respectively.

**NOTE 4: GOODWILL AND OTHER INTANGIBLE ASSETS**

Goodwill was \$1,448 million and \$1,364 million at September 30, 2004 and December 31, 2003, respectively. The changes in the carrying amount of goodwill by reportable segment for the nine months ended September 30, 2004 were as follows:

(in millions)	D&FIS	Health Imaging	Commercial Imaging	Graphic Communications	Consolidated Total
Balance at December 31, 2003	\$ 741	\$ 539	\$ 84	\$ —	\$ 1,364
Goodwill related to acquisitions	13	—	—	15	28
Goodwill written off related to disposals/ divestitures	(5)	—	—	—	(5)
Finalization of purchase accounting	6	45	—	7	58
Currency translation adjustments	7	(3)	(1)	—	3
<b>Balance at September 30, 2004</b>	<b>\$ 762</b>	<b>\$ 581</b>	<b>\$ 83</b>	<b>\$ 22</b>	<b>\$ 1,448</b>

The aggregate amount of goodwill acquired during the nine months ended September 30, 2004 of \$28 million was primarily attributable to \$15 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 \$5 million of goodwill written off in relation to disposals/divestitures during the nine months ended September 30, 2004 for the D&FIS segment was attributable to the divestiture of Consumer Imaging Services (CIS) in Austria.

The aggregate amount of goodwill added through the finalization of purchase accounting during the nine months ended September 30, 2004 of \$58 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., which are both within the Health Imaging segment, \$7 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.

Intangible assets net of accumulated amortization are included in other long-term assets in the Company's Consolidated Statement of Financial Position. The gross carrying amount and accumulated amortization by major intangible asset category as of September 30, 2004 and December 31, 2003 were as follows:

As of September 30, 2004				
(in millions)	Gross Carrying Amount	Accumulated Amortization	Net	Weighted-Average Amortization Period
Technology-based	\$ 277	\$ 99	\$ 178	8 years
Customer-related	215	29	186	15 years
Manufacturing exclusivity	131	6	125	12 years
Other	20	7	13	10 years
<b>Total</b>	<b>\$ 643</b>	<b>\$ 141</b>	<b>\$ 502</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 the nine months ended September 30, 2004 of \$252 million was primarily attributable to \$141 million for the purchase of Lucky Film, consisting of \$10 million of customer-related intangible assets and \$131 million of manufacturing exclusivity intangible assets, and \$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, as described in Note 13 "Acquisitions."

Intangible asset amortization expense is recorded in cost of goods sold in the Company's Consolidated Statement of Earnings. Intangible asset amortization expense for the three months ended September 30, 2004 and 2003 was \$17 million and \$7 million, respectively. Intangible asset amortization expense for the nine months ended September 30, 2004 and 2003 was \$48 million and \$21 million, respectively.

Estimated future aggregate amortization expense related to purchased intangible assets over the next five fiscal years is expected to be as follows: 2005 - \$67 million; 2006 - \$60 million; 2007 - \$57 million; 2008 - \$56 million; and 2009 - \$48 million.

## NOTE 5: INCOME TAXES

A reconciliation between the U.S. federal income tax rate, the Company's estimated annual effective tax rate and the income tax rate from continuing operations was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2004	2003	2004	2003
U.S. statutory tax rate	(35.0)%	35.0%	35.0%	35.0%
Increase (decrease) in statutory rate resulting from:				
State and other income taxes, net of federal	(0.7)	0.3	0.7	0.3
Export sales and manufacturing credits	4.0	(3.9)	(4.0)	(3.9)
Operations outside the U.S.	22.5	(13.2)	(22.5)	(13.2)
Other, net	(2.8)	(0.7)	2.8	(0.7)
Estimated annual effective tax rate	(12.0)	17.5	12.0	17.5
Impact from discrete period items:				
Restructuring charges	(203.5)	(32.1)	(176.6)	(26.1)
Purchased in-process R&D	(6.2)	—	(6.8)	(2.5)
Tax settlements	—	—	(68.7)	—
NexPress-related charges	—	—	(2.3)	—
Burrell asset impairments	—	—	—	(1.1)
Intellectual property settlement	—	—	—	(1.4)
Intellectual property donation	—	—	—	(4.5)
Patent infringement settlement	—	—	—	(1.8)
Prior year acquisition settlement	—	—	—	(1.3)
Donation	—	(1.8)	—	(0.9)
Impact of the change in the estimated annual effective tax rate	(43.7)	(14.0)	—	—
Income tax rate	(265.4)%	(30.4)%	(242.4)%	(22.1)%

For the three month period ended September 30, 2004, the Company recorded discrete period tax benefits of \$89 million in connection with the following items, which when aggregated, are taxed in jurisdictions with tax rates greater than the estimated annual effective tax rate: restructuring charges of \$264 million and \$6 million for purchased in-process research and development costs from the acquisition of the imaging business of National Semiconductor Corporation.

For the three month period ended September 30, 2004, the impact of the change in the estimated annual effective tax rate from 15.5 percent for the second quarter of 2004 to 12.0 percent for the third quarter of 2004 is primarily attributable to expected increased earnings from operations in lower-taxed jurisdictions outside the U.S. relative to total consolidated earnings from operations and an increase in benefits from export sales.

For the nine month period ended September 30, 2004, the Company recorded discrete period tax benefits of \$174 million in connection with the following items, which when aggregated, are taxed in jurisdictions with tax rates greater than the estimated annual effective tax rate: restructuring charges of \$502 million; a \$16 million charge for purchased in-process research and development costs; and fixed asset write-offs and inventory write-downs totaling \$5 million in connection with the Company's historical ownership in the NexPress joint venture in connection with the acquisition of the NexPress-related entities.

In addition, during the nine month period ended September 30, 2004, the Company received confirmation that the Internal Revenue Service (IRS) had provided a formal concession concerning the taxation of certain intercompany royalties, which could not legally be distributed to the Company as the parent entity. The \$32 million settlement was recorded as a discrete period tax benefit within earnings from continuing operations. Additionally, the Company recorded a discrete period tax benefit of \$9 million as a result of the settlement with the IRS in connection with the Company's filing relating to the income tax reporting of a patent infringement litigation settlement.



For the three month period ended September 30, 2003, the Company recorded discrete period tax benefits of \$63 million in connection with the following items, which when aggregated, are taxed in jurisdictions with tax rates greater than the estimated annual effective tax rate: restructuring charges of \$185 million and an \$8 million charge for a donation.

For the three month period ended September 30, 2003, the impact of the change in the estimated annual effective tax rate from 22.5 percent for the second quarter of 2003 to 17.5 percent for the third quarter of 2003 is primarily attributable to expected increased earnings from operations in lower-taxed jurisdictions outside the U.S. relative to total consolidated earnings from operations.

For the nine month period ended September 30, 2003, the Company recorded discrete period tax benefits of \$131 million in connection with the following items, which when aggregated, are taxed in jurisdictions with tax rates greater than the estimated annual effective tax rate: restructuring charges of \$285 million; a \$21 million charge for purchased in-process research and development costs; a \$12 million charge relating to an intellectual property settlement; a \$14 million charge relating to the settlement of a patent infringement claim; a \$14 million charge for the settlement of certain issues relating to a prior year acquisition; and a \$9 million charge relating to the impairment of the Burrell Companies' net assets held for sale.

In addition, during the nine month period ended September 30, 2003, the Company recorded a discrete period tax benefit of \$8 million relating to the donation of intellectual property.

## **NOTE 6: COMMITMENTS AND CONTINGENCIES**

### **Environmental**

At September 30, 2004, the Company's undiscounted accrued liabilities for environmental remediation costs amounted to \$142 million and 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 September 30, 2004, estimated future investigation and remediation costs of \$65 million are accrued for this site and are included in the \$142 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 \$44 million. At September 30, 2004, these costs are accrued and included in the \$142 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 September 30, 2004, estimated future remediation costs of \$33 million are accrued for these sites and are included in the \$142 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 \$17 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 September 30, 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 four 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 to the Company's financial position, results of operations or cash flows. 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 relating 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

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 is collateralized solely by the long-term receivables purchased from Qualex, and in part, by a \$40 million guarantee from DCC. Qualex provides no guarantee or collateral to ESF's creditors in connection with the debt, and ESF's debt is 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 \$217 million at September 30, 2004.

Effective July 20, 2004, ESF entered into an arrangement amending the Receivables Purchase Agreement (RPA), which represents the financing arrangement between ESF and the bank. Under the amended RPA agreement, maximum borrowings were lowered to \$200 million. Total outstanding borrowings under the RPA at September 30, 2004 were \$188 million. The amended RPA extends through July 2005, at which time the RPA can be extended or terminated. 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 September 30, 2004, the Company had outstanding letters of credit totaling \$121 million and surety bonds in the amount of \$111 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. The Company could be required to increase the dollar amount of its letters of credit or other financial support up to an additional \$141 million in relation to these matters if its Moody's or S&P long-term debt credit ratings are reduced below the current ratings of Baa3 and BBB-, respectively.

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, results of operations or cash flows. However, included in the matters referenced above are three patent infringement lawsuits in which the Company is the plaintiff. Although these lawsuits 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 September 30, 2004 in connection with these three matters. See Note 16, "Subsequent Events," regarding the October 12, 2004 settlement agreement between Sun Microsystems Inc. and the Company relating to one of the three patent infringement matters discussed above.

## **NOTE 7: GUARANTEES**

The Company guarantees debt and other obligations under agreements with certain affiliated companies and customers. At September 30, 2004, these guarantees totaled a maximum of \$357 million, with outstanding guaranteed amounts of \$136 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 (\$29 million outstanding); \$133 million of customer amounts due to banks in connection with various banks' financing of customers' purchase of products and equipment from Kodak (\$66 million outstanding); and \$64 million for other unconsolidated affiliates and third parties (\$41 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 October 2004 and December 2009. 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 with 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. Equipment financing activity where the Company has collateral is not material.

Management believes the likelihood is remote that material payments will be required under any of these guarantees described above. With respect to the guarantees that the Company issued in the three and nine months ended September 30, 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 \$435 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 \$220 million. These guarantees expire in 2004 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 September 30, 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 nine months ended September 30, 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 from December 31, 2003 to September 30, 2004 was as follows:

(in millions)

Accrued warranty obligations at December 31, 2003	\$	49
Actual warranty experience		(41)
Warranty provisions		51
		<hr/>
Accrued warranty obligations at September 30, 2004	\$	59
		<hr/>

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 nine months ended September 30, 2004 amounted to \$151 million. The change in the Company's deferred revenue balance in relation to these extended warranty arrangements from December 31, 2003 to September 30, 2004 was as follows:

(in millions)

Deferred revenue at December 31, 2003	\$	118
New extended warranty arrangements		308
Recognition of extended warranty arrangement revenue		(283)
		<hr/>
Deferred revenue at September 30, 2004	\$	143
		<hr/>

## NOTE 8: RESTRUCTURING COSTS AND OTHER

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 when 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 the third quarter of 2004:

(in millions)	Balance June 30, 2004	Costs Incurred	Reversals	Cash Payments	Non-cash Settlements	Reclass to Long- Term Liability	Balance Sept. 30, 2004
<b>2004-2006 Program:</b>							
Severance reserve	\$ 86	\$ 186	\$ —	\$ (32)	\$ —	\$ —	\$ 240
Exit costs reserve	6	20	(1)	(14)	—	(5)	6
Total reserve	\$ 92	\$ 206	\$ (1)	\$ (46)	\$ —	\$ (5)	\$ 246
<b>Long-lived asset impairments and inventory write-downs</b>							
Accelerated depreciation	\$ —	\$ 31	\$ —	\$ —	\$ (31)	\$ —	\$ —
<b>Q3 2003 Program:</b>							
Severance reserve	\$ 85	\$ —	\$ (2)	\$ (25)	\$ —	\$ —	\$ 58
Exit costs reserve	10	—	—	(2)	—	—	8
Total reserve	\$ 95	\$ —	\$ (2)	\$ (27)	\$ —	\$ —	\$ 66
Accelerated depreciation	\$ —	\$ 3	\$ —	\$ —	\$ (3)	\$ —	\$ —
<b>Q1 2003 Program:</b>							
Severance reserve	\$ 9	\$ —	\$ —	\$ (1)	\$ —	\$ —	\$ 8
Exit costs reserve	1	—	—	(1)	—	—	—
Total reserve	\$ 10	\$ —	\$ —	\$ (2)	\$ —	\$ —	\$ 8
<b>Phoenix Program:</b>							
Exit costs reserve	\$ 3	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 3
<b>Q4 2002 Program:</b>							
Severance reserve	\$ 4	\$ —	\$ —	\$ (2)	\$ —	\$ —	\$ 2
Exit costs reserve	3	—	—	(1)	—	—	2
Total reserve	\$ 7	\$ —	\$ —	\$ (3)	\$ —	\$ —	\$ 4
<b>2001 Programs:</b>							
Severance reserve	\$ 3	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 3
Exit costs reserve	12	—	—	(1)	—	—	11
Total reserve	\$ 15	\$ —	\$ —	\$ (1)	\$ —	\$ —	\$ 14
Total of all restructuring programs	\$ 222	\$ 267	\$ (3)	\$ (79)	\$ (61)	\$ (5)	\$ 341

The costs incurred, net of reversals, which total \$264 million and \$502 million for the three and nine months ended September 30, 2004, respectively, include \$37 million and \$93 million of charges related to accelerated depreciation and inventory write-downs, which were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. The remaining costs incurred, net of reversals, of \$227 million and \$409 million were reported as restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively.

## 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 plans to develop and execute a new 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 the second quarter of 2004. As a result of these actions, the Company recorded charges of \$144 million in the second quarter, which was composed of severance, long-lived asset impairments, exit costs and inventory write-downs of \$98 million, \$27 million, \$17 million and \$2 million, respectively. The severance costs related to the elimination of approximately 2,700 positions, including approximately 1,350 photofinishing, 925 manufacturing, 275 research and development and 150 administrative positions. The geographic composition of the positions to be eliminated includes approximately 2,250 in the United States and Canada and 450 throughout the rest of the world. The reduction of the 2,700 positions and the \$115 million charges for severance and exit costs are reflected in the 2004-2006 Restructuring Program table below. The \$27 million charge for long-lived asset impairments was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 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 nine months ended September 30, 2004.

The Company implemented certain actions under this program during the third quarter of 2004. As a result of these actions, the Company recorded charges of \$233 million in the third quarter, which was composed of severance, long-lived asset impairments, exit costs and inventory write-downs of \$186 million, \$24 million, \$20 million and \$3 million, respectively. The severance costs related to the elimination of approximately 3,200 positions, including approximately 950 photofinishing, 1,800 manufacturing, 100 research and development and 350 administrative positions. The geographic composition of the positions to be eliminated includes approximately 775 in the United States and Canada and 2,425 throughout the rest of the world. The reduction of the 3,200 positions and the \$206 million charges for severance and exit costs are reflected in the 2004-2006 Restructuring Program table below. The \$24 million charge for long-lived asset impairments was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004. Included in the \$20 million charge taken for exit costs in the third quarter was a \$5 million charge for environmental remediation associated with the closure of the manufacturing facility in Coburg, Australia that was announced during the quarter. The liability related to this charge has been reflected in other long-term liabilities in the accompanying Consolidated Statement of Financial Position and is disclosed in Note 6, "Commitments and Contingencies" under "Environmental." The charges taken for inventory write-downs of \$3 million were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004.

The following table summarizes the activity with respect to the severance charges and exit costs 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 September 30, 2004:

(dollars in millions)

	Number of Employees	Severance Reserve	Exit Costs Reserve	Total
Q2, 2004 charges	2,700	\$ 98	\$ 17	\$ 115
Q2, 2004 utilization	(800)	(12)	(11)	(23)
Balance at 6/30/04	1,900	86	6	92
Q3, 2004 charges	3,200	186	20	206
Q3, 2004 reversal	—	—	(1)	(1)
Q3, 2004 utilization	(2,075)	(32)	(14)	(46)
Q3, 2004 reclass	—	—	(5)	(5)
Balance at 9/30/04	3,025	\$ 240	\$ 6	\$ 246

The severance charges of \$186 million and \$284 million were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. The exit costs of \$20 million and \$37 million were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. Included in the \$20 million charge taken for exit costs in the third quarter was a \$5 million charge for environmental remediation associated with the closure of the manufacturing facility in Coburg, Australia that was announced during the third quarter. The liability related to this charge has been reported in other long-term liabilities in the accompanying Consolidated Statement of Financial Position and is disclosed in Note 6, "Commitments and Contingencies" under "Environmental." The severance costs and exit costs require the outlay of cash, while the long-lived asset impairments and inventory write-downs represent non-cash items. During the second and third quarters of 2004, the Company made \$44 million of severance payments and \$25 million of exit costs payments related to the 2004-2006 Restructuring Program. The \$1 million reversal recorded in the third quarter of 2004 resulted from the settlement of a lease obligation at a lower cost than originally anticipated and is included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004. As a result of the initiatives already implemented under the 2004-2006 Restructuring Program, severance payments will be paid during periods through 2006 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 are expected to be 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 \$31 million and \$56 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. Accelerated depreciation represents a non-cash item. The third quarter amount of \$31 million relates to \$12 million of photofinishing facilities and equipment, \$18 million of manufacturing facilities and equipment and \$1 million of administrative facilities and equipment that will be used until their abandonment. The year-to-date amount of \$56 million relates to \$26 million of photofinishing facilities and equipment, \$29 million of manufacturing facilities and equipment, and \$1 million of administrative facilities and equipment that will be used until their abandonment. The Company will incur accelerated depreciation charges of approximately \$82 million in the fourth quarter of 2004 as a result of the initiatives already implemented under the 2004-2006 Restructuring Program.



### 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 the first quarter of 2004. As a result of these actions, the Company recorded charges of \$56 million in the first quarter of 2004, which was composed of severance, exit costs, long-lived asset impairments and inventory write-downs of \$43 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 \$50 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 nine months ended September 30, 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 nine months ended September 30, 2004.

The following table summarizes the activity with respect to the severance charges and exit costs 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 September 30, 2004:

(dollars in millions)

	Number of Employees	Severance Reserve	Exit Costs Reserve	Total
Q3, 2003 charges	1,700	\$ 123	\$ —	\$ 123
Q3, 2003 utilization	(100)	(3)	—	(3)
Balance at 9/30/03	1,600	120	—	120
Q4, 2003 charges	2,150	108	40	148
Q4, 2003 utilization	(2,025)	(48)	(28)	(76)
Balance at 12/31/03	1,725	180	12	192
Q1, 2004 charges	2,000	43	7	50
Q1, 2004 reversal	—	(2)	—	(2)
Q1, 2004 utilization	(2,075)	(72)	(5)	(77)
Balance at 3/31/04	1,650	149	14	163
Q2, 2004 reversal	—	(2)	(2)	(4)
Q2, 2004 utilization	(1,375)	(62)	(2)	(64)
Balance at 6/30/04	275	85	10	95
Q3, 2004 reversal	—	(2)	—	(2)
Q3, 2004 utilization	(225)	(25)	(2)	(27)
Balance at 9/30/04	50	\$ 58	\$ 8	\$ 66

The severance charges of \$43 million and the exit costs of \$7 million taken in the first quarter of 2004 were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004. The severance costs and exit costs require the outlay of cash. The Company made \$159 million of severance payments and \$9 million of exit cost payments related to the Third Quarter, 2003 Restructuring Program during the first three quarters of 2004. In addition, the Company reversed \$2 million of severance reserves during the third quarter of 2004, for a total of \$6 million for the first three quarters of 2004, as severance payments to terminated employees were less than originally estimated. Accordingly, severance reserve reversals of \$2 million and \$6 million were recorded in restructuring and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. During the nine months ended September 30, 2004, \$2 million of exit costs reserves were reversed as the Company was able to settle a lease obligation for an amount that was less than originally estimated. This reversal was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004. The remaining severance payments relating to initiatives already implemented under the Third Quarter, 2003 Restructuring Program will be paid during periods through 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 are expected to be 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 \$3 million and \$23 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. Accelerated depreciation represents a non-cash item. The third quarter amount of \$3 million relates to manufacturing facilities and equipment that will be used until their abandonment. The year-to-date amount of \$23 million relates to \$16 million of manufacturing facilities and equipment and \$7 million of photofinishing facilities and equipment that will be used until their abandonment. The Company will incur accelerated depreciation charges of approximately \$1 million in the fourth quarter of 2004, as a result of the initiatives already implemented under the Third Quarter, 2003 Restructuring Program.

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 50 positions to be eliminated under the Third Quarter, 2003 Restructuring Program are expected to be completed during 2004.

#### **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 severance and exit costs 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 September 30, 2004:

(dollars in millions)

	Number of Employees	Severance Reserve	Exit Costs Reserve	Total
Q1, 2003 charges	425	\$ 28	\$ —	\$ 28
Q1, 2003 utilization	(150)	(2)	—	(2)
Balance at 3/31/03	275	26	—	26
Q2, 2003 charges	500	20	4	24
Q2, 2003 utilization	(500)	(13)	—	(13)
Balance at 6/30/03	275	33	4	37
Q3, 2003 charges	925	19	4	23
Q3, 2003 utilization	(400)	(12)	(1)	(13)
Balance at 9/30/03	800	40	7	47
Q4, 2003 utilization	(625)	(17)	(3)	(20)
Balance at 12/31/03	175	23	4	27
Q1, 2004 reversal	—	(1)	—	(1)
Q1, 2004 utilization	(150)	(11)	(3)	(14)
Balance at 3/31/04	25	11	1	12
Q2, 2004 utilization	—	(2)	—	(2)
Balance at 6/30/04	25	9	1	10
Q3, 2004 utilization	(25)	(1)	(1)	(2)
Balance at 9/30/04	0	\$ 8	\$ 0	\$ 8

The severance and exit costs require the outlay of cash. During the first three quarters of 2004, the Company made severance payments of \$14 million, and exit cost payments of \$4 million related to the First Quarter, 2003 Restructuring Program. In addition, the Company reversed \$1 million of excess severance reserves. This reversal was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004. The remaining severance payments will be paid during periods through 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 nine months ended September 30, 2004. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. Accelerated depreciation represents a non-cash item. The year-to-date amount of \$7 million relates to lab equipment used in photofinishing that was used until its abandonment.

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.

#### Phoenix Restructuring Program

The Company recorded \$17 million of charges in the second quarter of 2003 associated with the Company's exit from the D&FIS segment's Phoenix joint venture with Hewlett Packard. At September 30, 2004, the exit costs reserve, which represented the only cash portion of the charge, amounted to \$3 million. During the second quarter of 2004, the Company reversed \$3 million of exit costs reserves as a result of actual shutdown costs being lower than estimated. This reversal was included in the restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004. The remaining exit costs, which represent long-term lease payments, will be paid during 2004 and beyond.

### Fourth Quarter, 2002 Restructuring Program

At September 30, 2004, the Company had remaining severance and exit costs reserves of \$2 million and \$2 million, respectively, relating to the planned Program of focused cost reduction initiatives it announced during the Fourth Quarter of 2002. All actions anticipated under this Program were completed by the end of the third quarter of 2003 and resulted in the elimination of a total of 1,825 positions.

The severance and exit costs require the outlay of cash. During the first three quarters of 2004, approximately \$10 million of severance payments were made under the Fourth Quarter, 2002 Restructuring Program. During the first three quarters of 2004, approximately \$2 million of exit cost payments were made under the Fourth Quarter, 2002 Restructuring Program. In addition, approximately \$4 million of excess exit costs reserves were reversed and included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004, as the cost to shut down facilities was less than originally estimated. The remaining severance payments will be paid during periods through 2005 since, in many instances, the employees whose positions were eliminated could elect or were required to receive their severance payments over an extended period of time. Most of the remaining exit costs, which represent long-term lease payments, will be paid during 2004 and beyond.

#### NOTE 9: RETIREMENT PLANS AND OTHER POSTRETIREMENT BENEFITS

The components of net pension expense (income) for all major funded and unfunded U.S. and Non-U.S. defined benefit plans for the three and nine months ended September 30 are as follows:

(in millions)	Three Months Ended September 30,				Nine Months Ended September 30,			
	2004		2003		2004		2003	
	U.S.	Non-U.S.	U.S.	Non-U.S.	U.S.	Non-U.S.	U.S.	Non-U.S.
Service cost	\$ 29	\$ 10	\$ 29	\$ 9	\$ 91	\$ 27	\$ 90	\$ 29
Interest cost	96	39	103	36	293	115	305	109
Expected return on plan assets	(134)	(42)	(145)	(44)	(409)	(125)	(436)	(130)
Amortization of:								
Transition obligation (asset)	—	(1)	—	(1)	—	(1)	1	(2)
Prior service cost	—	(4)	1	(7)	1	(14)	1	(22)
Actuarial loss	6	10	1	8	17	34	3	22
	(3)	12	(11)	1	(7)	36	(36)	6
Special termination benefits	—	—	—	2	—	1	—	15
Curtailement charge (credit)	—	—	—	—	8	(5)	—	—
	(3)	12	(11)	3	1	32	(36)	21
Net pension (income) expense	(3)	12	(11)	3	1	32	(36)	21
Other plans including unfunded plans	—	5	—	4	—	15	—	14
	(3)	17	(11)	7	1	47	(36)	35
Total net pension (income) expense	\$ (3)	\$ 17	\$ (11)	\$ 7	\$ 1	\$ 47	\$ (36)	\$ 35

For the three months ended September 30, 2004 there were no special termination benefits or curtailment charges. For the three months ended September 30, 2003, there were special termination benefits and curtailment charges in the aggregate of \$2 million that 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 for that period. For the nine months ended September 30, 2004 and 2003, special termination benefits and curtailment charges in the aggregate of \$4 million and \$15 million, 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 for the respective periods.

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 8, the Company incurred curtailment gains and losses with respect to certain of its retirement plans in the first three quarters of 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 a net of \$37 million during the first three quarters of 2004. This increase is reflected in the postretirement liabilities component within the accompanying Consolidated Statement of Financial Position as of September 30, 2004. The net-of-tax amount of \$27 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 September 30, 2004.

The Company made contributions (funded plans) or paid benefits (unfunded plans) totaling approximately \$98 million relating to its major U.S. and non-U.S. defined benefit pension plans in the first three quarters of 2004. The Company expects its contribution (funded plans) and benefit payment (unfunded plans) requirements for its major U.S. and non-U.S. defined benefit pension plans for the balance of 2004 to be approximately \$21 million.

The components of net postretirement benefit cost for the Company's U.S., United Kingdom and Canada postretirement benefit plans, which represent the Company's major postretirement medical plans, are as follows:

(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2004	2003	2004	2003
<b>Components of net postretirement benefit cost</b>				
Service cost	\$ 4	\$ 4	\$ 12	\$ 13
Interest cost	46	56	146	170
Amortization of:				
Prior service cost	(15)	(17)	(44)	(48)
Actuarial loss	19	17	70	57
	54	60	184	192
Curtailment credit	—	—	(25)	—
<b>Total net postretirement benefit cost</b>	<b>\$ 54</b>	<b>\$ 60</b>	<b>\$ 159</b>	<b>\$ 192</b>

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. The remeasurement of the APBO as of April 1, 2004 takes into account the impact of the subsidy the Company will receive under 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 \$13 million and \$27 million for the three and nine months ended September 30, 2004, respectively as follows:

(in millions)	Three Months Ended September 30, 2004		
	Effect of Subsidy	Effect of Assumption Changes	Total
Service cost	\$ —	\$ —	\$ —
Interest cost	4	3	7
Amortization of the actuarial gain	4	2	6
	<u>\$ 8</u>	<u>\$ 5</u>	<u>\$ 13</u>

  

(in millions)	Nine Months Ended September 30, 2004		
	Effect of Subsidy	Effect of Assumption Changes	Total
Service cost	\$ —	\$ 1	\$ 1
Interest cost	8	6	14
Amortization of the actuarial gain	8	4	12
	<u>\$ 16</u>	<u>\$ 11</u>	<u>\$ 27</u>

The Company paid benefits totaling approximately \$203 million relating to its U.S., United Kingdom and Canada postretirement benefit plans in the first nine months of 2004. The Company expects to pay benefits of \$61 million for its U.S., United Kingdom and Canada postretirement plans for the balance of 2004.

#### NOTE 10: EARNINGS PER SHARE

Options to purchase 36.0 million and 40.0 million shares of common stock at weighted average per share prices of \$49.25 and \$48.78 for the three months ended September 30, 2004 and 2003, respectively, and options to purchase 36.3 million and 34.9 million shares of common stock at weighted average per share prices of \$49.15 and \$52.64 for the nine months ended September 30, 2004 and 2003, respectively, were outstanding during the periods presented but were not included in the computation of diluted earnings per share because the options' exercise price was greater than the average market price of the common shares for the respective periods.

#### NOTE 11: SHAREHOLDERS' EQUITY

The Company has 950 million shares of authorized common stock with a par value of \$2.50 per share, of which 391 million shares had been issued as of September 30, 2004 and December 31, 2003. Treasury stock at cost consists of approximately 105 million shares at both September 30, 2004 and December 31, 2003.

The Company accounts for its employee stock option 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 compensation cost relating to stock options is reflected in net earnings for the three months and nine months ended September 30, 2004 and 2003, as all options granted had an exercise price equal to the market value of the underlying common stock on the date of grant.

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)	Three Months Ended September 30		Nine Months Ended September 30	
	2004	2003	2004	2003
Net earnings, as reported	\$ 479	\$ 122	\$ 661	\$ 246
Deduct: Total compensation expense relating to stock options determined under fair value method of all awards, net of related tax effects	(4)	(2)	(11)	(11)
Pro forma net earnings	\$ 475	\$ 120	\$ 650	\$ 235
Earnings per share:				
Basic and diluted - as reported	\$ 1.67	\$ .42	\$ 2.31	\$ .86
Basic and diluted - pro forma	\$ 1.66	\$ .42	\$ 2.27	\$ .82

On March 31, 2004, the FASB issued an exposure draft on equity-based compensation, "Share-Based Payment," proposing a new accounting standard that requires the expensing of stock options (Proposed Standard). In accordance with an announcement made on February 18, 2004, Kodak will begin expensing stock options starting January 1, 2005 using the existing fair value recognition provisions under SFAS No. 123, "Accounting for Stock-Based Compensation." The Company will adopt the provisions under the Proposed Standard, in accordance with its transition guidelines, when and if the Proposed Standard is finalized.

#### NOTE 12: COMPREHENSIVE INCOME

(in millions)

	Three Months Ended September 30		Nine Months Ended September 30	
	2004	2003	2004	2003
Net income	\$ 479	\$ 122	\$ 661	\$ 246
Unrealized (losses) gains on available-for-sale securities	(5)	4	(11)	9
Realized and unrealized gains (losses) from hedging activity	1	13	13	3
Currency translation adjustments	32	4	(38)	207
Minimum pension liability adjustment	14	—	(27)	—
Total comprehensive income	\$ 521	\$ 143	\$ 598	\$ 465

#### NOTE 13: ACQUISITIONS

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 has acquired certain assets, including intellectual property and equipment, and has hired approximately 50 employees that previously supported the imaging business. 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.

Based on the Company's preliminary 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 nine months ended September 30, 2004.

In addition, approximately \$2 million of the purchase price was included in other long-term assets and \$2 million was recorded in current assets in the Company's Consolidated Statement of Financial Position at September 30, 2004. The Company expects to complete its purchase price allocation during the fourth quarter.

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 next two calendar years ending December 31, 2005, the Company will pay a maximum of \$150 million in cash. Additional payments may also be made if certain sales goals are met 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:

At May 1, 2004 – (in millions)	
Current assets	\$ 95
Intangible assets (including in-process R&D)	9
Other non-current assets (including PP&E)	51
	<hr/>
Total assets acquired	\$ 155
	<hr/>
Current liabilities	\$ 53
Other non-current liabilities	6
Deferred taxes	32
	<hr/>
Total liabilities assumed	\$ 91
	<hr/>
Net assets acquired	\$ 64
	<hr/>

The excess of fair value of acquired net assets over cost of \$64 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 September 30, 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 September 30, 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 is not estimable 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 \$1.3 million as of September 30, 2004.



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	\$ 141
Investment in Lucky	38
Deferred tax liability	(15)

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, \$25 million of the \$38 million of value allocated to the 20 percent interest was recorded as of quarter-end. The Company will record the \$13 million of value allocated to the additional 7 percent interest in Lucky Film when it completes the acquisition of those shares in 2005. 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.

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)	49
Goodwill	15
	<hr/>
Total assets acquired	\$ 284
	<hr/>
Current liabilities	\$ 23
Other non-current liabilities	9
	<hr/>
Total liabilities assumed	\$ 32
	<hr/>
Net assets acquired	\$ 252
	<hr/>

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 nine months ended September 30, 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 \$15 million of goodwill will be assigned to the Graphic Communications segment and is expected to be deductible for tax purposes.

The following unaudited pro forma financial information presents the combined results of operations of the Company and the Company's significant acquisitions since September 30, 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 three and nine months ended September 30, 2004 and 2003:

(in millions, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2004	2003	2004	2003
Net sales	\$ 3,364	\$ 3,515	\$ 9,851	\$ 9,729
Earnings from continuing operations	\$ 47	\$ 92	\$ 185	\$ 138
Basic and diluted earnings per share from continuing operations	\$ .16	\$ .32	\$ .65	\$ .48
Number of common shares used in:				
Basic earnings per share	286.6	286.5	286.6	286.5
Diluted earnings per share	286.7	286.6	286.7	286.6

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 were \$2 million and \$7 million for the three months ended September 30, 2004 and 2003, respectively, and \$3 million and \$19 million for the nine months ended September 30, 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%.

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. Kodak expects to complete the purchase price allocation during the fourth quarter of 2004.

During the second quarter, 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.

#### **NOTE 14: DISCONTINUED OPERATIONS**

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 period July 1, 2004 through August 13, 2004 and for the three months ended September 30, 2003 of approximately \$58 million and \$101 million, respectively, and net sales for the period January 1, 2004 through August 13, 2004 and for the nine months ended September 30, 2003 of approximately \$312 million and \$294 million, respectively. RSS had earnings before taxes for the period July 1, 2004 through August 13, 2004 and for the three months ended September 30, 2003 of approximately \$2 million and \$12 million, respectively, and earnings before taxes for the period January 1, 2004 through August 13, 2004 and for the nine months ended September 30, 2003 of approximately \$38 million and \$36 million, respectively.

The sale of RSS resulted in an after-tax gain of approximately \$434 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, as this amount is not currently determinable.

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 September 30, 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 and related provisions for income tax were approximately zero for the period July 1, 2004 through August 13, 2004. Total Company earnings from discontinued operations for the three months ended September 30, 2003 were \$7 million net of a provision for income tax of \$4 million. Earnings from discontinued operations for the period January 1, 2004 through August 13, 2004 and for the nine months ended September 30, 2003 of approximately \$23 million and \$37 million, respectively, were net of provisions for income taxes of \$15 million and \$14 million, respectively.

#### **NOTE 15: SEGMENT INFORMATION**

During the third quarter 2004, the Company announced its intention to begin actions that will result in the repositioning of the management and product lines of the Commercial Imaging segment into other reportable segments effective January 1, 2005. This move follows the sale of the Remote Sensing Systems operation, which was the largest operation within the Commercial Imaging segment, accounting for approximately 27% of its revenue in 2003. The remaining Commercial Imaging businesses will be realigned as follows:

- Document imaging products and services (document scanners, microfilm and worldwide service and support) as well as the business process services operations will move into the Graphic Communications segment. The Graphic Communications segment will also integrate the service function of its subsidiaries - Encad, Inc., Kodak Versamark and NexPress Solutions - and those of document products into one service operation that will do business under the Kodak name.
- The aerial and industrial materials operation will be moved into the D&FIS segment.

The Company has four reportable segments: Digital and Film Imaging Systems (D&FIS); Health Imaging; 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.

Segment financial information is shown below.

(in millions)	Three Months Ended September 30		Nine Months Ended September 30	
	2004	2003	2004	2003
<b>Net sales from continuing operations:</b>				
Digital & Film Imaging Systems	\$ 2,308	\$ 2,475	\$ 6,635	\$ 6,614
Health Imaging	642	571	1,945	1,727
Commercial Imaging	195	190	584	575
Graphic Communications	195	82	505	259
All Other	24	28	83	70
Consolidated total	\$ 3,364	\$ 3,346	\$ 9,752	\$ 9,245
<b>Earnings (loss) from continuing operations before interest, other income (charges), net, and income taxes:</b>				
Digital & Film Imaging Systems	\$ 214	\$ 204	\$ 460	\$ 277
Health Imaging	102	117	323	357
Commercial Imaging	33	24	96	75
Graphic Communications	(40)	(3)	(98)	5
All Other	(49)	(18)	(110)	(56)
Total of segments	260	324	671	658
Restructuring costs and other	(264)	(185)	(507)	(285)
Donation to technology enterprise	—	(8)	—	(8)
Impairment of Burrell Companies' net assets	—	—	—	(9)
GE settlement	—	—	—	(12)
Patent infringement claim settlement	—	—	—	(14)
Prior year acquisition settlement	—	—	—	(14)
Consolidated total	\$ (4)	\$ 131	\$ 164	\$ 316
<b>Earnings (loss) from continuing operations:</b>				
Digital & Film Imaging Systems	\$ 202	\$ 177	\$ 416	\$ 230
Health Imaging	96	109	284	293
Commercial Imaging	31	21	82	57
Graphic Communications	(24)	(10)	(71)	(20)
All Other	(44)	(22)	(101)	(51)
Total of segments	261	275	610	509
Restructuring costs and other	(264)	(185)	(507)	(285)
Donation to technology enterprise	—	(8)	—	(8)
Impairment of Burrell Companies' net assets	—	—	—	(9)
GE settlement	—	—	—	(12)
Patent infringement claim settlement	—	—	—	(14)
Prior year acquisition settlement	—	—	—	(14)
Interest expense	(43)	(33)	(130)	(104)
Other corporate items	3	2	7	8
Tax benefit - donation of patents	—	—	—	8
Income tax effects on above items and taxes not allocated to segments	88	64	224	130
Consolidated total	\$ 45	\$ 115	\$ 204	\$ 209

## NOTE 16: SUBSEQUENT EVENTS

On October 7, 2004, the Company and Sun Microsystems Inc. reached a tentative agreement to settle a lawsuit filed by Kodak 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 and, pursuant to the terms of the settlement agreement, Sun paid Kodak \$92 million in cash. Under the terms of the settlement agreement, Kodak provided to Sun a non-exclusive, perpetual, paid-up license under the Kodak patents at issue. In addition, Kodak provided to Sun non-exclusive, perpetual, paid-up licenses for 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, and Sun released Kodak from all counterclaims that it had asserted in the litigation. The \$92 million will be recorded in other income (charges), net in the Consolidated Statement of Earnings in the fourth quarter of 2004.

On October 22, 2004, President Bush signed the American Jobs Creation Act of 2004 (the "2004 Jobs Act") into law. The 2004 Jobs Act generally repeals the current U.S. federal income tax benefits associated with Foreign Sales Corporation/Extra-Territorial Income (FSC/ETI) provisions of the U.S. federal income tax law and, in certain circumstances, replaces these benefits with alternative U.S. federal income tax benefits. Historically, pursuant to the FSC/ETI provisions, the Company's U.S. federal income tax liability has been reduced with respect to income it receives from certain products manufactured in the United States for export and ultimate sale outside of the United States. In addition to the repeal of FSC/ETI, the Act creates a deduction for qualified domestic production activities and contains important provisions relating to the repatriation of foreign earnings. As a result of the 2004 Jobs Act, it is expected that the Company will record in the fourth quarter, a \$56 million income tax benefit relating to the reversal of a \$56 million foreign tax credit valuation allowance. At this time, additional impacts, if any, on the Company's financial position, results of operations and cash flows as a result of the 2004 Jobs Act, including the dividend repatriation provisions, will depend upon interpretation of the 2004 Jobs Act as well as Kodak's actual financial results and circumstances in future years, and are not currently determinable.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### SUMMARY

(in millions, except per share data)

	Three Months Ended September 30			Nine Months Ended September 30		
	2004	2003	Change	2004	2003	Change
Net sales	\$ 3,364	\$ 3,346	+1%	\$ 9,752	\$ 9,245	+5%
(Loss) earnings from continuing operations before interest, other income(charges), net, and income taxes	(4)	131	-103	164	316	-48
Earnings from continuing operations	45	115	-61	204	209	-2
Net earnings	479	122	+293	661	246	+169
Basic and diluted earnings per share:						
Continuing operations	.16	.40	-60	.72	.73	-1
Discontinued operations	1.51	.02	+298	1.59	.13	+169
Total	1.67	.42	+298	2.31	.86	+169

**Net Sales from Continuing Operations by Reportable Segment and All Other**

(in millions)

	Three Months Ended September 30			Nine Months Ended September 30		
	2004	2003	Change	2004	2003	Change
<b>Digital &amp; Film Imaging Systems</b>						
Inside the U.S.	\$ 940	\$ 1,009	-7%	\$ 2,631	\$ 2,668	-1%
Outside the U.S.	1,368	1,466	-7	4,004	3,946	+1
<b>Total Digital &amp; Film Imaging Systems</b>	<b>2,308</b>	<b>2,475</b>	<b>-7</b>	<b>6,635</b>	<b>6,614</b>	<b>+0</b>
<b>Health Imaging</b>						
Inside the U.S.	276	251	+10	811	755	+7
Outside the U.S.	366	320	+14	1,134	972	+17
<b>Total Health Imaging</b>	<b>642</b>	<b>571</b>	<b>+12</b>	<b>1,945</b>	<b>1,727</b>	<b>+13</b>
<b>Commercial Imaging</b>						
Inside the U.S.	79	80	-1	237	249	-5
Outside the U.S.	116	110	+5	347	326	+6
<b>Total Commercial Imaging</b>	<b>195</b>	<b>190</b>	<b>+3</b>	<b>584</b>	<b>575</b>	<b>+2</b>
<b>Graphic Communications</b>						
Inside the U.S.	100	42	+138	238	116	+105
Outside the U.S.	95	40	+138	267	143	+87
<b>Total Graphic Communications</b>	<b>195</b>	<b>82</b>	<b>+138</b>	<b>505</b>	<b>259</b>	<b>+95</b>
<b>All Other</b>						
Inside the U.S.	9	12	-25	41	33	+24
Outside the U.S.	15	16	-6	42	37	+14
<b>Total All Other</b>	<b>24</b>	<b>28</b>	<b>-14</b>	<b>83</b>	<b>70</b>	<b>+19</b>
<b>Consolidated total</b>	<b>\$ 3,364</b>	<b>\$ 3,346</b>	<b>+1%</b>	<b>\$ 9,752</b>	<b>\$ 9,245</b>	<b>+5%</b>

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

	Three Months Ended September 30			Nine Months Ended September 30		
	2004	2003	Change	2004	2003	Change
Digital & Film Imaging Systems	\$ 214	\$ 204	+5%	\$ 460	\$ 277	+66%
Percent of Sales	9.3%	8.2%		6.9%	4.2%	
Health Imaging	\$ 102	\$ 117	-13%	\$ 323	\$ 357	-10%
Percent of Sales	15.9%	20.5%		16.6%	20.7%	
Commercial Imaging	\$ 33	\$ 24	+38%	\$ 96	\$ 75	+28%
Percent of Sales	16.9%	12.6%		16.4%	13.0%	
Graphic Communications	\$ (40)	\$ (3)	-1,233%	\$ (98)	\$ 5	-2,060%
Percent of Sales	(20.5)%	(3.7)%		(19.4)%	1.9%	
All Other	\$ (49)	\$ (18)	-172%	\$ (110)	\$ (56)	-96%
Percent of Sales	(204.2)%	(64.3)%		(132.5)%	(80.0)%	
<b>Total of segments</b>	<b>\$ 260</b>	<b>\$ 324</b>	<b>-20%</b>	<b>\$ 671</b>	<b>\$ 658</b>	<b>+2%</b>
Percent of Sales	7.7%	9.7%		6.9%	7.1%	
Restructuring costs and other	(264)	(185)		(507)	(285)	
Donation to technology enterprise	—	(8)		—	(8)	
Impairment of Burrell Companies' net assets	—	—		—	(9)	
GE settlement	—	—		—	(12)	
Patent infringement claim settlement	—	—		—	(14)	
Prior year acquisition settlement	—	—		—	(14)	
<b>Consolidated total</b>	<b>\$ (4)</b>	<b>\$ 131</b>	<b>-103%</b>	<b>\$ 164</b>	<b>\$ 316</b>	<b>-48%</b>

**Earnings (Loss) From Continuing Operations by Reportable Segment and All Other**  
(in millions)

	Three Months Ended September 30			Nine Months Ended September 30		
	2004	2003	Change	2004	2003	Change
Digital & Film Imaging Systems	\$ 202	\$ 177	+14%	\$ 416	\$ 230	+81%
Percent of Sales	8.8%	7.2%		6.3%	3.5%	
Health Imaging	\$ 96	\$ 109	-12%	\$ 284	\$ 293	-3%
Percent of Sales	15.0%	19.1%		14.6%	17.0%	
Commercial Imaging	\$ 31	\$ 21	+48%	\$ 82	\$ 57	+44%
Percent of Sales	15.9%	11.1%		14.0%	9.9%	
Graphic Communications	\$ (24)	\$ (10)	-140%	\$ (71)	\$ (20)	-255%
Percent of Sales	(12.3)%	(12.2)%		(14.1)%	(7.7)%	
All Other	\$ (44)	\$ (22)	-100%	\$ (101)	\$ (51)	-98%
Percent of Sales	(183.3)%	(78.6)%		(121.7)%	(72.9)%	
<b>Total of segments</b>	<b>\$ 261</b>	<b>\$ 275</b>	<b>-5%</b>	<b>\$ 610</b>	<b>\$ 509</b>	<b>+20%</b>
Percent of Sales	7.8%	8.2%		6.3%	5.5%	
Restructuring costs and other	(264)	(185)		(507)	(285)	
Donation to technology enterprise	—	(8)		—	(8)	
Impairment of Burrell Companies' net assets	—	—		—	(9)	
GE settlement	—	—		—	(12)	
Patent infringement claim settlement	—	—		—	(14)	
Prior year acquisition settlement	—	—		—	(14)	
Interest expense	(43)	(33)		(130)	(104)	
Other corporate items	3	2		7	8	
Tax benefit - donation of patents	—	—		—	8	
Income tax effects on above items and taxes not allocated to above	88	64		224	130	
<b>Consolidated total</b>	<b>\$ 45</b>	<b>\$ 115</b>	<b>-61%</b>	<b>\$ 204</b>	<b>\$ 209</b>	<b>-2%</b>

**COSTS AND EXPENSES**

(in millions)

	Three Months Ended September 30			Nine Months Ended September 30		
	2004	2003	Change	2004	2003	Change
Gross profit	\$ 1,075	\$ 1,105	-3%	\$ 3,002	\$ 3,002	0%
Percent of Sales	32.0%	33.0%		30.8%	32.5%	
Selling, general and administrative expenses	\$ 633	\$ 630	0%	\$ 1,798	\$ 1,895	-5%
Percent of Sales	18.8%	18.8%		18.4%	20.5%	
Research and development costs	\$ 219	\$ 192	+14%	\$ 628	\$ 563	+12%
Percent of Sales	6.5%	5.7%		6.4%	6.1%	



## 2004 COMPARED WITH 2003

### Third Quarter

#### RESULTS OF OPERATIONS – CONTINUING OPERATIONS

##### CONSOLIDATED

###### Worldwide Revenues

Net worldwide sales were \$3,364 million for the third quarter of 2004 as compared with \$3,346 million for the third quarter of 2003, representing an increase of \$18 million or 1%, or a decrease of 2% excluding the favorable impact of exchange. The increase in net sales was primarily due to acquisitions and favorable exchange, which increased third quarter sales by approximately 5.0 and 3.0 percentage points, respectively. The acquisitions of PracticeWorks, Kodak Versamark, NexPress and Laser Pacific contributed \$164 million to third quarter sales. These increases were partially offset by decreases in volumes of approximately 4.0 percentage points, driven primarily by declines in the film capture strategic product group (SPG) and the wholesale and retail photofinishing portions of the consumer output SPG, and declines in price/mix of approximately 3.0 percentage points, primarily driven by the consumer digital capture SPG and the film capture SPG.

