UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
EASTMAN KODAK COMPANY, *et al.*,	:	Case No. 12-10202 (ALG)
Debtors.	:	(Jointly Administered)

EASTMAN BUSINESS PARK SETTLEMENT AGREEMENT BETWEEN THE DEBTORS, THE REORGANIZED DEBTORS, AND THE UNITED STATES OF AMERICA, ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES DEPARTMENT OF THE INTERIOR

THIS SETTLEMENT AGREEMENT (the "Settlement Agreement") is entered into by and between **Eastman Kodak Company** ("Kodak") and certain of its affiliates (together with Kodak, the "Debtors" or the "Reorganized Debtors," as applicable)[1], and the **United States of America**, on behalf of the **United States Environmental Protection Agency** ("EPA") and the **United States Department of the Interior** ("DOI") (collectively, the "Parties").

RECITALS

A. On January 19, 2012, each of the Debtors filed with the United States Bankruptcy Court for the Southern District of New York (the "Court") voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code"), which have been consolidated for

[1] The Debtors are Eastman Kodak Company; Creo Manufacturing America LLC; Eastman Kodak International Capital Company, Inc.; Far East Development Ltd.; FPC Inc.; Kodak (Near East), Inc.; Kodak Americas, Ltd.; Kodak Aviation Leasing LLC; Kodak Imaging Network, Inc.; Kodak Philippines, Ltd.; Kodak Portuguesa Limited; Kodak Realty, Inc.; Laser-Pacific Media Corporation; NPEC Inc.; Pakon, Inc.; and Qualex Inc. The Reorganized Debtors are Eastman Kodak Company; Eastman Kodak International Capital Company, Inc.; Far East Development Ltd.; FPC Inc.; Kodak (Near East), Inc.; Kodak Americas, Ltd.; Kodak Aviation Leasing LLC; Kodak Imaging Network, Inc.; Kodak Philippines, Ltd.; Kodak Portuguesa Limited; Kodak Realty, Inc.; Laser-Pacific Media Corporation; NPEC Inc.; and Qualex Inc.

procedural purposes and are being jointly administered as *In re Eastman Kodak Company, et al.*, 12-10202 (ALG) (the "Bankruptcy Cases").

B. Kodak's principal manufacturing facility in New York State is located at Eastman Business Park ("EBP"), a 1,200-acre technology center and industrial complex located in Monroe County, New York. The historical EBP includes approximately 1,200 acres that Kodak has used, and continues to use a portion of, to perform manufacturing activities involving the generation of hazardous waste. Portions of EBP have also been used for treatment (including incineration), storage and disposal of hazardous waste. EBP is a hazardous waste management facility, as that term is defined at 6 NYCRR 370.2(b)(89), and is subject to New York State laws and regulations governing hazardous waste management and corrective action. EBP is subject to the RCRA Permit (as that term is defined in Article I below), which establishes the operating requirements for hazardous waste management units and corrective action requirements at EBP.

C. The United States, on behalf of EPA, contends that Kodak has various obligations under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, at EBP and beyond the facility boundary, including to perform corrective action at EBP and in the Genesee River.

D. The United States, on behalf of DOI, contends that Kodak is liable under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, for natural resource damages and costs of assessment ("NRD") at or in connection with EBP (the "US NRD Claim").

E. The United States, on behalf of EPA, additionally contends that Kodak is liable under CERCLA for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with the Mercury Refining

Superfund Site ("Mercury Refining Site Claim") in Colonie and Guilderland, New York, and the Fair Lawn Well Field Superfund Site ("Fair Lawn Site Claim" and, collectively with the Mercury Refining Site Claim, the "Superfund Claims") in Fair Lawn, New Jersey.

F. The United States, on behalf of EPA and DOI, has filed a proof of claim (Claim No. 5609) (the "US Proof of Claim") against Kodak for the US NRD Claim and the Superfund Claims. Additionally, the US Proof of Claim asserted, in protective fashion only, Kodak's liability for, *inter alia*, equitable remedies and work obligations that are not within the Bankruptcy Code's definition of "claim," including those under RCRA at EBP.

G. On June 17, 2013, Kodak, the New York State Department of Environmental Conservation ("DEC"), and the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), entered into a settlement agreement in connection with EBP ("EBP Settlement Agreement"), pursuant to which, *inter alia*, Kodak agreed to establish on the Implementation Date an environmental response trust to be funded in the total amount of $49,000,000 to allow DEC to implement EBP Environmental Response Actions (as defined below), and DEC agreed to execute and deliver to Kodak a covenant not to sue for EBP Environmental Response Actions or other environmental liabilities associated with current and former parcels of EBP in existence prior to the Implementation Date (as defined below).

H. Under the EBP Settlement Agreement, the Debtors and DEC also agreed that the DEC Claims (as defined in the EBP Settlement Agreement) shall be allowed as prepetition general unsecured claims in the aggregate amount of $11,285,000.

I. One of the conditions to the implementation of the EBP Settlement Agreement, unless otherwise waived by Kodak, was receipt of a covenant not to sue by the United States, and contribution protection pursuant to applicable federal environmental law concerning

liabilities or potential liabilities to the United States associated with EBP or historical discharges from EBP to the Genesee River (the "US Covenant Condition").

J. On June 21, 2013, the Debtors filed a motion seeking entry of an order approving and authorizing the Debtors' entry into the EBP Settlement Agreement with a hearing on the motion scheduled for July 17, 2013.