Net sales in the U.S. were \$1,404 million for the third quarter of 2004 as compared with \$1,394 million for the prior year quarter, representing an increase of \$10 million, or 1%. Net sales outside the U.S. were \$1,960 million for the current quarter as compared with \$1,952 million for the third quarter of 2003, representing an increase of \$8 million, or unchanged as reported, or a decrease of 4% excluding the favorable impact of exchange.

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

The Company's digital product sales (excluding new technologies) were \$1,239 million for the current quarter as compared with \$894 million for the third quarter of 2003, representing an increase of \$345 million, or 39%, primarily driven by the consumer digital capture SPG, the kiosks/media portion of the consumer output SPG, the home printing SPG, and digital acquisitions which include PracticeWorks, Laser Pacific, Kodak Versamark, and NexPress. Excluding acquisitions, digital product sales increased 20% year over year.

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

Net sales of the Company's traditional products were \$2,119 million for the current quarter as compared with \$2,445 million for the third quarter of 2003, representing a decrease of \$326 million, or 13%, primarily driven by declines in the film capture SPG and the wholesale and retail photofinishing portions 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 the EAMER region were \$1,017 million for the third quarter of 2004 as compared with \$1,040 million for the prior year quarter, representing a decrease of \$23 million, or 2% as reported, or a decrease of 9% excluding the favorable impact of exchange. Net sales in the Asia Pacific region were \$629 million for the current quarter as compared with \$591 million for the prior year quarter, representing an increase of \$38 million, or 6% as reported, or an increase of 3% excluding the favorable impact of exchange. Net sales in the Canada and Latin America region were \$314 million in the current quarter as compared with \$321 million for the third quarter of 2003, representing a decrease of \$7 million, or 2% as reported, or a decrease of 4% excluding the favorable impact of exchange.

The Company's major emerging markets include China, Brazil, Mexico, Russia, India, Korea, Hong Kong and Taiwan. Net sales in emerging markets were \$739 million for the third quarter of 2004 as compared with \$677 million for the prior year quarter, representing an increase of \$62 million, or 9% as reported, and 9% excluding the impact of exchange. The emerging market portfolio accounted for approximately 22% of Kodak's worldwide sales and 38% of Kodak's non-U.S. sales in the quarter. The increase in emerging market sales was primarily attributable to sales growth in China, Mexico, India, and Russia of 20%, 11%, 9%, and 8%, respectively. Brazil recorded sales declines of 2%.

Strong sales increases in China and India were the result of strong business performance for most of the Company's operations in those areas. The increase in sales in Russia is a result of the Company's efforts to expand the distribution channels for Kodak products and services.

### **Gross Profit**

Gross profit was \$1,075 million for the third quarter of 2004 as compared with \$1,105 million for the third quarter of 2003, representing a decrease of \$30 million, or 3%. The gross profit margin was 32.0% in the current quarter as compared with 33.0% in the prior year quarter. The 1.0 percentage point decrease was primarily attributable to declines due to price/mix, driven primarily by the consumer digital capture SPG and the film capture SPG, which reduced gross profit margins by approximately 3.5 percentage points. These decreases were partially offset by: (1) manufacturing cost, which favorably impacted gross profit margins by approximately 2.0 percentage points, and (2) acquisitions, which favorably impacted gross profit margins by approximately 0.5 percentage points. There was no impact from foreign exchange. The impact of manufacturing cost to gross profit includes charges relating to accelerated depreciation and inventory write-downs of \$37 million in the current quarter and \$33 million in the prior year quarter relating to focused cost reduction actions. During the third quarter of 2004, the Company's gross profit was favorably impacted by a LIFO liquidation of approximately \$17 million versus \$12 million in the third quarter of 2003.

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

Selling, general and administrative expenses (SG&A) were \$633 million for the third quarter of 2004 as compared with \$630 million for the prior year quarter, representing an increase of \$3 million. SG&A remained unchanged as a percentage of sales at 18.8% for the third quarter of 2004 compared with the prior year quarter. In the current year quarter, unfavorable exchange of \$16 million and acquisition related SG&A of \$66 million were mostly offset by the savings from the Company's ongoing cost reduction actions. The prior year quarter included charges of \$8 million relating to a donation to Infotonics.

### **Research and Development Costs**

Research and development costs (R&D) were \$219 million for the third quarter of 2004 as compared with \$192 million for the third quarter of 2003, representing an increase of \$27 million, or 14%. R&D as a percentage of sales increased from 5.7% in the third quarter of 2003 to 6.5% in the current quarter. The increase in R&D is primarily attributable to acquisition related R&D, increased investments for digital growth initiatives, and a \$6 million charge for in-process R&D relating to the acquisition of the imaging business of National Semiconductor Corporation.

### **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 third quarter of 2004 were \$4 million as compared with earnings of \$131 million for the third quarter of 2003, representing a decrease of \$135 million, or 103%. This decrease is attributable to the reasons described above.

## **Interest Expense**

Interest expense for the third quarter of 2004 was \$43 million as compared with \$33 million for the prior year quarter, representing an increase of \$10 million, or 30%. Higher interest expense is a result of higher year over year interest rates, as the Company has replaced its commercial paper borrowings with long-term debt issued in the fourth quarter of 2003.

## **Other Income (Charges), Net**

The other income (charges) component includes investment income, income and losses from equity investments, foreign exchange, and gains and losses on the sales of assets and investments. Other income for the current quarter was \$20 million as compared with other charges of \$9 million for the third quarter of 2003. The improvement is primarily attributable to the fact that in the prior period the NexPress investments were accounted for under the equity method and included in other income (charges). As a result of the Company's purchase of Heidelberg's 50% interest in the NexPress joint venture, which closed on May 1, 2004, NexPress is consolidated in the Company's Statement of Earnings and included in the Graphics Communications segment.

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

The Company's estimated annual effective tax rate from continuing operations decreased from 17.5% for the prior year third quarter to 12.0% for the third quarter of 2004. This decrease is primarily attributable to expected increased earnings from operations in certain lower-taxed jurisdictions outside the U.S. relative to total consolidated earnings and the expected full-year earnings impact of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, which is not taxable.

During the third quarter of 2004, the Company recorded a tax benefit of \$72 million on \$27 million of pre-tax loss from continuing operations. The tax benefit of \$72 million for the quarter differs from the tax benefit of \$3 million that results from applying the estimated annual effective tax rate to the pre-tax loss from continuing operations of \$27 million due to: (1) the year-to-date impact through June 30, 2004 of the decrease in the estimated annual effective tax rate from continuing operations from 15.5% to 12.0% (\$12 million, or \$.04 per share) and (2) discrete period tax benefits of \$89 million. These discrete period tax benefits resulted from the following: recording of tax benefits of \$87 million associated with the net focused cost reduction charges of \$264 million and tax benefits of \$2 million associated with purchased in-process research and development costs of \$6 million from the acquisition of the imaging business of National Semiconductor Corporation. The focused cost reduction charges were incurred in jurisdictions that have tax rates that are greater than the estimated annual effective tax rate.

## **Earnings From Continuing Operations**

The earnings from continuing operations for the third quarter of 2004 were \$45 million, or \$.16 per basic and diluted share, as compared with earnings from continuing operations for the third quarter of 2003 of \$115 million, or \$.40 per basic and diluted share, representing a decrease of \$70 million, or 61% year over year. This decrease in earnings from continuing operations is attributable to the reasons described above.

## **DIGITAL & FILM IMAGING SYSTEMS**

### **Worldwide Revenues**

Net worldwide sales for the Digital & Film Imaging Systems (D&FIS) segment were \$2,308 million for the third quarter of 2004 as compared with \$2,475 million for the third quarter of 2003, representing a decrease of \$167 million, or 7% as reported, or a decrease of 9% excluding the favorable impact of exchange. The decrease in net sales was comprised of decreases in volume, driven primarily by declines in the film capture SPG and the wholesale and retail photofinishing portions of the consumer output SPG, which reduced net sales by approximately 6.5 percentage points, and price/mix declines, driven by the consumer digital capture SPG and the traditional film capture SPG, which reduced net sales by approximately 3.5 percentage points. These decreases were partially offset by favorable exchange, which contributed approximately 3.0 percentage points to net sales, and the acquisition of Laser-Pacific Media Corporation, which contributed approximately \$9 million, or 0.4 percentage points, to net sales for the quarter.

D&FIS segment net sales in the U.S. were \$940 million for the current quarter as compared with \$1,009 million for the third quarter of 2003, representing a decrease of \$69 million, or 7%. D&FIS segment net sales outside the U.S. were \$1,368 million for the third quarter of 2004 as compared with \$1,466 million for the prior year quarter, representing a decrease of \$98 million, or 7% as reported, or a decrease of 11% excluding the favorable impact of exchange.

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

D&FIS segment digital product sales were \$593 million for the current quarter as compared with \$438 million for the third quarter of 2003, representing an increase of \$155 million, or 35%, primarily driven by the consumer digital capture SPG, the Picture Maker kiosks/media portion of the consumer output SPG, and the home printing SPG. Net worldwide sales of consumer digital capture products, which include consumer digital cameras, accessories, memory products, and royalties, increased 41% in the third quarter of 2004 as compared with the prior year quarter, 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 quarter.

Year to date through August, the Company gained worldwide digital camera unit market share when compared with the prior year. While complete data for third quarter market share is not yet available, all indications are that Kodak gained digital camera market share in the U.S. on a unit basis year over year for the full quarter. For the full year, the Company expects to be profitable for the consumer digital capture SPG.

Net worldwide sales of Picture Maker kiosks and related media increased 41% in the third quarter of 2004 as compared with the third quarter of 2003, as a result of strong volume increases and favorable exchange. Sales continue to be driven by strong market acceptance of Kodak's new generation of kiosks and an increase in consumer demand for digital printing at retail. However, due to better than expected market demand for this product, the consumables portion of this business will remain somewhat capacity constrained throughout the remainder of the year, which will restrain equipment sales.

Net worldwide sales from the home printing solutions SPG, which includes inkjet photo paper and printer docks/media, increased 37% in the current quarter as compared with the third quarter of 2003, driven by sales of printer docks and associated thermal media. Kodak's Printer Dock product maintained its number one U.S. market share position on a unit basis in the 4x6 photo printer category through August. During the quarter, inkjet paper sales declined year over year due to a combination of slowing industry growth and lower market share. Despite share losses, the Company was able to maintain its top two-market share position in the U.S. during the quarter.

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

D&FIS segment traditional product sales were \$1,715 million for the current quarter as compared with the \$2,037 million for the third quarter of 2003, representing a decrease of \$322 million or 16%, primarily driven by declines in the film capture and consumer output SPGs. Net worldwide sales of the film capture SPG, including consumer roll film (35mm and APS film), one-time-use cameras (OTUC), professional films, reloadable traditional film cameras and batteries/videotape, decreased 20% in the third quarter of 2004 as compared with the third quarter of 2003, primarily reflecting volume declines and negative price/mix, partially offset by favorable exchange.

U.S. consumer film industry sell-through volumes decreased approximately 20% in the third quarter of 2004 as compared with the prior year quarter. Kodak's sell-in consumer film volumes declined 24% as compared with the prior year quarter, reflecting a decrease in U.S. retailers' inventories.

As previously announced, the Company anticipates that for full year 2004, the worldwide consumer film industry volumes will contract in the 10% to 12% range, with U.S. volumes declining 18% to 20%. For full year 2005, worldwide consumer film industry volumes 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, minilab equipment and services, chemistry, and photofinishing services at retail, decreased 13% in the third quarter of 2004 as compared with the third quarter of 2003, primarily reflecting volume declines and negative price/mix, partially offset by favorable exchange. Sales increases were recorded for retail photofinishing equipment during the quarter.

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 CIS (Consumer Imaging Services) outside the U.S., decreased 29% in the third quarter of 2004 as compared with the third quarter of 2003, primarily reflecting lower volumes and negative price/mix, partially offset by favorable exchange.

Net worldwide sales for the entertainment film SPGs, including origination and print films to the entertainment industry increased 11%, primarily reflecting volume increases, favorable exchange and positive price/mix. Color negative films benefited from continuing robust market demand and color print films experienced continued expansion resulting from international motion picture releases.

### **Gross Profit**

Gross profit for the D&FIS segment was \$724 million for the third quarter of 2004 as compared with \$807 million for the prior year quarter, representing a decrease of \$83 million or 10%. The gross profit margin was 31.4% in the current year quarter as compared with 32.6% in the prior year quarter. The 1.2 percentage point decline was comprised of decreases attributable to price/mix, driven by the consumer digital capture SPG and the film capture SPG, which reduced gross profit margins by approximately 5.0 percentage points. This decrease was partially offset by the positive results from initiatives to reduce manufacturing costs, which improved gross profit margins by approximately 4.0 percentage points. Foreign exchange had no impact.

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

SG&A expenses for the D&FIS segment decreased \$62 million, or 13%, from \$485 million in the third quarter of 2003 to \$423 million in the current quarter, and decreased as a percentage of sales from 19.6% for the third quarter of 2003 to 18.3% for the current quarter. Ongoing cost reduction actions more than offset a negative impact from exchange of \$12 million and acquisition related SG&A of \$2 million.

### **Research and Development Costs**

R&D costs for the D&FIS segment decreased \$31 million, or 26%, from \$118 million in the third quarter of 2003 to \$87 million in the current quarter and decreased as a percentage of sales from 4.8% in the prior year quarter to 3.8% in the current year quarter. The decrease in R&D year over year was primarily attributable to spending reductions related to traditional products and services, partially offset by increased investments for digital products.

### **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 \$10 million, or 5%, from \$204 million in the third quarter of 2003 to \$214 million in the third quarter of 2004, primarily as a result of the factors described above.

## HEALTH IMAGING

On October 7, 2003, the Company announced that it 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 radiography equipment, which PracticeWorks purchased in December 2002. The acquisition of PracticeWorks and Trophy is expected to contribute approximately \$200 million in sales to the Health Imaging segment during the first full year. During the third quarter of 2004, PracticeWorks contributed \$47 million in sales to Health Imaging's revenues.

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 is expected to move Health Imaging into the leading position in the dental practice management and dental digital radiographic markets.

### Worldwide Revenues

Net worldwide sales for the Health Imaging segment were \$642 million for the third quarter of 2004 as compared with \$571 million for the prior year quarter, representing an increase of \$71 million, or 12% as reported, or an increase of 9% excluding the favorable impact of exchange. The increase in sales was comprised of: (1) an increase in volume of approximately 4.0 percentage points, driven primarily by volume increases in the digital capture and output SPGs, and the services SPG, (2) the PracticeWorks acquisition, which contributed \$47 million or approximately 8.0 percentage points to third quarter sales, and (3) an increase from favorable exchange of approximately 3.0 percentage points. These increases were partially offset by decreases attributable to price/mix of approximately 2.5 percentage points, primarily driven by the traditional medical film portion of the film capture and output SPG and the digital capture SPG.

Net sales in the U.S. were \$276 million for the current quarter as compared with \$251 million for the third quarter of 2003, representing an increase of \$25 million, or 10%. Net sales outside the U.S. were \$366 million for the third quarter of 2004 as compared with \$320 million for the prior year quarter, representing an increase of \$46 million, or 14% as reported, or an increase of 9% excluding the favorable impact of exchange.

### Digital Strategic Product Groups' Revenues

Health Imaging 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 \$410 million for the current quarter as compared with \$330 million for the third quarter of 2003, representing an increase of \$80 million, or 24%, reflecting volume increases and favorable exchange, partially offset by negative price/mix. The increase in digital product sales was primarily attributable to the PracticeWorks acquisition, the services SPG and the digital media portion of the digital output SPG.

### Traditional Strategic Product Groups' Revenues

Health Imaging segment traditional product sales, including analog film, equipment, chemistry and services, were \$231 million for the current quarter as compared with \$241 million for the third quarter of 2003, representing a decrease of \$10 million or 4%. The primary driver was lower volumes and price/mix for the film capture and output SPG, partially offset by favorable exchange.

## **Gross Profit**

Gross profit for the Health Imaging segment was \$268 million for the third quarter of 2004 as compared with \$250 million in the prior year quarter, representing an increase of \$18 million, or 7%. The gross profit margin was 41.7% in the current quarter as compared with 43.8% in the third quarter of 2003. The decrease in the gross profit margin of 2.1 percentage points was principally attributable to: (1) manufacturing costs, which decreased gross profit margins by approximately 2.5 percentage points, and (2) price/mix, which negatively impacted gross profit margins by 2.0 percentage points, driven by the traditional medical film portion of the film capture and output SPG and the digital capture SPG. These decreases were partially offset by (1) increases due to the PracticeWorks acquisition, which increased gross profit margins by approximately 1.5 percentage points, and (2) favorable exchange, which contributed approximately 1.0 percentage points to the gross profit margins.

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

SG&A expenses for the Health Imaging segment increased \$24 million, or 26%, from \$89 million in the third quarter of 2003 to \$113 million for the current quarter, and increased as a percentage of sales from 15.6% to 17.6%. The increase in SG&A expenses is primarily attributable to \$23 million associated with the PracticeWorks acquisition.

## **Research and Development Costs**

Third quarter R&D costs increased \$10 million, or 23%, from \$43 million in the third quarter of 2003 to \$53 million in the current quarter, and increased as a percentage of sales from 7.5% to 8.2%. The increase in R&D expenses is primarily attributable to increased spending to drive growth in selected areas of the product portfolio and \$2 million associated with the PracticeWorks acquisition.

## **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 Imaging segment decreased \$15 million, or 13%, from \$117 million for the prior year quarter to \$102 million for the third quarter of 2004. The decrease in earnings reflects the impact of lower gross profit margins, increased SG&A, and increased investment for growth in R&D. The operating earnings margin rate is within the expected mid to upper teen range predicted earlier this year.

## **COMMERCIAL IMAGING**

On February 9, 2004 Kodak announced its intention to sell the Remote Sensing Systems (RSS) operation to ITT Industries for \$725 million in cash. This transaction closed during the third quarter of 2004. The RSS business was part of Kodak's commercial and government systems operation. The results of the Commercial Imaging segment for the three months ended September 30, 2004 and 2003 exclude the financial performance of Kodak's RSS 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 ultimate completion of the divestiture on August 13, 2004. Subsequent overhead costs have been allocated to all of the existing segments.

## **Worldwide Revenues**

Net worldwide sales for the Commercial Imaging segment were \$195 million for the third quarter of 2004 as compared with \$190 million for the prior year quarter, representing an increase of \$5 million, or 3% as reported, or a decrease of 1% excluding the favorable impact of exchange. The increase in net sales was primarily comprised of favorable exchange, which increased sales by approximately 4.0 percentage points. This increase was partially offset by a decrease of approximately 1.0 percentage point due to decreased volumes primarily driven by declines in the micrographics equipment and media SPG, services and support SPG, and the imaging services SPG. Price/mix had no impact on net sales.

Net sales in the U.S. were \$79 million for the current quarter as compared with \$80 million for the prior year quarter, representing a decrease of \$1 million, or 1%. Net sales outside the U.S. were \$116 million in the third quarter of 2004 as compared with \$110 million for the prior year quarter, representing an increase of \$6 million, or 5% as reported, or a decrease of 1% excluding the favorable impact of exchange.

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

Commercial Imaging segment digital product sales were \$95 million for the current quarter as compared with \$93 million for the third quarter of 2003, representing an increase of \$2 million, or 2%. Segment traditional product sales were \$100 million for the current quarter as compared with \$97 million for the third quarter of 2003, representing an increase of \$3 million, or 3%. The primary driver was an increase in sales from the aerial and industrial materials SPG.

#### **Gross Profit**

Gross profit for the Commercial Imaging segment was \$68 million for the third quarter of 2004 as compared with \$60 million in the prior year quarter, representing an increase of \$8 million, or 13%. The gross profit margin was 34.9% in the current quarter as compared with 31.6% in the prior year quarter. The increase in the gross profit margin of approximately 3.3 percentage points was primarily attributable to manufacturing cost improvements, which improved gross profit margins by approximately 2.0 percentage points, and favorable exchange, which impacted gross profit margins by approximately 1.0 percentage point. There was no impact from price/mix.

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

SG&A expenses for the Commercial Imaging segment decreased \$1 million from \$33 million in the third quarter of 2003 to \$32 million for the current quarter, and decreased as a percentage of sales from 17.4% to 16.4%.

#### **Research and Development Costs**

Third quarter R&D costs for the Commercial Imaging segment were \$3 million in the current quarter, unchanged from the prior year, but decreased as a percentage of sales from 1.6% in the prior year quarter to 1.5% in the current year quarter.

#### **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 \$9 million, or 38%, from \$24 million in the third quarter of 2003 to \$33 million in the third quarter of 2004, while the operating earnings margin rate increased 4.3 percentage points to 16.9% from 12.6% for the prior year quarter. This increase is primarily attributable to the reasons described above.

#### **GRAPHIC COMMUNICATIONS**

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

- Heidelberger Druckmaschinen's (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 next two calendar years ending December 31, 2005, the Company will pay a maximum of \$150 million in cash. Additional payments may also be made if certain sales goals are met during a five-year period following the closing of the transaction. Total operational dilution of \$.30 to \$.35 per share is expected for full year 2004, with the acquisition becoming accretive by 2007. During the third quarter, the NexPress-related entities contributed \$56 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 is expected to contribute approximately \$200 million to Graphic Communications segment sales in 2004, and will be slightly dilutive through the end of the year. Scitex Digital Printing now operates under the name Kodak Versamark, Inc. During the third quarter, Kodak Versamark contributed \$52 million in sales to the Graphic Communications segment.

### **Worldwide Revenues**

Net worldwide sales for the Graphic Communications segment were \$195 million for the third quarter of 2004 as compared with \$82 million for the prior year quarter, representing an increase of \$113 million, or 138% as reported, or 135% excluding the favorable impact of exchange. The increase in net sales was primarily due to the Kodak Versamark and the NexPress-related entities acquisitions, which contributed \$108 million to current quarter net sales for the Graphic Communications segment.

Net sales in the U.S. were \$100 million for the current quarter as compared with \$42 million for the prior year quarter, representing an increase of \$58 million, or 138%. Net sales outside the U.S. were \$95 million in the third quarter of 2004 as compared with \$40 million for the prior year quarter, representing an increase of \$55 million, or 138% as reported, or an increase of 133% excluding the favorable impact of exchange.

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

Graphic Communications segment digital product sales are comprised of Kodak Versamark, a leader in continuous inkjet technology, the NexPress-related entities, a producer of digital color and black and white printing solutions and Encad, Inc., a maker of wide-format inkjet printers. Segment traditional product sales are limited to the sales of traditional graphics products to the Kodak Polychrome Graphics (KPG) joint venture.

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

Net worldwide sales of graphic arts products to KPG, an unconsolidated joint venture affiliate in which the Company has a 50% ownership interest, increased 3% in the current quarter as compared with the third quarter of 2003, primarily reflecting volume increases, partially offset by negative price/mix for graphic arts products. However, digital technology substitution continues to impact the sales of the traditional product portfolio that is sold to KPG.

During the quarter, KPG and the NexPress Solutions announced that they will be collaborating in the marketing and distribution of Kodak NexPress 2100 digital production color presses and Kodak Digimaster E150 and E125 digital production systems in the U.S. KPG has launched the sale of the NexPress 2100 in the U.S. as of October 1, 2004 and will phase in remaining geographic territories. The Digimaster E125 and E150 presses will be introduced during the first quarter of 2005.

The NexPress installed base of digital production color presses continues to experience good customer acceptance. During the quarter, NexPress began shipping the NexPress intelligent color solution employed by the NexPress 2100 digital color press with a fifth imaging station. Overall activity levels for production volumes and product related sales and service are steadily increasing and acquisition integration remains ahead of plan.

On November 1, 2004, NexPress announced the completion of their acquisition of certain assets of Buhrmann Graphic Systems for the Nexpress 2100 digital color presses and Digimaster digital production systems. Buhrmann Graphic Systems is the digital sales and services division of Buhrmann NV. This acquisition covers several key European countries, including Belgium, the Netherlands, Luxembourg, Spain and Italy. The sales and service personnel in these countries will become part of Nexpress effective October 29, 2004. This acquisition expands NexPress' direct coverage in major European markets.

During the third quarter, Encad continued to experience strong order demand for its new Novajet 1000i wide- format inkjet printer.

### **Gross Profit**

Gross profit for the Graphic Communications segment was \$44 million for the third quarter of 2004 as compared with \$9 million in the prior year quarter, representing an increase of \$35 million, or 389%. The gross profit margin was 22.6% in the current quarter as compared with 11.0% in the prior year quarter. The increase in the gross profit margin of 11.6 percentage points was primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which contributed approximately 21.0 percentage points to gross profit margins for the current quarter. These increases were partially offset by: (1) an increase in manufacturing cost, which negatively impacted gross profit margins by approximately 6.5 percentage points, (2) negative price/mix of 1.5 percentage points, and (3) unfavorable exchange which decreased gross profit margins by approximately 1.0 percentage point.

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

SG&A expenses for the Graphic Communications segment were \$52 million for the third quarter of 2004 as compared with \$8 million in the prior year quarter, representing an increase of \$44 million, and increased as a percentage of sales from 9.8% to 26.7%. The increase in SG&A expenses is primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which accounted for \$42 million of SG&A expenses in the current quarter.

### **Research and Development Costs**

Third quarter R&D costs for the Graphic Communications segment increased \$27 million, from \$5 million for the third quarter of 2003 to \$32 million for the current quarter, and increased as a percentage of sales from 6.1% for the third quarter of 2003 to 16.4% for the current quarter. The increase was primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which accounted for \$27 million of R&D expenses in the current quarter.

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

The loss from continuing operations before interest, other income (charges), net, and income taxes for the Graphic Communications segment increased \$37 million from a loss of \$3 million in the third quarter of 2003 to a loss of \$40 million in the third quarter of 2004. This increase is primarily attributable to the acquisition of the NexPress-related entities on May 1, 2004. As noted above, total operational dilution of \$.30 to \$.35 per share is expected from the NexPress-related entities for full year 2004, with the acquisition becoming accretive by 2007.

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. KPG contributed positively to other income (charges), net during the third quarter of 2004 both in absolute terms and in quarterly year over year comparisons.

#### **ALL OTHER**

Net worldwide sales for All Other were \$24 million for the third quarter of 2004 as compared with \$28 million for the third quarter of 2003, representing a decrease of \$4 million, or 14%. Net sales in the U.S. were \$9 million for the third quarter of 2004 as compared with \$12 million for the prior year quarter, representing a decrease of \$3 million, or 25%. Net sales outside the U.S. were \$15 million in the third quarter of 2004 as compared with \$16 million in the prior year quarter, representing a decrease of \$1 million, or 6%.

SK Display Corporation, the OLED manufacturing joint venture between Kodak and Sanyo, continues to focus on improving manufacturing yields and process engineering.

The loss from continuing operations before interest, other income (charges), net, and income taxes for All Other was \$49 million in the current quarter as compared with a loss of \$18 million in the third quarter of 2003. During the quarter, the Company recorded a \$6 million R&D charge relating to the purchase of in-process R&D as part of the acquisition of the imaging business of National Semiconductor Corporation. The increase in the loss from operations was primarily driven by new technologies, which include the inkjet development and display programs.

During the third quarter, the Company acquired the imaging business of National Semiconductor Corporation, which develops and manufactures complimentary metal oxide semiconductor (CMOS) image sensors. The acquired assets are part of Kodak's image sensor solutions organization, a worldwide leader in the design and manufacture of high performance charged coupled device (CCD) image sensors and CMOS image sensor (CIS) technologies primarily for professional and industrial imaging markets.

Kodak also announced that it has reached an agreement to collaborate with IBM on the development and manufacture of image sensors to power mass market consumer products such as digital cameras and camera phones. The agreement will leverage IBM's CMOS processing expertise to allow Kodak to commercialize a new family of CMOS image sensor devices.

#### **RESULTS OF OPERATIONS - DISCONTINUED OPERATIONS**

Earnings from discontinued operations for the third quarter of 2004 were \$1.51 per basic and diluted share primarily relating to the gain on the sale of RSS business, which contributed \$434 million to earnings from discontinued operations. Earnings from discontinued operations for the third quarter of 2003 were \$.02 per basic and diluted share and were primarily related to \$7 million of post-tax earnings from Kodak's Remote Sensing Systems business.

#### **NET EARNINGS**

Net earnings for the third quarter of 2004 were \$479 million, or \$1.67 per basic and diluted share, as compared with net earnings for the third quarter of 2003 of \$122 million, or \$.42 per basic and diluted share, representing an increase of \$357 million, or 293%. This increase is primarily attributable to the gain on the sale of RSS.

**RESULTS OF OPERATIONS – CONTINUING OPERATIONS**

**CONSOLIDATED**

**Worldwide Revenues**

Net worldwide sales were \$9,752 million for the nine months ended September 30, 2004 as compared with \$9,245 million for the nine months ended September 30, 2003, representing an increase of \$507 million or 5%, or an increase of 2% excluding the favorable impact of exchange. The increase in net sales was primarily due to increased volumes, acquisitions and favorable exchange, which increased year-to-date sales by approximately 1.1, 4.5 and 3.6 percentage points, respectively. The increase in volume was primarily driven by the consumer digital capture SPG, the Picture Maker kiosks/media portion of the consumer output SPG and the Home Printing Solutions SPG. In addition, the acquisitions of PracticeWorks, Scitex Digital Printing (now Kodak Versamark), NexPress and Laser Pacific contributed \$413 million to net sales for the nine months ended September 30, 2004. These increases were partially offset by decreases attributable to price/mix, primarily driven by the consumer digital capture SPG and the film capture SPG, which reduced net sales for the nine months ended September 30, 2004 by approximately 3.6 percentage points.

Net sales in the U.S. were \$3,958 million for the current year period as compared with \$3,821 million for the prior year period, representing an increase of \$137 million, or 4%. Net sales outside the U.S. were \$5,794 million for the current year period as compared with \$5,424 million for the prior year period, representing an increase of \$370 million, or 7% as reported, or an increase of 1% excluding the favorable impact of exchange.

**Digital Strategic Product Groups' Revenues**

The Company's digital product sales were \$3,549 million for the nine months ended September 30, 2004 as compared with \$2,470 million for the nine months ended September 30, 2003, representing an increase of \$1,079 million, or 44%, primarily driven by the consumer digital capture SPG, the kiosks/media portion of the consumer output SPG and digital acquisitions. Net sales of the Company's traditional products were \$6,203 million for the current period as compared with \$6,775 million for the prior year period, representing a decrease of \$572 million, or 8%, primarily driven by declines in the film capture SPG and the wholesale photofinishing portion of the consumer output SPG.

**Foreign Revenues**

Net sales in the EAMER region were \$3,020 million for the first nine months of 2004 as compared with \$2,879 million for the first nine months of 2003, representing an increase of \$141 million, or 5% as reported, or a decrease of 2% excluding the favorable impact of exchange. Net sales in the Asia Pacific region were \$1,866 million for the first nine months of 2004 as compared with \$1,676 million for the first nine months of 2003, representing an increase of \$190 million, or 11% as reported, or an increase of 6% excluding the favorable impact of exchange. Net sales in the Canada and Latin America region were \$908 million for the first nine months of 2004 as compared with \$869 million for the first nine months of 2003, representing an increase of \$39 million, or 4% as reported, or an increase of 3% excluding the favorable impact of exchange.

The Company's major emerging markets include China, Brazil, Mexico, Russia, India, Korea, Hong Kong and Taiwan. Net sales in emerging markets were \$2,127 million for the nine months ended September 30, 2004 as compared with \$1,857 million for the nine months ended September 30, 2003, representing an increase of \$270 million, or 15% as reported, or an increase of 13% excluding the impact of exchange. The emerging market portfolio accounted for approximately 22% of Kodak's worldwide sales and 37% of Kodak's non-U.S. sales for the nine months ended September 30, 2004. The increase in emerging market sales was primarily attributable to sales growth in China, Russia, India, Brazil and Mexico of 35%, 12%, 12%, 7% and 6%, respectively.

Strong sales increases in China were recorded as compared with the first three quarters of 2003, when SARS significantly impacted operations in that country. The increase in sales in Russia is a result of the Company's efforts to expand the distribution channels for Kodak products and services. India experienced strong business performance for most of the Company's operations in that area. The increase in sales in Brazil is a result of market share growth in consumer imaging and digital capture products.

## **Gross Profit**

Gross profit was \$3,002 million for the nine months ended September 30, 2004 as compared with \$3,002 million for the nine months ended September 30, 2003. The gross profit margin was 30.8% in the current year period as compared with 32.5% in the prior year period. The 1.7 percentage point decrease was primarily attributable to declines due to price/mix, driven primarily by the consumer digital capture SPG, the film capture SPG and health products and services, which reduced gross profit margins by approximately 4.5 percentage points. These decreases were partially offset by: 1) manufacturing cost, which despite a \$38 million net increase in charges for accelerated depreciation and inventory write-offs associated with ongoing cost reduction programs, favorably impacted gross profit margins by approximately 2.0 percentage points; 2) acquisitions, which favorably impacted gross profit margins by approximately 0.5 percentage points; and 3) exchange, which favorably impacted gross profit margins by approximately 0.3 percentage points. In addition, during the first three quarters of 2004, the Company's gross profit was favorably impacted by a LIFO liquidation of approximately \$50 million versus \$24 million for the nine months ended September 30, 2003.

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

Selling, general and administrative expenses (SG&A) were \$1,798 million for the nine months ended September 30, 2004 as compared with \$1,895 million for the nine months ended September 30, 2003, representing a decrease of \$97 million, or 5%. SG&A decreased as a percentage of sales from 20.5% for the prior year period to 18.4% for the current year period. The decrease in SG&A is primarily attributable to cost savings in the current year period realized from position eliminations associated with ongoing cost reduction programs, a decrease in advertising spend of \$73 million, and \$57 million of one-time charges incurred in the prior year period relating to three legal settlements, an asset impairment and a contribution. These decreases were partially offset by unfavorable exchange of \$54 million and SG&A of acquisitions of \$154 million.

## **Research and Development Costs**

Research and development costs (R&D) were \$628 million for the nine months ended September 30, 2004 as compared with \$563 million for the nine months ended September 30, 2003, representing an increase of \$65 million, or 12%. R&D as a percentage of sales increased from 6.1% from the prior year period to 6.4% for the current year period. The increase in R&D is primarily attributable to acquisition related R&D and an increase in investments for digital growth initiatives. Write-offs for purchased in-process R&D associated with acquisitions made in the nine months ended September 30, 2004 were \$16 million as compared with \$21 million for acquisitions made in the nine months ended September 30, 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 nine months ended September 30, 2004 were \$164 million as compared with \$316 million for the nine months ended September 30, 2003, representing a decrease of \$152 million, or 48%. This decrease is primarily attributable to the reasons described above.

## **Interest Expense**

Interest expense for the nine months ended September 30, 2004 was \$130 million as compared with \$104 million for the prior year period, representing an increase of \$26 million, or 25%. Higher interest expense is a result of higher year over year interest rates resulting from the replacement of commercial paper debt with the Senior Notes and Convertible Senior Notes that were issued in October 2003.

## **Other Income (Charges), Net**

The other income (charges) component includes investment income, income and losses from equity investments, foreign exchange, and gains and losses on the sales of assets and investments. Other income for the current year period was \$26 million as compared with other charges of \$39 million for the prior year period. The improvement is primarily attributable to increased income from the Company's equity investment in Kodak Polychrome Graphics (KPG), elimination of losses from the Company's equity investment in the discontinued Phogenix venture and the fact that in the prior period the NexPress investments were accounted for under the equity method and included in other income (charges). As a result of the Company's purchase of Heidelberg's 50% interest in the NexPress joint venture, which closed on May 1, 2004, NexPress is consolidated in the Company's Statement of Earnings and included in the Graphics Communications segment.

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

The Company's estimated annual effective tax rate from continuing operations decreased from 17.5% for the nine months ended September 30, 2003 to 12.0% for the nine months ended September 30, 2004. This decrease is primarily attributable to expected increased earnings from operations in certain lower-taxed jurisdictions outside the U.S. relative to total consolidated earnings and the expected full-year earnings impact of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, which is not taxable.

During the nine months ended September 30, 2004, the Company recorded a tax benefit of \$144 million on \$60 million of pre-tax income. The tax benefit of \$144 million for the current year period differs from the tax provision of \$7 million that results from applying the estimated annual effective tax rate from continuing operations due to discrete period tax benefits of \$215 million. These discrete period tax benefits resulted from the following: recording of tax benefits of \$166 million associated with the net focused cost reduction charges of \$502 million, a tax benefit of \$32 million relating to the Internal Revenue Service's (IRS) concession concerning the taxation of certain intercompany royalties which could not legally be distributed to the parent, a tax benefit of \$9 million resulting from an IRS settlement in connection with the Company's filing position relating to the income tax reporting of a patent infringement litigation settlement, tax benefits of \$6 million associated with a \$16 million charge for purchased in-process R&D costs, and tax benefits of \$2 million associated with inventory write-downs and fixed asset write-offs of \$5 million relating to the Company's historical ownership in the NexPress joint venture in connection with the acquisition of the NexPress-related entities from Heidelberger Druckmaschinen. The net focused cost reduction charges, NexPress-related charges and the purchased in-process R&D charge were incurred in jurisdictions that have tax rates that are greater than the estimated annual effective tax rate.

## **Earnings From Continuing Operations**

The earnings from continuing operations for the nine months ended September 30, 2004 were \$204 million, or \$.72 per basic and diluted share, as compared with earnings from continuing operations for the nine months ended September 30, 2003 of \$209 million, or \$.73 per basic and diluted share, representing a decrease of \$5 million, or 2%. This decrease in earnings from continuing operations is attributable to the reasons described above.

## **DIGITAL & FILM IMAGING SYSTEMS**

### **Worldwide Revenues**

Net worldwide sales for the Digital & Film Imaging Systems (D&FIS) segment were \$6,635 million for the nine months ended September 30, 2004 as compared with \$6,614 million for the nine months ended September 30, 2003, representing an increase of \$21 million, or 0% as reported, or a decrease of 3% excluding the favorable impact of exchange. The increase in net sales was comprised of increases related to favorable exchange which increased net sales by approximately 3.5 percentage points and volume driven primarily by the consumer digital capture SPG and the Picture Maker kiosks/media portion of the consumer output SPG, which increased sales by approximately 0.7 percentage points. In addition, the acquisition of Laser-Pacific Media Corporation contributed approximately \$26 million, or 0.4 percentage points, to net sales for the nine months ended September 30, 2004. These increases were partially offset by negative price/mix, driven primarily by the film capture SPG and the consumer digital capture SPG, which reduced net sales by approximately 4.1 percentage points.

D&FIS segment net sales in the U.S. were \$2,631 million for the current year period as compared with \$2,668 million for the prior year period, representing a decrease of \$37 million, or 1%. D&FIS segment net sales outside the U.S. were \$4,004 million for the current year period as compared with \$3,946 million for the prior year period, representing an increase of \$58 million, or 1% as reported, or a decrease of 5% excluding the favorable impact of exchange.

## Digital Strategic Product Groups' Revenues

D&FIS segment digital product sales were \$1,665 million for the current year period as compared with \$1,088 million for the prior year period, representing an increase of \$577 million, or 53%, 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 71% in the nine months ended September 30, 2004 as compared with the nine months ended September 30, 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 period.

Year to date through August, the Company gained worldwide digital camera unit market share when compared with the prior year. While complete data for third quarter market share is not yet available, all indications are that Kodak gained digital camera market share in the U.S. on a unit basis year over year for the nine months ended September 30, 2004. For the full year, the Company expects to be profitable for the consumer digital capture SPG.

Net worldwide sales of Picture Maker kiosks and related media increased 63% in the nine months ended September 30, 2004 as compared with the nine months ended September 30, 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 45% in the current year period as compared with the prior year period. For inkjet paper, the nine months ended September 30, 2004 were marked by increased competition from store brands and the mix shift associated with consumer's preference for smaller format papers. Kodak's Printer Dock product continued to experience strong sales growth during the nine months ended September 30, 2004.

## Traditional Strategic Product Groups' Revenues

D&FIS segment traditional product sales were \$4,970 million for the current year period as compared with \$5,521 million for the prior year period, representing a decrease of \$551 million or 11%, primarily driven by declines in film capture and consumer output. Net worldwide sales of the film capture SPG, including consumer roll film (35mm and APS film), one-time-use cameras (OTUC), professional films, reloadable traditional film cameras and batteries/videotape, decreased 14% in the nine months ended September 30, 2004 as compared with the nine months ended September 30, 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 17% in the nine months ended September 30, 2004 as compared with the prior year period. Kodak's sell-in consumer film volumes declined 19% as compared with the prior year period, reflecting a decrease in U.S. retailers' inventories.

As previously announced, the Company anticipates that for full year 2004, the worldwide film industry volumes will contract in the 10% to 12% range, with U.S. volumes declining 18% to 20%. For full year 2005, worldwide consumer film industry volumes 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, minilab equipment and services, chemistry, and photofinishing services at retail, decreased 2% in the nine months ended September 30, 2004 as compared with the nine months ended September 30, 2003, primarily reflecting lower volumes of retail photofinishing equipment and negative price/mix, 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 CIS (Consumer Imaging Services) outside the U.S., decreased 28% in the nine months ended September 30, 2004 as compared with the nine months ended September 30, 2003, primarily reflecting lower volumes, partially offset by favorable exchange. The lower volumes reflect the effects of a continued weak consumer film industry.

Net worldwide sales for the entertainment films SPG, including origination and print films to the entertainment industry increased 19%, reflecting volume increases and favorable exchange that was partially offset by negative price/mix.

### **Gross Profit**

Gross profit for the D&FIS segment was \$1,956 million for the nine months ended September 30, 2004 as compared with \$2,066 million for the prior year period, representing a decrease of \$110 million or 5%. The gross profit margin was 29.5% in the current year period as compared with 31.2% in the prior year period. The 1.7 percentage point decline was comprised of decreases attributable to price/mix, primarily driven by the film capture SPG and the consumer digital capture SPG, which reduced gross profit margins by approximately 5.7 percentage points. This decrease was partially offset by the positive results from initiatives to reduce manufacturing costs, which improved gross profit margins by approximately 3.8 percentage points, and foreign exchange, which favorably impacted gross profit margins by approximately 0.2 percentage points.

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

SG&A expenses for the D&FIS segment decreased \$218 million, or 15%, from \$1,430 million in the nine months ended September 30, 2003 to \$1,212 million in the current year period, and decreased as a percentage of sales from 21.6% for the nine months ended September 30, 2003 to 18.3% for the current year period. The decrease is primarily attributable to a decline in advertising spend of \$80 million and cost savings realized from position eliminations associated with ongoing focused cost reduction programs. These decreases were partially offset by an unfavorable impact from exchange of \$39 million.

### **Research and Development Costs**

R&D costs for the D&FIS segment decreased \$75 million, or 21%, from \$359 million in the nine months ended September 30, 2003 to \$284 million in the current year period and decreased as a percentage of sales from 5.4% in the prior year period to 4.3% in the current year period. The decrease in R&D was partly attributable to a \$21 million charge incurred in the nine months ended September 30, 2003 for the write-off of purchased in-process R&D, with no such charge incurred in the current year period for D&FIS. The balance of the decrease was due to a decline in spending related to consumer and professional imaging traditional products and services, which was partially offset by an increase in R&D spending for digital products.

### **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 \$183 million, or 66%, from \$277 million in the nine months ended September 30, 2003 to \$460 million in the nine months ended September 30, 2004, primarily as a result of the factors described above.

### **HEALTH IMAGING**

On October 7, 2003, the Company announced that it 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 radiography equipment, which PracticeWorks purchased in December 2002. The acquisition of PracticeWorks and Trophy is expected to contribute approximately \$200 million in sales to the Health Imaging segment during the first full year. During the nine months ended September 30, 2004, PracticeWorks contributed \$146 million to net sales of the Health Imaging 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 is expected to move Health Imaging into the leading position in the dental practice management and dental digital radiographic markets.



## **Worldwide Revenues**

Net worldwide sales for the Health Imaging segment were \$1,945 million for the nine months ended September 30, 2004 as compared with \$1,727 million for the prior year period, representing an increase of \$218 million, or 13% as reported, or an increase of 10% excluding the favorable impact of exchange. The increase in sales was comprised of: (1) an increase in volume of approximately 3.6 percentage points, driven primarily by volume increases in the digital capture SPG and the services SPG, (2) the PracticeWorks acquisition, which contributed \$146 million or approximately 8.5 percentage points to the current year period sales, and (3) an increase from favorable exchange of approximately 3.7 percentage points. These increases were partially offset by decreases attributable to price/mix of approximately 3.1 percentage points, primarily driven by the digital output SPG, the digital capture SPG and the film capture and output SPG.

Net sales in the U.S. were \$811 million for the current year period as compared with \$755 million for the prior year period, representing an increase of \$56 million, or 7%. Net sales outside the U.S. were \$1,134 million for the nine months ended September 30, 2004 as compared with \$972 million for the prior year period, representing an increase of \$162 million, or 17% as reported, or 11% excluding the favorable impact of exchange.

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

Health Imaging 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 \$1,232 million for the current year period as compared with \$999 million for the nine months ended September 30, 2003, representing an increase of \$233 million, or 23%. 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 Imaging segment traditional product sales, including analog film, equipment, chemistry and services, were \$712 million for the current year period as compared with \$729 million for the nine months ended September 30, 2003, representing a decrease of \$17 million or 2%, 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 Imaging segment was \$822 million for the nine months ended September 30, 2004 as compared with \$742 million in the prior year period, representing an increase of \$80 million, or 11%. The gross profit margin was 42.3% in the current year period as compared with 43.0% in the nine months ended September 30, 2003. The decrease in the gross profit margin of 0.7 percentage points was principally attributable to: (1) price/mix, which negatively impacted gross profit margins by 2.1 percentage points driven by the digital media portion of the digital output SPG and the traditional medical film portion of the film capture and output SPG, and (2) an increase in manufacturing cost, which decreased gross profit margins by approximately 1.0 percentage points due to an increase in silver prices during the current year partially offset by increased manufacturing productivity. These decreases were partially offset by increases due to the PracticeWorks acquisition, which increased gross profit margins by approximately 1.6 percentage points, and favorable exchange, which contributed approximately 0.8 percentage points to the gross profit margins.

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

SG&A expenses for the Health Imaging segment increased \$86 million, or 32%, from \$265 million in the nine months ended September 30, 2003 to \$351 million for the current year period, and increased as a percentage of sales from 15.3% in the prior year period to 18.1% in the current year period. The increase in SG&A expenses is primarily attributable to \$67 million associated with the PracticeWorks acquisition, increased investment for growth initiatives, and unfavorable effects of foreign exchange of \$9 million.

## **Research and Development Costs**

R&D costs increased \$28 million, or 23%, from \$120 million in the nine months ended September 30, 2003 to \$148 million in the nine months ended September 30, 2004, and increased as a percentage of sales from 6.9% for the nine months ended September 30, 2003 to 7.6% for the current year period. The increase in R&D expenses is primarily attributable to increased spending to drive growth in selected areas of the product portfolio and \$7 million associated with the PracticeWorks acquisition.

## **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 Imaging segment decreased \$34 million, or 10%, from \$357 million for the prior year period to \$323 million for the nine months ended September 30, 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 the nine months ended September 30, 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 \$584 million for the nine months ended September 30, 2004 as compared with \$575 million for the prior year period, representing an increase of \$9 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 5.2 percentage points due to favorable exchange, which was partially offset by declines due to volume of approximately 3.4 percentage points, primarily driven by declines in the micrographics equipment and media SPG.

Net sales in the U.S. were \$237 million for the current year period as compared with \$249 million for the prior year period, representing a decrease of \$12 million, or 5%. Net sales outside the U.S. were \$347 million in the nine months ended September 30, 2004 as compared with \$326 million for the prior year period, representing an increase of \$21 million, or 6% as reported, or a decrease of 3% excluding the favorable impact of exchange.

## **Gross Profit**

Gross profit for the Commercial Imaging segment was \$201 million for the nine months ended September 30, 2004 as compared with \$192 million in the prior year period, representing an increase of \$9 million, or 5%. The gross profit margin was 34.4% in the current year period as compared with 33.4% in the prior year period. The increase in the gross profit margin was attributable to a decrease in manufacturing cost, which improved gross profit margins by approximately 1.0 percentage point, and favorable exchange, which improved gross margins by approximately 0.8 percentage points. The improvements in manufacturing costs and the favorable exchange were partially offset by decreases in price/mix, which reduced gross profit margins by approximately 1.3 percentage points primarily driven by declines for the aerial and industrial materials SPG.

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

SG&A expenses for the Commercial Imaging segment decreased \$3 million, or 3%, from \$99 million in the nine months ended September 30, 2003 to \$96 million for the current year period, and decreased as a percentage of sales from 17.2% in the prior year period to 16.4% in the current year period.

## Research and Development Costs

R&D costs for the Commercial Imaging segment decreased \$9 million in the nine months ended September 30, 2004, or 50%, from \$18 million for the nine months ended September 30, 2003 to \$9 million for the current year period, and decreased as a percentage of sales from 3.1% in the prior year period to 1.5% in the current year period, primarily due to a decrease in investments in film development.

## 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 \$21 million, or 28%, from \$75 million in the nine months ended September 30, 2003 to \$96 million in the nine months ended September 30, 2004. This increase is primarily attributable to the reasons described 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 next two calendar years ending December 31, 2005, the Company will pay a maximum of \$150 million in cash. Additional payments may also be made if certain sales goals are met during a five-year period following the closing of the transaction. Total operational dilution of \$.30 to \$.35 per share is expected for full year 2004, with the acquisition becoming accretive by 2007. During the five months since closing, the NexPress-related entities contributed \$97 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 is expected to contribute approximately \$200 million to Graphic Communications segment sales in 2004, and will be slightly dilutive through the end of the year. Scitex Digital Printing now operates under the name Kodak Versamark, Inc. During the nine months ended September 30, 2004, Kodak Versamark contributed \$144 million in sales to the Graphic Communications segment.

## Worldwide Revenues

Net worldwide sales for the Graphic Communications segment were \$505 million for the nine months ended September 30, 2004 as compared with \$259 million for the prior year period, representing an increase of \$246 million, or 95% as reported, or an increase of 92% excluding the favorable impact of exchange. The increase in net sales was primarily due to the acquisition of Kodak Versamark and the NexPress-related entities, which contributed approximately \$241 million to net sales for the nine months ended September 30, 2004.

Net sales in the U.S. were \$238 million for the current year period as compared with \$116 million for the prior year period, representing an increase of \$122 million, or 105%. Net sales outside the U.S. were \$267 million in the nine months ended September 30, 2004 as compared with \$143 million for the prior year period, representing an increase of \$124 million, or 87% as reported, or an increase of 82% excluding the favorable impact of exchange.

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

Graphic Communications segment digital product sales are comprised of Kodak Versamark, the NexPress-related entities, and 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 graphics arts products to Kodak Polychrome Graphics (KPG), an unconsolidated joint venture affiliate in which the Company has a 50% ownership interest, were consistent for the current year period as compared with the nine months ended September 30, 2003. Increasing volumes were offset by negative price/mix primarily attributable to graphic arts products.

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.

## **Gross Profit**

Gross profit for the Graphic Communications segment was \$91 million for the nine months ended September 30, 2004 as compared with \$44 million in the prior year period, representing an increase of \$47 million, or 107%. The gross profit margin was 18.0% in the current year period as compared with 17.0% in the prior year period. The increase in the gross profit margin of 1.0 percentage point was primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which contributed 13.0 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 in the first three quarters of 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 14.6 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 10.4 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 1.0 percentage points, and (3) negative price/mix of 0.6 percentage points.

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

SG&A expenses for the Graphic Communications segment were \$111 million for the nine months ended September 30, 2004 as compared with \$23 million in the prior year period, representing an increase of \$88 million, or 383%, and increased as a percentage of sales from 8.9% in the prior year period to 22.0% in the current year period. The increase in SG&A expenses is primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which together accounted for \$82 million of SG&A expenses in the current year period.

## **Research and Development Costs**

R&D costs for the Graphic Communications segment increased \$61 million, or 359%, from \$17 million for the nine months ended September 30, 2003 to \$78 million for the current period, and increased as a percentage of sales from 6.6% in the prior year period to 15.4% in the current year period. The increase was primarily attributable to the acquisitions of Kodak Versamark and the NexPress-related entities, which together accounted for \$62 million of R&D in the current period, which 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**

Earnings (loss) from continuing operations before interest, other income (charges), net, and income taxes for the Graphic Communications segment decreased \$103 million from earnings of \$5 million in the nine months ended September 30, 2003 to a loss of \$98 million in the nine months ended September 30, 2004. This decrease is primarily attributable to the acquisition of the NexPress-related entities on May 1, 2004, the purchase of Scitex Digital Printing (now Kodak Versamark) on January 5, 2004, and the other factors described above. As noted above, total operational dilution of \$.30 to \$.35 per share is expected from the NexPress-related entities for full year 2004, with the acquisition becoming accretive by 2007, and Kodak Versamark is expected to be slightly dilutive through the end of the year 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 the nine months ended September 30, 2004.

#### **ALL OTHER**

Net worldwide sales for All Other were \$83 million for the nine months ended September 30, 2004 as compared with \$70 million for the nine months ended September 30, 2003, representing an increase of \$13 million, or 19%. Net sales in the U.S. were \$41 million for the nine months ended September 30, 2004 as compared with \$33 million for the prior year period, representing an increase of \$8 million, or 24%. Net sales outside the U.S. were \$42 million in the nine months ended September 30, 2004 as compared with \$37 million in the prior year period, representing an increase of \$5 million, or 14%.

SK Display Corporation, the OLED manufacturing joint venture between Kodak and Sanyo, continues to focus on improving manufacturing yields and process engineering.

The loss from continuing operations before interest, other income (charges), net, and income taxes for All Other was \$110 million in the current year period as compared with a loss of \$56 million in the nine months ended September 30, 2003, primarily driven by increased levels of investment for the Company's inkjet development and display programs.

#### **RESULTS OF OPERATIONS - DISCONTINUED OPERATIONS**

Earnings from discontinued operations for the nine months ended September 30, 2004 were \$1.59 per basic and diluted share primarily relating to the sale of Kodak's Remote Sensing Systems business, which contributed \$457 million to earnings from discontinued operations, including the after-tax gain on the sale of \$434 million. Earnings from discontinued operations for the nine months ended September 30, 2003 were \$.13 per basic and diluted share and were primarily related to the reversal of a \$15 million tax reserve resulting from the elimination of the uncertainty surrounding the realizability of certain tax benefits and \$22 million of post-tax earnings from Kodak's Remote Sensing Systems business.

#### **NET EARNINGS**

Net earnings for the nine months ended September 30, 2004 were \$661 million, or \$2.31 per basic and diluted share, as compared with net earnings for the nine months ended September 30, 2003 of \$246 million, or \$.86 per basic and diluted share, representing an increase of \$415 million, or 169%. This increase is primarily attributable to the reasons outlined above.

#### **RESTRUCTURING COSTS AND OTHER**

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 when 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 the third quarter of 2004:

(in millions)	Balance June 30, 2004	Costs Incurred	Reversals	Cash Payments	Non-cash Settlements	Reclass to Long- Term Liability	Balance Sept. 30, 2004
<b>2004-2006 Program:</b>							
Severance reserve	\$ 86	\$ 186	\$ —	\$ (32)	\$ —	\$ —	\$ 240
Exit costs reserve	6	20	(1)	(14)	—	(5)	6
<b>Total reserve</b>	<b>\$ 92</b>	<b>\$ 206</b>	<b>\$ (1)</b>	<b>\$ (46)</b>	<b>\$ —</b>	<b>\$ (5)</b>	<b>\$ 246</b>
<b>Long-lived asset impairments and inventory write-downs</b>							
Accelerated depreciation	—	31	—	—	(31)	—	—
<b>Q3 2003 Program:</b>							
Severance reserve	\$ 85	\$ —	\$ (2)	\$ (25)	\$ —	\$ —	\$ 58
Exit costs reserve	10	—	—	(2)	—	—	8
<b>Total reserve</b>	<b>\$ 95</b>	<b>\$ —</b>	<b>\$ (2)</b>	<b>\$ (27)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 66</b>
Accelerated depreciation	\$ —	\$ 3	\$ —	\$ —	\$ (3)	\$ —	\$ —
<b>Q1 2003 Program:</b>							
Severance reserve	\$ 9	\$ —	\$ —	\$ (1)	\$ —	\$ —	\$ 8
Exit costs reserve	1	—	—	(1)	—	—	—
<b>Total reserve</b>	<b>\$ 10</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ (2)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 8</b>
<b>Phoenix Program:</b>							
Exit costs reserve	\$ 3	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 3
<b>Q4 2002 Program:</b>							
Severance reserve	\$ 4	\$ —	\$ —	\$ (2)	\$ —	\$ —	\$ 2
Exit costs reserve	3	—	—	(1)	—	—	2
<b>Total reserve</b>	<b>\$ 7</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ (3)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 4</b>
<b>2001 Programs:</b>							
Severance reserve	\$ 3	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 3
Exit costs reserve	12	—	—	(1)	—	—	11
<b>Total reserve</b>	<b>\$ 15</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ (1)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 14</b>
<b>Total of all restructuring programs</b>	<b>\$ 222</b>	<b>\$ 267</b>	<b>\$ (3)</b>	<b>\$ (79)</b>	<b>\$ (61)</b>	<b>\$ (5)</b>	<b>\$ 341</b>

The costs incurred, net of reversals, which total \$264 million and \$502 million for the three and nine months ended September 30, 2004, respectively, include \$37 million and \$93 million of charges related to accelerated depreciation and inventory write-downs, which were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. The remaining costs incurred, net of reversals, of \$227 million and \$409 million were reported as restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively.

## 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 plans to develop and execute a new 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 \$1,000 million 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 the second quarter of 2004. As a result of these actions, the Company recorded charges of \$144 million in the second quarter, which was composed of severance, long-lived asset impairments, exit costs and inventory write-downs of \$98 million, \$27 million, \$17 million and \$2 million, respectively. The severance costs related to the elimination of approximately 2,700 positions, including approximately 1,350 photofinishing, 925 manufacturing, 275 research and development and 150 administrative positions. The geographic composition of the positions to be eliminated includes approximately 2,250 in the United States and Canada and 450 throughout the rest of the world. The reduction of the 2,700 positions and the \$115 million charges for severance and exit costs are reflected in the 2004-2006 Restructuring Program table below. The \$27 million charge for long-lived asset impairments was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 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 nine months ended September 30, 2004.

The Company implemented certain actions under this program during the third quarter of 2004. As a result of these actions, the Company recorded charges of \$233 million in the third quarter, which was composed of severance, long-lived asset impairments, exit costs and inventory write-downs of \$186 million, \$24 million, \$20 million and \$3 million, respectively. The severance costs related to the elimination of approximately 3,200 positions, including approximately 950 photofinishing, 1,800 manufacturing, 100 research and development and 350 administrative positions. The geographic composition of the positions to be eliminated includes approximately 775 in the United States and Canada and 2,425 throughout the rest of the world. The reduction of the 3,200 positions and the \$206 million charges for severance and exit costs are reflected in the 2004-2006 Restructuring Program table below. The \$24 million charge for long-lived asset impairments was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004. Included in the \$20 million charge taken for exit costs in the third quarter was a \$5 million charge for environmental remediation associated with the closure of the manufacturing facility in Coburg, Australia that was announced during the quarter. The liability related to this charge has been reflected in other long-term liabilities in the accompanying Consolidated Statement of Financial Position and is disclosed in Note 6, "Commitments and Contingencies" under "Environmental." The charges taken for inventory write-downs of \$3 million were reported in cost of goods sold in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004.

The following table summarizes the activity with respect to the severance charges and exit costs 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 September 30, 2004:

(dollars in millions)

	Number of Employees	Severance Reserve	Exit Costs Reserve	Total
Q2, 2004 charges	2,700	\$ 98	\$ 17	\$ 115
Q2, 2004 utilization	(800)	(12)	(11)	(23)
Balance at 6/30/04	1,900	86	6	92
Q3, 2004 charges	3,200	186	20	206
Q3, 2004 reversal	—	—	(1)	(1)
Q3, 2004 utilization	(2,075)	(32)	(14)	(46)
Q3, 2004 reclass	—	—	(5)	(5)
Balance at 9/30/04	3,025	\$ 240	\$ 6	\$ 246

The severance charges of \$186 million and \$284 million were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. The exit costs of \$20 million and \$37 million were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. Included in the \$20 million charge taken for exit costs in the third quarter was a \$5 million charge for environmental remediation associated with the closure of the manufacturing facility in Coburg, Australia that was announced during the third quarter. The liability related to this charge has been reported in other long-term liabilities in the accompanying Consolidated Statement of Financial Position and is disclosed in Note 6, "Commitments and Contingencies" under "Environmental." The severance costs and exit costs require the outlay of cash, while the long-lived asset impairments and inventory write-downs represent non-cash items. During the second and third quarters of 2004, the Company made \$44 million of severance payments and \$25 million of exit costs payments related to the 2004-2006 Restructuring Program. The \$1 million reversal recorded in the third quarter of 2004 resulted from the settlement of a lease obligation at a lower cost than originally anticipated and is included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004. As a result of the initiatives already implemented under the 2004-2006 Restructuring Program, severance payments will be paid during periods through 2006 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 are expected to be 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 \$31 million and \$56 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. Accelerated depreciation represents a non-cash item. The third quarter amount of \$31 million relates to \$12 million of photofinishing facilities and equipment, \$18 million of manufacturing facilities and equipment, and \$1 million of administrative facilities and equipment that will be used until their abandonment. The year-to-date amount of \$56 million relates to \$26 million of photofinishing facilities and equipment, \$29 million of manufacturing facilities and equipment, and \$1 million of administrative facilities and equipment that will be used until their abandonment. The Company will incur accelerated depreciation charges of approximately \$82 million in the fourth quarter of 2004 as a result of the initiatives already implemented under the 2004-2006 Restructuring Program.

The charges of \$264 million recorded in the third quarter included \$97 million applicable to the D&FIS segment, \$3 million applicable to the Health Imaging segment, \$3 million applicable to the Graphics Communication segment and \$1 million applicable to the Commercial Imaging segment. The balance of \$160 million was applicable to manufacturing, research and development, and administrative functions, which are shared across all segments. The year-to-date charges of \$433 million included \$195 million applicable to the D&FIS segment, \$5 million applicable to the Health Imaging segment, \$3 million applicable to the Graphics Communications segment, and \$1 million applicable to the Commercial Imaging segment. The balance of \$229 million was applicable to manufacturing, research and development, and administrative functions, which are shared across all segments.



On July 21, 2004, the Company announced that it is accelerating the cost reduction program announced in January 2004. At that time, the Company said it would reduce employment by a range of 12,000 to 15,000 worldwide through 2006, with reductions of 2,500 to 3,500 occurring in 2004. Under the January program, the Company has already reduced employment by 5,900 positions through the third quarter, and plans an additional reduction of 700 to 1,000 positions for the balance of the year. These actions will result in charges this year of \$325 million to \$350 million.

### 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 the first quarter of 2004. As a result of these actions, the Company recorded charges of \$56 million in the first quarter of 2004, which was composed of severance, exit costs, long-lived asset impairments and inventory write-downs of \$43 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 \$50 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 nine months ended September 30, 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 nine months ended September 30, 2004.

The following table summarizes the activity with respect to the severance charges and exit costs 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 September 30, 2004:

	Number of Employees	Severance Reserve	Exit Costs Reserve	Total
Q3, 2003 charges	1,700	\$ 123	\$ —	\$ 123
Q3, 2003 utilization	(100)	(3)	—	(3)
Balance at 9/30/03	1,600	120	—	120
Q4, 2003 charges	2,150	108	40	148
Q4, 2003 utilization	(2,025)	(48)	(28)	(76)
Balance at 12/31/03	1,725	180	12	192
Q1, 2004 charges	2,000	43	7	50
Q1, 2004 reversal	—	(2)	—	(2)
Q1, 2004 utilization	(2,075)	(72)	(5)	(77)
Balance at 3/31/04	1,650	149	14	163
Q2, 2004 reversal	—	(2)	(2)	(4)
Q2, 2004 utilization	(1,375)	(62)	(2)	(64)
Balance at 6/30/04	275	85	10	95
Q3, 2004 reversal	—	(2)	—	(2)
Q3, 2004 utilization	(225)	(25)	(2)	(27)
Balance at 9/30/04	50	\$ 58	\$ 8	\$ 66

The severance charges of \$43 million and the exit costs of \$7 million taken in the first quarter of 2004 were reported in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004. The severance costs and exit costs require the outlay of cash. The Company made \$159 million of severance payments and \$9 million of exit cost payments related to the Third Quarter, 2003 Restructuring Program during the first three quarters of 2004. In addition, the Company reversed \$2 million of severance reserves during the third quarter of 2004, for a total of \$6 million for the first three quarters of 2004, as severance payments to terminated employees were less than originally estimated. Accordingly, severance reserve reversals of \$2 million and \$6 million were recorded in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. During the nine months ended September 30, 2004, \$2 million of exit costs reserves were reversed as the Company was able to settle a lease obligation for an amount that was less than originally estimated. This reversal was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004. The remaining severance payments relating to initiatives already implemented under the Third Quarter, 2003 Restructuring Program will be paid during periods through 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 are expected to be 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 \$3 million and \$23 million of accelerated depreciation on long-lived assets in cost of goods sold in the accompanying Consolidated Statement of Earnings for the three and nine months ended September 30, 2004, respectively. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. Accelerated depreciation represents a non-cash item. The third quarter amount of \$3 million relates to manufacturing facilities and equipment that will be used until their abandonment. The year-to-date amount of \$23 million relates to \$16 million of manufacturing facilities and equipment and \$7 million of photofinishing facilities and equipment that will be used until their abandonment. The Company will incur accelerated depreciation charges of approximately \$1 million in the fourth quarter of 2004, as a result of the initiatives already implemented under the Third Quarter, 2003 Restructuring Program.

The charges of \$3 million recorded in the third quarter are applicable to manufacturing functions, which are shared across all segments. The year-to-date charges of \$79 million included \$45 million applicable to the D&FIS segment, \$6 million applicable to the Health Imaging segment and \$1 million applicable to the Commercial Imaging segment. The balance of \$27 million was applicable to manufacturing, research and development, and administrative functions, as well as curtailment gains and losses, 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 50 positions to be eliminated under the Third Quarter, 2003 Restructuring Program are expected to be completed during 2004. The Company expects the cost savings as a result of all actions contemplated under the Third Quarter, 2003 Restructuring Program to be \$275 million to \$300 million in 2004, with annual savings of \$325 million to \$350 million 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 severance and exit costs 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 September 30, 2004:

(dollars in millions)

	Number of Employees	Severance Reserve	Exit Costs Reserve	Total
Q1, 2003 charges	425	\$ 28	\$ —	\$ 28
Q1, 2003 utilization	(150)	(2)	—	(2)
Balance at 3/31/03	275	26	—	26
Q2, 2003 charges	500	20	4	24
Q2, 2003 utilization	(500)	(13)	—	(13)
Balance at 6/30/03	275	33	4	37
Q3, 2003 charges	925	19	4	23
Q3, 2003 utilization	(400)	(12)	(1)	(13)
Balance at 9/30/03	800	40	7	47
Q4, 2003 utilization	(625)	(17)	(3)	(20)
Balance at 12/31/03	175	23	4	27
Q1, 2004 reversal	—	(1)	—	(1)
Q1, 2004 utilization	(150)	(11)	(3)	(14)
Balance at 3/31/04	25	11	1	12
Q2, 2004 utilization	—	(2)	—	(2)
Balance at 6/30/04	25	9	1	10
Q3, 2004 utilization	(25)	(1)	(1)	(2)
Balance at 9/30/04	0	\$ 8	\$ 0	\$ 8

The severance and exit costs require the outlay of cash. During the first three quarters of 2004, the Company made severance payments of \$14 million, and exit cost payments of \$4 million related to the First Quarter, 2003 Restructuring Program. In addition, the Company reversed \$1 million of excess severance reserves. This reversal was included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004. The remaining severance payments will be paid during periods through 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 nine months ended September 30, 2004. The accelerated depreciation relates to long-lived assets accounted for under the held and used model of SFAS No. 144. Accelerated depreciation represents a non-cash item. The year-to-date amount of \$7 million relates to lab equipment used in photofinishing that was used until its abandonment.

The total restructuring charges of \$7 million recorded in the nine months ended September 30, 2004, under the First Quarter, 2003 Restructuring Program were applicable to the D&FIS segment.

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.

### **Phogenix Restructuring Program**

The Company recorded \$17 million of charges in the second quarter of 2003 associated with the Company's exit from the D&FIS segment's Phogenix joint venture with Hewlett Packard. At September 30, 2004, the exit costs reserve, which represented the only cash portion of the charge, amounted to \$3 million. During the second quarter of 2004, the Company reversed \$3 million of exit costs reserves as a result of actual shutdown costs being lower than estimated. This reversal was included in the restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004. The remaining exit costs, which represent long-term lease payments, will be paid during 2004 and beyond.

### **Fourth Quarter, 2002 Restructuring Program**

At September 30, 2004, the Company had remaining severance and exit costs reserves of \$2 million and \$2 million, respectively, relating to the planned Program of focused cost reduction initiatives it announced during the Fourth Quarter of 2002. All actions anticipated under this Program were completed by the end of the third quarter of 2003 and resulted in the elimination of a total of 1,825 positions.

The severance and exit costs require the outlay of cash. During the first three quarters of 2004, approximately \$10 million of severance payments were made under the Fourth Quarter, 2002 Restructuring Program. During the first three quarters of 2004, approximately \$2 million of exit cost payments were made under the Fourth Quarter, 2002 Restructuring Program. In addition, approximately \$4 million of excess exit costs reserves were reversed and included in restructuring costs and other in the accompanying Consolidated Statement of Earnings for the nine months ended September 30, 2004, as the cost to shut down facilities was less than originally estimated. The remaining severance payments will be paid during periods through 2005 since, in many instances, the employees whose positions were eliminated could elect or were required to receive their severance payments over an extended period of time. Most of the remaining exit costs, which represent long-term lease payments, will be paid during 2004 and beyond.

### **LIQUIDITY AND CAPITAL RESOURCES**

The Company believes that its cash flow from operations will be sufficient to cover its working capital and capital investment needs and the funds required for future debt reduction 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 decreased \$137 million, from \$1,250 million at December 31, 2003 to \$1,113 million at September 30, 2004. The decrease resulted primarily from \$655 million of net cash used in financing activities. This was offset by \$466 million of net cash provided by operating activities, and \$55 million of net cash provided by investing activities.

The net cash provided by operating activities of \$466 million was mainly attributable to the Company's net earnings for the nine months ended September 30, 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 an increase in receivables of \$78 million, an increase in inventories of \$244 million, discussed below, and a decrease in liabilities excluding borrowings of \$43 million due to a decrease in accounts payable and other current liabilities, excluding those liabilities assumed from the 2004 acquisitions of NexPress, Algotec and Versamark, and the minority investment in Lucky Film. The increase in receivables is primarily attributable to increased sales in the month of September 2004 compared with September 2003 related to sales of digital products. The decrease in accounts payable and other current liabilities is consistent with the fact that there was a decrease in liabilities excluding borrowings of \$63 million for the nine months ended September 30, 2003, as the Company's accounts payable and other current liabilities balance is historically the highest at year end. The net cash used in investing activities from continuing operations of \$653 million was utilized primarily for capital expenditures of \$283 million, business acquisitions of \$358 million and investments in unconsolidated affiliates of \$31 million. The net cash used in financing activities of \$655 million was the result of debt repayments exceeding new borrowings as well as dividend payments for the nine months ended September 30, 2004.

Working capital increased to \$590 million from \$205 million at year-end 2003. This increase is mainly attributable to higher inventory balances resulting from (1) volume increases related to sales of digital products and (2) the inventory build in anticipation of fourth quarter sales. In addition to the increase in inventories, the Company has significantly reduced its use of the commercial paper (short-term debt) market in managing its working capital to fund its operating and investing activities.

The Company maintains \$2,399 million in committed bank lines of credit and \$1,690 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 (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 estimated future uses of cash for 2004 include debt reductions and dividend payments. 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 will be paid on December 14, 2004.

Capital additions were \$283 million in the nine months ended September 30, 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 2004, the Company expects its capital spending, excluding acquisitions, to be in the range of \$450 million to \$500 million.

During the nine months ended September 30, 2004, the Company expended \$275 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 financial covenant that requires the Company to maintain a debt to EBITDA (earnings before interest, income taxes, depreciation and amortization) ratio 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 September 30, 2004. The Company does not anticipate that a violation is likely to occur.

The Company has other committed and uncommitted lines of credit at September 30, 2004 totaling \$174 million and \$1,690 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 September 30, 2004 were \$60 million and \$193 million, respectively. These outstanding borrowings are reflected in the short-term borrowings and long-term debt, net of current portion balances in the accompanying Consolidated Statement of Financial Position at September 30, 2004.

At September 30, 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 September 30, 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.

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. 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 September 30, 2004, the Company 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 addition, as the contingencies surrounding the conversion features are substantive, the shares to be potentially issued upon triggering a conversion event will be excluded from the earnings per share calculation until such time as a contingency lapses and the effect of issuing such shares is dilutive. If and when a contingency lapses and the effect of issuing such shares is dilutive, then the shares issued would be included in the denominator of the earnings per share calculation, and the interest expense incurred on the Convertible Securities would be excluded from the numerator of the earnings per share calculation for the respective period.

The Company's debt ratings from each of the three major rating agencies did not change during the nine months ended September 30, 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 September 30, 2004 were as follows:

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

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. S&P will meet with management to complete a full assessment and may revise their ratings for the Company.

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 S&P or Moody's were to fall below BB and Ba2, 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 \$141 million in relation to these matters 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.

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 8, the Company incurred curtailment gains and losses with respect to certain of its retirement plans in the first three quarters of 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 a net of \$37 million during the first three quarters of 2004. This increase is reflected in the postretirement liabilities component within the accompanying Consolidated Statement of Financial Position as of September 30, 2004. The net-of-tax amount of \$27 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 September 30, 2004. The related increase in the long-term deferred tax asset of \$10 million was reflected in the other long-term assets component within the accompanying Consolidated Statement of Financial Position as of September 30, 2004.

The Company made contributions (funded plans) or paid benefits (unfunded plans) totaling approximately \$98 million relating to its major U.S. and non-U.S. defined benefit pension plans in the first three quarters of 2004. The Company expects its contribution (funded plans) and benefit payment (unfunded plans) requirements for its major U.S. and non-U.S. defined benefit pension plans for the balance of 2004 to be approximately \$21 million.

The Company paid benefits totaling approximately \$203 million relating to its U.S., United Kingdom and Canada postretirement benefit plans in the first three quarters of 2004. The Company expects to pay benefits of \$61 million for its U.S., United Kingdom and Canada postretirement plans for the balance of 2004.

At September 30, 2004, the Company had outstanding letters of credit totaling \$121 million and surety bonds in the amount of \$111 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.

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

The Company guarantees debt and other obligations under agreements with certain affiliated companies and customers. At September 30, 2004, these guarantees totaled a maximum of \$357 million, with outstanding guaranteed amounts of \$136 million. The maximum guarantee amount includes guarantees of up to: \$160 million of debt for KPG (\$29 million outstanding); \$133 million of customer amounts due to banks in connection with various banks' financing of customers' purchase of products and equipment from Kodak (\$66 million outstanding); and \$64 million for other unconsolidated affiliates and third parties (\$41 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 October 2004 and December 2009. 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. Equipment financing activity where the Company has collateral is not material.

Management believes the likelihood is remote that material payments will be required under any of these guarantees described above. With respect to the guarantees that the Company issued in the three and nine months ended September 30, 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 \$435 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 \$220 million. These guarantees expire in 2004 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 September 30, 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 quarter ended September 30, 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 is collateralized solely by the long-term receivables purchased from Qualex and, in part, by a \$40 million guarantee from DCC. Qualex provides no guarantee or collateral to ESF's creditors in connection with the debt, and ESF's debt is 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 \$217 million at September 30, 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 bank. Under the amended RPA agreement, maximum borrowings were lowered to \$200 million. Total outstanding borrowings under the RPA at September 30, 2004 were \$188 million. The amended RPA extends through July 2005, at which time the RPA can be extended or terminated. 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.

## **OTHER**

At September 30, 2004, the Company's undiscounted accrued liabilities for environmental remediation costs amounted to \$142 million and 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 September 30, 2004, estimated future investigation and remediation costs of \$65 million are accrued for this site and are included in the \$142 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 \$44 million. At September 30, 2004, these costs are accrued and included in the \$142 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 September 30, 2004, estimated future remediation costs of \$33 million are accrued for these sites and are included in the \$142 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 \$17 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 September 30, 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 four 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 to the Company's financial position, results of operations or cash flows. 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 relating 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.

#### **RECENT ACCOUNTING PRONOUNCEMENTS**

In May 2004, the Financial Accounting Standards Board (FASB) issued FASB Staff Position (FSP) No. 106-2, "Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the "Act")." The Act, which was signed into law on December 8, 2003, authorizes Medicare to provide prescription drug benefits to retirees. Under the Act, the federal government will begin to make subsidy payments to employers that sponsor postretirement benefit plans under which retirees receive prescription drug benefits that are actuarially equivalent to the prescription drug benefits provided by Medicare. Accordingly, the FSP provides guidance on accounting for the effects of the subsidy. As of and for the year ended December 31, 2003 and the quarter ended March 31, 2004, the Company had deferred the recognition of the effects of the Act in accordance with FSP No. 106-1, "Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003," (that was issued in January 2004), which permitted employers to either (1) recognize the effects of the Act as of the enactment date or (2) defer recognition until the earlier of the FASB's issuance of final rules on how to account for the subsidy or any remeasurement of plan obligations after January 31, 2004 due to a plan amendment, curtailment, or other significant event. FSP 106-2 supersedes FSP 106-1. The provisions of FSP 106-2 are effective for the first interim or annual period beginning after June 15, 2004 (third quarter of 2004 for Kodak); however early adoption is encouraged. Accordingly, the Company adopted the provisions of FSP 106-2 effective April 1, 2004 (second quarter of 2004) on a prospective basis. The impacts of the adoption of FSP 106-2 are discussed in detail in Note 9, "Retirement Plans and Other Postretirement Benefits."

Emerging Issues Task Force (EITF) Issue No. 04-08, "The Effect of Contingently Convertible Debt on Diluted Earnings per Share," states that, if an instrument is convertible to equity securities if either a market or other contingency is satisfied, then the securities should be included in the diluted earnings per share computation (if dilutive) regardless of whether the market price trigger (or other contingent feature) has been met. The Company will adopt EITF No. 04-08 effective for periods ending after December 15, 2004 (fourth quarter) with restatement of prior periods presented, as required.

#### **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 reduction plans 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: transition from analog to digital imaging, implementation of the digitally-oriented growth strategy, including the related implementation of the recently announced three-year cost reduction program; implementation of the debt reduction plans; implementation of product strategies (including digital products, category expansion, digitization, and OLED displays); 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 and capital expenditures; integration of newly acquired businesses; improvement in receivables performance; 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; 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, geopolitical, 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.

### **Item 3. 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 foreign currency forward contracts using available forward rates, if the U.S. dollar had been 10% weaker at September 30, 2004 and 2003, the fair value of open forward contracts would have increased \$45 million and \$49 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 silver forward contracts using available forward prices, if available forward silver prices had been 10% lower at September 30, 2004 and 2003, the fair value of open forward contracts would have decreased \$1 million and \$4 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% higher (about 35 basis points) at September 30, 2004, the fair value of short-term and long-term borrowings would have decreased \$1 million and \$58 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% higher (about 38 basis points) at September 30, 2003, the fair value of short-term and long-term borrowings would have decreased \$1 million and \$15 million, respectively. The larger decrease in the fair value of long-term borrowings in 2004 as compared with 2003 was due to the increase in the amount of long-term borrowings as a result of the October 2003 issuances of \$500 million of 7.25% Senior Notes due 2013 and \$575 million of 3.375% Convertible Senior Notes due 2033.

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 September 30, 2004 was not significant to the Company.

#### **Item 4. Controls and Procedures**

Under the supervision of and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer, the Company conducted an evaluation of the effectiveness of the design and operation of its disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of the Company's disclosure controls and procedures were effective. There have been no significant changes in internal controls over financial reporting or in other factors that could significantly affect internal controls over financial reporting subsequent to the date of such evaluation.

## **Part II. OTHER INFORMATION**

#### **Item 1. Legal Proceedings**

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.

#### **Item 6. Exhibits**

Exhibits and financial statement schedules required as part of this report are listed in the index appearing on page 71.

**SIGNATURES**

Pursuant to the requirements 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)

Date: November 9, 2004

/s/ RICHARD G. BROWN, JR.

---

**Richard G. Brown, Jr.**  
**Controller**

**Eastman Kodak Company**  
**Index to Exhibits and Financial Statement Schedules**

**Exhibit  
Number**

---

- (10)H. Stock and Asset Purchase Agreement by and between Eastman Kodak Company and ITT Industries, Inc. dated February 8, 2004.
- (10)R. Eastman Kodak Company 2000 Omnibus Long-Term Compensation Plan, as amended effective as of November 12, 2001.  
(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, and the Annual Report on Form 10-K for the fiscal year ended December 31, 2001, Exhibit 10.)
- Administrative Guide for the \_\_\_\_\_ Grant under the 2000 Omnibus Long-Term Compensation Plan.
- Notice of Award of Non-Qualified Stock Options Granted To \_\_\_\_\_, Effective \_\_\_\_\_, Pursuant to the 2000 Omnibus Long-Term Compensation Plan.
- Notice of Award of Restricted Stock Granted To \_\_\_\_\_, Pursuant to the 2000 Omnibus Long-Term Compensation Plan.
- (12) Statement Re Computation of Ratio of Earnings to Fixed Charges.
- (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.