K. On July 16, 2013, the United States filed a statement in response to the Debtors' motion for an order approving and authorizing the Debtors' entry into the EBP Settlement Agreement, stating, *inter alia*, that: the United States did not intend to provide the covenant not to sue and contribution protection contemplated by the EBP Settlement Agreement because (a) there had not been sufficient characterization of the nature and extent of contamination to provide a basis for confidence that the $49,000,000 allocated to EBP Environmental Response Actions through the EBP Settlement Agreement will be sufficient, and (b) the United States had significant concerns about the consequences of forgoing its remedies under the environmental laws, in the event that the cleanup of all existing contamination is incomplete at EBP and in or near the Genesee River.

L. On August 6, 2013, Kodak, DEC, and ESD entered into an amended and restated settlement agreement in connection with EBP (the "Amended EBP Settlement Agreement"), which amended in pertinent part the provisions concerning how the EBP Environmental Response Actions would be funded. Specifically, the Amended EBP Settlement Agreement provides that: (1) Kodak shall establish an environmental trust to be funded in the total amount of $49,000,000; (2) in the event the costs of EBP Environmental Response Actions exceed $49,000,000, DEC shall be responsible for payment of such costs in excess of $49,000,000, up to a limit of an additional $50,000,000; and (3) in the event the costs of EBP Environmental

Response Actions exceed $99,000,000, Kodak shall pay 50% of such costs in excess of $99,000,000 and DEC shall pay 50% of such costs in excess of $99,000,000.

M. The Amended EBP Settlement Agreement includes the US Covenant Condition.

N. On August 6, 2013, Debtors filed a motion for an order approving and authorizing Debtors' entry into the Amended EBP Settlement Agreement with a hearing on the motion scheduled for August 14, 2013.

O. The United States did not file a statement or objection in response to Debtors' motion for an order approving and authorizing Debtors' entry into the Amended EBP Settlement Agreement, but reserved on the record at the August 14, 2013 hearing its right, *inter alia*, not to provide the covenant contemplated by the Amended EBP Settlement Agreement.

P. On August 19, 2013, the Court entered an order approving and authorizing the Debtors' entry into the Amended EBP Settlement Agreement (the "EBP Order").

Q. The EBP Order provided, *inter alia*, in paragraph 6 that: (i) "[o]n the Implementation Date, [the NRD Claim (as defined in the EBP Order to include both DEC's NRD claim and the US NRD Claim)] shall be stipulated and allowed as an aggregate pre-petition general unsecured claim against Kodak in the total amount of $7,163,000, payable without duplication solely in accordance with Paragraph 7 [of the EBP Order];" and (ii) "[n]othing therein waives any right of the United States to seek reclassification of the NRD Claim (subject to the allowance in the amount specified herein and subject to the application of distributions in accordance with paragraph 7 [of the EBP Order]) as secured by right of setoff" (the stipulated and allowed NRD Claim, as provided in paragraph 6 of the EBP Order, the "Allowed Aggregate NRD Claim").

R. The Debtors, the Reorganized Debtors and the United States wish to resolve their differences concerning liabilities or potential liabilities to the United States with respect to the portions of the US Proof of Claim concerning the Superfund Claims and will enter into a separate agreement setting forth the resolution thereof.

S. As provided herein, the Debtors, the Reorganized Debtors and the United States wish to resolve their differences concerning liabilities or potential liabilities to the United States associated with EBP and historical discharges from EBP to the Genesee River.

T. The treatment of liabilities provided for herein is entered into solely for purposes of this settlement, and the Debtors, the Reorganized Debtors and the United States reserve their legal arguments as to any issues involved in other matters.

U. The United States, the Debtors, the Reorganized Debtors and DEC have negotiated the following additional agreements: (1) an agreement between EPA and DEC concerning the performance of corrective actions in connection with EBP (the "Memorandum of Agreement"), and (2) an agreement between EPA and DEC concerning the right of EPA to enforce certain obligations of DEC set forth in the Amended EBP Settlement Agreement (the "Funding Agreement"). These two agreements are hereinafter collectively referred to as the "Agreements." The Funding Agreement is attached hereto as Appendix 1 and is incorporated by reference herein.

V. In consideration of, and in exchange for, the promises and covenants herein, including, without limitation, the obligations set forth in Article IV and the covenants set forth in sections 5.1, 5.2 and 5.10, and subject to the provisions of sections 9.1 through 9.4, intending to be legally bound hereby, and in consideration of the Agreements, the Parties hereby agree to the terms and provisions of this Settlement Agreement.

W. This Settlement Agreement is in the public interest and is an appropriate means of resolving this matter.

NOW THEREFORE, upon the consent and agreement of the Parties by their attorneys and authorized officials, it is hereby agreed as follows:

I. DEFINITIONS

1.1 Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in RCRA or CERCLA or their implementing regulations, or in the Bankruptcy Code, shall have the meaning assigned to them therein. In addition, terms defined in the preamble or the recitals, above, shall have the meaning set forth therein. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

a. "Allowed" has the meaning set forth in the Plan.

b. "Claim" has the meaning provided in Section 101(5) of the Bankruptcy Code.