**STOCK AND ASSET PURCHASE AGREEMENT**

**by and between**

**EASTMAN KODAK COMPANY**

**and**

**ITT INDUSTRIES, INC.**

**Dated February 8, 2004**



## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE 1 DEFINITIONS AND USAGE</b>	<b>1</b>
1.1    Definitions	1
1.2    Usage	18
<b>ARTICLE 2 SALE AND TRANSFER OF ASSETS, LIABILITIES AND STOCK; CLOSING</b>	<b>19</b>
2.1    Assets to Be Sold	19
2.2    Excluded Assets	20
2.3    Liabilities	22
2.4    RSI Stock	24
2.5    Purchase Price; Closing	24
2.6    Allocation	25
2.7    Transfer Taxes	25
<b>ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER</b>	<b>26</b>
3.1    Organization and Good Standing	26
3.2    Authority; Enforceability; No Conflict	26
3.3    Capitalization and Ownership of Research Systems, Inc. and its Subsidiaries	27
3.4    Financial Statements	28
3.5    Sufficiency of Assets	28
3.6    Description of Owned Real Property	28
3.7    Description of Leased Real Property; Leases	29
3.8    Title to Assets; Encumbrances	29
3.9    Condition of Real Property	30
3.10   Condition of Personal Property	31
3.11   No Undisclosed Liabilities	31
3.12   Taxes	31
3.13   Employee Benefits	33
3.14   Compliance with Legal Requirements; Governmental Authorizations	34
3.15   Legal Proceedings; Orders	34
3.16   Absence of Certain Changes or Events	34
3.17   Contracts; No Defaults; Bids	35
3.18   Environmental Matters	37
3.19   Employees	39
3.20   Labor; Compliance	39
3.21   Brokers or Finders	40
3.22   Governmental Authorizations and Consents	40
3.23   Government Contracts	41
3.24   Certain Payments	42
3.25   Government Furnished Equipment	43
3.26   Material Suppliers	43

3.27	Classified Information	43
3.28	Export Control and Compliance	43
3.29	Business	43
3.30	Absence of Seller Marks	43
<b>ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER</b>		<b>43</b>
4.1	Organization and Good Standing	43
4.2	Authority; Enforceability; No Conflict	44
4.3	Certain Proceedings	44
4.4	Brokers or Finders	44
4.5	Sufficient Funds	45
4.6	Security Clearance	45
4.7	Governmental Authorizations and Consents	45
4.8	Buyer's Acknowledgment	45
<b>ARTICLE 5 COVENANTS OF SELLER</b>		<b>46</b>
5.1	Confidential Information	46
5.2	Operation of the Business of Seller	47
5.3	Noncompetition	49
5.4	Nonsolicitation	50
5.5	Real Estate Matters	51
5.6	Access	53
5.7	Tax Sharing Agreements	53
5.8	Intercompany Arrangements	53
5.9	Assistance with Environmental Permits	54
5.10	Transition Services	54
<b>ARTICLE 6 COVENANTS OF BUYER</b>		<b>54</b>
6.1	Confidentiality	54
6.2	Use of the Seller Marks	54
<b>ARTICLE 7 CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE</b>		<b>55</b>
7.1	Accuracy of Representations	55
7.2	Seller's Performance	56
7.3	Additional Documents	56
7.4	No Proceedings	57
7.5	Authorizations and Consents	57
7.6	Real Property	57
7.7	No Material Adverse Change	58
<b>ARTICLE 8 CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE</b>		<b>59</b>
8.1	Accuracy of Representations	59
8.2	Buyer's Performance	59
8.3	Additional Documents	59
8.4	No Proceedings	60
8.5	Authorizations and Consents	60

<b>ARTICLE 9 TERMINATION</b>		<b>60</b>
9.1	Termination Events	60
9.2	Effect of Termination	61
<b>ARTICLE 10 EMPLOYEES AND EMPLOYEE BENEFITS</b>		<b>61</b>
10.1	Employment	61
10.2	Employee Benefit Plans	62
10.3	Defined Benefit Plans	65
10.4	Forms W-2	69
<b>ARTICLE 11 INDEMNIFICATION; REMEDIES</b>		<b>69</b>
11.1	Survival	69
11.2	Indemnification and Reimbursement by Seller	70
11.3	Indemnification and Reimbursement by Buyer	71
11.4	Consequential or Punitive Damages	72
11.5	Limitations on Amount -- Seller	73
11.6	Indemnification Procedures	73
11.7	Indemnification with Respect to Retained Environmental Liabilities	75
11.8	Indemnity Claims Requiring Environmental Remediation	76
11.9	Sole Remedy	77
<b>ARTICLE 12 MUTUAL COVENANTS</b>		<b>78</b>
12.1	Antitrust and Competition Filings	78
12.2	Novations and Consents	78
12.3	Tax Matters	80
12.4	Bulk Sales	82
12.5	Update to Disclosure Schedules	82
12.6	Cooperation in Litigation and Audits	82
12.7	Retention of and Access to Records; Cooperation	83
12.8	FOS Agreement	84
12.9	Reasonable Efforts; Further Assurances	84
12.10	Ancillary Agreements	84
<b>ARTICLE 13 GENERAL PROVISIONS</b>		<b>84</b>
13.1	Expenses	84
13.2	Public Announcements	85
13.3	Notices	85
13.4	Disputes	86
13.5	Jurisdiction; Service of Process	86
13.6	Jury Trial Waiver	86
13.7	Specific Performance	87
13.8	Waiver	87
13.9	Entire Agreement and Modification	87
13.10	Disclosure Schedules	87
13.11	Assignments, Successors and No Third-Party Rights	87
13.12	Severability	88
13.13	Construction	88
13.14	Time of Essence	88
13.15	Governing Law	88
13.16	Execution of Agreement	88

## Exhibits

Exhibit 1.1(n)	Assignment and Assumption Agreement
Exhibit 1.1(s)	Bill of Sale
Exhibit 1.1(u)	Building 13 Land Lease Agreement: Summary of Significant Lease Terms
Exhibit 1.1(x)	Building 326 Lease Agreement
Exhibit 1.1(y)-1	Building 601 Interim Lease Agreement: Summary of Significant Lease Terms
Exhibit 1.1(z)	Building 601 Leaseback Agreement: Summary of Significant Lease Terms
Exhibit 1.1(bb)	Building 602 Land Lease Agreement: Summary of Significant Lease Terms
Exhibit 1.1(aaaa)	Hawkeye Lease and Facility Services Agreement
Exhibit 1.1(iiii)	Intellectual Property Agreement
Exhibit 1.1(tttt)	Term Sheet for Mathematical Foundations for Watermarking Subcontract
Exhibit 1.1(uuuu)-1	Term Sheet for Optical Services Agreement
Exhibit 1.1(oooo)	Rochester Airport Facility Sublease Agreement: Summary of Significant Lease Terms
Exhibit 1.1(pppp)	Rochester Technology Park Sublease Agreement: Summary of Significant Lease Terms
Exhibit 1.1(uuuuu)	RSS/AIM Services and Supply Agreement
Exhibit 1.1(kkkkkk)	Sensor Supply Agreement
Exhibit 1.1(lllll)-1	Storage Space Agreement: Summary of Significant License Terms
Exhibit 2.6	Allocation of Purchase Price
Exhibit 5.5(b)(ii)	Utility Services Agreement: Summary of Significant Terms
Exhibit 5.5(b)(iii)	Sanitary Sewer Agreement
Exhibit 7.3(g)	Assignment and Assumption of Lease

## Schedules

Schedule 1.1(f)	Employee Benefit Plans (Health and Dental)
Schedule 1.1(gg)(i)	Shared Employees
Schedule 1.1(gg)(iii)	Job Requisitions
Schedule 1.1(ttt)	Former Business Employees
Schedule 1.1(llll)	Seller's Knowledge Persons
Schedule 1.1(mmmm)	Buyer's Knowledge Persons
Schedule 2.1(i)	Governmental Authorizations to be Transferred
Schedule 2.2(j)	Excluded Governmental Authorizations
Schedule 2.2(n)	Other Excluded Assets
Schedule 2.3(a)(iv)	Employment Liabilities
Schedule 2.3(a)(ix)	Other Assumed Liabilities

Schedule 3.1	States in which Research Systems, Inc. is qualified to do business
Schedule 3.2(b)	Seller's Conflicts
Schedule 3.3(d)	Capitalization of RSI Subsidiaries
Schedule 3.4-A	Financial Statements
Schedule 3.4-B	Accounting Principles
Schedule 3.6	Description of Owned Real Property
Schedule 3.7	Description of Leased Real Property
Schedule 3.8(a)	Real Property Encumbrances
Schedule 3.8(b)	Other Property Encumbrances
Schedule 3.9(a)	Proceedings Affecting Transferred Real Property
Schedule 3.10(a)	Tangible Personal Property not in Seller's Possession
Schedule 3.11	Other Liabilities
Schedule 3.12	RSI Tax Encumbrances
Schedule 3.13(a)	Material Employee Benefit Plans
Schedule 3.13(f)	Contemplated Transaction Payments
Schedule 3.14(a)	Compliance with Legal Requirements
Schedule 3.15	Legal Proceedings
Schedule 3.16(a)	Material Adverse Effects
Schedule 3.16(b)	Actions Outside the Ordinary Course of Business
Schedule 3.17(a)	Material Business Contracts
Schedule 3.17(b)	Compliance with Business Contracts
Schedule 3.17(c)	Bids
Schedule 3.18	Environmental Matters
Schedule 3.19(a)	Business Employees' Compensation
Schedule 3.19(b)	Former Business Employees and Dependents who receive or are entitled to receive Post-Employment Welfare Benefits
Schedule 3.22(f)	Seller's Required Consents
Schedule 3.23(a)	Government/Business Contracts Exceptions
Schedule 3.23(b)	Government/Business Contracts Investigation, Indictments and Audits
Schedule 3.23(c)	Suspension or Debarment
Schedule 3.25	Government Furnished Equipment
Schedule 3.26	Material Suppliers
Schedule 4.2(b)	Buyer's Conflicts
Schedule 4.7(f)	Buyer's Required Consents
Schedule 5.2(g)	Exceptions to Transfer of Property
Schedule 5.2(j)	Exceptions to Modifications of Material Business Contracts
Schedule 5.2(o)	Exception to Research Systems, Inc. Tax Elections
Schedule 7.5(b)	Consents Required as Conditions to Buyer's Obligations
Schedule 8.5(b)	Consents Required as Conditions to Seller's Obligations

## STOCK AND ASSET PURCHASE AGREEMENT

This Stock and Asset Purchase Agreement ("Agreement") is dated February 8, 2004, by and between Eastman Kodak Company, a New Jersey corporation ("Seller") and ITT Industries, Inc., an Indiana corporation ("Buyer") (Seller and Buyer are referred to herein each individually as a "Party" and collectively as the "Parties").

## RECITALS

WHEREAS, Seller is engaged in the Business (as defined below); and

WHEREAS, Seller desires to sell and convey, and Buyer desires to purchase and acquire, certain of the assets, properties and rights of Seller used in the Business, and all of the stock of Research Systems, Inc., a Colorado corporation and a wholly-owned subsidiary of Seller, for the consideration and on the terms set forth in this Agreement, including the assumption by Buyer of certain of the liabilities and obligations of Seller relating to the Business.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1  
DEFINITIONS AND USAGE

1.1 **Definitions.** For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

(a) "2002 Balance Sheet" shall have the meaning set forth in Section 3.4(a).

(b) "2003 Balance Sheet" shall have the meaning set forth in Section 3.4(a).

(c) "Accounts Receivable" shall mean (i) all accounts receivable and other rights to payment of Seller (but only to the extent arising in connection with the operation of the Business) or RSI, and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers, including unbilled amounts for contract work in progress, and (ii) any claim, remedy or other right related to any of the foregoing.

(d) "Accrued Bonus Payments" shall mean the aggregate amount of all annual bonus payments accrued as of the Closing on the books and records of the Business, which amount represents a pro-rated portion (as described in the following sentence) of the annual incentive payment that would otherwise be payable to each Acquired Employee under the Kodak Executive Compensation for Excellence and Leadership Plan, as amended and restated effective January 1, 2002 and/or the Kodak United States Employee Recognition Plan, as revised on October 14, 2002, and Kodak Wage Dividend Plan, as applicable, in respect of the year in which the Closing Date occurs. Such accrued amount shall be determined based on Seller's reasonable, good faith determination, consistent with past practice, as to the relative achievement, as of the Closing Date, of the performance goals to be achieved under such plans upon the completion of such year, pro rated based on a fraction, the numerator of which will be equal to the number of days between January 1, 2004 and the Closing Date, and the denominator of which will equal to 365.

(e) “Acquired Employees” shall mean Business Employees who accept an offer of employment from Buyer as provided in Section 10.1(a).

(f) “Active Welfare Benefits” shall mean any health or dental benefits to be provided to any Acquired Employee or RSI Current Employee or any respective Dependent thereof under any Employee Benefit Plan identified on Schedule 1.1(f).

(g) “Affiliate” shall mean, as to any specified Person at any time, any other Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. For purposes of this definition, “control” (including “controlling,” “controlled by,” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise including, ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person, and shall be construed as such term is used in the rules promulgated under the Securities Act. Without limiting the generality of the foregoing, a Person shall be deemed to control any other Person in which it owns, directly or indirectly, a majority of the voting interests.

(h) “Affiliate Plan” shall mean each Employee Benefit Plan that is sponsored, maintained, or contributed to by RSI and that covers employees and former employees of RSI.

(i) “Allocation” shall have the meaning set forth in Section 2.6.

(j) “Ancillary Agreements” shall mean (i) the Assignment and Assumption Agreement, (ii) the Bill of Sale, (iii) the Building 13 Land Lease Agreement, (iv) the Building 326 Lease Agreement, (v) the Building 601 Leaseback Agreement, (vi) the Building 602 Land Lease Agreement, (vii) the Hawkeye Lease and Facility Services Agreement, (viii) the Intellectual Property Agreement, (ix) the Mathematical Foundations for Watermarking Subcontract, (x) the Rochester Airport Facility Sublease Agreement, (xi) the Rochester Technology Park Sublease Agreement, (xii) the RSS/AIM Services and Supply Agreement, (xiii) the Sanitary Sewer Agreement, (xiv) the Sensor Supply Agreement, (xv) the Utility Services Agreement, (xvi) the Building 601 Interim Lease Agreement, (xvii) the Storage Space License Agreement, (xviii) the Optical Services Agreement, (xix) the Transition Services Agreement, and (xx) the Employee Services Agreement (if requested by Buyer pursuant to Section 12.7(b)).

(k) “Assets” shall have the meaning set forth in Section 2.1.

- (l) “Assigned Intellectual Property” shall have the meaning set forth in the Intellectual Property Agreement.
- (m) “Assigned Marks” shall have the meaning set forth in the Intellectual Property Agreement.
- (n) “Assignment and Assumption Agreement” shall mean the assignment and assumption agreement substantially in the form of Exhibit 1.1(n).
- (o) “Assumed Pre-Closing Taxes” shall have the meaning set forth in Section 2.3(a)(iii).
- (p) “Assumed Liabilities” shall have the meaning set forth in Section 2.3(a).
- (q) “Balance Sheets” shall have the meaning set forth in Section 3.4(a).
- (q)-1 “Baseline Environmental Assessment” shall mean:

(i) for the Building 101 Facility, and the Building 601 Facility, an investigation by an independent environmental consultant mutually satisfactory to Buyer and Seller, the scope of which shall be proposed by Buyer in a written work plan developed in consultation with, and subject to the approval (not to be unreasonably withheld or delayed) of Seller, and the purpose of which is to develop a reasonable understanding of environmental conditions, including soil and groundwater, as they exist approximately as of the Closing Date, by sampling and analysis. Seller shall assist Buyer as necessary with information and access to properties and personnel so that Buyer or Buyer’s representative may develop work plans for the baseline environmental assessments for the Building 101 Facility and the Building 601 Facility, and Seller shall cooperate in reviewing and reasonably approving such work plans, so that these Baseline Environmental Assessments may be undertaken approximately as of the Closing, subject to reasonable timing adjustments in light of climate conditions. Buyer will promptly provide to Seller a copy of the final reports. Buyer is responsible for all costs associated with the performance of these baseline environmental assessments, and Buyer shall indemnify, defend, save and hold harmless the Seller Indemnified Persons from any Damages arising from the conduct of Buyer’s contractor in performance of the work plans; and

(ii) for the Hawkeye Plant, an investigation by an independent environmental consultant mutually satisfactory to Buyer and Seller, the scope of which shall be proposed by Seller in a written work plan developed in consultation with, and subject to the approval (not to be unreasonably withheld or delayed) of the Buyer, and the purpose of which is to develop a reasonable understanding of environmental conditions, including soil and groundwater, as they exist approximately as of the Closing Date, by sampling and analysis. Buyer shall cooperate in reviewing and reasonably approving such work plans, so that the Baseline Environmental Assessment for the Hawkeye Plant may be undertaken approximately as of the Closing, subject to reasonable timing adjustments in light of climate conditions. Seller will promptly provide to Buyer a copy of the final report. Costs associated with the baseline environmental assessment of the Hawkeye Plant will be split 50/50 between the Seller and Buyer. Seller shall indemnify, defend, save, and hold harmless the Buyer Indemnified Parties from any Damages arising from the conduct of Seller’s contractor in the performance of the work plan.



The scope of work, including sampling, will be an effort to document existing environmental conditions of site media including soil, surface water, sediment, ground water, and soil vapor at or about the time of the Closing. In selecting sample locations, the location of potential current and historic sources of contamination identified in the course of developing a sampling plan, and the locations of existing groundwater monitoring wells (if any), will be considered, as well as mutually acceptable up-gradient/background and down-gradient locations. Such sampling is intended to reasonably document environmental conditions in site media (such as geologic units, groundwater zones, and surface water bodies) that have been impacted by historic or current operations on or off the site, although it is recognized that sampling will not be comprehensive and cannot definitively describe site conditions. All sampling will be completed promptly, weather permitting, using methods that are acceptable to the New York State Department of Environmental Conservation. Should environmental impacts be identified, Buyer and Seller will mutually agree on the need for further site investigations, including additional sampling, to further document the source, nature, and extent of contamination. The site investigations will also attempt to document contaminant migration pathways and potential receptors. Site investigations will be completed using methods that are acceptable to the New York State Department of Environmental Conservation.

(r) “Bids” shall mean all proposals, offers, bids and quotations made by Seller, primarily in connection with the Business, or by RSI, in each case to the extent legally binding on Seller or RSI, as applicable.

(s) “Bill of Sale” shall mean a bill of sale substantially in the form of Exhibit 1.1(s).

(s)-1 “Building 12” shall mean the building known as Building 12 in Seller’s manufacturing complex known as Kodak Park, located in Rochester, New York.

(t) “Building 13” shall mean the building known as Building 13, which is located entirely within the subdivided boundaries of the land pertaining to the property known as the Building 101 Facility, which Building 13 is being retained by Seller together with the fixtures and other equipment affixed to such building, but shall not include the land upon which such building is located.

(u) “Building 13 Land Lease Agreement” shall mean the leaseback agreement between Seller, as tenant, and Buyer, as landlord, to be negotiated in good faith by Seller and Buyer between the date of this Agreement and Closing in accordance with the material terms set forth on Exhibit 1.1(u), with respect to (i) that portion of the land included in the Building 101 Facility on which Building 13 is located and (ii) the land reasonably necessary to access Building 13.

(v) “Building 101 Facility” shall mean the real property and improvements located in the Town of Gates, New York as more particularly described in Schedule 3.6, but specifically excluding Building 13 therefrom.

(w) “Building 326” shall mean the building known as Building 326 in Seller’s manufacturing complex known as Kodak Park, located in Rochester, New York, as more particularly described in Schedule 3.6.

(x) “Building 326 Lease Agreement” shall mean the lease agreement between Buyer, as tenant, and Seller, as landlord, substantially in the form of Exhibit 1.1(x), with respect to a portion of the space in Building 326.

(x)-1 “Building 508” shall mean the building known as Building 508 in Seller’s manufacturing complex known as Kodak Park, located in Rochester, New York.

(y) “Building 601 Facility” shall mean the building known as Building 601 in Seller’s manufacturing complex known as Kodak Park in Rochester, New York and certain land on which such building is located, as more particularly described in Schedule 3.6, the exact dimensions of which land shall be determined as contemplated in Section 5.5(b).

(y)-1 “Building 601 Interim Lease Agreement” shall mean the lease agreement between Seller, as landlord, and Buyer, as tenant, to be negotiated in good faith by Seller and Buyer between the date of this Agreement and Closing in accordance with the material terms set forth on Exhibit 1.1(y)-1, with respect to a portion of the space in the Building 601 facility.

(z) “Building 601 Leaseback Agreement” shall mean the leaseback agreement between Seller, as tenant, and Buyer, as landlord, pertaining to three separate leased premises in the Building 601 Facility, to be negotiated in good faith by Seller and Buyer between the date of this Agreement and Closing in accordance with the material terms set forth on Exhibit 1.1(z), with respect to a portion of the space in the Building 601 Facility.

(aa) “Building 602” shall mean the building known as Building 602, which is located entirely within the boundaries of the land pertaining to the Building 601 Facility, which Building 602 is being retained by Seller, together with the fixtures and other equipment affixed to such building, but shall not include the land upon which such building is located.

(bb) “Building 602 Land Lease Agreement” shall mean the leaseback agreement between Seller, as tenant, and Buyer, as landlord, to be negotiated in good faith by Seller and Buyer between the date of this Agreement and Closing in accordance with the material terms set forth on Exhibit 1.1(bb), with respect to (i) that portion of the land included in the Building 601 Facility on which Building 602 is located and (ii) the land reasonably necessary to access Building 602.

(bb)-1 “Building 642” shall mean the building known as Building 642 in Seller’s manufacturing complex known as Kodak Park, located in Rochester, New York.

(cc) “Business” shall mean (i) the business of Seller’s Remote Sensing Systems SPG, which designs, manufacturers, sells, and supports High Resolution Electro-Optical End-to-End Systems for (A) space-based, airborne, and terrestrial applications supporting United States Government intelligence, military and scientific applications and (B) for commercial remote sensing businesses; and (ii) all current operations of RSI. For the avoidance of doubt, the term “Business” excludes Seller’s Aerial and Industrial Materials SPG, Seller’s Optics SPG, Seller’s Imaging Sensor Solutions SPG, and Seller’s Imaging Services SPG.

(dd) “Business Confidential Information” shall have the meaning set forth in Section 5.1(a).

(ee) “Business Contracts” shall mean all Contracts, including Government Contracts, (i) to which RSI is a party or (ii) to which Seller is a party that are required for or relate primarily to the Business, Assets, Business Employees or Former Business Employees; provided, however, that the term “Business Contracts” shall not include Employee Benefit Plans, Confidentiality Letters or Bids.

(ff) “Business Day” shall mean any day other than (i) Saturday or Sunday or (ii) any other day on which commercial banks located in the State of New York are authorized or required to be closed or are otherwise generally closed.

(gg) “Business Employee” shall mean (i) individuals who constitute shared employees of the Seller and who are listed on Schedule 1.1(gg)(i) as of the Closing Date, (ii) any individual who, as of the Closing Date, is actively employed by Seller and who works primarily for the Business, (iii) individuals who, as of the Closing Date, are employed in the positions listed on Schedule 1.1(gg)(iii), and (iv) any individual who, as of the Closing Date, is employed by the Seller and who works primarily for the Business, but who is not actively at work as of the Closing Date, including any employee who is on temporary leave of absence, including family medical leave, military leave, short-term disability or sick leave as of the Closing Date.

(hh) “Buyer” shall have the meaning set forth in the first paragraph of this Agreement.

(ii) “Buyer’s DCAP” shall have the meaning set forth in Section 10.2(d)(i).

(jj) “Buyer’s FSA” shall have the meaning set forth in Section 10.2(c)(i).

(kk) “Buyer Indemnified Persons” shall have the meaning set forth in Section 11.2.

(ll) “Buyer Pension Plan” shall have the meaning set forth in Section 10.3.

(mm) “Buyer’s Title Company” shall have the meaning set forth in Section 7.6(a).

- (nn) “Capital Stock Equivalents” shall have the meaning set forth in Section 3.3(a).
- (oo) “Claim Notice” shall have the meaning set forth in Section 11.6(a).
- (pp) “Claims Incurred” shall mean a claim for benefits made by an Acquired Employee or their respective Dependents under the applicable Employee Benefit Plan, which claim shall be considered incurred when the services (medical or dental) are rendered or supplies (medical, dental, pharmaceutical) are provided, and not when the condition to which the claim may relate first arose; provided, however, that in the event of an Acquired Employee’s or Dependents’ death or disability, any claim for benefits shall be deemed to be incurred as of the date of the Acquired Employee’s or Dependents’ death or disability, as applicable.
- (qq) “Closing” shall have the meaning set forth in Section 2.5(b).
- (rr) “Closing Date” shall mean the date on which the Closing actually takes place.
- (ss) “COBRA” shall have the meaning set forth in Section 3.13(e).
- (tt) “Code” shall mean the Internal Revenue Code of 1986, as amended.
- (uu) “Competing Business” shall have the meaning set forth in Section 5.3(a).
- (vv) “Confidentiality Agreement” shall have the meaning set forth in Section 6.1.
- (ww) “Confidentiality Letters” shall mean any confidentiality agreements between Seller, on the one hand, and Persons other than Buyer, on the other hand, that were entered into in connection with or relating to a possible sale of all or substantially all of the Business.
- (xx) “Consent” shall mean any approval, consent, ratification, waiver or other authorization.
- (yy) “Contemplated Transactions” shall mean all of the transactions contemplated by the Transaction Agreements.
- (zz) “Contract” shall mean any agreement, contract, lease, license, sublicenses, indenture, letter contract, ordering agreement, delivery order, task order, teaming agreement or consensual obligation, promise, undertaking or other legally binding commitment or arrangement (whether written or oral, express or implied), including purchase orders and commitments and sales orders and commitments.

(aaa) “Cost Accounting Standards” shall mean the policies, procedures, standards and regulations promulgated by the Cost Accounting Standards Board pursuant to Public Law 100-679, as set forth in 48 CFR, Chapter 99.

(bbb) “Damages” shall have the meaning set forth in Section 11.2.

(ccc) “Dependent” shall mean any Acquired Employee’s, Former Business Employee’s, RSI Current Employee’s or RSI Former Employee’s, as applicable, (i) current, former or surviving domestic partner (as defined in the applicable Employee Benefit Plan) or spouse, and (ii) children (including the children of a domestic partner).

(ddd) “DIS” shall have the meaning set forth in Section 3.22(b).

(eee) “Disclosure Schedules” shall mean the disclosure schedules referenced in this Agreement and in the Intellectual Property Agreement, dated as of the date hereof, and delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement, as the same may be amended in accordance with this Agreement.

(fff) “Effective Time” shall mean 12:01 a.m. Eastern Time on the Closing Date.

(ggg) “Employees” shall mean, as of the Closing Date, all Acquired Employees, Former Business Employees, RSI Current Employees, RSI Former Employees and their respective Dependents, collectively.

(hhh) “Employee Benefit Plans” shall mean any pension, profit sharing, retirement, deferred compensation, stock purchase, stock option, stock appreciation, phantom stock or other equity based arrangement, compensation, incentive, bonus, performance, vacation, termination, retention, change of control, severance, golden parachute, disability, hospitalization, medical, dental, vision, disability, life insurance, cafeteria, flexible spending account, or other employee benefit plan, program, policy, agreement or arrangement, including any “employee benefit plan” (as defined under Section 3(3) of ERISA), which (i) is sponsored, maintained or contributed to by Seller or an ERISA Affiliate of Seller and (ii) under which Seller or an ERISA Affiliate of Seller has any current or future liability with respect to, provides benefits to, or describes policies or procedures applicable to, any Employees, regardless of how (or whether) liabilities for the provision of benefits are accrued or assets are acquired or dedicated with respect to the funding thereof.

(hhh)-1 “Employee Confidentiality Agreement” shall mean any agreement between Seller and any Business Employee (or provision of any such agreement), or legally enforceable obligation of a Business Employee to Seller, requiring the Business Employee not to disclose or use, or to restrict the disclosure or use of, proprietary or confidential information of Seller.

(hhh)-2 “Employee Services Agreement” shall have the meaning set forth in Section 12.7(b).

(iii) “Encumbrance” shall mean any lease, title retention agreement, equitable interest, license pertaining to real property, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

(jjj) “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.

(kkk) “Environmental Claim” shall mean any Proceeding or other claim based on any actual or alleged violation of or liability under Environmental Law.

(lll) “Environmental Law” shall mean any and all Legal Requirements relating to (i) the protection of the Environment, (ii) the contamination of the Environment, or (iii) the release, generation, production, transport, treatment, processing, use, disposal, or storage of Hazardous Materials.

(mmm) “Environmental Permit” shall mean any Governmental Authorization under or pursuant to any Environmental Law.

(nnn) “ERISA” shall mean the Employee Retirement Income Security Act of 1974.

(ooo) “ERISA Affiliate” shall mean any other corporation or trade or business controlled by, controlling or under common control with Seller (within the meaning of Section 414 of the Code or Section 4001(a)(14) or 4001(b) of ERISA).

(ppp) “Exchange Act” shall mean the Securities Exchange Act of 1934.

(qqq) “Excluded Assets” shall have the meaning set forth in Section 2.2.

(rrr) “Existing FOS Agreement” shall have the meaning set forth in Section 12.8.

(sss) “Financial Statements” shall have the meaning set forth in Section 3.4(a).

(ttt) “Former Business Employee” shall mean (i) any individual listed on Schedule 1.1(ttt), who was, on his or her last day of active work for the Seller prior to the Closing Date, employed by the Seller working primarily for the Business but who is not employed by Seller as of the Closing Date or (ii) any Inactive Employee who does not become employed by Buyer immediately after his or her employment with Seller terminates in accordance with Section 10.1(a).

(uuu) “GAAP” shall mean generally accepted accounting principles for financial reporting in the United States.

(vvv) “Governing Documents” shall mean with respect to any particular entity, (i) if a corporation, the articles or certificate of incorporation and the bylaws; (ii) if a general partnership, the partnership agreement and any statement of partnership; (iii) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (iv) if a limited liability company, the articles of organization and operating agreement; (v) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (vi) all equityholders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equityholders of any Person; and (vii) any amendment or supplement to any of the foregoing.

(www) “Government Contract” shall mean (i) any Contract between Seller, on the one hand, and (A) the United States Government or any agency thereof, (B) any prime contractor of the United States Government or any agency thereof or (C) any subcontractor with respect to any Contract described in clause (A) or (B), on the other hand, in each case that relates primarily to the Business; or (ii) any Contract between RSI, on the one hand, and (X) the United States Government or any agency thereof, (Y) any prime contractor of the United States Government or any agency thereof or (Z) any subcontractor with respect to any Contract described in clauses (X) or (Y), on the other hand.

(xxx) “Governmental Authorization” shall mean any Consent, license, franchise, registration, permit, certification, decree, registration, qualification, or security clearance issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

(yyy) “Governmental Body” shall mean any: (i) nation, state, county, city, town, borough, village, district or other jurisdiction; (ii) federal, state, local, municipal, foreign or other government; (iii) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers); (iv) multinational organization or body; (v) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (vi) official of any of the foregoing.

(zzz) “Hawkeye Plant” shall mean the facility located at 1447 St. Paul Street in Rochester, New York.

(aaaa) “Hawkeye Lease and Facility Services Agreement” shall mean a lease and facilities service agreement between Seller, as landlord, and Buyer, as tenant, substantially in the form of Exhibit 1.1(aaaa), with respect to the Hawkeye Plant.

(bbbb) “Hazardous Material” shall mean any hazardous, toxic, chemical, or dangerous substance, pollutant, contaminant, waste or material, that is regulated by any Governmental Body or pursuant to any Environmental Law, including: (A) any material, substance or waste that is defined as “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “contaminant,” “toxic waste,” “regulated 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; (D) radon, thorium, and radioactive materials; and (E) physical agents such as radiofrequency radiation, microwave radiation, ionizing radiation, laser radiation and noise.

(cccc) “High Resolution Electro-Optical End-to-End Systems” shall mean: (i) collection payloads, systems and components for ground-based telescopes, airborne cameras, remote sensing satellites, and orbiting astronomical platforms; (ii) payload systems integration and testing; (iii) digital image data processing from sensor to end user in connection with the items described in clauses (i) and (ii); and (iv) engineering support services for imagery users including analogue silver halide (AgX) systems support and maintenance in connection with the items described in clauses (i) and (ii).

(dddd) “HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

(eeee) “Indemnified Person” shall have the meaning set forth in Section 11.6(a).

(ffff) “Indemnifying Person” shall have the meaning set forth in Section 11.6(a).

(gggg) “Intellectual Property” shall have the meaning set forth in the Intellectual Property Agreement.

(hhhh) “Indemnity Claim” shall have the meaning set forth in Section 11.6(a).

(iiii) “Intellectual Property Agreement” shall mean an agreement between Buyer and Seller substantially in the form of Exhibit 1.1(iii).

(jjjj) “Inventory” shall mean all inventories, including all finished goods, work in process, raw materials, spare parts and all other materials and supplies to be used or consumed in the production of finished goods (i) owned by RSI, or (ii) owned by Seller and primarily relating to the Business, provided, that in the case of Seller’s inventories of imaging sensors and the raw materials with respect thereto, only those sensors and corresponding raw materials that are reflected on the 2003 Balance Sheet, as adjusted for changes to such inventories in the ordinary course of business consistent with past practice through the Closing Date, will be included within the term “Inventory.”

(kkkk) “IRS” shall mean the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.



(llll) “Knowledge of Seller,” “Seller’s Knowledge” and words of similar meaning, refers to facts which are actually known (after due inquiry and investigation) by the individuals listed on Schedule 1.1(llll).

(mmmm) “Knowledge of Buyer,” “Buyer’s Knowledge” and words of similar meaning, refers to facts which are actually known (after due inquiry and investigation) by the individuals listed on Schedule 1.1(mmmm).

(nnnn) “Leased Real Property” shall have the meaning set forth in Section 3.7.

(oooo) “Legal Requirement” shall mean any constitution, law (including common law), ordinance, code, regulation, statute or treaty of any federal, state, local, municipal, foreign, international, multinational or other Governmental Body.

(pppp) “Liability” shall mean, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

(qqqq) “Marks” shall have the meaning set forth in the Intellectual Property Agreement.

(rrrr) “Material Adverse Effect” shall mean any circumstance, change or effect that would reasonably be expected to cause, result in or have any material adverse effect on the business, operations, assets, liabilities, results of operations or condition (financial or other) of the Business, taken as a whole, but excluding (i) the effects of changes that are generally applicable to the industries and markets in which the Business operates (including general reductions in United States military, intelligence and homeland security planning and spending), (ii) the effects of changes in general economic conditions, or (iii) the effects resulting from the announcement or pendency of any of the Contemplated Transactions, or (iv) any effects resulting from compliance by Seller with the terms of, or the taking of any action required by, this Agreement.

(ssss) “Material Business Contracts” shall have the meaning set forth in Section 3.17(a).

(tttt) “Mathematical Foundations for Watermarking Subcontract” shall mean an agreement to be negotiated in good faith by Seller and Buyer between the date of this Agreement and Closing in accordance with the material terms set forth on Exhibit 1.1(tttt), pursuant to which Seller shall provide Buyer with research and development services as a subcontractor under the F30602-03-C-0072, Mathematical Foundations for Watermarking Agreement.

(uuuu) “New FOS Agreements” shall have the meaning set forth in Section 12.8.

(uuuu)-1 “Optical Services Agreement” shall mean an agreement to be negotiated in good faith by Seller and Buyer between the date of this Agreement and Closing in accordance with the material terms set forth on Exhibit 1.1(uuuu)-1.

(vvvv) “Order” shall mean any order, decision, injunction, judgment, decree, ruling, settlement, assessment or arbitration award of any Governmental Body or arbitrator.

(wwww) “Owned Real Property” shall have the meaning set forth in Section 3.6.

(xxxx) “OSHA” shall mean Legal Requirements relating to worker safety and health under the Occupational, Safety and Health Act of 1970 and state law equivalents.

(yyyy) “Party” or “Parties” shall have the meaning set forth in the first paragraph of this Agreement.

(zzzz) “PBGC” shall mean the Pension Benefit Guaranty Corporation.

(aaaa) “Pension Settlement Liability” shall mean any Liability of Seller to the United States Government pursuant to that certain Settlement Agreement between the U.S. Government and Seller regarding the settlement of Proceedings related to Seller’s compliance with certain Cost Accounting Standards with respect to the Seller Pension Plan.

(bbbb) “Permitted Encumbrances” shall have the meaning set forth in Section 3.8(b)(v).

(cccc) “Person” shall mean an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

(dddd) “Post-Employment Settlement Costs” shall mean any Liability of Seller arising out of the final resolution and settlement of the DCAA audit matters entitled “CAS 416 and 403 Non-Compliance” (retiree post-employment costs), dated July 2, 2003.

(eeee) “Post-Employment Welfare Benefits” shall mean benefits under any Employee Benefit Plan (other than the Seller Pension Plan, the Seller Savings Plans and the Seller Stock Plans), including long-term disability, survivor income, severance, COBRA, unfunded pension and retiree health, dental and life insurance benefits, which any Former Business Employee, RSI Former Employee or their respective Dependents are entitled to receive on and after the Closing Date.

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

(ggggg) “Purchase Price” shall have the meaning set forth in Section 2.5(a).

(hhhhh) “Real Property Lease” shall have the meaning set forth in Section 3.7.

(iiii) “Record” shall mean information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(jjjj) “Related Person” shall mean, as to any specified Person, (i) any Affiliate of such specified Person or (ii) any Person that serves as a director, officer, partner, executor or trustee (or in a similar capacity) of such specified Person.

(kkkk) “Release” shall mean any spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, dumping, or disposal, whether intentional or unintentional; and any verb forms of the term shall have the corresponding meanings.

(llll) “Representative” shall mean, with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor or legal counsel of that Person.

(mmmm) “Retained Environmental Liabilities” shall have the meaning set forth in Section 2.3(b)(iii).

(nnnn) “Retained Liabilities” shall have the meaning set forth in Section 2.3(b).

(oooo) “Rochester Airport Facility Sublease Agreement” shall mean a sublease agreement between Buyer, as subtenant, and Seller, as sublandlord, to be negotiated in good faith by Seller and Buyer between the date of this Agreement and Closing in accordance with the material terms set forth on Exhibit 1.1(oooo), with respect to a portion of the land and a portion of the building located at the Greater Rochester International Airport, located in Gates, New York, and leased by Seller from the County of Monroe, New York pursuant to that certain Lease dated as of June 30, 1987, as amended.

(pppp) “Rochester Technology Park Sublease Agreement” shall mean the sublease agreement between Buyer, as subtenant, and Seller, as sublandlord, to be negotiated in good faith by Seller and Buyer between the date of this Agreement and Closing in accordance with the material terms set forth on Exhibit 1.1(pppp), with respect to a portion of the leased premises located in Building 6 of the Rochester Technology Park, located on Elmgrove Road in the Town of Gates, New York, and leased by Seller from Continental Industrial Capital LLC pursuant to the terms of that certain Lease Agreement dated as of June 1, 2002, as amended.

(qqqq) “RSI” shall mean Research Systems, Inc. and each of the RSI Subsidiaries.

(rrrr) “RSI Current Employee” shall mean (i) any individual who, as of the Closing Date, is actively employed by RSI and (ii) any individual who, as of the Closing Date, is employed by RSI but who is not actively at work as of the Closing Date, including any employee who is on temporary leave of absence, including family medical leave, military leave, short-term disability or sick leave as of the Closing Date.

(sssss) “RSI Former Employee” shall mean any individual who was, at any time prior to the Closing Date, employed by RSI, but who is not employed by RSI as of the Closing Date.

(ttttt) “RSI Subsidiaries” shall mean Research Systems France SARL, Research Systems International UK Limited, and Research Systems Italia SRL, each of which is a wholly-owned subsidiary of Research Systems, Inc.

(uuuuu) “RSS/AIM Services and Supply Agreement” shall mean (i) the agreement, substantially in the form of Exhibit 1.1(uuuuu), pursuant to which Buyer and Seller shall cooperate and assist one another in performing their respective obligations under the New FOS Agreements, or (ii) in the event the Existing FOS Agreement cannot be divided into the New FOS Agreements as of the Closing, an agreement in a form to be negotiated in good faith by Buyer and Seller prior to Closing, pursuant to which Seller shall provide Buyer with aerial and industrial materials products and services as a subcontractor under the Existing FOS Agreement.

(vvvvv) “Sanitary Sewer Agreement” shall have the meaning set forth in Section 5.5(b)(iii).

(wwwww) “Schedule” shall mean a part or section of the Disclosure Schedules.

(xxxxx) “Section 338(h)(10) Election” shall have the meaning set forth in Section 12.3(d).

(yyyyy) “Securities Act” shall mean the Securities Act of 1933.

(zzzzz) “Seller” shall have the meaning set forth in the first paragraph of this Agreement.

(zzzzz)-1 “Seller Bonus Plans” shall mean the Kodak Executive Compensation for Excellence and Leadership Plan, as amended and restated effective January 1, 2002, the Kodak United States Employee Recognition Plan, as revised on October 14, 2002, and the Kodak Wage Dividend Plan.

(zzzzz)-2 “Seller Bonus Plan Payments” shall mean the bonus amounts payable under the Seller Bonus Plans in respect of the 2003 year to eligible Employees, to the extent accrued on the 2003 Balance Sheet.

(aaaaa) “Seller DCAP” shall have the meaning set forth in Section 10.2(d).

(bbbbb) “Seller Deferred Compensation Plans” shall mean those Employee Benefit Plans that are deferred compensation plans, identified as such on Schedule 3.13(a).

(ccccc) “Seller FSA Plan” shall have the meaning set forth in Section 10.2(c).

- (ddddd) “Seller Indemnified Person” shall have the meaning set forth in Section 11.3.
- (eeeeee) “Seller Marks” shall mean all Marks owned by Seller and its Affiliates other than the Assigned Marks.
- (fffff) “Seller Nonqualified Pension Plan” shall mean the Kodak Unfunded Retirement Income Plan and the Kodak Excess Retirement Income Plan.
- (ggggg) “Seller Pension Plan” shall mean the Kodak Retirement Income Plan.
- (hhhhh) “Seller Savings Plan” shall mean the Eastman Kodak Employees’ Savings and Investment Plan.
- (iiiiii) “Seller Severance Plan” shall mean the Kodak Termination Allowance Plan.
- (jjjjj) “Seller Stock Plans” shall mean the Kodak 2000 Omnibus Long-Term Incentive Plan, the Kodak Global Long-Term Incentive Program for Executives and the Kodak Employee Stock Ownership Plan.
- (kkkkk) “Sensor Supply Agreement” shall mean the agreement, substantially in the form of Exhibit 1.1(kkkkk), pursuant to which (i) Seller will continue to supply imaging sensors to Buyer and (ii) Buyer will permit Seller to use all equipment that is currently used by Seller to manufacture such imaging sensors, to the extent that such equipment constitutes an Asset hereunder that would otherwise be in Buyer’s possession as of the Closing.
- (kkkkk)-1 “Single Trigger Severance Liability” shall mean any Liability to provide severance benefits to any Acquired Employees or RSI Current Employees that arises solely as a result of the occurrence of the Closing.
- (lllll) “SPG” shall mean a Strategic Product Group within Seller’s corporate organization.
- (lllll)-1 “Storage Space Agreement” shall mean the storage space agreement between Seller, as licensor, and Buyer, as licensee, to be negotiated in good faith by Seller and Buyer between the date of this Agreement and Closing in accordance with the material terms set forth on Exhibit 1.1(lllll)-1, with respect to portions of space located at Buildings 12, 508 and 642, and any other space presently used exclusively by the Business for storage.
- (mmmmm) “Straddle Period” shall have the meaning set forth in Section 12.3(f).
- (nnnnn) [intentionally omitted]

(ooooo) “Tangible Personal Property” shall mean all machinery, equipment, tools, dies, molds, jigs, patterns, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than Inventory), owned or leased by RSI or by Seller primarily in connection with the Business.

(ppppp) “Tax” shall mean any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, capital gains, estimated, franchise, employees’ income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, intangible property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever, including payments-in-lieu of any of the foregoing, and any interest, penalty, addition or additional amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement.

(qqqqq) “Tax Return” shall mean any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

(rrrrr) “Third Party” shall mean a Person that (i) is not a Party to this Agreement or (ii) a Related Person of either Party to this Agreement.

(sssss) “Third-Party Claim” shall mean any claim against any Indemnified Person by a Third Party.

(ttttt) “Third Party Intellectual Property License” shall mean any license of Intellectual Property by a Third Party (i) to RSI or (ii) to Seller and that relates primarily to the Business.

(uuuuu) “Transaction Agreements” shall mean this Agreement and the Ancillary Agreements.

(uuuuu)-1 “Transferred Owned Real Property” shall have the meaning set forth in Section 3.8(a).

(vvvvv) “Transferred Real Property” shall mean the Transferred Owned Real Property and the Leased Real Property, but excluding the real property subleased to Buyer pursuant to the Rochester Airport Facility Sublease Agreement and the Rochester Technology Park Sublease Agreement.

(wwwww) “Transition Services Agreement” shall have the meaning set forth in Section 5.10.

(xxxxx) “Utility Services Agreement” shall have the meaning set forth in Section 5.5(b)(ii).

(yyyyy) “WARN Act” shall have the meaning set forth in Section 3.20(c).

**1.2 Usage.**

(a) Interpretation. In this Agreement, and in each Ancillary Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by the applicable agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to the applicable agreement as a whole and not to any particular Article, Section or other provision hereof;

(vii) "including" (and with correlative meaning "include") is deemed to be followed by the words "without limitation" or words of similar import;

(viii) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to and including";

(ix) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; and

(x) the terms "Dollars" and "\$" shall mean United States Dollars.

(b) Legal Representation of the Parties. This Agreement was negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against either Party shall not apply to any construction or interpretation hereof.

**ARTICLE 2**  
**SALE AND TRANSFER OF ASSETS, LIABILITIES AND STOCK; CLOSING**

**2.1 Assets to Be Sold.** Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right (contractual and otherwise), title and interest in and to all of Seller's property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located (but excluding the Excluded Assets and excluding the RSI Stock) that are used or held for use primarily in the Business as the same shall exist on the Closing Date (collectively, the "Assets"), including the following:

- (a) the Transferred Real Property;
- (b) all of Seller's Tangible Personal Property;
- (c) all of Seller's Inventory;
- (d) all of Seller's Accounts Receivable;
- (e) the Assigned Intellectual Property and Assigned Marks;
- (f) all of Seller's Business Contracts, including Seller's Government Contracts;
- (g) all Confidentiality Letters;
- (h) all of Seller's Bids;
- (i) all Governmental Authorizations and all pending applications therefor or renewals thereof, issued to Seller primarily for the operation of the Business or otherwise relating primarily to the Assets, including the Governmental Authorizations listed in Schedule 2.1(i), in each case to the extent legally transferable to Buyer;
- (j) all of Seller's Records that primarily relate to the Business (other than those Records described in Section 2.2(c)), including sales and advertising literature, market research, technical research, business and strategic plans, product information, customer and supplier files and lists, equipment maintenance records and warranty information, plant plans, specifications and drawings, environmental and health and safety records (including training documents, information concerning supplies, and applications for Environmental Permits), customer specifications and, subject to Legal Requirements, all employment records related to the Acquired Employees and, to the extent reasonably required by Buyer in order to satisfy its obligations under this Agreement, the Former Business Employees. Notwithstanding the foregoing, Seller may retain copies of any of the foregoing Records: (i) that relate to properties or activities of Seller other than the Business, (ii) that relate to the Excluded Assets or Retained Liabilities, or (iii) that Seller is required to retain in its possession pursuant to applicable Legal Requirements or that are required or useful for Seller to retain for financial reporting purposes or Tax purposes;



(k) all claims and defenses of Seller against Third Parties to the extent relating to the Assets or the Business, whether choate or inchoate, known or unknown, contingent or noncontingent, including all rights of Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors in connection with products or services purchased by Seller in respect of the Business;

(l) all rights of Seller relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof, in each case that relate primarily to the Business, except to the extent excluded under Section 2.2(d);

(m) all rights in connection with, and assets of, any Affiliate Plan to the extent held by Seller or any trust to which Seller contributes or is required to contribute in respect of any such Affiliate Plan, if not transferred by operation of law upon Closing; and

(n) all rights in connection with, and assets relating to Employee Benefit Plans and any Liability thereunder being assumed by Buyer pursuant to Section 2.3(a), to the extent permitted by this Agreement and subject to the Legal Requirements.

**2.2 Excluded Assets.** Notwithstanding anything to the contrary contained in Section 2.1, the following assets of Seller (collectively, the “Excluded Assets”) are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Seller after the Closing:

(a) all cash, cash equivalents, short-term investments and intercompany receivables, including checking accounts, bank accounts, certificates of deposit, securities, and the proceeds of Seller Accounts Receivable, including uncashed checks in payment thereof, received by Seller prior to the Closing Date;

(b) all insurance policies and rights thereunder (including the payment of any proceeds thereunder) other than those insurance policies and rights that are Assets related to Employee Benefit Plans to be sold to the Buyer as provided in Section 2.1(m) or (n));

(c) (i) all employment Records in respect to employees not related to the Business, (ii) all Records that Seller is required under any Legal Requirement to retain in its possession or is not permitted under Legal Requirements to provide to Buyer, (iii) all Tax Records relating to the Business, and (iv) all Records relating primarily to the Excluded Assets or Retained Liabilities;

(d) all claims for refund of Taxes relating to the Business for any period ending on or prior to the Closing Date, except as provided in Section 12.3(b) and except to the extent liability for such Taxes is assumed by Buyer pursuant to Section 2.3(a)(iii);

(e) all rights of Seller under any Transaction Agreement;

- (f) all other assets used primarily in connection with Seller's corporate functions (including the corporate charter, taxpayer and other identification numbers, seals, minute books and stock ledgers), whether or not used for the benefit of the Business;
- (g) all Intellectual Property and Marks that are owned by Seller other than Assigned Intellectual Property and Assigned Marks;
- (h) other than the Transferred Real Property, all real property or interests in real property owned or leased by Seller;
- (i) all claims of Seller against Third Parties, whether choate or inchoate, known or unknown, contingent or noncontingent, (i) to the extent relating to any of the Excluded Assets or Retained Liabilities, including causes of actions, claims and rights under insurance policies relating thereto and (ii) to the extent arising under any Seller insurance policy and relating to the Transferred Real Property;
- (j) all Governmental Authorizations and all pending applications therefor or renewals thereof, issued to Seller that either (i) are set forth on Schedule 2.2(j) or (ii) are not used primarily for the operation of the Business and do not otherwise relate primarily to the Assets;
- (k) all inventories of imaging sensors and the raw materials with respect thereto that are owned by Seller and that are not reflected on the 2003 Balance Sheet, as adjusted for changes to such inventories in the ordinary course of business consistent with past practice through the Closing Date;
- (l) all rights in connection with, and assets relating to Employee Benefit Plans and any Liability thereunder not being assumed by Buyer pursuant to Section 2.3(a) to the extent permitted by this Agreement and subject to Legal Requirements;
- (m) all rights in connection with, and assets of (i) the Seller Savings Plan (to the extent not distributed to Employees in accordance with Section 10.2(b)), and (ii) the Seller Stock Plans;
- (n) the property and assets expressly designated in Schedule 2.2(n); and
- (o) all rights under Employee Confidentiality Agreements in connection with proprietary or confidential information of Seller which proprietary or confidential information is not included in the Assigned Intellectual Property.