c. "EBP Environmental Response Action" means any action taken by DEC, or by a party whom DEC requires to take such action, involving the investigation, remediation, corrective action, closure, and post-closure activities concerning Pre-Existing Contamination and: (i) required pursuant to the RCRA Permit issued to Kodak by DEC; or (ii) due to conditions giving rise to Kodak's environmental liabilities in existence prior to the Plan Effective Date (as defined below), including without limitation environmental conditions found at EBP that resulted in entry of a DEC Administrative Consent Order (No. R8-1046-95-02) dated February 15, 1996, regarding the Weiland Road Landfill, an inactive hazardous waste disposal site within EBP identified by DEC as site # 828002, or conditions that gave rise to the designation of Inactive Hazardous Waste Disposal Sites # 828071, 828074, 828092 and 828082.

d. "Implementation Date" has the meaning set forth in the Amended EBP Settlement Agreement.

e. "IRS Refund Amount" means $7,204,040.58, plus interest on such amount accruing at the rate applicable to tax overpayments from August 15, 2013, through the Settlement Effective Date.

f. "Plan" means the First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and its Debtor Affiliates (Docket No. 4966), confirmed by the Court on August 23, 2013.

g. "Plan Effective Date" means September 3, 2013.

h. "Pre-Existing Contamination" means any hazardous substances or hazardous wastes spilled, discharged, escaped or otherwise released into the environment at EBP, or from EBP into the Genesee River, prior to the Plan Effective Date, including: (i) contamination of soil, surface water, sediments or groundwater at EBP; (ii) contamination of sediments and surface water in the Genesee River which originated at Eastman Business Park; and (iii) contamination due to ongoing migration or passive emissions (including soil vapors) of hazardous substances or hazardous wastes that were spilled, discharged, escaped or released at EBP entirely prior to the Plan Effective Date; *provided, however*, that to the extent that any contamination is due, in part, to discharges or other events that occurred prior to the Plan Effective Date and, in part, to discharges or other events (including the negligent acts or omissions of Kodak) that occur after the Plan Effective Date, then that portion of the contamination that is caused by the discharges or other events that occur after the Plan Effective Date shall not constitute Pre-Existing Contamination; and *provided further*, that with regard to any building, building material, structure or equipment at EBP presently or formerly owned or

operated by Kodak, the presence of asbestos, lead based paint, urea formaldehyde insulation, polychlorinated biphenyls, mercury, or any other hazardous substance or hazardous waste underneath, present in, or as a component or constituent of any such building, building material, structure or equipment that existed prior to the Plan Effective Date shall not be considered Pre-Existing Contamination, and Kodak shall comply with all laws governing the management, abatement and/or disposal of such material to the extent triggered by or applicable to Kodak's past or present ownership, operation, demolition, modification, refurbishment or removal of such building, building material, structure or equipment.

i. "RCRA Permit" means the Eastman Kodak Company-Kodak Park Part 373 Hazardous Waste Management Permit, DEC Permit # 8-2614-00295/0014, February 2008, and modifications thereto.

j. "Settlement Effective Date" means the date that is the later of (a) the date that the Court approves this Settlement Agreement, (b) the date that EPA and DEC enter into the Memorandum of Agreement, and (c) the date that EPA and DEC enter into the Funding Agreement.

k. "Superfund Sites Settlement Agreement" means the Settlement Agreement Between the Debtors, the Reorganized Debtors, and the United States, on behalf of EPA, relating to the Mercury Refining Site Claim and the Fair Lawn Site Claim.

l. "Trust" has the meaning set forth in the Amended EBP Settlement Agreement.

m. "United States" means the United States of America and each department, agency, and instrumentality of the United States, including EPA and DOI and each successor department, agency, or instrumentality of EPA and DOI.

II. JURISDICTION

2.1 The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334. To the extent that such consent may be necessary, each Party consents to the Court's entry of a final order regarding this Settlement Agreement.

III. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

3.1 This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the Debtors, the Reorganized Debtors, the Debtors' and the Reorganized Debtors' legal successors and assigns, any Transferee in accordance with the provisions of Article VII of this Settlement Agreement, and any trustee, examiner, or receiver appointed in the Bankruptcy Cases.

IV. OBLIGATIONS REGARDING EASTMAN BUSINESS PARK

4.1 Provisions Regarding the Amended EBP Settlement Agreement and the EBP Order

4.1.1 On or before the Implementation Date, Kodak shall: (i) execute and deliver to DEC and EPA the Trust Agreement in substantially the form as attached as Exhibit A to the Amended EBP Settlement Agreement and establish the Trust contemplated thereby, (ii) upon DEC's instruction, deposit in the Trust all funds then held in trust for RCRA financial assurances (in a cash amount not less than $31,400,000), (iii) use commercially reasonable efforts to assign to the Trust all available insurance policies, all existing third-party contracts acceptable to the Trust, all warranties running to the benefit of Kodak, and all rights to reimbursement and/or contribution held by Kodak, in each case to the extent concerning any EBP Environmental Response Actions, (iv) transfer and assign to the Trust its interests in personal property, equipment and fixtures used for performing any EBP Environmental

Response Actions on site, including, without limitation, all equipment and fixtures presently used in connection with the RCRA corrective action or collection of contaminated groundwater or leachate set forth on Schedule 3.1(a) of the Amended EBP Settlement Agreement, and (v) deposit in the Trust an amount equal to $17,600,000 such that the total funds in the Trust equal $49,000,000.

4.1.2 In the event the costs of EBP Environmental Response Actions exceed $99,000,000, Kodak shall pay fifty percent (50%) of such costs in excess of $99,000,000 and DEC shall pay fifty percent (50%) of such costs in excess of $99,000,000.

4.1.3 To the extent that Kodak fails to comply with Sections 4.1.1 or 4.1.2 above, the obligations set forth therein are enforceable by the United States against Kodak.