In addition to the foregoing, the Excluded Assets shall include any Business Contracts to the extent that such Business Contract may not be legally transferred by Seller to Buyer without the Consent of a Third Party and such Consent has not been obtained as of the Closing; provided, however, that if and to the extent such Consent is obtained after Closing in accordance with Section 12.2 the foregoing provision shall cease to apply to the applicable Business Contract.

## 2.3 Liabilities.

(a) Assumed Liabilities. On the Closing Date, but effective as of the Effective Time, Buyer shall assume and agree to pay, perform and discharge when due, and shall indemnify Seller in accordance with Article 11 with respect to, all Liabilities of Seller (but excluding the Retained Liabilities) to the extent arising out of or relating primarily to the operation of the Business or the Assets (the "Assumed Liabilities"), and specifically including the following (but excluding the Retained Liabilities):

(i) any Liability arising from or relating primarily to the Business or the Assets that is (A) disclosed in the 2003 Balance Sheet or for which identifiable reserves are reflected in the 2003 Balance Sheet, unless expressly excluded by Seller pursuant to any Transaction Agreement; (B) incurred in the ordinary course of business on or after the date of the 2003 Balance Sheet and on or prior to the Closing, unless expressly excluded by Seller pursuant to any Transaction Agreement; or (C) otherwise expressly assumed by Buyer pursuant to any Transaction Agreement;

(ii) any Liability arising under the Business Contracts including (A) any Liability arising from or relating to Buyer's performance or non-performance thereunder and (B) any Liability arising from or relating to any claim based upon any warranty contained in such Business Contracts, or any claim of manufacturing or design defects with respect to any product or service sold or provided pursuant to such Business Contracts, in any case, whether or not such Liability or claim was contingent, liquidated, accrued, known or unknown to Seller at or prior to Closing and whether such Liability or claim arises out of an event or occurrence before, on, or after the Closing; provided, however, that under no circumstances shall Buyer be deemed to have assumed hereunder any Liability arising out of the presence or alleged presence of, or exposure or alleged exposure to asbestos as a result of any product sold or service provided prior to the Closing Date;

(iii) any Liability for Taxes, arising out of the operation of the Business or relating to the Assets (A) with respect to any period (or portion thereof) beginning after the Closing Date, and (B) with respect to any period (or portion thereof) ending on or before the Closing Date, to the extent the amount of such Taxes is recoverable by Buyer from the United States Government pursuant to the Government Contracts assumed by Buyer hereunder, but only to the extent of such recovery (Taxes described in clause (B) of this Section 2.3(a)(iii) are referred to herein as the "Assumed Pre-Closing Taxes");

(iv) any Liability (A) arising under any employment, severance, retention or termination plan or agreement covering or with respect to any Acquired Employee (including any such plans or agreements entered into specifically in anticipation of the Contemplated Transactions) set forth on Schedule 2.3(a)(iv); (B) arising out of or in connection with the termination of any Acquired Employee on or after Closing (other than any Single Trigger Severance Liability); (C) arising out of or related to any employment-related claim (other than any Single Trigger Severance Liability), including workers' compensation claims, wrongful termination claims and claims arising under OSHA or similar laws and regulations of any Governmental Body, of any Acquired Employee, or Former Business Employee to the extent arising out of any event or occurrence that took place when such individual was employed by the Business, whether before, on, on or after the Closing Date; (D) relating to payroll, vacation and sick pay for any Acquired Employee, including all Liability for the same which has accrued and has not been paid as of the Closing Date; (E) relating to Claims Incurred by Acquired Employees and their respective Dependents on or after the Closing Date in respect of Active Welfare Benefits, including the payment of any premiums and administrative expenses related thereto; and (F) for the Seller Bonus Plans Payments and Accrued Bonus Payments;

(v) any Liability (A) under any Employee Benefit Plans, (excluding (I) the Seller Stock Plans and the Seller Savings Plan, and (II) any Single Trigger Severance Liability) with respect to Acquired Employees, Former Business Employees, RSI Current Employees, RSI Former Employees and Dependents, as applicable, (B) for Post-Employment Welfare Benefits, and (C) to the extent of any Seller Liability thereunder, any Affiliate Plan not otherwise transferred by operation of law upon the Closing;

(vi) any Liability arising from or relating to Buyer's conduct of the Business or ownership of the Assets from and after the Closing Date including any Proceedings in respect thereof;

(vii) any and all Proceedings arising from or relating to any of the Assumed Liabilities, whether or not such matters were accrued, liquidated, contingent, matured, unmatured, or known or unknown to Seller at or prior to the Closing;

(viii) any Liability arising from or related to any governmental audit of any Seller Government Contract (including any Liability relating to the Pension Settlement Liability and the Post-Employment Settlement Costs); and

(ix) any Liability described in Schedule 2.3(a)(ix).

(b) Retained Liabilities. Notwithstanding Section 2.3(a), the following Liabilities of Seller arising out of or relating to the operation of the Business or the Assets shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller (the "Retained Liabilities"):

(i) any Liability arising from or related to the Excluded Assets;

(ii) any Liability for Taxes of any Person within Seller's affiliated group, whether by reason of Treasury Regulation Section 1.1502-6, any tax allocation or tax sharing agreements, or otherwise, including any Liability arising out of the operation of the Business or relating to the Assets with respect to any period (or portion thereof) ending on or before the Closing Date, other than the Assumed Pre-Closing Taxes;

(iii) any Liability arising from or related to (A) to the extent that such Claim or Proceeding is brought within 10 years of the Closing Date, the presence or Release of Hazardous Materials on, under, from or affecting the Transferred Real Property, to the extent such presence or Release existed or occurred prior to the Closing Date (it being understood that, after title to a parcel of Transferred Owned Real Property is transferred to Buyer, ownership of, and responsibility for maintaining, any asbestos-containing material present inside that Transferred Owned Real Property shall not be a Retained Liability and shall be assumed by Buyer); (B) the generation, transfer, storage, treatment, recycling, or disposal, prior to the Closing Date, of Hazardous Materials by or on behalf of Seller, RSI or the Business, or (C) the presence or Release of Hazardous Materials on, under, from or affecting any Excluded Assets (the foregoing (A) through (C) are collectively referred to herein as the "Retained Environmental Liabilities");

(iv) to the extent that such claim is made or such Proceeding is brought within eighteen (18) months after the Closing Date, any Liability arising from or relating to any claim or Proceeding based on the actual or alleged infringement, misappropriation, or other violation of any Third Party intellectual property right, where such infringement, misappropriation, or violation occurred or allegedly occurred before the Closing Date, of any Third Party intellectual property right by (A) any product or service of the Business that was made, sold, offered for sale or provided by Seller in connection with the Business before the Closing Date or (B) any process or method to the extent used by Seller in connection with the Business before the Closing Date;

(v) any Liability of Seller under this Agreement, any Ancillary Agreement or any other document executed in connection with the Contemplated Transactions;

(vi) any Liability of Seller based upon Seller's acts or omissions occurring after the Effective Time;

(vii) any Liability (A) under the Seller Savings Plan and the Seller Stock Plans, (B) for the Single Trigger Severance Liability, and (C) for Claims Incurred by Acquired Employees and their respective Dependents prior to Closing with respect to Active Welfare Benefits;

(viii) any Liability arising from or related to indebtedness for borrowed money to Third Parties; and

(ix) any Liability with respect to any intercompany payables.

#### **2.4 RSI Stock.**

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any Encumbrances, certificates representing all of the issued and outstanding capital stock of Research Systems, Inc. (the "RSI Stock"), together with a stock power attached thereto, and all minute books, stock ledgers and corporate seals of Research Systems, Inc.

#### **2.5 Purchase Price; Closing.**

(a) The consideration for the Assets and RSI Stock (the "Purchase Price") will be (i) Seven Hundred Twenty Five Million Dollars (\$725,000,000) and (ii) the assumption of the Assumed Liabilities. In accordance with Section 8.3(a), at the Closing, the Purchase Price shall be delivered by Buyer to Seller by wire transfer.

(b) The purchase and sale provided for in this Agreement (the “Closing”) will take place at the offices of Seller’s counsel at 1899 Pennsylvania Avenue, N.W., Washington, D.C., commencing at 10:00 a.m. Eastern Time on the date that is five (5) Business Days following the satisfaction or waiver of all conditions precedent to the obligations of the Parties set forth in Article 7 and Article 8, or such other date as may be mutually agreed upon by the Parties in writing.

**2.6 Allocation.** Buyer and Seller agree to allocate the Purchase Price and the Assumed Liabilities, each to the extent properly taken into account under Section 1060 of the Code, among the Assets and RSI Stock and, in connection with the Section 338(h)(10) Election, to further allocate the amount allocated to RSI Stock among the assets of Research Systems, Inc., in accordance with the allocation set forth on Exhibit 2.6 (the “Allocation”). Any issues with respect to the Allocation which have not been finally resolved within sixty (60) days following the Closing Date shall be referred to Ernst & Young LLP or to such other accounting firm of international recognition mutually acceptable to Buyer and Seller (the “Independent Accounting Firm”), whose duties may include an appraisal of the Assets, the RSI Stock, and the assets of Research Systems, Inc., and whose determination shall be final and binding upon the Parties. The Independent Accounting Firm shall resolve any issues referred to it as soon as practicable, and preferably within thirty (30) days. Buyer and Seller shall bear equally the fees, costs, and expenses of the Independent Accounting Firm. After the Closing, the Parties shall make consistent use of the Allocation for all Tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including the reports required to be filed under Sections 338 and 1060 of the Code. No Party shall take a position inconsistent with the Allocation on any Tax Return or with any taxing authority without the consent of the other Party except as required by a final “determination” within the meaning of Section 1313 of the Code. Seller shall prepare and deliver IRS Forms 8594, 8023 and 8883 to Buyer within sixty (60) days after the Closing Date or upon agreement between the Parties on the Allocation pursuant to this Section 2.6, whichever is later; provided, however, that if agreement on the Allocation is not complete thirty (30) days prior to the due date of any of Forms 8594, 8023 and 8883, the Parties shall cooperate in reaching a tentative agreement that allows timely filing of such Forms, subject to subsequent amendment. Within thirty (30) days after the receipt of such Form 8594, 8023 and 8883, Buyer shall propose any changes or shall indicate its concurrence otherwise, which concurrence shall not be unreasonably withheld. In any Proceeding related to the determination of any Tax, neither Buyer nor Seller shall contend or represent that the Allocation is not a correct allocation.

**2.7 Transfer Taxes.** Buyer shall prepare all use, sales, real estate, transfer and similar Tax Returns relating to the purchase and sale of the Assets and RSI Stock. Buyer shall, no later than thirty (30) days prior to the due date for the filing of any such Tax Return (including extensions for filing), provide Seller with copies of such Tax Returns for Seller’s review, consent and approval. Buyer will file all necessary Tax Returns and other documentation with respect to all such transfer, documentary, sales, use, stamp, registration and other Taxes and fees. Seller shall assist Buyer in preparing, executing and filing such Tax Returns, and Buyer and Seller shall cooperate in providing or obtaining any certification reasonably necessary to exempt or reduce the amount of transfer Taxes or other Taxes payable by either Buyer or Seller relating to the purchase and sale of the Assets and RSI Stock. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement, shall be paid one-half by Buyer and one-half by Seller. Seller shall reimburse Buyer for one-half of all such transfer Taxes within thirty (30) days of Buyer’s written request. Seller will reimburse Buyer for one-half of all reasonable, documented out-of-pocket costs incurred in connection with filing any such Tax Returns and any such other documentation.

**ARTICLE 3**  
**REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows:

**3.1 Organization and Good Standing.**

(a) Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New Jersey. Seller is duly qualified or licensed to do business in each jurisdiction in which the property relating to the Business is owned, leased or operated by Seller or the nature of the Business makes such qualification necessary, except for those jurisdictions where the failure to be so qualified or licensed would not, individually or in the aggregate, have a Material Adverse Effect.

(b) Research Systems, Inc. is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Colorado. Research Systems, Inc. is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification, except for those jurisdictions where the failure to be so qualified or licensed would not, individually or in the aggregate, have a Material Adverse Effect. Schedule 3.1 sets forth each state in which Research Systems, Inc. is qualified to do business. Seller has made available to Buyer complete and correct copies of the Governing Documents, the minute books and stock transfer records of RSI. Other than the outstanding shares of the RSI Subsidiaries, Research Systems, Inc. does not own or have any option or right to acquire, directly or indirectly, any capital stock or other equity securities of, or have any direct or indirect equity or ownership interest or debt investment in, any other Person or other business.

(c) Each of the RSI Subsidiaries is an entity duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its organization. Each of the RSI Subsidiaries is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification, except for those jurisdictions where the failure to be so qualified or licensed would not, individually or in the aggregate, have a Material Adverse Effect.

**3.2 Authority; Enforceability; No Conflict.**

(a) Seller has the requisite corporate power and authority to enter into the Transaction Agreements and to consummate the Contemplated Transactions. All corporate acts and other proceedings required to be taken by Seller to authorize the execution, delivery and performance of the Transaction Agreements and the consummation of the Contemplated Transactions have been duly and properly taken. This Agreement has been, and each of the Ancillary Agreements, when executed, will be, duly executed and delivered by Seller and, assuming that this Agreement and each Ancillary Agreement constitutes a valid and binding obligation of Buyer, constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) Except as set forth in Schedule 3.2(b), neither the execution and delivery by Seller of this Agreement or the Ancillary Agreements, nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) breach any provision of any of the Governing Documents of Seller or Research Systems, Inc.;

(ii) contravene, conflict with or result in a violation or breach of any Legal Requirement applicable to the Business;

(iii) contravene, conflict with or result in a violation or breach of any Order to which Seller or RSI is a party or by which Seller, RSI or any of the Assets is bound; or

(iv) result in any violation or breach of, or give rise to any right of termination, cancellation or acceleration under, or require any consent under, any Material Business Contract;

except, in the case of clause (iv), for such conflicts, violations, breaches, terminations, cancellations, or accelerations as to which requisite waivers or consents have been obtained or which, individually or in the aggregate, would not have a Material Adverse Effect.

### **3.3 Capitalization and Ownership of Research Systems, Inc. and its Subsidiaries.**

(a) The authorized equity securities of Research Systems, Inc. consist of one thousand (1,000) shares of common stock, par value \$.01 per share, of which five hundred (500) shares (the "RSI Shares") are issued and outstanding, fully paid and nonassessable, all of which are owned by Seller and are duly authorized and validly issued, and no other shares of any other class or series of capital stock of Research Systems, Inc. or securities exercisable or convertible into or exchangeable for capital stock ("Capital Stock Equivalent") of Research Systems, Inc. are authorized, issued or outstanding. The RSI Shares were not issued in violation of, and are not subject to, any preemptive, subscription or similar rights.

(b) Seller is and will be on the Closing Date the record and beneficial owner and holder of the RSI Shares, free and clear of all Encumbrances.

(c) There are no Contracts relating to the issuance, sale or transfer of any equity securities or other securities of Research Systems, Inc.



(d) Schedule 3.3(d) sets forth a list of the authorized, issued and outstanding capital stock of each of the RSI Subsidiaries. All of the outstanding shares of each RSI Subsidiary are duly authorized and validly issued and outstanding, fully paid and nonassessable and owned by Research Systems, Inc. None of the outstanding shares of any of the RSI Subsidiaries has been issued in violation of any purchase option, call, right of first refusal, preemptive right, subscription or similar rights under any provision of applicable law or the Governing Documents of such RSI Subsidiary, or any Contract to which such RSI Subsidiary is bound. There are no outstanding warrants, options, subscriptions, calls, rights, agreements, convertible or exchangeable securities or other commitments or arrangements relating to the issuance, sale, purchase, return or redemption, voting or transfer of any shares, whether issued or unissued, of capital stock, Capital Stock Equivalents or other securities of any of the RSI Subsidiaries.

### **3.4 Financial Statements.**

(a) Schedule 3.4-A contains a true and complete copy of the unaudited historical statements of assets and liabilities of the Business as of December 31, 2002 (the "2002 Balance Sheet") and December 31, 2003 (the "2003 Balance Sheet" and together with the 2002 Balance Sheet, the "Balance Sheets") and the related unaudited historical statements of revenues, costs and expenses of the Business for the calendar years ended December 31, 2002 and December 31, 2003 (together with the Balance Sheets, the "Financial Statements"). Except as set forth on Schedule 3.4-B, the Financial Statements fairly present, in all material respects, the financial position of the Business, in each case at and as of the dates indicated, and the results of operations of the Business for the periods indicated. Except as set forth on Schedule 3.4-B, the Financial Statements have been prepared in accordance with GAAP applied consistently throughout the periods covered thereby.

(b) Seller's backlog (as such term is described in paragraph C.1.viii of Item 101 of Regulation S-K of the U.S. Securities and Exchange Commission), including government orders that are firm but not yet funded, with respect to the Business at December 31, 2003 was \$792,679,000.

**3.5 Sufficiency of Assets.** Except for the Excluded Assets, (a) the Assets, (b) the assets owned by RSI as of the Closing, and (c) the rights conferred by the Ancillary Agreements, collectively constitute all of the properties, assets and rights necessary to operate the Business substantially in the manner presently operated by Seller and are adequate for Buyer to conduct the Business in the ordinary course of business consistent with past practice, in each case only for so long as all of the Ancillary Agreements remain in effect.

**3.6 Description of Owned Real Property.** Schedule 3.6 contains a true and complete list of all real property owned in fee simple by Seller and (a) necessary for the operation of the Business as currently operated by Seller or (b) used primarily in the Business (together with all land, buildings, structures, fixtures and improvements located thereon, the "Owned Real Property"). Schedule 3.6 sets forth (x) a description of the principal Business functions conducted at each parcel of Owned Real Property and (y) a correct street address and such other information as is reasonably necessary to identify each parcel of Owned Real Property; provided, however, that where the tax parcel identification or legal description is not available as of the date of this Agreement, Seller shall update Schedule 3.6 with such information (to the extent it becomes available) prior to Closing.

**3.7 Description of Leased Real Property; Leases.** Schedule 3.7 contains a true and complete list of all real property in which Seller or RSI has a leasehold or other occupancy interest, that is (a) necessary for the operation of the Business as currently operated by Seller or (b) used primarily in the Business (the "Leased Real Property"). Schedule 3.7 sets forth (x) the street address of each leasehold interest within the Leased Real Property (y) true and complete description (by location, name of lessor, date of lease agreement and term expiry date) of the applicable lease agreement, including all amendments and modifications thereto, pertaining to each such leasehold interest and (z) the nature of the leasehold interest to be assigned or subleased, as applicable, to Buyer pursuant to the terms of this Agreement (each, a "Real Property Lease"). True and complete copies of each material Real Property Lease have been made available to Buyer. Each such Real Property Lease is a valid and subsisting agreement in full force and effect and constitutes a valid and binding obligation of, and is legally enforceable against Seller and, to Seller's knowledge, the other parties thereto. Neither Seller nor RSI, as applicable, is in material default under any Real Property Lease or has received any notice of default or termination thereunder. No event has occurred which, with notice or the passage of time, or both, would give rise to such a default. To Seller's Knowledge, (i) none of the other parties to the Real Property Leases is in material default thereunder and, (ii) there is no event which, with notice or the passage of time or both, would give rise to such a default. Except as set forth on Schedule 3.7, no approval or consent is required from the other parties to the Real Property Leases to consummate the Contemplated Transactions. Except as set forth on Schedule 3.7, neither Seller nor RSI, as applicable, has assigned, sublet, transferred or encumbered its leasehold interest in any of the Leased Real Property. Seller or RSI has, and immediately after the Closing Buyer will have, good and valid title to the leasehold estate in the Leased Real Property (as contemplated on Schedule 3.7), free and clear of all Encumbrances, other than Permitted Encumbrances.

**3.8 Title to Assets; Encumbrances.**

(a) Seller is (and, subject to the provisions of Section 5.5(b), at Closing, Buyer shall be) the sole owner of good, valid, insurable and marketable fee simple title to the Building 101 Facility and the Building 601 Facility (collectively, the "Transferred Owned Real Property"), in each case free and clear of any Encumbrances, other than:

(i) those Encumbrances described in Schedule 3.8(a);

(ii) liens for Taxes for the current tax year which are not yet due and payable;

(iii) easements, covenants, restrictions and similar Encumbrances of record or as would be shown on any survey or subdivision map and that do not materially adversely affect the use, operation or occupancy of the Transferred Owned Real Property subject thereto as currently used, operated or occupied by Seller; and

(iv) minor encroachments that do not materially adversely affect the use, operation or occupancy of the Transferred Owned Real Property subject thereto as currently used, operated or occupied by Seller (clauses (i) through (iv) collectively, the “Permitted Real Estate Encumbrances”).

(b) Seller has good, valid and transferable title to, or a valid leasehold interest in, all of the Assets (other than the Owned Real Property, the Assigned Intellectual Property and the Assigned Marks), and RSI has good, valid and transferable title to, or a valid leasehold interest in, all of the assets, rights and properties owned by it and used or held for use by it as of the date of this Agreement, in each case, free and clear of all Encumbrances other than:

(i) those Encumbrances described in Schedule 3.8(b);

(ii) Encumbrances for current Taxes or other governmental charges not yet due and payable;

(iii) Encumbrances arising under conditional sales contracts and equipment leases with Third Parties entered into in the ordinary course of business consistent with past practice;

(iv) mechanics’, carriers’, workmen’s, repairmen’s or other like Encumbrances arising or incurred in the ordinary course of business consistent with past practice relating to obligations as to which there is no default on the part of Seller or RSI, as the case may be, or the validity or amount of which is being contested in good faith by appropriate proceedings; and

(v) other Encumbrances that do not, individually or in the aggregate, materially impair the continued use, operation, value or marketability of the specific Assets to which they relate or the operation of the Business (clauses (i) through (v) collectively, the “Permitted Non-Real Estate Encumbrances” and, together with the Permitted Real Estate Encumbrances, “Permitted Encumbrances”).

### **3.9 Condition of Real Property.**

(a) Except as set forth on Schedule 3.9(a), there are no Proceedings or claims, disputes, condemnations, specials assessments or conditions, affecting any of the Transferred Owned Real Property that would interfere with Buyer’s use of such property after the Closing Date in any material respect. There are no material defects in the physical or structural condition of any buildings or improvements constituting part of the Transferred Owned Real Property which would prevent Buyer from conducting the Business therein in substantially the manner in which it has been conducted by Seller prior to the Closing Date. All utilities presently serving the Transferred Owned Real Property are adequate to service the existing normal operations of the Business with respect to such Transferred Owned Real Property consistent with past practice.

(b) To the Knowledge of Seller: (i) Seller is not in violation of any Legal Requirement which, individually or in combination with any others, would materially and adversely affect the ability of Seller to use any parcel of Transferred Owned Real Property in the manner and scope in which it is now being used or operated or otherwise which would have a Material Adverse Effect; and (ii) other than published notice not actually received, there is no pending or contemplated rezoning or special designation proceeding affecting the Transferred Owned Real Property.

(c) Seller has no Knowledge of, and has not received any written notice from, any utility company, municipality or other entity of the discontinuation of sewer, water, electric, gas, telephone or other utilities or services presently provided to the Transferred Owned Real Property and Leased Real Property.

**3.10 Condition of Personal Property.**

(a) Each material item of Seller's Tangible Personal Property has been maintained in accordance with Seller's customary practices and is in good operating condition and repair, normal wear and tear excepted. Except as disclosed in Schedule 3.10(a), each item of Seller's Tangible Personal Property is in the possession of Seller.

(b) Each material item of RSI's Tangible Personal Property has been maintained in accordance with RSI's customary practices and is in good operating condition and repair, normal wear and tear excepted. Each item of RSI's Tangible Personal Property owned or leased by RSI is in the possession of RSI.

**3.11 No Undisclosed Liabilities.** Except as and to the extent reflected on the 2003 Balance Sheet, or on Schedule 3.11, Seller does not have any Liabilities relating to the Business that are required to be reflected on a balance sheet prepared in accordance with GAAP as modified by the exceptions to GAAP set forth on Schedule 3.4-B, other than Liabilities incurred since the date of the 2003 Balance Sheet in the ordinary course of business consistent with past practice which, individually or in the aggregate, would not have a Material Adverse Effect.

**3.12 Taxes.** Except as set forth on Schedule 3.12:

(a) Neither RSI, nor Seller with respect to the Business, is party to, bound by or has any obligation under, any agreement that provides for the sharing or allocation of liability for Taxes or for the making of a payment computed by reference to the Taxes, taxable income or taxable losses of any other Person.

(b) Seller has not received a material adverse ruling from any taxing authority or entered into any materially adverse agreement regarding Taxes with any taxing authority that could, individually or in the aggregate, apply to the Business or the Assets after the Closing Date. No currently outstanding assessment of a material Tax has been proposed in writing against Seller, with respect to the Business, the Assets or RSI or any of RSI's assets or properties. No material issue relating to any material Taxes of the Business or RSI has been raised in writing by any taxing authority in any audit or examination which can result in a proposed adjustment or assessment by a taxing authority in a taxable period (or portion thereof) ending on or before the Closing Date. There are no outstanding agreements extending the statutory period of limitation applicable to any claim for, or the period for the collection or assessment of, Taxes with respect to RSI for any taxable period. No closing agreement pursuant to Section 7121 of the Code (or any predecessor provision) or any similar provision of any state, local, or foreign law has been entered into by or with respect to RSI, and no rulings have been received from any taxing authority by RSI.

(c) All material income or franchise Tax Returns required to be filed by or on behalf of RSI and by Seller, with respect to the Business, on or before the Closing Date have been or will be timely filed (including extensions) and are in all material respects true, complete and correct, and all material Taxes due and payable (whether or not shown on such Tax Returns) have been or will be paid when required by law or adequate reserves have been or shall have been taken for such Taxes. There are no Proceedings now pending or threatened in writing against or with respect to RSI in respect of any Tax or Tax asset. None of the Assets or the assets or properties of RSI (i) is subject to any Encumbrance that arose in connection with any failure (or alleged failure) to pay any Tax (other than for Taxes not yet due and payable), (ii) comprises “tax exempt use property” within the meaning of Section 168(h) of the Code or (iii) is property that is required to be treated as being owned by a Person other than Seller or RSI pursuant to the provisions of Section 168(f)(8) of the Internal Revenue Code of 1954, as amended and in effect immediately prior to the enactment of the Tax Reform Act of 1986.

(d) Seller is not a “foreign person” as defined in Section 1445(f)(3) of the Code.

(e) RSI and, with respect to the Business, Seller have (i) duly and timely withheld from employee salaries, wages and other compensation and paid over to the appropriate taxing authority all amounts required to be so withheld and paid over for all periods under all applicable laws and (ii) collected all material sales and use taxes required to be collected, and have remitted, or will remit on a timely basis, such amounts to the appropriate taxing authority, or have been furnished properly completed exemption certificates or have notified the relevant taxing authority of any Person’s refusal to pay such sales and use taxes and have maintained all such material records and material supporting documents in the manner required by all applicable sales and use tax statutes and regulations.

(f) RSI has not been a member of an affiliated group (other than a group the common parent of which is Seller) filing a consolidated federal income Tax Return.

(g) With respect to any taxable period ending after the Closing Date, RSI will not be required to include in income amounts that accrued in a prior taxable period but were not recognized in any prior taxable period as a result of the installment method of accounting, the completed contract method of accounting, the long-term contract method of accounting, the cash method of accounting, or Section 481 of the Code (or any comparable provisions of state, local or foreign law).

(h) No elections pursuant to Treasury Regulation Section 301.7701 have been made with respect to RSI.

(i) No “reportable” or “listed” transactions (as are defined pursuant to Treasury Regulation Section 1.6011-4 thereunder) have been entered into with respect to RSI.

(j) As a result of the Contemplated Transactions, no payment has been or will be made that is non-deductible pursuant to Code Section 280G or that will result in an excise tax under Code Section 4999, without regard to whether such payment is reasonable compensation for personal services performed or to be performed in the future.

### **3.13 Employee Benefits.**

(a) Set forth in Schedule 3.13(a) is a complete and correct list of all material Employee Benefit Plans.

(b) Seller has delivered or made available to Buyer with respect to each Employee Benefit Plan: (i) if required to be prepared under ERISA or the Code, a copy of the most recent annual report (including all required attachments, schedules and financial statements); (ii) a copy of the Employee Benefit Plan and any amendments thereto and a copy of any summary plan descriptions and summaries of material modifications to any such plan required to be prepared under applicable Legal Requirements; (iii) if the Employee Benefit Plan is funded through a trust or any third-party funding vehicle (other than with respect to any “multiemployer plan” (within the meaning of Section 3(37) of ERISA)), a copy of the trust or other funding agreement or document and the latest statement of assets and/or financial statements thereof; and (iv) a copy of the most recent favorable determination letter issued by the IRS with respect to each Employee Benefit Plan intended to be qualified under Section 401(a) of the Code.

(c) (i) Each Employee Benefit Plan has been administered, and complies in all material respects with its terms and applicable Legal Requirements; (ii) there are no material actions, suits, claims or other Proceedings with respect to any Employee Benefit Plan, and except as would not reasonably be expected to result in material Liability to Buyer or RSI, by the IRS, the PBGC, Department of Labor, any participant or beneficiary, or any other Person, currently pending, or, to Seller’s Knowledge, threatened (other than routine claims for benefits in the ordinary course of business consistent with past practice) and, to Seller’s Knowledge, no facts or circumstances exist that would reasonably be expected to result in any such material actions, suits, claims or other Proceedings; (iii) each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS that it is so qualified, and to the Seller’s Knowledge, nothing has occurred, whether by action or failure to act, that could reasonably be expected to cause the loss of such qualification; (iv) no written communication has been received from the IRS or PBGC concerning the transfer of assets and liabilities from the Seller Pension Plan with respect to the Contemplated Transactions; and (v) to the Seller’s Knowledge, no “prohibited transaction” (as such term is defined in Section 406 of ERISA and Section 4975 of the Code) has occurred with respect to any Employee Benefit Plan for which Buyer is assuming any Liability pursuant to Section 2.3(a) of this Agreement.

(d) With respect to each of the Employee Benefit Plans, all required payments, premiums, contributions or reimbursements, with respect to the Employees, for all periods (or partial periods) ending prior to or as of the Closing Date have been made or properly accrued on the books and Records of the Business. None of the Employee Benefit Plans has, to Seller’s Knowledge, any risk of incurring material liability under Title IV or Section 302 of ERISA. No Employee Benefit Plan is a multiemployer plan as defined in Section 3(37) of ERISA.

(e) Seller, with respect to the Business, and the Employee Benefit Plans, with respect to the Employees, have complied in all material respects with the requirements of Section 4980B of the Code ("COBRA").

(f) Except as set forth on Schedule 3.13(f), no Employee Benefit Plan exists that, as a result of the execution of this Agreement or the Contemplated Transactions (whether alone or in connection with any subsequent event(s)), could result in the increase, acceleration or provision of any payments, benefits or other rights to any Employee, whether or not any such payment, benefit or right would constitute a "parachute payment" within the meaning of Section 280G of the Code.

**3.14 Compliance with Legal Requirements; Governmental Authorizations.**

(a) Except as set forth in Schedule 3.14(a), neither RSI nor Seller, with respect to the Business, is in violation of any applicable Legal Requirement, except any such violation which, individually or in the aggregate, would not have a Material Adverse Effect.

(b) (i) Seller has all Governmental Authorizations that are necessary to conduct the Business as presently being conducted in all material respects and RSI has all Governmental Authorizations that are necessary to conduct its business as presently conducted in all material respects, (ii) all such Governmental Authorizations are in full force and effect, and (iii) no violations or claimed violations of such Governmental Authorizations are pending before any Governmental Body.

**3.15 Legal Proceedings; Orders.** Except as set forth on Schedule 3.15, there is no pending nor, to the Knowledge of Seller, threatened Proceeding against Seller or any of its properties, assets and business operations, in each case relating to the Business, or against RSI or any of its properties, assets and business operations. Seller is not in default under any Order applicable to the Business and RSI is not in default of any Order.

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

(a) Since January 1, 2004, there has not occurred a Material Adverse Effect or any events, circumstances, developments, changes or effects that, individually or in the aggregate, cause, result in or have a Material Adverse Effect.

(b) Except as required by or expressly permitted by this Agreement, and except for such actions as are reasonably necessary for Seller to separate the Business and the Assets from Seller's retained businesses and assets (including the actions described in Section 6.2(b)), except as set forth in Schedule 3.16(b), since January 1, 2004, Seller and RSI have conducted the Business only in the ordinary course of business consistent with past practice, and:

(i) there has not been any material change by Seller in the accounting methods or practices followed by or with respect to the Business except to the extent required by any changes in GAAP;

(ii) there has not been any occurrence resulting in the damage, destruction or loss (whether or not covered by insurance) affecting any tangible asset or property of the Business in excess of One Million Dollars (\$1,000,000) for any single loss or Ten Million Dollars (\$10,000,000) for all such losses;

(iii) Seller has not waived or released any right or claim (or series of related rights and claims) related to the Business outside the ordinary course of business consistent with past practice and RSI has not waived or released any right or claims (or series of related rights or claims) outside the ordinary course of business consistent with past practice;

(iv) there has not been (A) any material increase in the compensation or benefits of any Employee, except for such increases as are granted (1) in the ordinary course of business consistent with past practice to Business Employees and RSI Current Employees pursuant to normal periodic performance reviews; (2) in accordance with the terms of any employment agreement as currently in effect and set forth on Schedule 3.17(a)(iii) or (3) pursuant to applicable Legal Requirements; or (B) any material change with respect to any Employee Benefit Plan that has resulted, or is reasonably expected to result, in a material increase in any Liability to Buyer or RSI.

(v) there has not been any grant of any severance or termination pay to any Employee, except in accordance with the terms of any Employee Benefit Plan set forth on Schedule 3.13(a) or with applicable Legal Requirements;

(vi) neither Seller nor RSI has entered into any Material Business Contract outside the ordinary course of business consistent with past practice and neither Seller nor RSI, nor any other party to any Material Business Contract, has terminated or unilaterally modified any Material Business Contract outside the ordinary course of business consistent with past practice;

(vii) Seller has not sold, transferred, or otherwise disposed of any of the properties or assets of the Business (real, personal or mixed, tangible or intangible) other than in the ordinary course of business consistent with past practice and RSI has not sold, transferred, or otherwise disposed of any of its properties or assets (real, personal or mixed, tangible or intangible), except in the ordinary course of business consistent with past practice; and

(viii) neither Seller nor RSI has entered into any Contract to do any of the foregoing.

**3.17 Contracts; No Defaults; Bids.**

(a) Schedule 3.17(a) contains an accurate and complete list of each of the following types of Business Contracts (the "Material Business Contracts") (other than those described in clause (iii), which shall be Material Business Contracts, but which shall not appear on Schedule 3.17(a)) and, except where Seller is prohibited from doing so by the terms of such Material Business Contract or where indicated on Schedule 3.17(a), Seller has made available to Buyer accurate and complete copies of such Material Business Contracts:



(i) any Business Contract involving performance of services or delivery of goods or materials by Seller of an amount or value in excess of Five Hundred Thousand Dollars (\$500,000) or any Business Contract involving performance of services or delivery of goods or materials by RSI of an amount or value in excess of One Hundred Thousand Dollars (\$100,000);

(ii) any Business Contract involving performance of services or delivery of goods or materials to Seller of an amount or value in excess of Five Hundred Thousand Dollars (\$500,000) or any Business Contract involving performance of services or delivery of goods or materials to RSI of an amount or value in excess of One Hundred Thousand Dollars (\$100,000);

(iii) any employment or severance agreement that has an aggregate future liability, if fully performed, in excess of Two Hundred and Fifty Thousand Dollars (\$250,000);

(iv) any Business Contract containing any covenant limiting the ability of Seller, with respect to the operation of the Business, or RSI to engage in any line of business or compete with any business or person or in any geographic area;

(v) (A) any Business Contract under which (1) Seller is the lessee of, or holds or uses, any machinery, equipment, vehicle or other tangible personal property owned by any third Person for an annual rent in excess of Five Hundred Thousand Dollars (\$500,000) or (2) Seller is the lessor of, or makes available for use by any third Person, any tangible personal property owned by it for an annual rent in excess of Five Hundred Thousand Dollars (\$500,000) or (B) any Business Contract under which (1) RSI is the lessee of, or holds or uses, any machinery, equipment, vehicle or other tangible personal property owned by any third Person for an annual rent in excess of One Hundred Thousand Dollars (\$100,000) or (2) RSI is the lessor of, or makes available for use by any third Person, any tangible personal property owned by it for an annual rent in excess of One Hundred Thousand Dollars (\$100,000);

(vi) any indebtedness of Seller, on behalf of the Business, or RSI for borrowed money;

(vii) any indebtedness for borrowed money of RSI to any Related Person of Seller;

(viii) any Business Contract with any Related Person of Seller or of RSI;

(ix) (A) all material Third Party Intellectual Property Licenses granted to RSI for Intellectual Property that is embedded in products (1) sold by RSI or (2) under development by RSI, in each case as of the Closing Date; and (B) all Third Party Intellectual Property Licenses granted to RSI since October 1, 2000 for Intellectual Property that is embedded in products (1) sold by the RSI or (2) under development by the RSI, in each case as of the Closing Date;

(ix)- 1 (A) any Third Party Intellectual Property License requiring the payment of royalties by Seller in excess of Fifty Thousand Dollars (\$50,000) per year, and (B) to Seller's Knowledge, any Third Party Intellectual Property License requiring the payment of royalties by Seller in excess of Twenty Five Thousand Dollars (\$25,000), but less than Fifty Thousand Dollars (\$50,000), per year, in each case where such Third Party Intellectual Property License was entered into after January 1, 2000.

(x) any power of attorney pertaining to the Business or RSI;

(xi) each Business Contract for capital expenditures which, together with future payments under all other Business Contracts relating to the same capital project, exceed One Million Dollars (\$1,000,000);

(xii) any Business Contract under which Seller or RSI has loaned money to a Third Party;

(xiii) any Business Contract that is a joint venture agreement or other agreement involving the sharing of profits;

(xiv) any Business Contract that is guarantee or similar obligation incurred by Seller or RSI for the benefit of any Person; and

(xv) any Business Contract relating to the acquisition of assets (other than in the ordinary course of business consistent with past practice) or any capital stock of any business enterprise.

(b) Except as disclosed on Schedule 3.17(b), each Business Contract is valid, binding and in full force and effect, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). Except as disclosed on Schedule 3.17(b), Seller or RSI, as applicable, has performed all material obligations required to be performed by it to date under each such Business Contract and is not in breach or default in any material respect thereunder and, to Seller's Knowledge, no other party to any of such Business Contracts is in breach or default in any material respect thereunder.

(c) Schedule 3.17(c) sets forth a complete list of all Bids as of the date of this Agreement that, if accepted by the party to which such Bid was made, would constitute a Material Business Contract. Seller and RSI each has complied in all material respects with all Legal Requirements pertaining to each Bid, all representations and certifications executed, acknowledged or set forth in or pertaining to each Bid (if any) were complete and correct in all material respects as of their effective date and Seller and RSI each has complied in all material respects with all such representations and certifications. Except as stated in this Section 3.17(c), Seller makes no other representations with respect to the Bids.

**3.18 Environmental Matters.** Except as disclosed in Schedule 3.18:

(a) each of Seller and RSI is, and to the Knowledge of Seller since January 1, 1999 has been, in compliance with all applicable Environmental Laws and OSHA concerning its activities on any Transferred Owned Real Property or Leased Real Property or concerning the Business, except where any failure to be in compliance would not, individually or in the aggregate, have a Material Adverse Effect;

(b) (i) Each of Seller and RSI has all Environmental Permits required for the operation of the Business, as presently conducted by it; (ii) all such Environmental Permits are in full force and effect; and (iii) there are no violations, investigations or proceedings, nor, to the Knowledge of Seller, are any investigations or proceedings pending or threatened, that could reasonably be expected to cause the revocation, suspension, or adverse modification of any such Environmental Permits, and, to the Knowledge of Seller, neither Seller nor RSI has engaged in conduct that could reasonably be expected to cause such revocation, suspension, adverse modification or interference;

(c) since January 1, 1999, no Environmental Claim, request for information pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S. §§ 9601 et seq., or summons is or has been pending against or has been received by Seller or RSI concerning any Transferred Owned Real Property or Leased Real Property, or concerning the Business and, to the Knowledge of Seller, no such Environmental Claim, request for information, citation or summons is pending or threatened by any Person against the Seller or RSI, or pending or threatened against any other Person, concerning any Transferred Owned Real Property or Leased Real Property, or concerning the Business, in each case with respect to any alleged violation of any Environmental Law or liability thereunder;

(d) there is no investigation, cleanup or remediation of Hazardous Materials being conducted or planned at any Transferred Owned Real Property or Leased Real Property, or concerning the Business;

(e) to the Knowledge of Seller, no Hazardous Material is present at, and there has been no Release of any Hazardous Material on, at, under or affecting, any Transferred Owned Real Property or Leased Real Property, or concerning the Business except for such presence or Releases that, individually or in the aggregate, would not have a Material Adverse Effect;

(f) the Knowledge of Seller, there are no events, conditions, circumstances, activities, practices, or incidents which would, or would be reasonably likely to, give rise to any Environmental Claim against RSI or, with respect to the Business, against Seller, except for Environmental Claims that, individually or in the aggregate, would not have a Material Adverse Effect;

(g) to the Knowledge of Seller, Research Systems, Inc. has never owned any real property; and

(h) true and complete copies of any environmental reports, audits, and other similar documents, in each case that contain material information concerning any Transferred Owned Real Property or Leased Real Property, or concerning the Business, and that are in the possession or control of Seller or RSI, have been provided to Buyer. In the event that additional documents are obtained by Seller, Seller shall provide same to Buyer in a timely manner.

### **3.19 Employees.**

(a) Schedule 3.19(a) sets forth a list of all Business Employees (other than those individuals who fill the positions on Schedule 1.1(gg)(iii)), together with each such employee's name, title, date of birth, current salary or hourly rate of compensation, and date of hire. Subject to Section 5.2(f), Schedule 3.19(a) shall be amended no later than fourteen (14) days prior to Closing to reflect the addition of the individuals who fill the positions listed on Schedule 1.1(gg)(iii) and may also be updated at any time prior to Closing to reflect hiring, firing, transfers, departures, or terminations of Business Employees in the ordinary course of business consistent with past practice.

(b) Schedule 3.19(b) (contains a complete and accurate list of the name, date of hire, date of termination, and date of birth of each Former Business Employee or Dependent thereof receiving or entitled to receive Post-Employment Welfare Benefits. Schedule 3.19(b) shall be amended at any time prior to the Closing Date to reflect firing, departures, or terminations of Business Employees in the ordinary course of business consistent with past practice.

### **3.20 Labor; Compliance.**

(a) No labor union represents or has represented, within the past three (3) years, the Business Employees or RSI Current Employees and no collective bargaining agreement is or has been, binding against RSI or, with respect to the Business, Seller. None of Seller (with respect to the Business) or RSI has incurred any material Liability under any collective bargaining agreement in respect of any Former Business Employee or RSI Former Employees that remains unsatisfied as of the Closing Date. To Seller's Knowledge, no union organization campaign is in progress with respect to the Business Employees or RSI Current Employees. There is no labor strike, slowdown, work stoppage, dispute, lockout or other labor controversy in effect, or to Seller's Knowledge, threatened against or otherwise affecting RSI or, with respect to the Business, Seller, and none of Seller (with respect to the Business) or RSI has experienced any such labor controversy within the past three (3) years. No grievance or arbitration proceeding arising out of or under employment relationships, is pending or, to Seller's Knowledge, threatened against RSI or, with respect to the Business, Seller.

(b) There is no unfair labor practice charge or complaint against RSI or, with respect to the Business, against Seller pending, or, to Seller's Knowledge, threatened, before the National Labor Relations Board or other Governmental Body except for any such charge or complaint that, individually or in the aggregate, would not have a Material Adverse Effect. No other material action, suit, complaint, charge, arbitration, inquiry, proceeding or investigation by or before any court, governmental agency, administrative agency or commission brought by or on behalf of any Business Employee, RSI Current Employee, or RSI Current Employee, Former Business Employee or RSI Former Employee, labor organization or other representative of any Employees is pending or, to Seller's Knowledge, threatened. Neither Seller, with respect to the Business, nor RSI is a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Body relating to employees or employment practices.

(c) Each of Seller, with respect to the Business, and RSI is in compliance in all material respects with all applicable laws, agreements, contracts, and policies, plans, and programs relating to employment, employment practices, compensation, benefits, hours, and terms and conditions of employment, and the termination of employment, including but not limited to any obligations pursuant to the Worker Adjustment and Retraining Notification Act of 1988 (the “WARN Act”).

(d) Neither the Seller (with respect to the Business) nor RSI has closed any plant or facility, or implemented any early retirement, separation or window program with respect to Former Business Employees within the past three years that could reasonably be expected to result in material Liability to Buyer, nor has the Seller (with respect to the Business) or RSI announced any such action or program for the future.

**3.21 Brokers or Finders.** Neither Seller, nor any of its Representatives, has incurred any obligation or liability, contingent or otherwise, for brokerage or finders’ fees or agents’ commissions or other similar payments in connection with the Contemplated Transactions other than the fees and expenses of Goldman Sachs for which Seller shall be solely responsible and for which Buyer shall have no liability.

**3.22 Governmental Authorizations and Consents.** Execution, delivery and performance of this Agreement by Seller and consummation of the Contemplated Transactions will not require any material Consent from, any material filing with or material notification to, any United States, state or local governmental or regulatory authority except with respect to the following:

- (a) The pre-merger notification requirements of the HSR Act and any applicable equivalent foreign governmental reporting requirements;
- (b) The facilities clearance requirements of the Defense Investigative Service of the United States Department of Defense (“DIS”), as set forth in the DIS Industrial Security Regulation and the National Industrial Security Program Operating Manual, as may be amended from time to time;
- (c) The novation of the Government Contracts as contemplated by Section 12.2;
- (d) Such notice as may be required by applicable U.S. export control laws and regulations, including the International Traffic in Arms Regulations and the Export Administration Regulations;
- (e) Such filings as may be required under the Exchange Act; and
- (f) Such other Consents as identified on Schedule 3.22(f) delivered hereunder.

### 3.23 Government Contracts.

(a) Except as set forth on Schedule 3.23(a):

(i) To Seller's Knowledge, Seller's and RSI's cost accounting, material management, quality control, and procurement systems, in each case with respect to the Government Contracts, are in compliance in all material respects with all laws and regulations;

(ii) To the Knowledge of Seller, (A) Seller and RSI each has complied with all material terms and conditions of, and are not in material breach or default of, each Government Contract and all clauses, provisions and requirements included expressly, by reference or by operation of law therein, (B) Seller and RSI each has complied in all material respects with all Legal Requirements pertaining to each Government Contract and (C) all representations and certifications executed, acknowledged or set forth in or pertaining to each Government Contract were complete and correct in all material respects as of their effective date and Seller and RSI each has complied in all material respects with all such representations and certifications;

(iii) Neither Seller nor RSI has received a final decision of a government contracting officer or other contractor or any other Person asserting any claim or equitable adjustment or breach against Seller or RSI with respect to any Government Contract and there are no material disputes as to which Seller or RSI has received notice in writing with respect to any Government Contract;

(iv) To the Knowledge of Seller, during the three (3) year period prior to the date of this Agreement, neither the United States Government nor any prime contractor nor subcontractor has notified Seller or RSI in writing, and neither Seller nor RSI has notified any Third Party in writing, that Seller or RSI has materially breached or materially violated any Legal Requirement, any material representation, clause, provision, requirement, or certification pertaining to any Government Contract, provided that for purposes of the foregoing, a breach or violation shall not include any breach or violation that has been resolved to the satisfaction of the relevant non-breaching party;

(v) During the three (3) year period prior to the date of this Agreement, neither the United States government nor any prime contractor nor subcontractor has notified Seller or RSI in writing and neither Seller nor RSI has notified any Third Party in writing, that Seller or RSI has breached or violated any Legal Requirement, representation, clause, provision, requirement, or certification pertaining to any Government Contract, where the breach or violation described in this Section 3.23(a)(v), individually or in the aggregate, would have a Material Adverse Effect;

(vi) No termination for convenience, termination for default, cure notice or show cause notice is currently in effect pertaining to any Government Contract;

(vii) No aggregated costs in excess of One Hundred Thousand Dollars (\$100,000) incurred by Seller or RSI pertaining to any Government Contract have been formally questioned or challenged, or have been disallowed in any manner by the United States Government;

(viii) No money due to Seller or RSI pertaining to any Government Contract has been withheld or set off nor has any claim been made to withhold or set off such money and, to the Knowledge of Seller, except for adjustments in the ordinary course of business, each of Seller and RSI is entitled to all payments, including progress payments, received with respect to any Government Contract; and

(ix) Neither Seller nor RSI has received any written notices of product or service warranty claims or obligations pertaining to any Government Contract that exceed an aggregate amount of One Hundred Thousand Dollars (\$100,000).

(b) Except as set forth on Schedule 3.23(b), (i) to the Knowledge of Seller, neither Seller, with respect to the Business, nor RSI, nor any of their respective directors, officers or employees that are engaged in the Business, is (or during the three year period prior to the date of this Agreement has been) under administrative, civil or criminal investigation, or indictment or audit by any Governmental Body with respect to any alleged violation of law, irregularity, misstatement or omission arising under or relating to any Government Contract (other than routine DCAA audits, in which no such violations of law, irregularities, misstatements or omissions were expressly identified); and (ii) during the last three (3) years, neither Seller, with respect to the Business, nor RSI has conducted or initiated any internal investigation or made a voluntary disclosure to the United States Government, with respect to any alleged violation of law, irregularity, misstatement or omission arising under or relating to a Government Contract.

(c) Except as set forth in Schedule 3.23(c), during the three (3) year period prior to the date of this Agreement, (i) Seller, with respect to the Business, has not been (A) debarred or suspended or (B) notified of a proposed debarment or suspension, in each case from participation in the award of contracts with any United States Government entity, (ii) RSI has not been (A) debarred or suspended or (B) notified of a proposed debarment or suspension, in each case from participation in the award of contracts with any United States Government entity, and (iii) neither Seller, with respect to the Business, nor RSI has been the subject of a finding of nonresponsibility or ineligibility for contracting with any United States Government entity (and in each case excluding ineligibility to bid on certain contracts due to generally applicable bidding requirements such as nonresponsiveness or exclusion from a competitive range). To the Knowledge of Seller, there exist no facts or circumstances that would warrant the institution of suspension or debarment proceedings by any United States Government entity against, or the finding of non-responsibility or ineligibility for contracting with any United States Government entity on the part of, Seller (with respect to the Business) or RSI.

**3.24 Certain Payments.** To the Knowledge of Seller, neither Seller, nor RSI, nor any of their respective directors, officers or employees has, during the three (3) year period prior to the date of this Agreement, directly or indirectly in connection with the Business: (a) used any of the funds of Seller or RSI for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (b) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from the funds of Seller or RSI; or (c) violated any provision of the Foreign Corrupt Practices Act of 1977.

**3.25 Government Furnished Equipment.** Schedule 3.25 contains a schedule, dated as of the dates set forth therein, identifying, by description or inventory number, all government furnished property (including special test equipment, tools, materials and fixtures) loaned, bailed or otherwise furnished to or held by Seller on behalf of the United States as of the applicable date and that relate to the Business Contracts. Schedule 3.25 identifies each Business Contract to which each such item relates. Such Schedule was materially accurate and complete on the applicable date set forth therein and, if it were dated as of the Closing Date would contain only those additions and omit only those deletions of government furnished property that have occurred in the ordinary course of business consistent with past practice. Seller is in compliance in all material respects with all laws and regulations governing government furnished property that is in the possession of Seller and that relates to the Business, including Federal Acquisition Regulation Part 45.

**3.26 Material Suppliers.** Schedule 3.26 sets forth the names of the ten suppliers of the Business whom Seller paid the greatest sum of money in respect of services, products or materials provided to the Business between January 1, 2003 and December 31, 2003.

**3.27 Classified Information.** To the Knowledge of Seller, during the three (3) year period prior to the date of this Agreement, neither Seller, nor RSI, nor any of their respective directors, officers, employees or agents has, in connection with the Business, been in material violation of the provisions and requirements of the National Industrial Security Program Operating Manual or the requirements of (a) Seller's or RSI's facilities security clearances and (b) the individual security clearances of their respective directors, officers, employees or agents.

**3.28 Export Control and Compliance.** To the Knowledge of Seller, during the three (3) year period prior to the date of this Agreement, neither Seller, nor RSI, nor any of their respective directors, officers, employees or agents, in connection with Business, has materially violated, breached or failed to comply with any Legal Requirement pertaining to export controls, including applicable regulations of the United States Department of Commerce and United States Department of State.

**3.29 Business.** The Business is not conducted by any Affiliate of Seller, other than RSI.

**3.30 Absence of Seller Marks.** None of the tools, dies, molds or masks included within the Assets bear any Kodak Marks. None of the Seller's Inventory bears any Kodak Marks.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

**4.1 Organization and Good Standing.** Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Indiana.



**4.2 Authority; Enforceability; No Conflict.**

(a) Buyer has the requisite corporate power and authority to enter into the Transaction Agreements and to consummate the Contemplated Transactions. All corporate acts and other proceedings required to be taken by Buyer to authorize the execution, delivery and performance of the Transaction Agreements and the consummation of the Contemplated Transactions have been duly and properly taken. This Agreement has been, and each of the Ancillary Agreements, when executed, will be, duly executed and delivered by Buyer and, assuming that this Agreement and each Ancillary Agreement constitute a valid and binding obligation of Seller, constitute a valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) Except as set forth in Schedule 4.2(b), neither the execution and delivery by Buyer of this Agreement or the Ancillary Agreements, nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

- (i) breach any provision of any of the Governing Documents of Buyer;
- (ii) contravene, conflict with or result in a violation or breach of any Legal Requirement applicable to Buyer or its assets;
- (iii) contravene, conflict with or result in a violation or breach of any Order to which Buyer is a party or by which Buyer or any of its assets is bound; or
- (iv) result in any violation or breach of, or give rise to any right of termination, cancellation or acceleration under, or require any consent under any material Contract to which Buyer is a party or by which Buyer or its assets may be bound;

except, in the case of clauses (iii) and (iv), for such conflicts, violations, breaches, terminations, cancellations, or accelerations as to which requisite waivers or consents have been obtained or which, individually or in the aggregate, would not impair Buyer's ability to consummate the Contemplated Transactions.

**4.3 Certain Proceedings.** There is no pending Proceeding that has been commenced against Buyer which seeks to prevent the Contemplated Transactions, or which if adversely determined, would reasonably be likely to materially and adversely affect the ability of Buyer to enter into and perform its obligations under the Transaction Agreements or otherwise to consummate the Contemplated Transactions. To Buyer's Knowledge, no such Proceeding has been threatened.

**4.4 Brokers or Finders.** Neither Buyer, nor any of its Representatives, has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the Contemplated Transactions other than the fees and expenses of Rothschild, Inc. for which Buyer shall be solely responsible and for which Seller shall have no liability.

**4.5**     **Sufficient Funds.** Buyer has or has available sufficient funds to deliver the Purchase Price to Seller at the Closing.

**4.6**     **Security Clearance.** Buyer controls facilities classified for United States Government security purposes as high as the level of “Top Secret SCI,” and employs individuals holding United States Government security clearances as high as the level of “Top Secret SCI.”

**4.7**     **Governmental Authorizations and Consents.** Execution, delivery and performance of this Agreement by Buyer and consummation of the Contemplated Transactions will not require any Consent from, any filing with or notification to, any United States, state or local governmental or regulatory authority except with respect to the following:

(a)     The pre-merger notification requirements of the HSR Act and any applicable equivalent foreign governmental reporting requirements;

(b)     The facilities clearance requirements of the DIS, as set forth in the DIS Industrial Security Regulation and the DIS Industrial Security Manual, as may be amended from time to time;

(c)     The novation of the Government Contracts as contemplated by Section 12.2;

(d)     Such notices and filings as may be required by applicable U.S. export control laws and regulations, including the International Traffic in Arms Regulations and the Export Administration Regulations;

(e)     Such filings as be required under the Exchange Act;

(f)     Such other Consents as identified on Schedule 4.7(f) delivered hereunder; and

(g)     Such other Consents as the failure to obtain or make would not have, in the aggregate, a material adverse effect on the business, results of operations or financial position of Buyer on a consolidated basis.

**4.8**     **Buyer’s Acknowledgment.**

(a)     Buyer acknowledges and agrees that:

(i)     other than the representations and warranties of Seller specifically contained in this Agreement or in the Ancillary Agreements,

(A) there are no other representations or warranties of Seller either expressed or implied with respect to Seller, the Business, the Assets, RSI, or the Contemplated Transactions and Buyer takes the Assets “as-is” and “where-is” and (B) SELLER EXPRESSLY DISCLAIMS ANY IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION, MERCHANTABILITY OR SUITABILITY OF ANY OF THE ASSETS, OR OF THE BUSINESS; and

(ii) it shall have a right to indemnification solely as provided in Article 11 hereof and shall have no claim or right to indemnification with respect to any information, documents or materials furnished by either Seller or any of its officers, directors, employees, agents or advisors, or otherwise available to Buyer.

(b) Buyer acknowledges and agrees that some or all of the services and products of the Business may require a license from either the United States Department of State or Department of Commerce in order to export such services or products to a foreign buyer and some or all of the equipment used in the Business is of such a nature that the export of such equipment may require a license from either the United States Department of State or Department of Commerce.

(c) Buyer acknowledges and agrees that any cost estimates, projections or other predictions contained or referred to in the Disclosure Schedules or in the information provided to Buyer or any of its employees, agents or representatives were prepared for internal planning purposes only and are not and shall not be deemed to be representations or warranties of Seller or any Related Person of Seller.

(d) Buyer acknowledges and agrees that: (i) other than those set forth in Section 3.18, Seller makes no representations or warranties, express or implied, regarding the information and findings of any environmental reports provided to Buyer; (ii) such reports were not prepared for Buyer or in anticipation of the Contemplated Transactions; and (iii) Buyer acknowledges that all such environmental reports were prepared solely for Seller's use and benefit.

## ARTICLE 5 COVENANTS OF SELLER

### 5.1 Confidential Information.

(a) Seller and its Affiliates will treat and hold any proprietary and confidential information relating primarily to the operations or affairs of the Business (the "Business Confidential Information") in the same manner as Seller treats and holds its own confidential information of a similar nature; provided, however, that to the extent any Business Confidential Information is included in the Assigned Intellectual Property, Seller's obligations with respect to the treatment of such information shall be governed exclusively by the Intellectual Property Agreement and not by this Section 5.1.

(b) The obligations of confidentiality contained in Section 5.1(a) will not apply to any information to the extent that (i) it becomes generally available to the public or otherwise part of the public domain after the Closing Date and other than through any act or omission of Seller or any of its Affiliates in breach of this Agreement, (ii) it is disclosed to Seller after the Closing Date, other than under an obligation of confidentiality, by a Third Party who has no obligation to Buyer not to disclose such information to others, or (iii) it is independently developed by Seller after the Closing Date without access to the Business Confidential Information.

(c) Notwithstanding Section 5.1(a), Seller may disclose Business Confidential Information to the extent required by a court of competent jurisdiction or other Governmental Body or otherwise as required by any Legal Requirement. Before disclosing Business Confidential Information pursuant to this Section 5.1(c), Seller shall provide at least five (5) Business Days' notice to Buyer of the court order, subpoena, interrogatories or government order that requires disclosure of the Business Confidential Information so that Buyer may seek a protective order or other appropriate remedy or waive compliance with this Agreement. Seller shall consult with Buyer on the advisability of taking steps to resist or narrow such request or requirement and shall otherwise cooperate with the efforts of Buyer to protect the Business Confidential Information. Further, in the event such disclosure is required under the laws, rules or regulations of the Securities and Exchange Commission or any other applicable Governmental Body, Seller shall (i) redact mutually agreed upon portions of the Business Confidential Information to the fullest extent permitted under applicable laws, rules and regulations and (ii) submit a request to the Securities and Exchange Commission or such Governmental Body that such portions of the Business Confidential Information receive confidential treatment under the laws, rules and regulations of the Securities and Exchange Commission or otherwise be held in the strictest confidence to the fullest extent permitted under the laws, rules or regulations of any other applicable Governmental Body.

(d) At the Closing, Seller shall deliver to Buyer copies of all Confidentiality Letters.

**5.2 Operation of the Business of Seller.** Except as required by or expressly permitted by this Agreement, and except for such actions as are reasonably necessary for Seller to separate the Business and the Assets from Seller's retained businesses and assets (including the actions described in Section 6.2(b)), from the date of this Agreement to the Closing, Seller will conduct the Business solely in the ordinary course of business consistent with past practice in substantially the same manner as presently conducted, will make all reasonable efforts, consistent with past practice, to preserve relationships with employees, customers and suppliers and will not take any action which would adversely affect its ability to consummate the Contemplated Transactions. Without limiting the generality of the foregoing, except as contemplated by this Agreement, during the period from the date of this Agreement to the Closing Date, without the prior written consent of Buyer which consent shall not be unreasonably withheld, neither Seller, in each case with respect to the Business, nor RSI will:

(a) enter into any Business Contract that would, at the time it is entered into, require establishing a loss contract reserve (under GAAP) upon entry into such Business Contract;

(b) create, incur, assume or guarantee any indebtedness for borrowed money (including obligations in respect of capital leases), other than in the ordinary course of business consistent with past practice;

(c) issue, sell or deliver, redeem or purchase, any shares of the capital stock of Research Systems, Inc. or any Capital Stock Equivalents thereof, or the RSI Subsidiaries or any Capital Stock Equivalents thereof, or grant or enter into any options, warrants, rights, agreements or commitments with respect to the issuance of capital stock of Research Systems, Inc. or any Capital Stock Equivalents thereof, or the RSI Subsidiaries or any Capital Stock Equivalents thereof, or amend any terms of any such securities or agreements;

(d) materially increase the rate of compensation or benefits of, or pay or agree to pay any benefit to, any Business Employee or RSI Current Employee, except for such increases as are granted (i) in the ordinary course of business consistent with past practice to Business Employees and RSI Current Employees pursuant to normal periodic performance reviews; (ii) in accordance with the terms of any employment agreement as currently in effect and set forth on Schedule 3.17(a)(iii); or (iii) pursuant to applicable Legal Requirements;

(e) (i) effect any material change with respect to any Employee Benefit Plan that would reasonably be expected to result in a material increase in any liability to Buyer or RSI or (ii) grant any severance or termination pay to any Business Employee or RSI Employee, except in accordance with the terms of any Employee Benefit Plan as currently in effect and set forth on Schedule 3.13(a) or with applicable Legal Requirements;

(f) hire or transfer (i) more than 40 individuals for the requisition positions charged directly to the government, or (ii) any individuals for the requisition positions not charged directly to the government, who would otherwise constitute Business Employees or RSI Employees as of the date hereof;

(g) except as set forth in Schedule 5.2(g), (i) sell, lease, transfer, or otherwise dispose of any properties or assets, real, personal or mixed, which have an aggregate book value in excess of One Million Dollars (\$1,000,000), (ii) mortgage any of the Transferred Owned Real Property (other than Permitted Real Estate Encumbrances), or (iii) encumber any personal property or assets (other than Permitted Non-Real Estate Encumbrances);

(h) acquire, by merging or consolidating with, or by purchasing the stock or a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof;

(i) acquire any assets which are material, individually or in the aggregate, to the Business other than in the ordinary course of business consistent with past practice or pursuant to existing contractual obligations;

(j) except as set forth in Schedule 5.2(j), enter, modify, amend or terminate any Real Property Lease or any Material Business Contract except in the ordinary course of business consistent with past practice;

(k) waive or release any rights of material value, or cancel, compromise, release or assign any material indebtedness owed to it or any material claims held by it other than in the ordinary course of business consistent with past practice or pursuant to existing contractual obligations;

- (l) effectuate a “plant closing” or “mass layoff” (as those terms are defined under the WARN Act) affecting in whole or in part any site of employment, facility, operating unit of the Business Employees or RSI Current Employees;
- (m) amend the Governing Documents of Research Systems, Inc. or any RSI Subsidiary;
- (n) maintain its books and records in a manner other than in the ordinary course of business consistent with past practice;
- (o) with respect to RSI and any RSI Subsidiary, change or make any Tax elections, change any method of accounting with respect to Taxes, file any amended Tax Return, settle or compromise any federal, state, local or foreign material Tax liability or agree to extend or waive the statutory period of limitations for the assessment or collection of Taxes;
- (p) institute any change in its accounting methods, principles or practices other than as required by a change in GAAP;
- (q) pay, discharge or satisfy any material Liability, other than the payment, discharge or satisfaction of Liabilities in the ordinary course of business consistent with past practice, or collect, or accelerate the collection of, any amount owed (including Accounts Receivable) other than in the ordinary course of business consistent with past practice;
- (r) enter into any Third Party Intellectual Property License other in the ordinary course of business and consistent with past practice;
- (s) enter into any Business Contract assigning or granting rights to any Assigned Intellectual Property or Assigned Marks, other than non-exclusive licenses in the ordinary course of business and consistent with past practice; or
- (t) agree, whether in writing or otherwise, to do any of the foregoing.

### 5.3 **Noncompetition.**

(a) **Noncompetition.** For a period of three (3) years after the Closing Date, Seller shall not, and shall cause its Affiliates not to, anywhere in the world, directly or indirectly invest in, own, manage, operate, finance, control, advise, render services to or guarantee the obligations of any Person engaged in or planning to become engaged in (i) the business of designing, manufacturing, selling or supporting High Resolution Electro-Optical End-to-End Systems (A) for space-based, airborne, and terrestrial applications supporting United States Government intelligence, military and scientific applications or (B) for commercial remote sensing businesses; or (ii) the business of RSI as conducted as of the Closing (the “Competing Business”). Notwithstanding the foregoing, Seller and its Affiliates may engage in any of the following activities, and the term “Competing Business” shall be deemed to exclude each of the following activities of Seller and its Affiliates:

- (i) engage in any business conducted by any of them as of the date of this Agreement other than through the Remote Sensing Systems SPG and make any upgrades or improvements to products or services currently offered by, or under active development by, Seller or its Affiliates other than through the Remote Sensing Systems SPG;

(ii) the design, development, manufacture, promotion and sale of Small Optics for any application (where “Small Optics” shall mean optical devices that are less than one meter in diameter), and the provision of services in connection therewith;

(iii) the design, development, manufacture, promotion and sale of devices, software, products, systems, and components therefor, intended for night vision or for combat or law enforcement obscured vision situations, and the provision of services in connection therewith;

(iv) the design, development, manufacture, promotion and sale of devices, software, products, systems, and components therefor, involved in or utilizing the transmission of digital and digitized images and data via satellite communications systems or otherwise, and the provision of services in connection therewith;

(v) the design, development, manufacture, promotion and sale of devices, software, products, systems, and components therefor, in the areas of consumer and professional imaging (capture and output), commercial printing and graphics, health imaging, healthcare, and entertainment imaging, and the provision of services in connection therewith; and

(vi) the promotion, marketing, sale, lease, licensing, and other disposition or provision of its standard products, software and services at any time to any other party (where standard products, software and services include inventoried and cataloged commercial and consumer products and related customer support and equipment services, including modifications thereof for particular customer applications).

(b) Investment and Acquisition Exceptions. Notwithstanding Section 5.3(a), nothing herein shall prohibit Seller or its Affiliates from:

(i) Purchasing or otherwise acquiring up to (but not more than) ten percent (10%) of any class of the securities of any Person (but may not otherwise participate in the activities of such Person) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Exchange Act; or

(ii) Acquiring assets or securities from, or effectuating a merger, business combination, reorganization, exchange or recapitalization with, any Person where the effect of the foregoing would otherwise be to cause Seller to be in noncompliance with Section 5.3(a) so long as the portion of such Person’s revenue derived from the Competing Business does not constitute more than fifteen percent (15%) of such Person’s overall revenue immediately preceding the transaction with Seller or its Affiliate.

**5.4 Nonsolicitation.** For a period of two (2) years after the Closing Date, Seller shall not, directly or indirectly hire, retain or attempt to hire or retain any Acquired Employee; provided, however, that the foregoing shall not apply to responses to or follow up hiring in respect of (a) general solicitations or advertisements for job positions not specifically directed to Acquired Employees, (b) unsolicited job applications from Acquired Employees, or (c) Acquired Employees whose employment is terminated by Buyer.

## 5.5 Real Estate Matters.

(a) Title Reports. As of the date of this Agreement, all title reports or policies in Seller's possession with respect to each parcel of Transferred Owned Real Property have previously been delivered to Buyer; provided, however, that if any such title report or policy is not available as of the date of this Agreement, Seller shall use commercially reasonable efforts to provide Buyer with such title report or policy prior to or at the Closing or prior to the transfer of title to the related Transferred Owned Real Property.

(b) Building 601 Facility. The following conditions, contingencies and limitations shall apply in connection with the transfer to Buyer of the Building 601 Facility:

(i) Seller's obligation hereunder to transfer title to the Building 601 Facility to Buyer shall be expressly contingent upon Seller's obtaining all necessary governmental approvals, including variances and subdivision approval, in final, non-appealable form and content reasonably satisfactory to Seller and Buyer, for the subdivision of the land included with the Building 601 Facility (the "Building 601 Land") from the remaining lands of Seller adjacent to the Building 601 Land. The Building 601 Land is more particularly described in Schedule 3.6 and the map attached thereto. Notwithstanding the immediately preceding sentence, the exact acreage, location and dimensions of the Building 601 Land are subject to the mutual good faith agreement of the Parties, and will be in accordance with the subdivision map to be prepared on behalf of Seller and approved as part of the governmental approvals contemplated by this Section 5.5(b).

(ii) After the Closing (or upon such time thereafter as title to the Building 601 Facility may be transferred to Buyer), Seller shall supply domestic hot water, chilled water, domestic water, drinking water, compressed air, electricity, natural gas, and low-pressure steam (collectively, the "Utilities") to the Building 601 Facility from Seller's central utility plant and related systems (the "Kodak Park Utility Facilities"). Prior to the Closing, the Parties shall negotiate in good faith to agree upon the terms pursuant to which Seller shall provide the Utilities in accordance with the foregoing (the "Utility Services Agreement"), the material terms of which are set forth on Exhibit 5.5(b)(ii). Seller's obligation to transfer title to the Building 601 Facility to Buyer hereunder shall be contingent upon Seller's obtaining approval from the New York State Public Service Commission (the "PSC") or appropriate Governmental Body, in final form and content satisfactory to Seller in Seller's sole discretion, for Seller to provide the Utilities in accordance with the foregoing.

(iii) After the Closing (or upon such time thereafter as title to the Building 601 Facility may be transferred to Buyer), the Building 601 Facility shall remain connected to the sanitary sewer currently owned by Seller, running through Kodak Park and ultimately connecting to a Rochester Pure Waters District sanitary sewer under Ridgeway Avenue ("Kodak Sanitary Sewer"). Upon the conveyance of title to the Building 601 Facility to Buyer, the Parties shall enter into an agreement substantially in the form of Exhibit 5.5(b)(iii), pursuant to which Seller shall permit Buyer to use the Kodak Sanitary Sewer via the existing connections to the Building 601 Facility in accordance with the foregoing (the "Sanitary Sewer Agreement"). Seller's obligation to transfer title to the Building 601 Facility to Buyer hereunder shall be contingent upon Seller's obtaining a variance from the County of Monroe or other appropriate Governmental Body to allow the transfer of the Building 601 Facility to Buyer and to allow the Building 601 Facility to remain connected to the Kodak Sanitary Sewer.



(iv) Upon the transfer of title to the Building 601 Facility to Buyer, or within a reasonable time period thereafter, Seller shall effect the physical separation of the Building 601 Facility from the Kodak Park fire main suppression system without any further liability on the part of Seller to provide replacement services or systems to the Building 601 Facility. From and after the date of the Closing until the date of such separation, Seller shall continue to provide Buyer with access to fire protection water from the Kodak Park fire main suppression systems pursuant to the Transition Services Agreement. Seller shall reasonably coordinate the timing of the final separation of the fire main suppression system with Buyer to enable Buyer to make any necessary modifications to the Building 601 Facility to keep such facility in continued compliance with applicable fire codes, but Seller makes no representations or warranties of any kind regarding the compliance of the Building 601 Facility with applicable fire codes subsequent to the separation of the Building from the Kodak Park fire main suppression system. As of the Closing (or such time thereafter as the Building 601 Facility may be transferred to Buyer), or within a reasonable time thereafter, Seller shall disconnect the Building 601 Facility from the central Kodak Park monitoring system (the Simplex security system currently serving the Building 601 Facility), but shall leave the components of the system in place in such facility.

(v) Buyer shall grant to Seller, and its successors and assigns, at the time of the Closing Date, or at such time thereafter as the Building 601 Facility may be transferred to Buyer, one or more permanent and exclusive easements or rights-of-way, in recordable form mutually satisfactory to the Parties, over certain portions of the Building 601 Land for ingress and egress by vehicles and pedestrians, for stormwater drainage, fire water delivery systems, and other utilities, for groundwater monitoring wells, for railway lines, and for such other purposes as may be reasonably required by Seller, or as may reasonably be required by Governmental Bodies in connection with obtaining the governmental approvals (including subdivision approval) contemplated in this Section 5.5(b). Such easements granted to Seller as contemplated hereunder shall be superior to the lien of any mortgage, security agreement or other financing document granted or entered into by Buyer in connection with the purchase of the Building 601 Facility. The exact location and dimensions of such easements shall be as shown on the subdivision map referred to in paragraph (i) above, or as otherwise determined by the good faith agreement of Seller and Buyer, provided that Seller and Buyer agree to cooperate with the other with respect to the location of such easements so as to minimize the impact of such easements on Buyer's use and operation of the Building 601 Facility.

(vi) Prior to Closing, Seller shall, at Seller's sole cost and expense, use reasonable efforts to pursue diligently the satisfaction of each of the conditions set forth in this Section 5.5(b) and to complete the other tasks contemplated in this Section 5.5(b) in connection with the transfer of title to the Building 601 Facility to Buyer. If despite such efforts, such conditions and tasks have not been satisfied or completed to the reasonable satisfaction of Seller and Buyer prior to the Closing, the Parties shall proceed with the Closing (but title to the Building 601 Facility shall not be transferred to Buyer upon Closing) and (A) the provisions and obligations of this Section 5.5(b) shall survive and continue in full force and effect and (B) Seller shall at Seller's sole cost and expense, proceed with due diligence to satisfy the conditions and complete the tasks set forth in this Section 5.5(b) in order to allow a transfer to Buyer of title to the Building 601 Facility to occur as soon as possible after the Closing.

(vii) In the event the term of the Building 601 Interim Lease Agreement expires prior to the transfer of title to the Building 601 Facility to Buyer as contemplated herein, the Parties shall agree to extend the term of the Building 601 Interim Lease Agreement for an additional period not to exceed four (4) years (the “Renewal Term”) during which Renewal Term Seller shall either (A) satisfy the conditions set forth in Section 5.5(b)(ii), or (B) at Seller’s sole cost and expense, render the Building 601 Facility as independently served by the Utilities necessary to operate the Business through reasonably available alternative means. Seller acknowledges and agrees that upon the expiration or earlier termination of the Building 601 Interim Lease Agreement (including the Renewal Term), Seller shall transfer title to the Building 601 Facility to Buyer.

**5.6 Access.** During the period from the date of this Agreement through the Closing Date, Seller shall and shall cause RSI to give Buyer and its authorized Representatives reasonable access during regular business hours and upon reasonable notice to all plants, offices, warehouses and other properties, facilities, employees, agents, books and records and other information of the Business as they may reasonably request and, upon Buyer’s reasonable request, to furnish information to Buyer or its Representatives regarding the Business, in each case for the purpose of planning for the post-Closing integration of the Business and valuing the property for purposes of the Allocation; provided, however, (a) that Buyer and its Representatives shall take such action as is deemed necessary in the reasonable judgment of Seller to schedule such access and visits through a designated officer of Seller and in such a way as to avoid disrupting the normal business of the Business, (b) Seller shall not be required to take any action which would constitute a waiver of the attorney-client or other privilege and (c) Seller need not supply Buyer with any information which, in the reasonable judgment of Seller, Seller is under a contractual or legal obligation not to supply, including as a result of any governmental or defense industrial security clearance requirement or program requirements of any Governmental Body prohibiting certain persons from sharing information.

**5.7 Tax Sharing Agreements** Any agreement that provides for the sharing or allocation of liability for Taxes or for the making of a payment computed by reference to the Taxes, taxable income or taxable losses of any other Person, to which RSI is party to, bound by or has any obligation under (as may be included on Schedule 3.12 of this Agreement), shall be terminated prior to Closing.

**5.8 Intercompany Arrangements.** Immediately prior to Closing, (a) to the extent RSI has available cash, RSI will pay Seller in cash the amount of any intercompany debt owed by RSI to Seller and (b) Seller will capitalize any such debt that remains outstanding after such payment has been made.

**5.9 Assistance with Environmental Permits.** Seller shall assist Buyer as reasonably necessary to transfer, amend or reissue existing Environmental Permits, and or obtain new Environmental Permits, in order for Buyer to operate the Business.

**5.10 Transition Services.** Between the date of this Agreement and Closing, Seller and Buyer shall negotiate in good faith to enter into a transition services agreement, the term of which shall be a reasonable transition period following the Closing (not to exceed the one-year anniversary of the Closing) and pursuant to which Seller shall provide Buyer with all services (“Services”) provided to the Business prior to the date of this Agreement that are necessary for Buyer to continue to operate the Business (the “Transition Services Agreement”). The Services shall be provided in substantially the same manner, quality and scope (including in terms of volume and time) as provided to the Business during the four (4) month period immediately prior to the date hereof. The costs charged for such Services shall be the fully-burdened costs. The Parties acknowledge and agree that Buyer may elect to not receive certain services from Seller and Seller may be unable to provide other services (such as routine access to Seller’s on-site physician and payroll (except for seconded employees)), even if such services are presently provided to the Business, and Buyer shall not be obligated to receive, and Seller shall not be obligated to provide, any such service. The Parties agree that the Services will be otherwise provided on terms and conditions customary for transition services of this nature.

## **ARTICLE 6 COVENANTS OF BUYER**

**6.1 Confidentiality.** Buyer acknowledges that any information provided to or obtained by it pursuant to this Agreement shall be held by Buyer and its Representatives in accordance with, and shall be subject to the terms of, the Confidentiality Agreement between Buyer and Seller dated June 25, 2002, as extended pursuant to the letter between Buyer and Seller dated November 10, 2003 (the “Confidentiality Agreement”). Effective upon, and only upon, the Closing, the Confidentiality Agreement shall terminate, but only with respect to information relating solely to the Business. Buyer acknowledges that any and all other information provided to or obtained by it pursuant to this Agreement shall remain subject to the terms and conditions of the Confidentiality Agreement after the Closing provided that the term of the agreement is extended to five (5) years after the date of the Closing. In the event of any termination of this Agreement, the Confidentiality Agreement shall remain in full force and effect, with respect to all information obtained by or provided to Buyer hereunder, whether or not related to the Business, notwithstanding any termination of this Agreement. Buyer shall assist Seller as reasonably necessary to enable Seller to enforce any Employee Confidentiality Agreement against a Business Employee who breaches such agreement in connection with proprietary or confidential information that is not included in the Assigned Intellectual Property.

## 6.2 Use of the Seller Marks.

(a) Buyer acknowledges and agrees that by this Agreement (or by any Ancillary Agreement) it is obtaining no rights or licenses with respect to any of the Seller Marks, including the name “Kodak” or any derivative thereof, or to the Kodak logo. To that end, as soon as practicable, but in no event later than thirty (30) days after Closing, Buyer (a) shall change and substitute: signage; promotional, marketing, and advertising material in whatever medium; stationery, business cards, invoices and related materials and documentation; and packaging, in each case that is used in the Business, in order to remove (or, where feasible “sticker over”) all references to Kodak and Kodak Marks and (b) shall take all such other steps as may be required or appropriate to indicate that there no longer exists any relation or affiliation between Buyer, on the one hand, and Seller and its Affiliates (excluding Research Systems, Inc.), on the other hand, other than as created by this Agreement; provided, however, that nothing herein shall obligate Buyer to change or copy over any engineering drawings or historical records in the form of copies of correspondence, copies of existing invoices and other similar documents prepared prior to the Closing Date. Nothing in any Transaction Agreement or in the performance thereof, or that might otherwise be implied by law, shall operate to grant Buyer any right, title or interest in and to the Seller Marks. Buyer shall assign, and does hereby assign to Seller, without cost, any rights it may acquire, if any, by the operation of law or otherwise, in the Seller Marks pursuant to this Section 6.2. Notwithstanding the foregoing, Buyer shall, for a period of six (6) months following the Closing, be permitted to sell any RSI Inventory that exists as of the Closing Date and that bears the Kodak name or other Kodak Marks.

(b) Between signing and Closing, Seller and RSI shall be permitted, but not obligated, to remove or sticker over references to Kodak and Kodak Marks in signage; promotional, marketing, and advertising material in whatever medium; stationery, business cards, invoices and related materials and documentation; and packaging, in each case that is used in the Business.

## ARTICLE 7 CONDITIONS PRECEDENT TO BUYER’S OBLIGATION TO CLOSE

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

7.1 **Accuracy of Representations.** Each of Seller’s representations and warranties in Article 3 of this Agreement and in Section 4 of the Intellectual Property Agreement which are qualified as to materiality or “Material Adverse Effect” shall be true and correct in all respects and all other representations and warranties of Seller in Article 3 of this Agreement and in Section 4 of the Intellectual Property Agreement shall be true and correct in all material respects, in each case as of the date of this Agreement and at and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date, except (a) to the extent such representations and warranties by their terms speak as of an earlier date, in which case they shall be true and correct, or true and correct in all material respects, as the case may be, only as of such date; (b) to the extent that the failure of such representations and warranties to be true and correct, or true and correct in all material respects, as the case may be, is the result of changes occurring subsequent to the date of this Agreement which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; and (c) to the extent that a representation and warranty is not true as of the date of this Agreement (or any earlier date) and, prior to the Closing Date, Seller cures such breach.

**7.2 Seller's Performance.** Each of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects.

**7.3 Additional Documents.** Seller shall have caused the following documents and instruments to be delivered (or tendered subject only to Closing) to Buyer:

- (a) The certificate of incorporation and all amendments thereto of Seller, duly certified as of a recent date by the Secretary of State of the jurisdiction of Seller's incorporation;
- (b) The certificate of incorporation and all amendments thereto of Research Systems, Inc., duly certified as of a recent date by the Secretary of State of the jurisdiction of Research Systems, Inc.'s incorporation;
- (c) Releases of all Encumbrances on the Assets, other than Permitted Encumbrances, including releases of any mortgage of record with respect to each parcel of Transferred Owned Real Property included in the Assets;
- (d) Certificates dated as of a date not earlier than the fifth (5<sup>th</sup>) Business Day prior to the Closing as to the good standing of Seller, executed by the appropriate officials of the State of New Jersey;
- (e) Certificates dated as of a date not earlier than the fifth (5<sup>th</sup>) Business Day prior to the Closing as to the good standing of Research Systems, Inc., executed by the appropriate officials of the State of Colorado and each jurisdiction in which Research Systems, Inc. is licensed or qualified to do business as a foreign corporation as specified in Schedule 3.1;
- (f) For each parcel of Transferred Owned Real Property, a recordable bargain and sale deed containing a covenant against grantor's acts subject to any easements required for Seller to provide utilities to Buyer;
- (g) For each interest in real property identified on Schedule 3.7 as requiring an assignment from Seller to Buyer, an Assignment and Assumption of Lease in the form of Exhibit 7.3(g) executed by Seller;
- (h) Each of the Ancillary Agreements executed by Seller ; provided, however, that in the event the Building 601 Facility is not transferred to Buyer at Closing pursuant to Section 5.5(b), the Sanitary Sewer Agreement, the Utility Services Agreement and the Building 602 Land Lease Agreement shall be delivered by Seller at such later time as the Building 601 Facility may be transferred to Buyer;
- (i) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance reasonably satisfactory to Buyer and its legal counsel and executed by Seller;
- (j) A certificate executed by a duly authorized officer of Seller to the effect that the conditions set forth in Sections 7.1 and 7.2 have been satisfied;

(k) A certificate of the Secretary of Seller certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Seller, certifying and attaching all requisite resolutions or actions of Seller's board of directors approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Seller executing this Agreement and any other document relating to the Contemplated Transactions; and

(l) A certificate of the Secretary of Research Systems, Inc. certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Research Systems, Inc.

**7.4 No Proceedings.** No Proceeding shall be pending that, in the reasoned, written opinion of Simpson Thacher & Bartlett LLP, involves a reasonable likelihood of an Order that could reasonably be expected to (a) prevent consummation of the Contemplated Transactions, (b) cause the Contemplated Transactions to be rescinded following consummation, or (c) affect adversely the right of Buyer to own the Assets or RSI Stock, or to operate the Business or RSI, immediately after the Closing, and no such Order shall be in effect.

**7.5 Authorizations and Consents.**

(a) The waiting period under the HSR Act, and any suspensory period associated with any applicable equivalent foreign governmental reporting requirement, shall have expired or been terminated.

(b) Each of the Consents identified in Schedule 7.5(b) shall have been obtained and shall be in full force and effect. For the avoidance of doubt, this Section 7.5(b) shall not apply to the novation of the Government Contracts.

**7.6 Real Property.**

(a) Title Insurance. Seller shall be the sole owner of good, valid and marketable fee simple title to the Transferred Owned Real Property, in each case free and clear of any Encumbrances, other than the Permitted Real Estate Encumbrances, and insurable at ordinary rates by a nationally recognized title company selected by Buyer and reasonably acceptable to Seller ("Buyer's Title Company") on a standard 1992 ALTA Form B owner's title insurance policy (or equivalent policies reasonably acceptable to Buyer if the real property is located in a state in which such ALTA policies of title insurance are not available in such form and with such coverage as may be reasonably acceptable to Buyer); provided, however, that in the event the Building 601 Facility is not transferred to Buyer at Closing pursuant to Section 5.5(b), Buyer's ability to obtain title complying with the aforementioned conditions with respect to the Building 601 Facility shall not be a condition precedent to Buyer's obligations to close under this Article 7, but shall be a condition precedent to the transfer of the Building 601 Facility to Buyer. Seller agrees to execute such reasonable affidavits and other documents, consistent with local practice, as are necessary to induce Buyer's Title Company to issue policies free of any standard exceptions related to claims of parties in possession and unfiled mechanics liens or liens of a similar nature.

(b) FIRPTA. Seller shall have executed and delivered to Buyer an affidavit of non-foreign status as described in Section 1445(b)(2) of the Code.

(c) Other Documents. Seller shall have executed and delivered to Buyer: (i) copies of all material real property transfer Tax Returns with respect to the Transferred Owned Real Property relating to a taxable period that ends after the Closing Date required to be filed prior to the Closing Date in the relevant jurisdictions in which the Transferred Owned Real Property is located; (ii) such documents, affidavits, certificates and instruments as may be reasonably and customarily requested by Buyer or Buyer's Title Company to facilitate the transfer of the Transferred Owned Real Property and Buyer's obtaining title insurance with respect thereto (including gap indemnities and lien and possession affidavits in such form and containing such terms and conditions as may be reasonably and customarily required by Buyer's title insurance company in order to insure title in Buyer to the Transferred Owned Real Property subject to the Permitted Real Estate Encumbrances and such matters as may be acceptable to Buyer in its reasonable discretion); (iii) such easements in favor of Buyer benefiting the Transferred Owned Real Property and burdening other real property owned by Seller as may be necessary or desirable in order for Buyer to use and operate the Business as presently conducted by Seller; and (iv) such other customary instruments of sale, transfer, conveyance and assignment with respect to the Transferred Owned Real Property as Buyer may reasonably request in writing; provided, however, that in the event the Building 601 Facility is not transferred to Buyer at Closing pursuant to Section 5.5(b), Buyer's obtaining the foregoing documents with respect to the Building 601 Facility shall not be a condition precedent to Buyer's obligations to close under this Article 7, but shall be a condition precedent to the transfer of the Building 601 Facility.

(d) Real Property Consents. Except as otherwise required under this Agreement, Seller shall use commercially reasonable efforts to deliver to Buyer at Closing each of the consents identified on Schedule 3.7.

**7.7 No Material Adverse Change.** At any time on or after the date of this Agreement, there shall not have occurred any material adverse change in the business, properties, financial condition or results of operations of the Business; provided, however, that in no event shall any of the following constitute such a material adverse change: (i) any change resulting from conditions in the industries and markets in which the Business operates (including general reductions in United States military, intelligence and homeland security planning and spending), (ii) any change resulting from changes in general economic conditions, (iii) any change resulting from the announcement or pendency of any of the Contemplated Transactions, (iv) any change resulting from compliance by Seller with the terms of, or the taking of any action as required by, this Agreement.