4.1.4 Paragraphs 6 and 7 of the EBP Order are incorporated by reference herein, except that insofar as such paragraphs refer to the United States' claim to a right of setoff, such right of setoff is addressed in Section 4.2 below.

4.2 <u>The US NRD Claim and Setoff</u>

4.2.1 The Parties agree that the Internal Revenue Service may hold the IRS Refund Amount in abeyance to allow the United States to set off the IRS Refund Amount against the US NRD Claim (as part of the Allowed Aggregate NRD Claim), the Mercury Refining Site Claim, and/or the Fair Lawn Site Claim, or portions thereof.

4.2.2 The United States shall apply 61.83% of the IRS Refund Amount as a setoff to satisfy a portion of the US NRD Claim (as part of the Allowed Aggregate NRD Claim). The United States shall additionally apply 38.17% of the IRS Refund Amount as a setoff to satisfy a portion of the Superfund Claims, as further specified in the Superfund Sites Settlement Agreement.

4.2.3 Promptly after application of all or part of the IRS Refund Amount as a setoff, the United States shall notify the Reorganized Debtors in writing of the amount of the IRS Refund Amount applied to the US NRD Claim (as part of the Allowed Aggregate NRD Claim). Upon such notification, the portion of the US NRD Claim (as part of the Allowed Aggregate NRD Claim) set off by 61.38% of the IRS Refund Amount shall be deemed fully and finally satisfied. The unsatisfied amount of the US NRD Claim will be reduced accordingly, and the unsatisfied amount of the Allowed Aggregate NRD Claim will be reduced accordingly.

4.2.4 The US NRD Claim (as part of the Allowed Aggregate NRD Claim), less the IRS Refund Amount applied to such claim (the "Remaining US NRD Allowed Amount"), shall be paid as Class 4 General Unsecured Claim and shall receive the same treatment under the Plan, without discrimination, as all other allowed Class 4 General Unsecured Claims, with all attendant rights provided by the Bankruptcy Code and other applicable law. In no event shall such Remaining US NRD Allowed Amount be senior or subordinated to any allowed Class 4 General Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code. Kodak shall make applicable distributions under Sections 4.2.4 of the Plan, payable as provided in paragraph 7 of the EBP Order, in full and final satisfaction of such Remaining US NRD Allowed Amount. Upon delivery of payment as described in this section 4.2.4, the US NRD Claim shall be deemed fully and finally satisfied.

4.3 Due Care and Cooperation.

4.3.1 Kodak shall exercise due care with respect to (a) the Pre-Existing Contamination, and (b) any other hazardous wastes, hazardous substances, pollutants or

contaminants that are the legal responsibility of Kodak at EBP. Kodak shall comply with all applicable local, state, and federal laws and regulations with respect to Kodak's activities at EBP.

4.3.2 Kodak agrees to cooperate with the United States and its representatives in their implementation of studies, corrective actions or other response actions at EBP and in the Genesee River, and further agrees not to interfere with any such actions.

4.3.3 Except as expressly provided herein, nothing in this Settlement Agreement shall affect Kodak's obligations under environmental laws with respect to any action or occurrence which causes or threatens a release of hazardous wastes, hazardous substances, pollutants or contaminants at or from EBP that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, including complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, and other applicable law.

4.4 Access and Institutional Controls.

4.4.1 For any portion of EBP owned or controlled by Kodak, Kodak shall:

a. provide the United States and their representatives with access at all reasonable times to EBP for the purpose of conducting any response activity related to EBP, including but not limited to the following activities:

i. Monitoring, investigation, removal, remedial, or other activities at EBP;

ii. Verifying any data or information submitted to the United States;

iii. Conducting investigations relating to contamination at or near EBP;

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing response actions at or near EBP;

vi. Assessing Kodak's compliance with this Settlement Agreement and the Amended EBP Settlement Agreement; and

vii. Determining whether EBP or other property is being used in a manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures, corrective actions, engineering controls, institutional controls or other measures that have been or are performed at or near EBP; and

b. refrain from using EBP in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures, corrective actions, engineering controls, institutional controls or other measures that have been or are performed at or near EBP.

4.4.2 If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at EBP, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Kodak shall cooperate with EPA's efforts to secure such governmental controls.

4.5 Access to Information

4.5.1 Kodak shall cooperate with EPA's reasonable requests for information regarding environmental conditions at or near EBP and the handling, treatment, storage, disposal, release or threat of release of hazardous wastes, hazardous substances, pollutants or contaminants at or from EBP.

4.5.2 Kodak shall provide EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information

in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to environmental conditions at or near EBP or activities at EBP or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the source, nature and extent of potential contamination at or near EBP and actions to address such contamination.

4.6 Business Confidential and Privileged Documents.

4.6.1 Kodak may assert business confidentiality claims covering part or all of the Records submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Kodak that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Kodak.

4.6.2 Kodak may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Kodak asserts such a privilege in lieu of providing Records, it shall provide EPA with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Kodak. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Kodak shall retain all Records that it

claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Kodak's favor.

4.6.3 No Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld from the United States on the grounds that they are privileged or confidential.

4.6.4 No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around EBP.

4.7 Retention of Records

4.7.1 Until ten years after the completion of the EBP Environmental Response Actions, Kodak shall preserve and retain all non-identical copies of Records now in its possession or control or that come into its possession or control that relate in any manner to: (i) the Pre-Existing Contamination; (ii) Kodak's liability under CERCLA and RCRA for the Pre-Existing Contamination; or (iii) the performance of corrective actions or other work relating to the Pre-Existing Contamination, pursuant to the RCRA Permit.

V. COVENANTS AND RESERVATIONS

5.1 In consideration of the actions that will be performed and the payments that will be made by Kodak, as referenced in Article IV above, including but not limited to the matters described in sections 4.1.1 and 4.1.2 of this Settlement Agreement, and except as specifically provided in sections 5.5 through 5.8 below, the United States on behalf of EPA covenants not to file a civil action or to take any administrative or other civil actions against Kodak pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, or RCRA (except for Section 7003, 42 U.S.C. §

6973) with respect to Pre-Existing Contamination**.** This covenant not to sue is conditioned upon the satisfactory performance by Kodak of its obligations under this Settlement Agreement, including but not limited to section 4.1.1 and 4.1.2.

5.2 In consideration of the allowed US NRD Claim and the setoff right provided in sections 4.2.1 and 4.2.2 of this Settlement Agreement, and except as specifically provided in sections 5.5 through 5.8, the United States on behalf of DOI covenants not to file a civil action or to take any administrative or other civil actions against Kodak pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, with respect to Pre-Existing Contamination.

5.3 The covenants set forth in sections 5.1 and 5.2 shall take effect on the later of (a) the Settlement Effective Date, and (b) the Implementation Date.

5.4 The covenants set forth in sections 5.1 and 5.2 (and the limitations and reservations in sections 5.5 through 5.8, below) shall also apply to successors, officers, directors, employees, and trustees of Kodak, but only to the extent that the alleged liability of the successor, officer, director, employee, or trustee of Kodak is based solely on its status as and in its capacity as a successor, officer, director, employee, or trustee of Kodak.

5.5 The covenants set forth in sections 5.1 and 5.2 shall extend only to Kodak and the persons described in section 5.4 and do not extend to any other person, except as specifically provided in sections 7.1 through 7.4. Nothing in this Settlement Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than Kodak, the United States, and the persons and entities described in section 5.4 above, except as specifically provided in sections 7.1 through 7.4. The United States and Kodak expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or

equity, which they may have against all other persons, firms, corporations, or entities for any matter arising at or relating in any manner to EBP or the Genesee River.

5.6 The covenants not to sue set forth in sections 5.1 and 5.2 do not pertain to any matters other than those expressly specified therein.

5.7 The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against Kodak and the persons described in sections 5.4 and 7.1 with respect to all matters other than those set forth in sections 5.1 and 5.2. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on: (i) a failure to meet a requirement of this Settlement Agreement or the Amended EBP Settlement Agreement; (ii) criminal liability; (iii) liability other than liability for the Pre-Existing Contamination; (iv) circumstances or activities that may present an imminent and substantial endangerment to the public health or welfare or the environment; (v) a failure to have a hazardous waste permit that includes corrective action requirements relating to Pre-Existing Contamination, to the extent required by RCRA and applicable state law, provided that regardless of the terms or conditions of the RCRA Permit or any hazardous waste permit issued to a Transferee, as defined in section 7.1 below, such permit obligations shall be subject to the covenant not to sue that is applicable to Kodak, or may be applicable to the Transferee, pursuant to section 5.1, the remainder of this section 5.7, and Article VII below, and any enforcement by the United States of such permit, insofar as Pre-Existing Contamination is concerned, shall be subject to section 5.1, the remainder of this section 5.7, and Article VII; (vi) exacerbation of Pre-Existing Contamination; (vii) to the extent that Kodak or the persons described in sections 5.4 and 7.1 manage any wastes or other materials generated from the remediation, storage, transportation, treatment or disposal of Pre-Existing Contamination, any failure by Kodak or

such persons to manage such materials in accordance with applicable state or federal law; or (viii) EPA's rights to gather information, request records and enter and inspect property and premises. Kodak waives any argument or contention that any cause of action of EPA for injunctive relief for circumstances or activities that may present an imminent and substantial endangerment to the public health or welfare or the environment at EBP or the Genesee River is discharged under the Plan or the Bankruptcy Code.

5.8 Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take response actions under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, Section 3007 of RCRA, 42 U.S.C. § 6927, or any other applicable law or regulation, or to excuse Kodak from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable law or regulation.

5.9 With respect to any claim or cause of action asserted by the United States, Kodak and the persons described in sections 5.4 and 7.1 shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Pre-Existing Contamination.

5.10 Kodak hereby covenants not to sue and agrees not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to EBP or the Genesee River, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim against the United States

under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities or corrective action at EBP or the Genesee River. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. §300.700(d).

5.11 Only the amount of cash or net proceeds from non-cash consideration received by the United States on behalf of DOI for the US NRD Claim, and not the total amount of the US NRD Claim nor the amount of any Allowed Claim approved by the Court for the US NRD Claim, shall be credited by the United States on behalf of DOI to its account for the site, which credit shall reduce the liability to the United States of non-settling potentially responsible parties (or responsible parties that have only partially settled their liability) for the site by the amount of the credit.

5.12 With respect to the current holders of a property interest in EBP, other than Kodak, provided that the EBP Environmental Response Actions are being carried out in a timely manner, EPA anticipates no need to pursue such interest holders for the performance or funding of those actions, assuming that they did not cause or contribute to the release or threat of release of any of the Pre-Existing Contamination. The foregoing sentence does not pertain to any releases not within the definition of Pre-Existing Contamination.