**ARTICLE 8**  
**CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE**

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

**8.1 Accuracy of Representations.** Each of Buyer's representations and warranties in Article 4 of this Agreement which are qualified as to materiality or material adverse effect shall be true and correct in all respects and all other representations and warranties of Buyer in Article 4 of this Agreement shall be true and correct in all material respects, in each case as of the date of this Agreement and at and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date, except (a) to the extent such representations and warranties by their terms speak as of an earlier date, in which case they shall be true and correct, or true and correct in all material respects, as the case may be, only as of such date, (b) to the extent that the failure of such representations and warranties to be true and correct, or true and correct in all material respects, as the case may be, would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Buyer to enter into and perform its obligations under the Transaction Agreements or otherwise to consummate the Contemplated Transactions; and (c) to the extent that a representation and warranty is not true as of the date of this Agreement (or any earlier date) and, prior to the Closing Date, Buyer cures such breach.

**8.2 Buyer's Performance.** Each of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects.

**8.3 Additional Documents.** Buyer shall have caused the following consideration, documents and instruments to be delivered (or tendered subject only to Closing) to Seller:

(a) Seven Hundred Twenty Five Million Dollars (\$725,000,000) by wire transfer of immediately available funds to an account specified by Seller in a writing delivered to Buyer at least three (3) Business Days prior to the Closing Date;

(b) Each of the Ancillary Agreements executed by Buyer; provided, however, that in the event the Building 601 Facility is not transferred to Buyer at Closing pursuant to Section 5.5(b), the Sanitary Sewer Agreement, the Utility Services Agreement and the Building 602 Land Lease Agreement shall be delivered by Buyer at such later time as the Building 601 Facility may be transferred to Buyer;

(c) For each interest in real property identified on Schedule 3.7, an Assignment and Assumption of Lease in the form of Exhibit 7.3(g) executed by Buyer;

(d) A certificate executed by a duly authorized officer of Buyer to the effect that the conditions set forth in Sections 8.1 and 8.2 have been satisfied; and



(e) A certificate of the Secretary or Assistant Secretary of Buyer certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Buyer and certifying and attaching all requisite resolutions or actions of Buyer's board of directors approving the execution and delivery of an agreement to consummate the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Buyer executing (or the officers giving power of attorney to others to execute) this Agreement and any other document relating to the Contemplated Transactions.

**8.4 No Proceedings.** No Proceeding shall be pending that, in the reasoned, written opinion of Wilmer Cutler Pickering LLP, involves a reasonable likelihood of an Order that could reasonably be expected to (a) prevent consummation of the Contemplated Transactions, (b) cause the Contemplated Transactions to be rescinded following consummation, or (c) affect adversely the ability of Buyer to assume the Assumed Liabilities to Buyer, and no such Order shall be in effect.

**8.5 Authorizations and Consents.**

(a) The waiting period under the HSR Act, and any suspensory period associated with any applicable foreign governmental reporting requirement, shall have expired or been terminated.

(b) Each of the Consents identified in Schedule 8.5(b) shall have been obtained and shall be in full force and effect. For the avoidance of doubt, this Section 8.5(b) shall not apply to the novation of Government Contracts.

**ARTICLE 9  
TERMINATION**

**9.1 Termination Events.** By written notice given prior to or at the Closing, subject to Section 9.2, this Agreement may be terminated, and the Contemplated Transactions abandoned, as follows:

(a) by Buyer if a material breach or material violation of any provision of this Agreement has been committed by Seller, which breach cannot be or has not been cured within thirty (30) days after written notice of such breach has been delivered to Seller and which breach has not been waived by Buyer;

(b) by Seller if a material breach or material violation of any provision of this Agreement has been committed by Buyer, which breach cannot be or has not been cured within thirty (30) days after written notice of such breach has been delivered to Buyer and which breach has not been waived by Seller;

(c) by Buyer if any condition in Article 7 has not been satisfied as of September 30, 2004 (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived such condition on or before such date;

(d) by Seller if any condition in Article 8 has not been satisfied as of September 30, 2004 (other than through the failure of Seller to comply with its obligations under this Agreement), and Seller has not waived such condition on or before such date;

(e) by mutual written consent of Buyer and Seller; or

(f) subject to each of the Parties having complied with its obligations under Section 12.1, by either Seller or Buyer if any Governmental Body shall have issued an Order or taken any other action that permanently restrains, enjoins or otherwise prohibits the acquisition by Buyer of the Assets, the RSI Stock, the Business and RSI, and such Order or other action shall have become final and non-appealable.

**9.2 Effect of Termination.** If this Agreement is terminated and the Contemplated Transactions are abandoned as described in this Article 9, this Agreement shall become void and of no further force and effect, and there shall be no liability or obligation on the part of either Party to the other, except (a) for the provisions of (i) Section 6.1 relating to the obligation of Buyer to keep confidential certain information obtained by it hereunder, (ii) Section 13.2 relating to public announcements, (iii) Section 13.1 relating to certain fees and expenses, and (iv) this Article 9, each of which shall survive the termination of this Agreement, and (b) nothing in this Section 9.2 shall relieve any party from liability for any willful breach of this Agreement. In the event that this Agreement is terminated by either Party as a result of the condition set forth in Section 7.5(a) and Section 8.5(a) not having been satisfied as of September 30, 2004 (other than through the failure of either Party to comply with its obligations under this Agreement), then, within thirty (30) days after such termination, Buyer shall pay Seller a termination fee of Five Million Dollars (\$5,000,000).

## ARTICLE 10 EMPLOYEES AND EMPLOYEE BENEFITS

### 10.1 Employment.

(a) No later than fourteen (14) days prior to Closing, Seller shall update Schedule 3.19(a) to include all information otherwise identified in Section 3.19(a) as required to be provided for the individuals who fill the positions listed on Schedule 1.1(gg)(iii). Effective as of the Closing Date, Buyer may offer employment to any individuals listed on Schedule 1.1(gg)(i). Effective as of the Closing Date, Buyer shall offer employment to each of the Business Employees, except as otherwise provided above with respect to individuals listed on Schedule 1.1(gg)(i). In the case of any Business Employee who, as of the Closing Date, is on a temporary leave of absence, including family medical leave, military leave, temporary disability or sick leave (any such employees, “Inactive Employees”), such offer shall remain open until the Inactive Employee is able or otherwise required to return to work or until the Inactive Employee is no longer employed by Seller, whichever occurs first. Seller will continue to employ any Inactive Employee until the earlier of: (i) 180 days after the Closing Date (or such longer period as may be required under Legal Requirements); (ii) the date the Inactive Employee is able or otherwise required to return to work; (iii) the date on which the Inactive Employee’s temporary leave of absence or military leave ends; or (iv) in the case of an illness absence, the date on which the Inactive Employee’s paid illness absence benefit expires or any later date on which unpaid FMLA leave, taken for the same illness, expires.

(b) Seller shall retain all Liabilities related to Inactive Employees unless and until such Inactive Employee accepts Buyer's offer of employment and commences employment with Buyer.

(c) As of the Closing Date, each Business Employee shall be offered a position similar to his or her position immediately prior to the Closing Date (or, with respect to any Inactive Employee, immediately prior to the date such leave commenced), at salary or wage levels at least equal to those provided by Seller immediately prior to the Closing Date. Each such offer of employment shall be at the same geographic locale where the Business Employee is working (or on leave from) immediately prior to the Closing Date.

(d) Buyer shall perform, meet and discharge any obligations that may arise following the Closing under the WARN Act or any similar state or local law or regulation, and agrees to indemnify Seller and its Affiliates for, and hold Seller and its Affiliates harmless from and against, any and all Liability arising or resulting from any violations of such obligations.

(e) Nothing in this Agreement shall require Buyer or RSI to continue to employ any Acquired Employee or RSI Current Employee for any period of time after the Closing Date. In addition, subject to any applicable Legal Requirements and the provisions of this Article 10, Buyer and RSI each reserves the right, at any time after the Closing Date, to (i) terminate any Acquired Employee's or RSI Current Employee's employment, (ii) amend, modify or terminate any term and condition of employment including, without limitation, any employee benefit plan, program, policy, practice or arrangement or the compensation or working conditions of the Acquired Employees and RSI Current Employees and (iii) amend, modify or terminate any employee benefit or compensation plan, program or arrangement in which any Employee may participate on or after the Closing Date.

## **10.2 Employee Benefit Plans.**

(a) Except to the extent changes are required by Legal Requirements or otherwise provided herein, for the period from the Closing Date until December 31, 2005 (such period, the "Continuation Period"), the Acquired Employees and RSI Current Employees will receive employee benefits that are, in the aggregate, no less favorable than those employee benefits offered from time to time during the Continuation Period by Seller, including the benefits provided under any of the Employee Benefit Plans and Affiliate Plans (but excluding any Seller Stock Plans and Kodak Flexible Benefits Plan); provided, however, that such benefits to be provided to such Employees are in no event required to be, in the aggregate, more favorable than the corresponding benefits provided to such Employees immediately prior to the Closing. For the period from the Closing Date until December 31, 2005, the Acquired Employees and RSI Current Employees will receive severance benefits that are no less favorable than those severance benefits offered by Seller or RSI, as applicable immediately prior to the Closing, provided however, in no event shall Buyer be responsible for any Single Trigger Severance Liability. Buyer will give each Acquired Employee, Former Business Employee, RSI Current Employees and RSI Former Employees full credit for service with Seller for purposes of eligibility, vesting and for purposes of welfare plans or arrangements, benefit accrual under all plans or arrangements maintained by Buyer or RSI for the benefit of such Employees after the Closing Date to the extent such employee's service is recognized for such purposes under Seller's plans or under Affiliate Plans, as applicable.

(b) Buyer shall take all action necessary and appropriate to provide that, as of the Closing or as soon as practicable (but not more than sixty (60) days thereafter), Buyer maintains one or more retirement savings plans that is qualified under Section 401(a) of the Code that will accept rollover contributions (including any outstanding employee loans under the Seller Savings Plan) from each Acquired Employee who (i) receives a distribution from the Seller Savings Plan, (ii) elects such a rollover form of distribution, and (iii) is employed by the Seller (or any of its Affiliates) immediately prior to the Closing Date. Buyer shall also pay to each Employee the Seller Bonus Plans Payments at such time(s) as such amounts would have been paid under the Seller Bonus Plans if no Closing had occurred.

(c) Seller will provide to Buyer, not less than fifteen (15) calendar days prior to the Closing Date, a list of all Acquired Employees who are participating in or have participated in the Kodak Health Care Reimbursement Account Plan (the "Seller FSA Plan"), together with the elections made prior to the Closing Date with respect to such accounts through the Closing Date.

(i) Buyer shall take all actions reasonably necessary and legally permissible to provide that as of the Closing Date, the Acquired Employees who are participating in the Seller FSA Plan as of the Closing Date, will be allowed to participate in a plan of Buyer that constitutes a "flexible spending" or "health reimbursement" account arrangement that qualifies as a "cafeteria plan" under Section 125 of the Code and any flexible spending arrangements thereunder (the "Buyer's FSA"). Buyer shall further take all actions reasonably necessary and legally permissible to amend Buyer's FSA to provide that: (A) the Acquired Employees who have elected to participate in the Seller FSA Plan shall become participants in Buyer's FSA as of the beginning of the Seller FSA Plan's plan year and at the level of coverage provided under the Seller FSA Plan; (B) the Acquired Employees' salary reduction elections shall be taken into account for the remainder of Buyer's FSA plan year as if made under Buyer's FSA; and (C) Buyer's FSA shall reimburse medical expenses incurred by the participating Acquired Employees incurred by the Acquired Employees at any time during the Seller FSA Plan's plan year (including Claims Incurred prior to the Closing Date but unpaid prior to the Closing Date), up to the amount of the Acquired Employee's election and reduced by amounts previously reimbursed by the Seller FSA Plan.

(ii) Seller shall take all actions necessary and legally permissible to amend the Seller FSA Plan to provide that the Acquired Employees shall cease to be eligible for reimbursements from the Seller FSA Plan as of the Closing Date.

(iii) As soon as practicable following the Closing Date, Seller shall transfer to Buyer, and Buyer agrees to accept, those amounts which represent the debit and credit balances under the Seller FSA Plan of the Acquired Employees who are to become covered by Buyer's FSA and the transfer of such amounts shall take into account on a net basis such employees' payroll deductions and claims paid through the Closing Date.

(d) Seller will provide to Buyer, not less than five (5) calendar days prior to the Closing Date, a list of all Acquired Employees who are participating in or have participated in the Kodak Dependent Care Reimbursement Account Plan (the “Seller DCAP Plan”), together with the elections made prior to the Closing with respect to such accounts through the Closing Date.

(i) Buyer shall take all actions reasonably necessary and legally permissible to provide that as of the Closing Date, the Acquired Employees who are participating in the Seller DCAP Plan as of the Closing Date, will be allowed to participate in the plan of Buyer that constitutes a “dependent care assistance program” within the meaning of Section 129 of the Code and any reimbursement arrangements thereunder (“Buyer’s DCAP”). Buyer shall further take all actions reasonably necessary and legally permissible to amend Buyer’s DCAP to provide that: (A) the Acquired Employees who have elected to participate in the Seller DCAP Plan shall become participants in Buyer’s DCAP as of the beginning of the Seller DCAP Plan’s plan year and at the level of coverage provided under the Seller DCAP Plan, (B) the Acquired Employees’ salary reduction elections shall be taken into account for the remainder of Buyer’s DCAP plan year as if made under Buyer’s DCAP; and (C) Buyer’s DCAP shall reimburse dependent care expenses incurred by the participating Acquired Employees at any time during the Seller DCAP Plan’s plan year (including Claims Incurred prior to the Closing Date but unpaid prior to the Closing Date), up to the amount of the Acquired Employee’s balance under Seller’s DCAP Plan and reduced by amounts previously reimbursed by the Seller DCAP Plan.

(ii) Seller shall take all actions necessary and legally permissible to amend the Seller DCAP Plan to provide that the Acquired Employees shall cease to be eligible for reimbursements from the Seller DCAP Plan as of the Closing Date.

(iii) As soon as practicable following the Closing Date, Seller shall transfer to Buyer, and Buyer agrees to accept, those amounts which represent the balances under the Seller DCAP Plan of the Acquired Employees who are to become covered by Buyer’s DCAP and the transfer of such amounts shall take into account on a net basis such employees’ payroll deductions and claims paid through the Closing Date.

(e) With respect to any benefits to which any Business Employee, Former Business or respective Dependent thereof, or other qualifying beneficiaries thereof may be entitled under COBRA by reason of qualifying events occurring before, on or after the Closing Date, Buyer shall provide such benefits to any such Business Employees, Former Business Employee and their respective Dependents and other qualifying beneficiaries from and after the Closing Date through the period of required coverage under COBRA.

(f) Buyer shall assume all the obligations of Seller or its Affiliates for any Post-Employment Welfare Benefits in accordance with Section 2.3(a) of this Agreement, and shall during the Continuation Period, provide any individual identified on Schedule 3.19(b) with Post-Employment Welfare Benefits that are, in the aggregate, no less favorable than those corresponding benefits offered from time to time during the Continuation Period by Seller to its similarly situated former employees; provided, however, that such benefits to be provided to such Employees are in no event required to be, in the aggregate, more favorable than the benefits provided to such Employees immediately prior to the Closing Date.

(g) With respect to all welfare benefit plans maintained by Buyer on and after the Closing Date in which the Acquired Employees are offered the opportunity to participate: Buyer shall allow the Acquired Employees (and, as applicable, their covered Dependents) to (i) participate in such plans without being subject to any waiting periods or any restrictions or limitations for pre-existing conditions, to the extent waiting periods have been met and restrictions or limitations for pre-existing conditions were waived under corresponding Employee Benefit Plans in which the Acquired Employees participated prior to the Closing Date, and (ii) receive credit for co-payments or deductibles paid during any calendar year in which the Closing occurred under the Employee Benefit Plans in which they participated for purposes of determining any deductibles and maximum out-of-pocket limitations under any corresponding welfare benefit plans maintained by Buyer on and after the Closing Date in which the Acquired Employees participate.

### **10.3 Defined Benefit Plans.**

(a) Effective as of the Closing Date, Business Employees shall cease to accrue benefits under the Seller Pension Plan, and, thereafter, the Buyer shall enroll Acquired Employees in an existing or newly created Buyer pension plan (the "Buyer Pension Plan"). Subject to the consummation of the asset transfer described in Section 10.3 below: (i) effective as of the Closing Date, with respect to Acquired Employees and Former Business Employees, the Buyer Pension Plan shall waive any eligibility requirements for participation that were previously satisfied under the Seller Pension Plan, and, for Acquired Employees and Former Business Employees, shall recognize service that is recognized under the Seller Pension Plan for purposes of eligibility, vesting, service related level of benefits, and eligibility for early retirement subsidies; (ii) Buyer agrees to provide accrued benefits to Acquired Employees and Former Business Employees under the Buyer Pension Plan that are no less than the accrued benefits of the Acquired Employees and Former Business Employees under Seller Pension Plan as of the Closing Date; (iii) accrued benefits of Acquired Employees and Former Business Employees that are vested under Seller Pension Plan as of the Closing Date shall be nonforfeitable under the Buyer Pension Plan, (iv) Buyer shall, effective as of the Closing Date, assume all of the Liabilities of Seller, its Affiliates and the Seller Pension Plan in respect of benefits accrued by the Acquired Employees and the Former Business Employees under the Seller Pension Plan on or prior to the Closing Date (the "Pension Liability") (and, for the avoidance of doubt, cause the Buyer Pension Plan to make payments to any Acquired Employee who becomes entitled to receive payment of such accrued benefits on and after the Closing taking into account the provisions of this Section 10.3 regardless of whether assets have yet been transferred), subject to the transfer of assets from the Seller Pension Plan to the Buyer Pension Plan in accordance with the provisions of Section 10.3 below, and (v) with respect to benefits transferred from the Seller Pension Plan, the Buyer Pension Plan shall recognize the service of Acquired Employees with Buyer for the purpose of determining eligibility for early retirement benefits and calculate benefits based upon the Final Average Compensation of the Acquired Employees as defined in Buyer Pension Plan. Also, for the avoidance of doubt, from the Closing Date through the True-Up Transfer Date, in accordance with the provisions of Section 10.3 below, Seller shall continue to cause the Seller Pension Plan to make benefit payments to any Former Business Employees who is entitled to receive such payments. Nothing in this Agreement shall require Buyer to provide coverage to the Acquired Employees or the RSI Employees under any benefit formula for Buyer's defined benefit pension plan for salaried employees in effect prior to the date that the Acquired Employees or the RSI Employees first become eligible for Buyer's defined benefit pension plan for salaried employees.

(b) To the extent not previously qualified under the applicable provisions of the Code, Buyer shall take all action necessary to qualify the Buyer Pension Plan under the applicable provisions of the Code and shall make any filings and submissions to the appropriate Governmental Bodies required to be made by Buyer. The Buyer Pension Plan and any successor plans thereto shall contain appropriate provisions providing that (i) assets transferred to the Buyer Pension Plan from the Seller Pension Plan may, upon termination of the Buyer Pension Plan, revert to the employer or sponsor of the Buyer Pension Plan to the extent permitted under the Seller Pension Plan as in effect on the date hereof, applicable Government Contracts and Legal Requirements; (ii) to the extent required by Legal Requirements, Buyer shall preserve all optional forms under which each Acquired Employee or Former Business Employee shall be entitled to receive his or her benefits accrued through the Closing Date under the Seller Pension Plan (including any early retirement subsidies); and (iii) the Buyer Pension Plan shall provide for such benefit formulas as may be required in order for Buyer to satisfy its obligations under Section 10.2(a) of this Agreement.

(c) As soon as practicable, but in no event later than 90 days after the Closing Date (or, if later, the date Seller has been provided evidence reasonably satisfactory to it that the Buyer Pension Plan is qualified under Section 401(a) of the Code and the trust holding such assets is tax exempt under Section 501(a) of the Code), Seller shall cause the Seller Pension Plan to transfer assets to the Buyer Pension Plan equal to eighty percent (80%) of a reasonable estimate of the Accrued Liability (such amount, the "Initial Transfer Amount"). The term "Accrued Liability," shall mean the aggregate present value of the accrued benefits (as defined in Treas. Reg. 1.414(l)-1(b)(9)) of each Acquired Employee and Former Business Employee under the Seller Pension Plan, determined as of the Closing Date on a plan termination basis using (i) the interest factors specified by the PBGC and in effect as of the Closing Date for an immediate or deferred annuity, as appropriate for that Acquired Employee or Former Business Employee, and (ii) the other methods and factors specified in the regulations underlying Section 4044 of ERISA for the valuation of accrued benefits upon plan termination, including expected retirement ages and expense load assumptions published by the PBGC, and the 1983 Group Annuity Mortality Table. The Initial Transfer Amount shall be adjusted as follows: (x) it shall be decreased by any benefit payments made by the Seller Pension Plan to any Acquired Employees or Former Business Employees (or their beneficiaries) on or after the Closing Date and before the date of transfer of the Initial Transfer Amount (such date, the "Initial Transfer Date") and (y) increased by the amount of interest accrued on the Initial Transfer Amount from the Closing Date through the Initial Transfer Date, using an interest rate of five percent (5%) (the "Interest Rate"). For purposes of this paragraph, "evidence reasonably satisfactory" of the Buyer Pension Plan's qualification under Section 401(a) of the Code and the corresponding trust's qualification under Section 501(a) of the Code shall be deemed to be the delivery of either: (A) a favorable determination letter from the IRS as to such status, as the plan and trust are currently in effect (including any required changes thereto), or (B) (if no such letter has been requested or received), an opinion of counsel, which states that such plan and trust in form comply with the applicable requirements of the Code and a commitment that Buyer will make any changes required by the IRS to receive a favorable determination letter.

(d) As soon as practicable following the transfer of the Initial Transfer Amount (but, subject to the provisions of Section 10.3(f), in no event later than six months after the Closing Date), Seller shall cause a second transfer of assets from the Seller Pension Plan to the Buyer Pension Plan to be made of the “True-up Amount.” The True-up Amount shall equal the greater of (i) the excess of the Accrued Liability Amount over the Initial Transfer Amount and (ii) the excess of the CAS 413 Amount over the Initial Transfer Amount. The “CAS 413 Amount” shall mean the maximum amount of assets required to be transferred under 48 C.F.R. § 9904.413-50(c)(12) (“CAS 413”), calculated as of the Closing Date using the assumptions and methods identified in such section (as set forth in the CAS Actuarial Valuation Report of the Seller Pension Plan prepared by Pine Cliff Consulting, dated January 6, 2004) required in order to avoid any segment-closing adjustment being imposed thereunder; provided, however, that prior to any such calculation, Seller shall transfer to the CAS Sub-Account (as defined in Section 10.3(e) below), in accordance with the methodology set forth in 48 C.F.R. § 9904.413-50(c)(8), assets equal to the present value of the accrued benefit under the Seller Pension Plan of each Acquired Employee who, at any time prior to working primarily for the Business, was employed by Seller (or any Affiliate thereof) in another line of business but who participated in the Seller Pension Plan during such other employment, to the extent not previously transferred to the CAS Sub-Account prior to the Closing Date. The True-up Amount shall be adjusted as follows: (x) it shall be decreased by any benefit payments made by the Seller Pension Plan to the Acquired Employees or Former Business Employees (or their beneficiaries) on or after the Initial Transfer Date and before the date of transfer of the True-up Amount (the “True-up Transfer Date”) and (y) increased by the amount of interest accrued on the True-up Amount from the Initial Transfer Date through the True-up Transfer Date, using the Interest Rate. In the event that the total amount of assets (which shall be equal the sum of the Initial Transfer Amount and the True-up Amount (the “Total Transfer Amount”)) are required to be reduced in order to satisfy Section 414(l) of the Code and Section 4044 of ERISA (and the regulations underlying either such section) (the “Pension Asset Transfer Rules”), the total amount of the assets to be transferred from the Seller Pension Plan to the Buyer Pension Plan will be equal to the maximum amount permitted to be transferred under the Pension Asset Transfer Rules (such reduced amount, the “414/4044 Amount”) and Seller shall cause the Seller Pension Plan to only transfer such amount of assets as necessary to equal the 414/4044 Amount. Notwithstanding the foregoing, in the event that, upon final calculation by Seller Actuary of the True-up Amount, Seller Actuary determines that the Initial Transfer Amount was in excess of the 414/4044 Amount (such excess amount, the “Overpayment”), Seller Actuary shall promptly notify Buyer Actuary in writing of such determination, and Buyer Actuary shall have thirty (30) Business Days to review Seller Actuary’s calculations thereof and respond to such determination. In the event that Buyer Actuary concurs with Seller Actuary’s determination, Buyer Actuary shall notify Buyer in writing of such determination, and Buyer shall, within ten (10) Business Days following receipt of such notice, cause the Buyer Pension Plan to return to the Seller Pension Plan an amount of cash equal to the Overpayment. The Overpayment shall be increased by the amount of interest accrued from the Initial Transfer Date through the date of payment of the Overpayment, using the Interest Rate.

(e) For purposes of this Section 10.3, any assets to be transferred from the Seller Pension Plan to the Buyer Pension Plan as described in Sections 10.3(c) and (d) above shall: (i) based on the fair market value of the assets as of the True-up Transfer Date, (x) first be drawn from the sub-accounts of the trust of the Seller Pension Plan that are subject to the segment closing rules under CAS 413 (the “CAS Sub-Account”), up to the minimum amount required to avoid a segment closing adjustment thereunder, with (y) any remaining assets to be transferred to be drawn from the sub-account that holds the assets that correspond to the pre-payment credit account (as established by Seller pursuant to the provisions of CAS 413 in respect of the Pension Liability) and (ii) be in cash.



(f) All calculations to be made under this Section 10.3 shall be determined by an enrolled actuary designated by Seller (the “Seller Actuary”). Seller shall provide any actuary designated by Buyer (the “Buyer Actuary”) with all information reasonably necessary to review all such calculations in all material respects and to verify that such calculations have been performed in a manner consistent with the terms of this Agreement. If the Seller Actuary and Buyer Actuary disagree as to any of the Seller Actuary’s calculations, and such disagreement remains unresolved for a period in excess of thirty (30) Business Days or such additional period as Seller and Buyer may agree upon in writing (a “Disagreement”), the Disagreement shall be submitted to the Chief Financial Officer of each of Seller and Buyer for review and resolution in such manner as they deem necessary or appropriate. If such Disagreement remains unresolved for an additional sixty (60) Business Days, any remaining disputed matters will be finally and conclusively determined by a qualified independent actuary selected by Seller and Buyer, which actuary will not be any actuary who performs services for either Buyer or Seller on an ongoing and continuous basis. Promptly, but in no event later than sixty (60) days after its acceptance of its appointment, the independent actuary will determine (based solely on presentations by Seller and Buyer and not by independent review) only those matters in dispute and will render a written report as to the disputed matters and the resulting calculation of the amount of the pension assets required to be transferred by Seller in accordance with the provisions of this Section 10.3, which report will be conclusive and binding upon the Parties. The fees and expenses of the independent actuary will be shared equally by Buyer and Seller.

(g) The Initial Transfer Amount and the True-Up Amount shall be calculated, if possible, such that no segment closing adjustment is required under Cost Accounting Standards and no adjustment of contract prices or cost allowance is required under any Government Contract. If the 414/4044 Amount exceeds the CAS 413 Amount (such excess, the “Excess Amount”) and the amount of assets to be transferred from the CAS Sub-Account is less than the 414/4044 Amount, in order to avoid any segment-closing adjustment under CAS 413, then no later than the thirtieth (30th) day after the True-up Date (subject to the provisions of Section 10.3(f)), Buyer shall remit a cash payment to Seller in an amount equal to fifty percent (50%) of the Excess Amount, up to \$35,000,000 (50% of the first \$70,000,000 Excess Amount). In the event that the Excess Amount is equal to or greater than \$70,000,000, Buyer shall not pay Seller any amounts in excess of the maximum amounts calculated pursuant to the immediately preceding sentence. The Excess Amount shall be increased by the amount of interest accrued on the Excess Amount for the period beginning on the first calendar day after the third Business Day following the True-Up Transfer Date through the date of payment of the Excess Amount, using the Interest Rate. If the sum of the Initial Transfer Amount and the True-Up Amount is less than the amount that is required to be transferred to the Buyer as of the Closing Date under CAS 413, in order to avoid any segment-closing adjustment that would be imposed under the Cost Accounting Standards, Seller shall, in its sole discretion, no later than the thirtieth (30th) day after the True-up Date (subject to the provisions of Section 10.3(f)), either (A) transfer such additional amount in cash to Buyer as shall be necessary to avoid any such adjustment or (B) provide written notice to Buyer that Seller shall retain all responsibility and liability for resolving any resulting issues with the United States Government in connection with any such adjustment, except that Buyer agrees that it will cooperate to the extent reasonably requested by Seller and the United States Government in making any adjustment that may be required in Government Contracts as a result of an agreement between Seller and the United States Government, provided, however, that Seller shall hold Buyer and its Affiliates harmless for any liability that Buyer or its Affiliates may incur in connection with or as a result of any such cooperation, adjustment or agreement.

(h) Notwithstanding anything set forth in this Agreement to the contrary, if the PBGC requests or establishes conditions of Buyer or Seller that are, in Buyer's and Seller's reasonable good faith judgment, unacceptable to Buyer or Seller, the parties hereto shall, in good faith, use their reasonable best efforts to cooperate to respond to PBGC in a manner that is in the best interests of both Seller and Buyer.

**10.4 Forms W-2.** As permitted by Internal Revenue Service Revenue Procedure 96-60, Section 5, Seller and Buyer agree that Buyer, as the "successor employer" described therein within the meaning of Section 3121(a)(1) of the Code, will furnish and file a single Form W-2 for wages paid by both Seller and Buyer to each Acquired Employee during the calendar year in which the Closing occurs, and Buyer assumes and shall perform Seller's entire Form W-2 reporting obligations for the Acquired Employees, provided that Seller furnishes Buyer with all information necessary to fulfill such obligation on a timely basis. Seller shall remain responsible for the Form W-2 reporting obligations for those employees of Seller who do not become Acquired Employees. Accordingly, provided that Seller furnishes Buyer with all information necessary to fulfill such obligation on a timely basis, Buyer shall (a) furnish Forms W-2 to the Acquired Employees by January 31 following the calendar year in which the Closing occurs, and (b) file Forms W-2 and W-3 as to the Acquired Employees with the Social Security Administration by the last day of February of such calendar year. With respect to Forms 941 for the quarter in which the Closing occurs, (x) Seller will attach a statement to its Form 941 which (i) explains the discrepancy that will exist between the amounts reported on its Form W-3 and four quarterly Forms 941, (ii) includes the name, address, and identification number of the Buyer, and (iii) includes a reference to Revenue Procedure 96-60, and (y) Buyer will attach a similar statement to its Form 941 referencing Seller. Finally, Seller will transfer to the successor all current Forms W-4 and W-5 that were provided to Seller by the Acquired Employees, and Buyer will keep the transferred Forms W-4 and W-5 on file and deduct and withhold from the wages it pays to the Acquired Employees according to the information supplied on those forms until an Acquired Employee submits a revised form. Seller and Buyer shall follow similar procedures with respect to state and local employment and withholding tax administration where such procedures are available.

**ARTICLE 11**  
**INDEMNIFICATION; REMEDIES**

**11.1 Survival.**

(a) All representations and warranties in this Agreement shall survive the Closing and shall remain in full force and effect for a period of eighteen (18) months after the Closing; provided, however, that (i) the representations and warranties contained in Sections 3.1 and 4.1 (Organization and Good Standing), 3.2(a) and 4.2(a) (Authority and Enforceability), 3.3 (Capitalization and Ownership of Research Systems, Inc. and its Subsidiaries), and 3.21 and 4.4 (Brokers or Finders) shall survive the Closing and shall remain in full force and effect until the expiration of the applicable statute of limitations with respect to this Agreement, (ii) the representations and warranties contained in Section 3.12 (Taxes) and 3.13 (Employee Benefits) shall survive the Closing and shall remain in full force and effect until thirty (30) days after the expiration of the applicable statute of limitations with respect to the matter to which the claim relates, as such limitation period may be tolled from time to time, (iii) the representations and warranties contained in Section 3.23 (Government Contracts) shall survive the Closing and remain in full force and effect for a period of three (3) years after the Closing, and (iv) the representations and warranties contained in Section 3.18 (Environmental) shall survive the Closing and remain in full force and effect for a period of two (2) years after the Closing.

(b) Neither Seller nor Buyer shall be entitled to make any claim for indemnification under this Article 11 with respect to the breach of any particular representation and warranty contained in Article 3 and Article 4 after the date on which such representation and warranty ceases to survive pursuant to Section 11.1(a); provided, however, that, if prior to the date on which such representation and warranty ceases to survive, the Indemnifying Person shall have received written notification of a claim for indemnity hereunder specifying in reasonable detail the basis of any such claim, and such claim shall not have been finally resolved or disposed of at such date, such claim shall continue as a basis for indemnity until it is finally resolved or disposed of, subject to applicable statutes of limitation which shall continue to run in all circumstances absent the written consent of the Indemnifying Person to toll the applicable limitations period.

**11.2 Indemnification and Reimbursement by Seller.** Seller will indemnify and hold harmless Buyer and its successors and permitted assigns, and its directors, officers, employees, agents and Affiliates (including RSI, from and after the Closing) (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, actions or causes of action, assessments, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses), whether or not involving a Third-Party Claim, (collectively, "Damages"), arising from or in connection with:

- (a) any breach by Seller of any representation or warranty made by Seller in Article 3 of this Agreement, in Section 4 of the Intellectual Property Agreement or in any other Ancillary Agreement;
- (b) any breach, failure or non-fulfillment by Seller of any covenant or obligation of Seller in this Agreement or any Ancillary Agreement;
- (c) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Seller (or any Person acting on their behalf) in connection with any of the Contemplated Transactions;

(d) (i) all Taxes that may be imposed upon or assessed against RSI or its assets or properties with respect to any period (or portion thereof) ending on or before the Closing Date, (ii) all Taxes of Seller with respect to any operation of the Business and ownership of the Assets for any period (or portion thereof) ending on or before the Closing Date other than Assumed Pre-Closing Taxes, and (iii) any Taxes that are the responsibility of Seller pursuant to Section 2.7;

(d)-1 as further described in Section 1.1(q)-1(ii), any Damages arising from the conduct of Seller's contractor in the performance of the work plans; or

(e) any failure by Seller to perform or in due course pay and discharge any Retained Liabilities, including the Retained Environmental Liabilities;

provided, however, that any Damages shall be (i) reduced by the amount of any Tax refund, credit or other reduction in Taxes actually realized by the Buyer Indemnified Person and any reimbursement or other refund of any portion of such amounts actually received (after deducting related costs and expenses) by the Buyer Indemnified Person as a result of (A) Third Party indemnification pursuant to any rights assigned to Buyer hereunder, or (B) the actual recovery of such amounts (or portions thereof) as reimbursable costs under any cost-type, flexibly-priced or fixed price contract for the provision of goods or services to the United States Government under any Government Contract assigned to Buyer hereunder and (ii) increased to take account of any net Tax cost actually incurred by the Buyer Indemnified Person. Any indemnification payment hereunder shall initially be made without regard to any Tax savings or Tax cost and shall be increased or reduced to reflect any such Tax savings or Tax cost only after the Indemnified Person has actually realized such savings or cost. For purposes of this Agreement, the Indemnified Person shall be deemed to have "actually realized" a Tax cost or a Tax benefit to the extent that, and at such time as, the amount of Taxes payable by such Indemnified Person is increased above or reduced below, as the case may be, the amount of Taxes that such Indemnified Person would be required to pay but for the incurrence or payment of such Loss or the receipt of the indemnity payment, as the case may be. Upon written request of the Indemnifying Person, the Indemnified Person shall provide appropriate support for its calculation of its Tax savings or Tax cost.

**11.3 Indemnification and Reimbursement by Buyer.** Buyer will indemnify and hold harmless Seller, and its successors and permitted assigns, and its directors, officers, employees, agents and Affiliates (collectively, the "Seller Indemnified Persons"), and will reimburse the Seller Indemnified Persons for any Damages arising from or in connection with:

- (a) any breach by Buyer of any representation or warranty made by Buyer in Article 4 of this Agreement;
- (b) any breach, failure or non-fulfillment by Buyer of any covenant or obligation of Buyer in this Agreement or any Ancillary Agreement;
- (c) any Liability arising out of the ownership or operation of the Assets, the Business and RSI after the Effective Time (other than the Retained Liabilities);

(d) any Liability arising from or in connection with any failure of Buyer's hiring procedures with respect to the Business Employees to comply with Legal Requirements;

(e) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the Contemplated Transactions;

(f) any failure by Buyer to perform or in due course pay and discharge any Assumed Liabilities;

(g) as further described in Section 10.1(d), any Liability arising or resulting from any violations of Buyer's post-Closing obligations under the WARN Act;

(h) as further described in Sections 12.2(b) and 12.2(c), any Liability of Seller relating to Buyer's performance or failure to perform under certain Business Contracts;

(h)-1 as further described in Section 1.1(q)-1(i), any Damages arising from the conduct of Buyer's contractor in performance of the work plans;

or

(i) (A) all Taxes that may be imposed upon or assessed against RSI or its assets or properties with respect to any period (or portion thereof) beginning after the Closing Date, (B) all Assumed Pre-Closing Taxes, (C) all Taxes of Buyer with respect to the operation of the Business or ownership of the Assets for any period (or portion thereof) ending after the Closing Date, and (C) any Taxes that are the responsibility of Buyer pursuant to Section 2.7;

provided, however, that any Damages shall be (i) reduced by the amount of any Tax refund, credit or other reduction in Taxes actually realized (after deducting related costs and expenses) by the Seller Indemnified Person and any reimbursement or other refund of any portion of such amounts actually received by the Seller Indemnified Person, including reimbursement by way of insurance, Third Party indemnification or the actual recovery of such amounts (or portions thereof) as reimbursable costs under any cost-type, flexibly-priced or fixed price contract for the provision of goods or services to the United States Government and (ii) increased to take account of any net Tax cost actually incurred by Seller. Any indemnification payment hereunder shall initially be made without regard to any Tax savings or Tax cost and shall be increased or reduced to reflect any such Tax savings or Tax cost only after the Indemnified Person has actually realized such savings or cost. For purposes of this Agreement, the Indemnified Person shall be deemed to have "actually realized" a Tax cost or a Tax benefit to the extent that, and at such time as, the amount of Taxes payable by such Indemnified Person is increased above or reduced below, as the case may be, the amount of Taxes that such Indemnified Person would be required to pay but for the incurrence or payment of such Loss or the receipt of the indemnity payment, as the case may be. Upon written request of the Indemnifying Person, the Indemnified Person shall provide appropriate support for its calculation of its Tax savings or Tax cost.

**11.4 Consequential or Punitive Damages.** Notwithstanding any other provision of this Agreement, neither Party shall, in any event, be liable to the other Party for any consequential damages, including loss of revenue or income or loss of business reputation or opportunity relating to the breach or alleged breach of any representation or warranty under Section 11.2(a) (other than loss of revenue or income proximately caused by, and reasonably foreseeable in connection with, the breach of any representation or warranty made in Section 3.4(a) with respect to the unaudited historical statements of revenues, costs and expenses of the Business for the calendar years ended December 31, 2002 and December 31, 2003) or for any punitive or exemplary damages; provided, however, that foregoing shall not be interpreted to limit indemnification for any damages assessed in favor of a Third Party in connection with a Third-Party Claim against an Indemnified Person, to the extent the Indemnified Person is otherwise entitled to indemnification hereunder.

**11.5 Limitations on Amount -- Seller.** Seller shall have no liability (for indemnification or otherwise) with respect to claims for breaches of representations and warranties under Section 11.2(a) until the total of all Damages with respect to such matters exceeds Ten Million Dollars (\$10,000,000) (the “First Deductible”) and then only for the amount by which such Damages exceed Ten Million Dollars (\$10,000,000); provided, however, that any Damages which may be recovered from Seller arising out of or resulting from a breach of Section 3.4(a) with respect to the unaudited historical statements of revenues, costs and expenses of the Business for the calendar years ended December 31, 2002 and December 31, 2003 shall be subject to an additional deductible of Twenty-Five Million Dollars (\$25,000,000) (the “Second Deductible”), and Seller shall have no liability (for indemnification or otherwise) with respect to claims for breaches of the representations in Section 3.4(a) with respect to the unaudited historical statements of revenues, costs and expenses of the Business for the calendar years ended December 31, 2002 and December 31, 2003 until the total of all Damages with respect to matters described in Section 11.2(a) exceed the sum of the First Deductible plus the Second Deductible. In no event shall Buyer be able to submit any claim to Seller for breaches of representations and warranties under Section 11.2(a), whether incurred as a result of single incident or a related series of incidents, unless the Damages under such claim are at least One Hundred Thousand Dollars (\$100,000). Seller’s aggregate liability for breaches of representations and warranties pursuant to Section 11.2(a) shall in no event exceed One Hundred Eighty One Million Two Hundred Fifty Thousand (\$181,250,000). Notwithstanding the foregoing, none of the limitations set forth in this Section 11.5 will apply with respect to Damages arising out of any breach of Seller’s representations and warranties contained in Sections 3.1 (Organization and Good Standing), 3.2(a) (Authority and Enforceability), 3.3(b) (Ownership of Research Systems, Inc.) and 3.21 (Brokers or Finders) and Seller will be liable for all Damages with respect to such breaches. Seller shall not be liable for any claim for indemnification under Section 11.2(a) to the extent that the breach of the representation or warranty was actually Known to Buyer as of the date of this Agreement.

**11.6 Indemnification Procedures.**

(a) **Notice of Indemnity Claims.** If any Buyer Indemnified Person or Seller Indemnified Person entitled to or seeking indemnification hereunder (an “Indemnified Person”) (i) determines that any event, occurrence, fact, condition or claim has given or could give rise to Damages for which such Indemnified Person is or may be entitled to, or may seek, indemnification under this Agreement, (ii) otherwise identifies an event, occurrence, fact, condition or claim giving rise (or which may give rise) to a right of indemnification hereunder in favor of such Indemnified Person, or (iii) with respect to any Third Party Claim, becomes aware of the assertion of any claim or of the commencement of any Proceeding (any of the foregoing (i), (ii) or (iii)), an “Indemnity Claim”), such Indemnified Person shall promptly notify (and, in the case of a Third Party Claim, shall notify within thirty (30) days following assertion of such Third Party Claim) the party obligated to provide indemnification or from whom indemnification is being or will be sought (the “Indemnifying Person”) in writing of such Indemnity Claim (a “Claim Notice”) describing in reasonable detail the facts giving rise to the claim for indemnification hereunder and shall include in such Claim Notice a reference to the provision(s) of this Agreement or any Ancillary Agreement upon which such Indemnity Claim is based; provided, however, the failure of any Indemnified Person to give timely notice thereof shall not affect any of its rights to indemnification hereunder nor relieve the Indemnifying Person from any of its indemnification obligations hereunder, except to the extent the Indemnifying Person is materially prejudiced by such failure. Any Claim Notice, other than one relating to a Third Party Claim, shall specify the nature of the Damages and (if known or reasonably capable of being estimated) the estimated amount thereof.

(b) Third Party Claims. Any obligation to provide indemnification hereunder with respect to any Third Party Claim shall be subject to the following terms and conditions:

(i) If an Indemnified Person gives notice to the Indemnifying Person pursuant to Section 11.6(a) of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled (but not obligated, except with respect to Assumed Liabilities, as to which Buyer shall be so obligated and the Retained Liabilities, as to which Seller shall be so obligated) to assume the defense or settlement of such Third-Party Claim. If the Indemnifying Person fails to elect in writing, within ten (10) Business Days after receiving the above-described notice, to assume the defense, the Indemnified Person may engage counsel to defend, settle or otherwise dispose of such Third-Party Claim in its reasonable discretion on behalf of and for the account and risk of the Indemnifying Party.

(ii) In any case in which the Indemnifying Person has assumed the defense or settlement with respect to a Third-Party Claim, the Indemnifying Person shall be entitled to conduct the defense or settlement thereof with counsel of its own choosing, which counsel shall be reasonably satisfactory to the Indemnified Person, provided that the Indemnifying Person will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld), unless settlement or release is solely for monetary damages and does not involve any finding or admission by the Indemnified Party of a violation of law or Order or other wrongdoing and contains an unconditional release of the Indemnified Party.

(iii) In any case in which the Indemnifying Person has assumed the defense or settlement with respect to a Third-Party Claim, the Indemnified Person shall be entitled to participate at its own cost in any such action or proceeding to defend, or in any negotiations or proceedings to settle, such Third-Party Claim, and shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless the Indemnifying Person shall not have employed counsel (reasonably satisfactory to the Indemnified Person) to take charge of the defense or settlement of such Third-Party Claim, in which case the reasonable fees and expenses of one counsel or firm of counsel selected by the Indemnified Person shall be borne by the Indemnifying Person. In no event shall an Indemnifying Person be liable to any Indemnified Person for the cost of employing or using in-house legal counsel regardless of whether the Indemnifying Person has, or has not, assumed the defense or settlement of such Third-Party Claim.