VI. CONTRIBUTION PROTECTION

6.1 Kodak and the United States on behalf of EPA and DOI agree, and by entering this Settlement Agreement the Court finds, that this Settlement Agreement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA,

42 U.S.C. § 9613(f)(2), and that Kodak is entitled, as of the Settlement Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), are: (a) claims by EPA or potentially responsible parties for response costs in connection with the Pre-Existing Contamination; and (b) claims by DOI or potentially responsible parties for natural resource damages for injury at EBP or the Genesee River (including related natural resource damage assessment costs) with respect to Pre-Existing Contamination; *provided, however*, that if the United States exercises rights under the reservations in Section 5.7, other than 5.7(i) (failure to meet a requirement of this Settlement Agreement or the Amended EBP Settlement Agreement) or 5.7(ii) (criminal liability), the "matters addressed" in this Settlement Agreement will no longer include those response costs or natural resource damages that are within the scope of the exercised reservation.

6.2 Kodak agrees that, with respect to any suit for contribution brought against it after the Settlement Effective Date for matters related to this Settlement Agreement, it will notify the United States within fifteen (15) business days of service of the complaint upon it. In addition, in connection with such suit, Kodak shall notify the United States within fifteen (15) business days of service or receipt of any Motion for Summary Judgment and within fifteen (15) business days of receipt of any order from a court setting a case for trial; provided, however, that the failure to notify the United States pursuant to this paragraph shall not in any way affect the protections afforded by Articles V and VI of this Settlement Agreement.

VII. TRANSFER OF COVENANT

7.1 After completion of the condition set forth in section 7.1.1 below, any person or entity (hereinafter, "Transferee") that takes a real property interest in EBP from or through Kodak or another person or entity shall have the rights, duties and obligations under Sections 4.3 (Due Care and Cooperation), 4.4 (Access and Institutional Controls), 4.5 (Access to Information), 4.6 (Business Confidential and Privileged Documents) and 4.7 (Retention of Records) and Articles V (Covenants and Reservations), VI (Contribution Protection), VIII (Notices and Submissions), and XII (Retention of Jurisdiction) of this Settlement Agreement, as well as any additional duties and obligations set forth in the Transfer Agreement and Certification attached hereto as Appendix 2.

7.1.1 At least fourteen (14) days before the assignment or transfer of the property interest, the Transferee shall complete, execute and submit to EPA by certified mail, return receipt requested, the Transfer Agreement and Certification, attached hereto as Appendix 2. The Transferee shall send the Transfer Agreement and Certification to the following address:

Chief, Waste & Toxic Substances Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

7.2. The applicability to a Transferee of the covenants set forth in sections 5.1 and 5.2 is subject to the same reservations, conditions and limitations as provided in Article V (Covenants and Reservations), except that the applicability of such covenants to a Transferee is not dependent upon the satisfactory performance by Kodak of its obligations under this Settlement Agreement.

7.3 If at any time after receiving a completed and executed Transfer Agreement and Certification from a Transferee, EPA issues a written determination that any representation or

certification submitted by the Transferee is materially inaccurate or incomplete, or if, at any time, the Transferee fails to meet one of the obligations and requirements referenced in section 7.1 or the Transfer Agreement and Certification, the United States' covenant under section 5.1 of this Settlement Agreement and the contribution protection under section 6.1 of this Settlement Agreement shall be null and void with respect to such Transferee, and the United States reserves all rights it may have against such party.

7.4 Notwithstanding any assignment or transfer of an interest in EBP, Kodak shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Settlement Agreement, except as the Parties agree otherwise and modify this Settlement Agreement, in writing, accordingly.

VIII. NOTICES AND SUBMISSIONS

8.1 Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Settlement Agreement, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in the Settlement Agreement with respect to the United States and the Reorganized Debtors, respectively.

As to the United States:

Christine S. Poscablo
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Ref. DOJ File No. 90-11-3-10545 & 90-11-3-10545/1

Chief, Waste & Toxic Substances Branch
Office of Regional Counsel
EPA Region 2
290 Broadway
New York, NY 10007-1866

Mark Barash
Office of the Regional Solicitor
U.S. Department of the Interior
Suite 612, One Gateway Center
Newton, MA 02458

As to Kodak:

Eastman Kodak Company
343 State Street
Rochester, New York 14650
Attn: General Counsel

With a copy (which shall not constitute notice) to:

Sullivan & Cromwell LLP
125 Broad St.
New York, New York 10004
Attn: Andrew G. Dietderich

IX. JUDICIAL APPROVAL AND PUBLIC COMMENT

9.1 This Settlement Agreement shall be subject to approval of the Court.

9.2 This Settlement Agreement shall be lodged with the Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. The public comment period provided for in this section 9.2 may run concurrently with any notice period required pursuant to Bankruptcy Rule 2002 or applicable local rule in connection with judicial approval of the Settlement Agreement pursuant to the preceding section 9.1.

9.3 After the conclusion of the public comment period, the United States will file with the Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement under applicable environmental laws. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest.

9.4 Prior to, or contemporaneously with, the filing by the United States referred to in the prior paragraph, the Reorganized Debtors shall seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code, or shall advise the United States in writing that no such approvals are necessary.

9.5 If for any reason (a) this Settlement Agreement is withdrawn by the United States, (b) the Settlement Agreement is not approved by the Court, or (c) this Settlement Agreement does not become effective because EPA and DEC do not enter into the Memorandum of Agreement or the Funding Agreement: (i) this Settlement Agreement shall be null and void, and the Parties shall not be bound hereunder or under any documents executed in connection herewith; (ii) the Parties shall have no liability to one another arising out of or in connection with

this Settlement Agreement or under any documents executed in connection herewith; and (iii) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

9.6 This Settlement Agreement is not conditioned on approval of the Superfund Sites Settlement Agreement. In the event, however, that the Superfund Sites Settlement Agreement is not approved by the Court, the percentage allocation of the IRS Refund Amount to the US NRD Claim and the Superfund Claims set forth in section 4.2.2 of this Settlement Agreement shall not apply, and, instead, the United States may allocate the IRS Refund Amount to the US NRD Claim, the Mercury Refining Site Claim, and/or the Fair Lawn Site Claim in its sole discretion.

X. PLAN OF REORGANIZATION

10.1 The Reorganized Debtors shall not amend the Plan in a manner inconsistent with the terms and provisions of this Settlement Agreement, or take any other action in the Bankruptcy Cases that is inconsistent with the terms and provisions of this Settlement Agreement. The Reorganized Debtors shall timely serve the United States and DEC with any motion to amend the Plan.

XI. INTEGRATION, AMENDMENTS, AND COUNTERPARTS

11.1 This Settlement Agreement and any other documents to be executed in connection herewith and/or referred to herein shall constitute the sole and complete agreement of the Parties with respect to the matters addressed herein.

11.2 This Settlement Agreement shall not become effective unless EPA and DEC have entered into the Memorandum of Agreement and the Funding Agreement.

11.3 This Settlement Agreement may be modified, amended or supplemented through a written document signed by the Parties without further order of the Court, provided that no

such modification, amendment or supplement may be made without further order of the Court if it materially alters the terms of this Settlement Agreement.

11.4 This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

XII. RETENTION OF JURISDICTION

12.1 The Court (or, upon withdrawal of the Court's reference, the United States District Court for the Southern District of New York) shall retain jurisdiction over the subject matter of this Settlement Agreement and the Parties for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms. All parties consent to the exercise of such jurisdiction.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:

FOR THE UNITED STATES OF AMERICA:

Date: 3/10/14

PREET BHARARA
United States Attorney
for the Southern District of New York

By: _____
CHRISTINE S. POSCABLO
ROBERT WILLIAM YALEN
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, NY 10007

Date: 3/7/14

_____
ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 3/10/14

Donald G. Frankel
DONALD G. FRANKEL
Senior Counsel
ALAN S. TENENBAUM
National Bankruptcy Coordinator
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 3/5/14

Judith A. Enck

JUDITH A. ENCK
Regional Administrator
EPA Region 2

Date: 3/5/14

ERIC SCHAAF
Regional Counsel
EPA Region 2

FOR EASTMAN KODAK COMPANY AND THE OTHER DEBTORS AND REORGANIZED DEBTORS:

Date: 3/4/2014

Eastman Kodak Company

By: _____
Patrick M. Sheller
Senior Vice President, General Counsel, and Secretary

Eastman Kodak International Capital Company, Inc.
Far East Development Ltd
FPC Inc.
Kodak (Near East), Inc.
Kodak Americas, Ltd.
Kodak Imaging Network, Inc.
Kodak Philippines, Ltd
Kodak Portuguesa Limited
Kodak Realty, Inc.
Laser-Pacific Media Corporation
NPEC Inc.
Qualex Inc.

By: _____
Patrick M. Sheller
Secretary

Kodak Aviation Leasing LLC

By: _____
Patrick M. Sheller
Managing Director

APPENDIX 1

FUNDING AGREEMENT

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
EASTMAN KODAK COMPANY, *et al.*,[1]	:	Case No. 12-10202 (ALG)
Debtors.	:	(Jointly Administered)

FUNDING AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AND THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

This funding agreement (the "Funding Agreement"), is entered into by and between the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the New York State Department of Environmental Conservation ("DEC") (collectively, the "Parties").

RECITALS

WHEREAS, on January 19, 2012, each of the Eastman Kodak Company ("Kodak") and its affiliated debtors and Reorganized Debtors (collectively, "Debtors") filed with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court" or "Court") voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy

[1] The Debtors are Eastman Kodak Company; Creo Manufacturing America LLC; Eastman Kodak International Capital Company, Inc.; Far East Development Ltd.; FPC Inc.; Kodak (Near East), Inc.; Kodak Americas, Ltd.; Kodak Aviation Leasing LLC; Kodak Imaging Network, Inc.; Kodak Philippines, Ltd.; Kodak Portuguesa Limited; Kodak Realty, Inc.; Laser-Pacific Media Corporation; NPEC Inc.; Pakon, Inc.; and Qualex Inc. The Reorganized Debtors are Eastman Kodak Company; Eastman Kodak International Capital Company, Inc.; Far East Development Ltd.; FPC Inc.; Kodak (Near East), Inc.; Kodak Americas, Ltd.; Kodak Aviation Leasing LLC; Kodak Imaging Network, Inc.; Kodak Philippines, Ltd.; Kodak Portuguesa Limited; Kodak Realty, Inc.; Laser-Pacific Media Corporation; NPEC Inc.; and Qualex Inc.