(iv) If the Indemnifying Person elects not to defend the Indemnified Person against any Third Party Claim, whether through written notice to the Indemnified Person or by failure of the Indemnifying Person to notify the Indemnified Person that it elects to defend the Third Party Claim, then the Indemnified Person may defend, settle or otherwise dispose of such Third Party Claim, provided that the Indemnified Person shall give written notice to the Indemnifying Person of any proposed settlement of any Third Party Claim and the Indemnified Person will not consent to the entry of any judgment, enter into any settlement with respect to the Third Party Claim or cease to defend such claim without the prior written consent of the Indemnifying Person (which consent shall not be unreasonably withheld).

(v) With respect to any Third-Party Claim subject to indemnification under this Article 11: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where such Person is not represented by its own counsel, and (ii) the Parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(vi) With respect to any Third-Party Claim subject to indemnification under this Article 11, the Parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all confidential information of the other Party and the attorney-client and work-product privileges. In connection therewith, each Party agrees that: (i) it will use its commercially reasonable efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of the other Party's confidential information (consistent with applicable law and rules of procedure), and (ii) all communications between any Party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

#### **11.7 Indemnification with Respect to Retained Environmental Liabilities.**

(a) Notwithstanding Section 11.2(e), in no event shall Seller have any indemnification obligation to any Buyer Indemnified Persons to the extent that the matter for which indemnification is sought results from: (i) Prospecting Activities; or (ii) remediation or corrective action conducted by or on behalf of Buyer which is not required by Environmental Laws, or required by or at the direction of a Governmental Body.

(b) "Prospecting Activities" shall mean deliberate drilling and/or testing of the soil and groundwater on, at or about the Transferred Owned Real Property or the Leased Real Property undertaken by or on behalf of Buyer or its Affiliates, to the extent not required by any Environmental Law, for the primary purpose of determining if environmental conditions exist on, at or about such properties. Notwithstanding the foregoing limitations on Seller's indemnification obligations, Seller's indemnification obligations hereunder shall apply with respect to, and the term "Prospecting Activities" shall not include, (i) any investigations, undertakings, remediation, corrective actions or reporting obligations of Buyer or its Affiliates in connection with the construction or renovation of facilities on, at or about the Transferred Owned Real Property, or (ii) Baseline Environmental Assessments.



**11.8 Indemnity Claims Requiring Environmental Remediation.** To the extent that a Claim Notice delivered by a Buyer Indemnified Person to Seller (i) relates to (A) a breach of any representation set forth in Section 3.18 or (B) the Retained Environmental Liabilities, and (ii) requires, or would reasonably be expected to require any investigation, remediation or corrective action, the provisions of this Section 11.8 shall be applicable.

(a) Seller shall have the right, but not the obligation, to control, manage and undertake all remedial action related to such Indemnity Claim. If Seller desires to control, manage and undertake remedial action relating to an Indemnity Claim, Seller shall so notify the Buyer Indemnified Person in writing within thirty (30) days after receipt of the Claim Notice, except that such notice period shall be extended upon Seller's reasonable request so that Seller may have sufficient time to assess its liability for the Damages arising from such Indemnity Claim. During the notice period, Seller shall have reasonable access to the Transferred Owned Real Property to the extent necessary to determine Seller's liability for the Damages arising from such Indemnity Claim and to non-privileged information in Buyer's or its Affiliates' possession at the time of the Claim Notice and to additional non-privileged information (including, without limitation, sampling data, consultants' and other investigatory reports, correspondence with the applicable Governmental Bodies, lab reports, cost documentation and access to consultants) as such non-privileged information becomes available. During the period prior to Seller's election to assume control of the remedial action, the Buyer Indemnified Person may take any action which the Buyer Indemnified Person would be authorized to take assuming that Seller had elected not to assume such control in accordance with Section 11.8(f).

(b) If Seller elects to undertake a remedial action pursuant to Section 11.8(a), Seller shall consult in good faith with Buyer with respect to such remedial action. Seller shall not be obligated to conduct any remedial action related to Transferred Owned Real Property, nor to indemnify Buyer Indemnified Person with respect to any remedial action related to Transferred Owned Real Property, unless (i) the remedial action is required by Order or directive, or is otherwise at the direction, of a Governmental Body or (ii) the remedial action is required to comply with Environmental Law.

(c) If Seller or Buyer obtains a letter from a Governmental Body stating that a remedial action has been completed in compliance with applicable Environmental Law, or that no action is required in addition to the remedial action that the Governmental Body has approved, Seller shall not be required to take any further remedial action related to the Transferred Owned Real Property (or portion thereof) addressed by the remedial action, nor to indemnify the Buyer Indemnified Person with respect to further remedial action undertaken by a Buyer Indemnified Person, unless further action is required by such Governmental Body or by another Governmental Body.

(d) Seller agrees to conduct any remedial action in a manner that reasonably minimizes interference with Buyer's operations. Buyer and its Affiliates shall provide Seller with reasonable access to the Transferred Owned Real Property in order to conduct any remedial action, and shall provide Seller with accurate information in Buyer's possession concerning the location of underground utilities installed after the Closing Date at the Transferred Owned Real Property. Seller shall not be responsible for damage caused to any underground utilities that have not been accurately identified to Seller in accordance with the preceding sentence, but Seller shall be responsible for, and shall indemnify, defend, save and hold harmless Buyer Indemnified Persons from any other Damages arising from Seller's Remedial Action.

(e) The Parties acknowledge that the completion of any remedial action may involve the implementation of institutional controls (including, but not limited to, restrictions on the use of the Transferred Owned Real Property through deed restrictions or other similar instruments) approved by the relevant Governmental Body. Buyer and Affiliates shall not object to the imposition of any such institutional controls approved by the relevant Governmental Body and shall provide any required consents or other instruments or documents necessary for the implementation of such controls; provided, however, that such controls are consistent with the use of the Transferred Owned Real Property as of the Closing and do not interfere with Buyer's operations at such Transferred Owned Real Property. If the Seller implements a remedial action at a Transferred Owned Real Property that requires long-term operation and maintenance, following a suitable period of operation to reliably estimate the future, reasonably anticipated, out-of-pocket costs associated with such operation and maintenance, Seller may upon agreement of Buyer and Seller on the present value of such costs, pay to Buyer such amount and be relieved of any further obligation to undertake such long-term operation and maintenance.

(f) If Seller elects not to undertake the remedial action pursuant to Section 11.8(b), whether by failure of Seller to give the Buyer Indemnified Person timely notice as provided above or otherwise, or if Seller elects to undertake remedial action but fails to do so in accordance with the foregoing, then the Buyer Indemnified Person, without waiving any rights against Seller, (i) may, in its reasonable discretion, implement any remedial action described in clauses (i) and (ii) of Section 11.8(b), and (ii) may settle or defend against the Indemnity Claim in accordance with Section 11.6(b)(iv).

(g) Nothing in this Section 11.8 is intended to preclude or restrict Buyer's rights to conduct any different or additional Remedial Action at its own expense on the Transferred Owned Real Property.

**11.9 Sole Remedy.** From and after the Closing, the Parties agree that the indemnification provisions of this Article 11 are intended to provide the sole and exclusive remedy (absent fraud or other claims for intentional torts) as to all Damages that either Party's Indemnified Persons may incur arising from or relating to (a) this Agreement, (b) any breach by Seller of any representation or warranty made by Seller under any Ancillary Agreement or (c) the Contemplated Transactions, and each Party hereby waives, to the extent it may do so, any other rights or remedies that would otherwise have been available to it under common law, statute, or otherwise, including any cause of action or claim based in contract or tort.

**ARTICLE 12**  
**MUTUAL COVENANTS**

Each of Seller and Buyer covenant and agree as follows:

**12.1 Antitrust and Competition Filings.** Seller and Buyer will, as promptly as practicable, file all notifications and information required to be filed or supplied pursuant to the HSR Act in order to facilitate the prompt consummation of the Contemplated Transactions (including any request for additional information or production of personnel for administrative interviews made pursuant to the HSR Act). Furthermore, Seller and Buyer will, as promptly as practicable following the execution and delivery of this Agreement, file all notifications and information required to be filed or supplied pursuant to any applicable equivalent foreign governmental reporting requirement. Seller and Buyer shall furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission that is necessary under the HSR Act or any foreign governmental reporting requirement. Buyer and Seller shall cooperate and use their respective reasonable best efforts to contest and resist any Proceeding, and to have vacated, lifted, reversed or overturned any Order (whether temporary, preliminary or permanent), in each case that restricts, prevents or prohibits the consummation of the Contemplated Transactions. Buyer and Seller shall each use its best efforts to avoid the entry of, or to have vacated or terminated, any Order that would restrain, prevent or delay the Closing, including defending through litigation on the merits any claim asserted in any court by any party. Buyer and Seller shall each take any and all steps necessary to avoid or eliminate each and every impediment under any antitrust, competition, or trade regulation law that may be asserted by any Governmental Body with respect to the Contemplated Transactions so as to enable the Closing to occur as soon as reasonably possible, including, proposing, negotiating, committing to and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of such assets or businesses of Seller or Buyer as may be required in order to avoid the entry of, or to effect the dissolution of, any Order or Proceeding that would otherwise have the effect of preventing or delaying the Closing. Notwithstanding anything to the contrary in this Agreement, Buyer shall not be required to effect any sale, divestiture or disposition of its assets or businesses or the Business to the extent that doing so would have a material adverse effect on Buyer's combined existing and acquired space businesses (including the Business). Seller and Buyer shall keep each other apprised of the status of any communications with, and inquiries or requests for additional information from, the U.S. Federal Trade Commission or the U.S. Department of Justice or any foreign merger authority with jurisdiction over the transaction and shall comply promptly with any such inquiry or request.

**12.2 Novations and Consents.**

(a) As promptly as practicable after the date hereof, Buyer and Seller shall deliver all documents and instruments required to consummate the Contemplated Transactions and make all other filings with Governmental Bodies, and use all reasonable efforts to obtain all Consents and Governmental Authorizations, required to consummate the Contemplated Transactions and to allow Buyer to operate the Business and RSI after the Closing substantially in the same manner as conducted in the ordinary course immediately prior to the Closing. Buyer and Seller shall furnish promptly to each other all information that is not otherwise available to the other Party and that such Party may reasonably request in connection with the foregoing efforts. Buyer and Seller shall use all reasonable efforts to obtain such consents to the assignment of the Business Contracts as may be required.

(b) In the event that any and all novations, transfer or other Consents necessary for the assignment, transfer or novation of any Business Contract (including Government Contracts), or any claim, right or benefit arising thereunder or resulting therefrom, shall not have been obtained prior to the Closing Date (except with respect to any Consents identified in Schedule 7.5(b) that have not been obtained and have not been waived as a condition to Closing by both Parties):

(i) the Parties shall continue to use the efforts described in Section 12.2(a) to obtain such novations, transfer or other Consents as promptly as practicable after Closing until such time as it becomes reasonably apparent that such efforts will not be successful, and

(ii) as of the Closing, this Agreement, to the extent permitted by law, shall constitute full and equitable assignment by Seller to Buyer of all of Seller's right, title and interest in and to, and all of Seller's Liabilities under, such Business Contracts, and Buyer shall be deemed Seller's agent for purpose of completing, fulfilling and discharging all of Seller's Liabilities under any such Business Contract to the same extent that Buyer would have been obligated to complete, fulfill and discharge such Liabilities if such Business Contract had been assigned to Buyer pursuant to the terms of this Agreement. The Parties shall take all necessary steps and actions to provide Buyer with the benefits of such Business Contracts, and to relieve Seller of the performance and other obligations thereunder, including entry into subcontracts for the performance thereof. Buyer shall pay, perform and discharge, and shall indemnify Seller in accordance with Article 11 with respect to, all Liabilities of Seller relating to such performance or failure by Buyer to perform under such Business Contracts.

(c) In the event Seller shall be unable to make the equitable assignment described in Section 12.2(b)(ii), or if such attempted equitable assignment would give rise to any right of termination, or would otherwise adversely affect the rights of Seller or Buyer under such Business Contract, or would not assign all Seller's rights thereunder at the Closing, Seller and Buyer shall continue to cooperate and use their commercially reasonable efforts to provide Buyer with all such rights. Until the impediments to such an equitable assignment are resolved, Seller shall use commercially reasonable efforts to (i) provide to Buyer, at the request of Buyer, the benefits of any such Business Contract to the extent related to the Business, (ii) cooperate in any lawful arrangement designed to provide such benefits to Buyer and (iii) enforce, at the request of and for the account of Buyer, any rights of Seller arising from any such Business Contract against any third Person (including any Governmental Body) including the right to elect to terminate in accordance with the terms thereof upon the advice of Buyer. To the extent that Buyer is provided the benefits of any Business Contract referred to herein (whether from Seller or otherwise), Buyer shall perform the obligations of Seller thereunder or in connection therewith, to the same extent that Buyer would have been obligated to perform such obligations if such Business Contract had been assigned to Buyer pursuant to the terms of this Agreement, and Buyer shall pay, perform and discharge, and indemnify Seller in accordance with Article 11 with respect to, all Liabilities of Seller relating to such performance or failure to perform by Buyer, and in the event of a failure of such indemnity, Seller shall cease to be obligated under this Agreement in respect of the Business Contract which is the subject of such failure.

(d) Any equitable assignment described in Section 12.2(b)(ii), or any alternative arrangement described in Section 12.2(c), will be superseded to the extent that the novation, transfer or other Consents necessary for the actual assignment, transfer or novation of the applicable Business Contract are obtained as a result of the post-Closing efforts of the Parties described in Section 12.2(b).

(e) In the event that any Governmental Authorizations required to consummate the Contemplated Transactions and to allow Buyer to operate the Business and RSI after the Closing substantially in the same manner as conducted in the ordinary course immediately prior to the Closing shall not have been obtained prior to the Closing Date, the Parties shall continue to use the efforts describe in Section 12.2(a) to obtain such Governmental Authorizations as promptly as practicable after Closing until such time as it becomes reasonably apparent that such efforts will not be successful.

(f) If the appropriate contracting officer refuses to allow novation of a Government Contract, then any payment made by the U.S. Government after Closing with respect to such Government Contract will be for the account of Buyer.

(g) In the event that the facility security clearances described in Section 3.22(b) have not been obtained by Buyer prior to Closing, after Closing, in addition to continuing its efforts to obtain such clearances in accordance with Section 12.2(e), Buyer shall take all necessary action to ensure that (i) all classified information pertaining to the Business is adequately safeguarded; and (ii) any owners, officers, or employees of Buyer without requisite personnel security clearances are effectively denied access to classified information pertaining to the Business.

### **12.3 Tax Matters.**

(a) Cooperation. Buyer and Seller shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the preparation and filing of any Tax Return (including any report required pursuant to Section 6043 of the Code and all Treasury Regulations promulgated thereunder), any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other Party's request) the provision of Records that are reasonably relevant to any such Tax Return, audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided pursuant to the foregoing. Buyer and Seller agree (i) to retain all Records with respect to Tax matters pertinent to the Business or to RSI with respect to any period (or portion thereof) ending prior to or on the Closing Date until six (6) months after the expiration of the applicable statute of limitations (giving effect to any and all extensions and waivers), and to abide by all record retention agreements entered into with any Tax authority, and (ii) to give the other Party reasonable written notice prior to destroying or discarding any Records and, if the other Party so requests, Buyer or Seller, as the case may be, shall allow the other Party reasonable access to such Records before they are destroyed.

(b) Tax Refunds on Included Costs. If Seller receives any Tax refund relating to the Business for periods prior to the Closing Date and the Tax liability to which such refund relates was included as a cost in a cost-reimbursement or fixed-price incentive (cost-redeterminable) Government Contract that is assumed by Buyer hereunder, then Seller will cooperate with Buyer to determine the appropriate portion of such Tax refund due to any Governmental Body as if Buyer had pursued and obtained an identical Tax refund. Once the appropriate portion due any Governmental Body is determined, Seller will promptly remit to Buyer such amount to be paid to such Governmental Body in an appropriate manner to be determined by Buyer.

(c) Apportionment. Except as provided in Section 2.7, Taxes arising out of the operation of the Business or relating to the Assets for any Tax period that includes but does not end on the Closing Date, shall be apportioned between the portion of the period up to and including the Closing Date and the portion of the period that begins after the Closing Date as follows: (i) any real property, personal property and other similar Taxes, or payments-in-lieu thereof, levied with respect to the Assets or the Business shall be apportioned based on the number of days of such Tax period up to and including the Closing Date and the number of days of such Tax period after the Closing Date, and (ii) any other Taxes with respect to the Assets or the Business shall be apportioned based on a closing of the books as of the close of business on the Closing Date. Seller shall be responsible for the amount of any such Tax that is attributable to the portion of the Tax period ending on or before the Closing Date, and Buyer shall be responsible for the amount of any such Tax that is attributable to the portion of the Tax period beginning after the Closing Date, regardless of when such Tax is levied or due. To the extent that the post-closing portion of any such Tax is paid by Seller, either before or after the Closing Date, Buyer shall promptly reimburse Seller after receipt of an invoice therefor from Seller. To the extent that the pre-closing portion of any such Tax is paid by Buyer, Seller shall promptly reimburse Buyer after receipt of an invoice therefore from Buyer.

(d) Section 338(h)(10) Election. Buyer and Seller will join in making elections under Sections 338(g) and 338(h)(10) of the Code and any corresponding elections under state, local or foreign law (collectively, the "Section 338(h)(10) Election") with respect to the purchase of the shares of the capital stock of Research Systems, Inc. by Buyer pursuant to this Agreement. Seller shall file, and shall cause its Affiliates to file, all Tax Returns and statements, forms and schedules in connection therewith in a manner consistent with the Section 338(h)(10) Election and shall take no position contrary thereto unless required to do so by applicable tax laws. Seller will include any income, gain, loss, deduction or other item resulting from the Section 338(h)(10) Election on the U.S. federal income Tax Return of its affiliated group for the taxable year of the affiliated group that includes the Closing Date to the extent required by applicable law. Seller shall pay any Tax imposed on the affiliated group attributable to the making of the Section 338(h)(10) Election, including any state, local or foreign tax imposed on the gain of the affiliated group. Seller and Buyer will cooperate in the preparation and filing of IRS Forms 8023 and 8883 as provided for in Section 2.6.

(e) Stub Period For Research Systems, Inc. Seller will include the taxable income or loss of Research Systems, Inc. (including any deferred income triggered into income under Treasury Regulation Sections 1.1502-13 and 1.1502-14 and any excess loss accounts taken into income under Treasury Regulation Section 1.1502-9) on Seller's consolidated federal income Tax Returns for all periods through the Closing Date and pay any federal income taxes attributable to such income. The income of Research Systems, Inc. will be apportioned through the period up to and including the Closing Date and the period after the Closing Date by closing the books of Research Systems, Inc. as of the Closing.

(f) **Straddle Period Tax Returns.** Buyer shall prepare and file (or cause to be prepared and filed) all Tax Returns of RSI with respect to any taxable period beginning before but ending after the Closing Date (the “Straddle Period”), which returns shall be prepared in a manner reasonably consistent with prior practice, and shall timely pay or cause to be paid, all Taxes shown to be due on such Tax Returns. Buyer shall, no later than thirty (30) days prior to the due date for the filing of such Straddle Period Tax Returns (including extensions for filing), provide Seller with copies of such Tax Returns for Seller’s review, consent and approval. No later than ten (10) business days after the filing of each such Straddle Period Tax Return, Seller shall pay to Buyer, in accordance with Section 12.3(c), any amounts owed by Seller pursuant to Section 12.3(c) with respect to Taxes covered by such Straddle Period Tax Returns.

(g) **Adjustment to Purchase Price.** The Parties shall treat any indemnity payment made under this Agreement as an adjustment to Purchase Price for Tax purposes, unless otherwise required by law.

**12.4 Bulk Sales.** Buyer and Seller hereby waive compliance, in connection with the Contemplated Transactions, with the bulk-transfer provisions as adopted in any state where any of the Assets are located, and any other applicable bulk sales laws with respect to or requiring notice to Seller’s creditors, in effect as of the Closing Date.

**12.5 Update to Disclosure Schedules.** Each Party hereto will promptly disclose to the other in writing any information with respect to (a) any matter that existed as of the date of this Agreement and should have been set forth or described on such Party’s Disclosure Schedules or (b) any matter hereafter arising which, if existing as of the date of this Agreement would have been required to have been disclosed in such Party’s Disclosure Schedules. No disclosure made pursuant to this Section 12.5 or otherwise will be deemed to modify, amend or supplement the representations and warranties of any Party hereto or to prevent or cure or be deemed a waiver of any misrepresentation or breach of representation or warranty or covenant or agreement. Notwithstanding the foregoing, Seller shall be entitled amend the Disclosure Schedules as expressly provided in Sections 3.6, 3.19(a) and 3.19(b), and such amendments shall be deemed to amend the corresponding representations and warranties of Seller.

**12.6 Cooperation in Litigation and Audits.**

(a) In the event and for so long as either Party is actively contesting or defending against any claim or Proceeding in connection with (i) any of the Contemplated Transactions or (ii) any fact, circumstance, condition, event, occurrence, act or failure to act on or prior to the Closing Date involving the Business or RSI, the other Party will cooperate with the contesting or defending Party and its counsel in the contest or defense and, to the extent it is legally permitted to do so, make available its personnel and provide such testimony and access to its Records as may be reasonably necessary in connection with the contest or defense, at the sole cost and expense of the contesting or defending Party (unless and to the extent that the contesting or defending Party is entitled to indemnification therefor under Article 11). To the extent that this Section 12.6(a) requires one Party to make available to the other Party Records or information that are subject to a claim of attorney-client privilege or attorney work product, the Parties shall enter into an appropriate and customary joint defense agreement to protect the privileged nature and confidentiality of such Records or information.

(b) In addition to providing reasonable access to Records that relate to the Business or RSI in connection with litigation as described in Section 12.6(a), Seller shall provide Buyer, subject to an appropriate confidentiality agreement, with reasonable access to its Records relating to indirect corporate general and administrative expenses invoiced or allocated to the Business prior to the Closing Date, to the extent reasonably necessary to permit Buyer to contest or defend governmental audits or investigations, to complete required government reports or contract closures relating to periods prior to the Closing Date or as required by any Legal Requirement.

**12.7 Retention of and Access to Records; Cooperation.**

(a) After the Closing Date, Buyer shall retain for a period consistent with Buyer's record-retention policies and practices in place as of the date hereof, those Records of Seller delivered to Buyer hereunder. Buyer also shall provide Seller and its Representatives reasonable access to such Records, during normal business hours and on at least three (3) Business Days' prior written notice, to the extent access to such records is required or useful for financial reporting purposes or Tax purposes or to the extent any such records relate to properties or activities of Seller other than the Business or RSI or to the Excluded Assets or Retained Liabilities. As soon as reasonably practicable after the date hereof, to the full extent Seller may do so under applicable Legal Requirements, Seller shall provide Buyer and its Representatives (i) reasonable access to any Records, to the extent that such Records relate to the Business or Employee Benefit Plans, and (ii) reasonable access to the Employees in order to make presentations to, and otherwise communicate with the Employees regarding, the compensation and benefits to be provided to such Employees on and after the Closing Date, in any such case during normal business hours and on at least three (3) Business Days' prior written notice, for any reasonable business purpose specified by Buyer in such notice. Seller shall retain all such Records for a period consistent with the record-retention policies and practices in place as of the date hereof. Commencing on and after the date of this Agreement, Buyer shall use its commercially reasonable best efforts to establish all employee benefit plans, programs and arrangements necessary to satisfy its obligations under this Article 10 on the Closing Date, including contacting all third-party benefit plan administrators, insurance companies and vendors as soon as practicable after the execution of this Agreement and the public announcement of the Contemplated Transactions. In addition, commencing on and after the date of this Agreement, Seller shall reasonably cooperate with Buyer and its designated representatives to effectuate the foregoing, including, without limitation, (i) allowing all access to applicable Seller employees, on a timely basis, as reasonably requested by Buyer and its designees, and (ii) providing, and directing its independent contractors (including, without limitation, third-party benefit plan administrators, insurance companies, vendors and actuaries, as applicable) to provide, Buyer and its designated representatives, third-party benefit plan administrators, insurance companies and actuaries, as applicable, with any information and other assistance as may be reasonably requested by Buyer and its designees in order to effectuate the foregoing.



(b) Notwithstanding anything set forth in this Agreement to the contrary, for purposes of providing all or a portion of the Employees with continuity of payroll and employee benefits for a reasonable period of time after the Closing Date, in the event that the Buyer delivers a request to the Seller, in a timely manner, to enter into an employee services (secondment) agreement with the Seller, Seller hereby agrees to enter into an agreement to provide such employee services to Buyer at cost and upon such other terms reasonably satisfactory to each Party (the “Employee Services Agreement”).

**12.8 FOS Agreement.** One of the Seller’s Business Contracts is a classified contract with a United States Government customer (the “Existing FOS Agreement”). The products and services provided under the Existing FOS Agreement are provided by Seller both through the Business and through Seller’s other businesses. The Parties will use commercially reasonable efforts to obtain the agreement of the customer to divide the Existing FOS Agreements into two separate agreements (the “New FOS Agreements”) as of Closing, one to be retained by Seller (which shall cover the products and services currently provided by Seller’s other businesses) and one to be assigned to Buyer hereunder as a Business Contract (which shall cover the products and services currently provided by the Business). In the event the customer does not agree to divide the Existing FOS Agreement into two separate agreements as of Closing, the Existing FOS Agreement shall be assigned to Buyer hereunder.

**12.9 Reasonable Efforts; Further Assurances.** From time to time, whether before, at or after the Closing, each of the Parties will use commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to consummate and make effective the Contemplated Transactions (including satisfying the closing conditions set forth in Article 7 and Article 8) The Parties shall cooperate reasonably with each other in connection with any steps required to be taken as part of their respective obligations under this Agreement and the Ancillary Agreements, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

**12.10 Ancillary Agreements.** At the Closing, Seller shall, or shall cause its applicable Affiliates, and Buyer shall, or shall cause its applicable Affiliates, to enter into the Ancillary Agreements to which each such party is or is intended to be a party and which have not been executed and delivered prior to that time.

### ARTICLE 13 GENERAL PROVISIONS

**13.1 Expenses.** Except as otherwise provided in this Agreement or in the applicable Ancillary Agreement, each Party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement, the Ancillary Agreements, and the Contemplated Transactions, including all fees and expense of its Representatives. Buyer shall bear the cost of the HSR Act filing fee as well as any costs associated with complying with any applicable equivalent foreign governmental reporting requirements, including the fees of any local competition counsel used by Buyer in connection with any foreign filings. Buyer and Seller will share equally the cost of obtaining all required Consents as contemplated by Section 12.2; provided, however, that, except as provided in Section 7.6, Seller shall bear all brokerage commissions or any other compensation and fees, (other than Taxes, which shall be governed by Section 2.7), payable by reason of the assignment of the Real Property Leases or the transfer of the Transferred Owned Real Property in connection with the consummation of the Contemplated Transactions. If this Agreement is terminated, the obligation of each Party to pay its own fees and expenses will be subject to any rights of such Party arising from a breach of this Agreement by another Party.

**13.2 Public Announcements.** From the date hereof through and including the Closing Date, the Parties will consult with each other and will mutually agree upon any press release or public announcement pertaining to this Agreement or Contemplated Transactions and shall not issue any such press release or make any such public announcement unless the text and time of the release of such statement has been approved by the other Party in writing, except to the extent required by any Legal Requirement or by obligations pursuant to any listing agreement with any national securities exchange or national automated quotation system, in which case the Party proposing to issue such press release or make such public announcement shall use its best efforts to consult in good faith with the other Party and obtain the written consent of the other Party, which consent shall not unreasonably be withheld, before issuing any such press release or making any such public announcement.

**13.3 Notices.** All notices, Consents, waivers and other communications required or permitted by this Agreement or any Ancillary Agreement shall be in writing and shall be deemed given to a Party (a) upon delivery to the appropriate address by hand; (b) upon the date of delivery indicated in the records of such carrier, when sent by nationally recognized overnight courier service (costs prepaid); (c) when sent, if sent by facsimile with confirmation of transmission by the transmitting equipment (provided that such transmission and confirmation are received by 5:00 p.m. local time of the recipient on a Business Day, otherwise, such transmission shall be deemed given on the next Business Day); or (d) when received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses or facsimile numbers and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number or person as a Party may designate by notice to the other Party):

Seller:

Eastman Kodak Company  
343 State Street  
Rochester, NY 14650  
Attention: General Counsel  
Fax no.: 585-724-9448

with a mandatory copy (which shall not constitute notice) to:

Wilmer Cutler Pickering LLP  
2445 M Street, N.W.  
Washington, DC 20037  
Attention: Robert Bell  
Fax no.: 202-663-6363

Buyer:

ITT Industries, Inc.  
4 West Red Oak Lane  
White Plains, New York 10604  
Attention: General Counsel  
Fax no.: 914-696-2971

with a mandatory copy (which shall not constitute notice) to :

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Attention: Gary Sellers  
Fax no.: 212-455-2502

**13.4 Disputes.** The Parties shall attempt to resolve any dispute, controversy, or claim arising out of, or in connection with, this Agreement or any Ancillary Agreement (each, a "Dispute") amicably and promptly by negotiations between executives from each Party. Either Party may give the other Party written notice of any Dispute not resolved in the normal course of business, in which case, the Parties' executives shall negotiate in good faith to resolve the Dispute within thirty (30) days after such notice is provided. In the event, however, that (a) the Dispute is not resolved within such thirty-day period (or any extension thereto to which the Parties may mutually agree) or (b) that a meeting between such executives has not occurred within such thirty-day period, then regardless of whether any such good faith negotiations have actually occurred, either Party may bring a claim against the other with respect to the subject matter of such Dispute. Notwithstanding the foregoing, either Party may, at any time and without first engaging in any negotiations with the other Party, seek provisional injunctive relief the may be required to maintain the status quo.

**13.5 Jurisdiction; Service of Process.** Any Proceeding (other than those arising under Section 2.6) brought by Seller or Buyer or any of their respective Affiliates arising out of or relating to this Agreement, any Ancillary Agreement or any Contemplated Transaction shall be brought in the courts of the State of New York, County of Monroe or, if it has or can acquire jurisdiction, in the United States District Court for the Western District of New York, and each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement, any Ancillary Agreement or any Contemplated Transaction in any other court.

**13.6 Jury Trial Waiver.** TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER AND BUYER KNOWINGLY AND IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS.

**13.7 Specific Performance.** The Parties agree that in the event of either Party's breach of its obligations to consummate the Contemplated Transactions, damages may prove insufficient and the non-breaching Party should be entitled to the remedy of specific performance.

**13.8 Waiver.** Neither any failure nor any delay by any Party in exercising any right, power or privilege under this Agreement, any Ancillary Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement, any Ancillary Agreement or any of the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party and (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given.

**13.9 Entire Agreement and Modification.** This Agreement, together with the Confidentiality Agreement, supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes (along with the Disclosure Schedules, Exhibits, Ancillary Agreements and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by each Party.

**13.10 Disclosure Schedules.**

(a) Any disclosure under one Schedule of the Disclosure Schedules which is disclosed in such a way as to make its relevance or applicability to a representation or representations made elsewhere in this Agreement or in an Ancillary Agreement apparent on its face shall be deemed a disclosure with respect to such other representation or representations. Disclosure of any matter in the Disclosure Schedules shall not constitute an expression of a view that such matter is material or is required to be disclosed pursuant to this Agreement or any Ancillary Agreement.

(b) To the extent that any representation or warranty set forth in this Agreement or any Ancillary Agreement is qualified by the materiality of the matter(s) to which the representation or warranty relates, the inclusion of any matter in the Disclosure Schedules does not constitute a determination by Seller that any such matter is material. The disclosure of any information concerning a matter in the Disclosure Schedules does not imply that any other, undisclosed matter that has a greater significance or value is material.

**13.11 Assignments, Successors and No Third-Party Rights.** Neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, except that Buyer may at any time assign any or all of its rights or obligations hereunder to one of its wholly owned subsidiaries (but no such assignment shall relieve Buyer of any of its obligations under this Agreement). Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 13.11.

**13.12 Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. If any provision of this Agreement is held unenforceable by reason of its extent, duration or scope, the Parties contemplate that the court making such determination shall reduce such extent, duration or scope and shall enforce it in its reduced form for all purposes contemplated by this Agreement. If any provision of this Agreement is held to be unenforceable for any other reason, the Parties contemplate that the court making such determination shall adjust such provision, rather than void it, if possible, in order to achieve the intent of the Parties to the extent possible.

**13.13 Construction.** The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to “Articles,” “Sections” and “Paragraphs” refer to the corresponding Articles, Sections and Paragraphs of this Agreement and the Disclosure Schedules.

**13.14 Time of Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

**13.15 Governing Law.** This Agreement will be governed by and construed under the laws of the State of New York without regard to conflicts-of-laws principles that would require the application of any other law.

**13.16 Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

[Execution Page to Follow]

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

Buyer: ITT INDUSTRIES, INC.

Seller: EASTMAN KODAK COMPANY

By: /s/ D. BROWN  
\_\_\_\_\_

By: /s/ CARL A. MARCHETTO  
\_\_\_\_\_

Name: Denise Brown  
Title: Attorney-in-fact

Name: Carl A. Marchetto  
Title: Senior Vice President

**Administrative Guide for \_\_\_\_\_ Grant under the  
2000 Omnibus Long-Term Compensation Plan**

**1. Purpose**

The purpose of this Administrative Guide is to evidence the Committee's grant of awards, effective as of \_\_\_\_\_, to those Employees who are corporate officers of Kodak.

**2. Terms of Awards**

Any award issued under this Administrative Guide (hereinafter individually referred to as an "Award" and collectively as the "Awards") will be subject to the terms, conditions, restrictions, and limitations contained in this Administrative Guide, the Plan, and the Award Notice. To the extent there are any inconsistencies between the terms of this Administrative Guide and the Plan, the terms of the Plan will control.

**3. Form of Awards**

All of the Awards will be granted in the form of nonqualified stock options. One option provides for the ability to purchase a single share of Common Stock.

**4. Eligibility**

All of Kodak's corporate officers will be eligible for an Award; provided, however, they have signed an Employee's Agreement in a form acceptable to the Director, Human Resources, Eastman Kodak Company. Any Kodak corporate officer who fails to sign such an Employee's Agreement on or prior to the date of grant specified in Section 6 below will not receive an Award.

**5. Size of Awards**

Attached Exhibit A sets forth the size of the Awards granted by the Committee under this Administrative Guide to each corporate officer of Kodak.

**6. Date of Grant**

All of the Awards will be granted effective as of \_\_\_\_\_ (the "Grant Date").

**7. Terms and Conditions of Awards**

The following terms and conditions will apply to the Awards:

- (a) **Option Price.** The option price will be the mean between the high and low at which the Common Stock trades on the New York Stock Exchange on \_\_\_\_\_.
- (b) **Duration of Option.** Subject to Section 7(h) hereof, each option will expire at the close of business on the day before the seventh anniversary of the Grant Date, unless sooner forfeited in accordance with the terms and conditions of this Administrative Guide, the Plan, or the Award Notice.
- (c) **Vesting of an Option.** No option will be exercisable by a Participant until first anniversary of the Grant Date. One third (33 1/3%) of the options granted to a Participant will become exercisable on such date, another third (33 1/3%) will become exercisable on the second anniversary of the Grant Date, and the remaining third (33 1/3%) will become exercisable on the third anniversary of the Grant Date. A Participant may exercise all or a portion of his or her vested options by following the administrative procedures established by the Company for the one or more exercise methods approved by the Company from time to time.

- (d) **Payment of Option Price.** The option price for the share for which a Participant exercises an option will be paid by such 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.** A 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.** A Participant will not have any of the rights of a shareholder with respect to the share of Common Stock covered by an option except to the extent a certificate for such share is delivered to him or her upon the exercise of such option.
- (g) **Broker Assisted Exercise.** Notwithstanding Sections 7(d) and 7(e) above to the contrary, a Participant may, subject to Section 13 hereof, exercise any option granted to him or her under this Administrative Guide 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 under the program will be paid in cash directly to the Company.
- (h) **Exercise Upon Expiration.**
  - (i) Notwithstanding Section 7(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 7(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 Administrative Guide, the Plan or the Award Notice, by providing written notice thereof to the Company within sixty (60) days after such scheduled expiration date. In such event, such options will, for all purposes under this Administrative Guide 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 recordowner of the shares acquired upon exercise of such options until one or more certificates for the shares is delivered to the Participant. The exercise price of any options issued pursuant to the provisions of this Section 7(h)(2) 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 7(g) above to the contrary, any options exercised pursuant to this Section 7(h) will not, without the Committee's prior approval, be exercised by way of the Company's broker-assisted stock option program.

## 8. Termination of Employment

The following terms and conditions will apply to the Awards:

- (a) **Forfeiture**
  - (i) **Within One Year of Grant.** The provisions of this Section 8(a)(i) will apply insofar as a Participant's employment is terminated for any reason, whether voluntarily or involuntarily, prior to the first anniversary of the date of the Award's grant. 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 the Award granted to him or her under this Administrative Guide. In the event of termination of the Participant's employment for a Permitted Reason or due to death, the Award will, unless sooner forfeited in accordance with another provision of this Administrative Guide or the provisions of the Plan, expire on the third anniversary of the date of the Participant's termination of employment.



(ii) **On or After First Anniversary of Grant**

- (A) **In General.** The provisions of this Section 8(a)(ii) will apply insofar as a Participant's employment is terminated for any reason, whether voluntarily or involuntarily, on or after the first anniversary of the Award's grant.
- (B) **Unvested Options.** Effective upon the date of the Participant's termination, all of the unvested portion of the Participant's Award will be immediately forfeited; provided, however, if the Participant's employment is terminated by reason of death, Disability, Retirement, or an Approved Reason, the Award 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 Administrative Guide or the Plan.
- (C) **Vested Options.** On the sixtieth (60) day after the date of the Participant's termination, all of the vested portion of the Participant's Award will expire; provided, however, if the Participant's employment is terminated by reason of death, Disability, Retirement, or an Approved Reason, the Award 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 Administrative Guide or the Plan.

(b) **Vesting.**

- (i) **Death.** Notwithstanding Section 7(c) to the contrary, if a Participant dies prior to being vested in all of his or her Award, the provisions of this Section 8(b)(i) will apply. In such case, the unvested portion of the Award held by the Participant immediately prior to his or her death 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 termination of employment.
- (ii) **Transfer.** Notwithstanding Section 7(c) to the contrary, if a Participant's employment terminates as a result of a Transfer prior to being vested in all of his or her Award, the provisions of this Section 8(b)(ii) will apply. In such case, the unvested portion of the Award held by the Participant immediately prior to his or her termination of employment will immediately vest on the date of the Participant's termination of employment 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 termination of employment.

**9. Definitions**

Any defined term used in this Administrative Guide, other than those set forth in this Section 9, will have the same meaning for purposes of this document as that given to it under the terms of the Plan. The following definitions will apply to this Administrative Guide:

- (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) **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.

- (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-subsidary 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) **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 shall be used.
- (e) **Individualized 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, 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.
- (f) **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.
- (g) **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.

- (h) **Participant.** Any Key Employee who is granted an Award under this Administrative Guide will be a “Participant.” When through exercise, expiration and/or forfeiture a person no longer holds any portion of the Award granted to him or her under this Administrative Guide, such person will no longer be considered a “Participant.”
- (i) **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, 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, Eastman Kodak Company.
- (j) **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.

## 10. Administration

The Committee will administer this Administrative Guide, which is subject to the terms, conditions and limitations of the Plan. The Committee is authorized to interpret, construe and implement the Administrative Guide, to prescribe, amend and rescind rules and regulations relating to it and the Awards granted under it, and to make all other determinations necessary, appropriate or advisable for its administration. Any determination by the Committee in carrying out, administering or construing this Administrative Guide will be final and binding for all purposes upon all interested persons and their heirs, successors, and personal representatives.

## 11. Amendment

The Committee may, from time to time, amend this Administrative Guide in any manner for any reason or no reason.

## 12. Award Notice

Each Award granted under this Administrative Guide will be evidenced by an Award Notice issued by Kodak. To the extent there are any inconsistencies between the terms of any such Award Notice and this Administrative Guide, the terms of this Administrative Guide will control unless, however, such inconsistency is attributable to a term or condition contemplated pursuant to Section 5.2 of the Plan.

## 13. Restrictions, Conditions and Limitations

The Committee may, from time to time, impose those restrictions, conditions and limitations as it determines necessary, advisable or appropriate as to the timing and manner of any Award exercised by an Participant and/or any resales or other transfer of shares issued upon exercise of an option, including without limitation (a) restrictions under any insider trading policy; (b) restrictions as to the use of a specified brokerage firm for resale or other transfer of shares; and (c) restrictions necessary to comply with applicable law.

## 14. Miscellaneous

- (a) **Headings.** The headings of the Sections of this Administrative Guide 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 this Administrative Guide.
- (b) **Applicable Law.** This Administrative Guide, including its reference to the Plan, 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, without giving effect to principles of conflicts of laws.

15. **Impact on Benefits.** The Awards (either at the date of their grant or at the time they vest) will not be includible as compensation or earnings for purposes of any benefit plan offered by the Company.

16. **Transferability**

(a) **In General.** Except as specified in Section 16(b), the Awards 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 Administrative Guide are transferable in accordance with, and subject to, the terms and conditions set forth in Section 19.1(b) of the Plan.

17. **No Right to Continued Employment**

A Participant's receipt of an Award under this Administrative Guide does not give the Participant any right to remain in the employ of Kodak or any Subsidiary. Kodak or, in the case of employment with a Subsidiary, the Subsidiary, reserves the right to terminate any Employee at any time.

**NOTICE OF AWARD OF NON-QUALIFIED STOCK OPTIONS**

**GRANTED TO \_\_\_\_\_**

**EFFECTIVE \_\_\_\_\_**

**PURSUANT TO THE**

**2000 OMNIBUS LONG-TERM COMPENSATION PLAN**

APPROVED BY:

Action by or on behalf of the Executive Compensation and  
Development Committee effective \_\_\_\_\_, \_\_\_\_\_

**NOTICE OF AWARD OF NON-QUALIFIED STOCK OPTIONS**  
**GRANTED TO \_\_\_\_\_**  
**EFFECTIVE \_\_\_\_\_**  
**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 Executive Compensation and Development Committee (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. The Committee's charter permits delegation of its authority to grant certain awards pursuant to the terms contained therein.

**2. Award**

The Committee or its designee 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-subidiary 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 Senior 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 Senior 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 Senior 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.

**NOTICE OF AWARD OF RESTRICTED STOCK**

**GRANTED TO \_\_\_\_\_**

---

**PURSUANT TO THE  
2000 OMNIBUS LONG-TERM  
COMPENSATION PLAN**

APPROVED BY:

Action by or on behalf of the  
Executive Compensation and  
Development Committee

---

1. Background. Under Article 10 of the 2000 Omnibus Long-Term Compensation 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 three “Restriction Periods.” The Restriction Period for one-third of the Restricted Shares will begin on the Grant Date and terminate, subject to Section 4 below, on the third anniversary of the Grant Date. The Restriction Period for the second one-third of the restricted shares will begin on the Grant Date and terminate, subject to Section 4 below, on the fifth anniversary of the Grant Date. The Restriction Period for the remaining one-third restricted shares will begin on the Grant Date and terminate, subject to Section 4 below, on seventh 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 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 seventh 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 eighty four (84), 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 seventh 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 eighty four (84), 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.
    - (iii) Interest Rate. For purposes of this Award Notice, "Interest Rate" means the base rate, as reported in the "Money Rates" section of The Wall Street Journal, on corporate loans posted by at least 75% of the nation's 30 largest banks (known as the "Prime Rate").
    - (iv) Market Value. For purposes of this Award Notice, "Market Value" means the mean between the high and low at which the Common Stock trades on the New York Stock Exchange as quoted on the New York Stock Exchange Composite Transactions as published in The Wall Street Journal for the day for which the determination is to be made or, if such day is not a trading day, the immediately preceding trading day.
    - (v) Valuation Date. For purposes of this Award Notice, "Valuation Date" means the last business day of each calendar month.
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)

	<u>Nine Months  Ended  September 30, 2004</u>
Earnings from continuing operations before income taxes	\$ 60
Adjustments:	
Minority interest in income of subsidiaries with fixed charges	4
Undistributed income of equity method investees	(18)
Interest expense	130
Interest component of rental expense (1)	40
Amortization of capitalized interest	20
Earnings as adjusted	\$ 236
Fixed charges:	
Interest expense	130
Interest component of rental expense (1)	40
Capitalized interest	1
Total fixed charges	\$ 171
Ratio of earnings to fixed charges	1.4x

---

(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.

**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 quarterly report on Form 10-Q;
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: November 9, 2004

/s/ DANIEL A. CARP

---

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 quarterly report on Form 10-Q;
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: November 9, 2004

/s/ ROBERT H. BRUST

---

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 Quarterly Report of Eastman Kodak Company (the "Company") on Form 10-Q for the three and nine month periods ended September 30, 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

---

Daniel A. Carp  
Chief Executive Officer  
November 9, 2004

**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 Quarterly Report of Eastman Kodak Company (the "Company") on Form 10-Q for the three and nine month periods ended September 30, 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

---

Robert H. Brust  
Chief Financial Officer  
November 9, 2004