Code"), which have been consolidated for procedural purposes and are being jointly administered as *In re Eastman Kodak Company, et al.*, 12-10202 (ALG) (the "Bankruptcy Cases");

WHEREAS, Kodak's principal manufacturing facility in New York State is located at Eastman Business Park ("EBP"), a 1,200-acre technology center and industrial complex located in Monroe County, New York. The historical EBP includes approximately 1,200 acres that Kodak has used, and continues to use a portion of, to perform manufacturing activities involving the generation of hazardous waste. Portions of EBP have also been used for treatment (including incineration), storage and disposal of hazardous waste. EBP is a hazardous waste management facility, as that term is defined at 6 NYCRR 370.2(b)(89), and is subject to New York State laws and regulations governing hazardous waste management and corrective action. EBP is subject to a 6 NYCRR Part 373 Permit (the "RCRA Permit"), which was issued by DEC. The RCRA Permit establishes the operating requirements for hazardous waste management units and corrective action requirements at EBP;

WHEREAS, the United States, on behalf of EPA, contends that Kodak has various obligations under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, at EBP and beyond the facility boundary, including to perform corrective action at EBP and in the Genesee River;

WHEREAS, on June 17, 2013, Kodak, DEC, and the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), entered into a settlement agreement in connection with EBP ("EBP Settlement Agreement"), pursuant to which, *inter alia*, Kodak agreed to establish on the Implementation Date an environmental response trust to be funded in the total amount of $49,000,000 to allow DEC to implement EBP Environmental Response Actions, and DEC agreed to execute and deliver to Kodak a covenant not to sue for

EBP Environmental Response Actions or other environmental liabilities associated with current and former parcels of EBP in existence prior to the Implementation Date;

WHEREAS, one of the conditions to the implementation of the EBP Settlement Agreement, unless otherwise waived by Kodak, was receipt of a covenant not to sue by the United States, on behalf of EPA and the U.S. Department of the Interior ("DOI"), and contribution protection pursuant to applicable federal environmental law concerning liabilities or potential liabilities to the United States associated with EBP or historical discharges from EBP to the Genesee River (the "U.S. Covenant Condition");

WHEREAS, on June 21, 2013, the Debtors filed a motion seeking entry of an order approving and authorizing the Debtors' entry into the EBP Settlement Agreement with a hearing on the motion scheduled for July 17, 2013;

WHEREAS, on July 16, 2013, the United States filed a statement in response to the Debtors' motion for an order approving and authorizing the Debtors' entry into the EBP Settlement Agreement, stating, *inter alia*, that: (1) the United States did not intend to provide the covenant not to sue and contribution protection contemplated by the EBP Settlement Agreement because (a) there has not been sufficient characterization of the nature and extent of contamination to provide a basis for confidence that the $49,000,000 allocated to EBP Environmental Response Actions through the EBP Settlement Agreement will be sufficient, and (b) the United States had significant concerns about the consequences of forgoing its remedies under the environmental laws, in the event that the cleanup of all existing contamination is incomplete at the EBP and in or near the Genesee River;

WHEREAS, on August 6, 2013, Kodak, DEC, and the New York State Urban Development Corporation d/b/a ESD entered into an amended and restated settlement agreement in connection with EBP (the "Amended EBP Settlement Agreement"), which provides that: (1)

Kodak shall establish an environmental trust to be funded in the total amount of $49,000,000; (2) in the event the costs of EBP Environmental Response Actions exceed $49,000,000, DEC shall be responsible for payment of such costs in excess of $49,000,000, up to a limit of an additional $50,000,000; and (3) in the event the costs of EBP Environmental Response Actions exceed $99,000,000, Kodak shall pay 50% of such costs in excess of $99,000,000 and DEC shall pay 50% of such costs in excess of $99,000,000;

WHEREAS, the Amended EBP Settlement Agreement includes the U.S. Covenant Condition;

WHEREAS, the United States did not file a statement or objection in response to the Debtors' motion for an order approving and authorizing the Debtors' entry into the Amended EBP Settlement Agreement, but reserved on the record at the August 14, 2013 hearing its rights, *inter alia*, not to provide the covenant contemplated by the Amended EBP Settlement Agreement;

WHEREAS, on August 19, 2013, the Court entered an order approving and authorizing the Debtors' entry into the Amended EBP Settlement Agreement;

WHEREAS, the United States, on behalf of EPA and DOI, has executed simultaneously herewith a settlement agreement (the "Settlement Agreement") with Kodak in the Bankruptcy Cases, which includes a covenant not sue by the United States, on behalf of EPA and DOI (the "U.S. Covenant"), and contribution protection pursuant to applicable federal environmental law, concerning liabilities or potential liabilities to the United States associated with past discharges at EBP or from EBP to the Genesee River;

WHEREAS, EPA and DEC have also executed simultaneously herewith a Memorandum of Agreement ("MOA") concerning the performance of corrective actions in connection with EBP;

WHEREAS, the Settlement Agreement, the MOA and this Funding Agreement are each critical to EPA's willingness to provide the covenants not to sue contained in the Settlement Agreement, and the three documents should be considered integrated agreements addressing the matters resolved therein; provided that the MOA is pursuant to its terms not judicially enforceable;

WHEREAS, the EBP Environmental Response Actions anticipated by the Amended EBP Settlement Agreement are expected to be implemented by DEC;

WHEREAS, nothing in the July 16, 2013 statement of the United States, or the filing of it, in and of itself, creates any rights or cause of action not otherwise available under law;

WHEREAS, the United States believes this Funding Agreement, the Settlement Agreement, and the MOA to be fair, reasonable and consistent with applicable law; provided, however, that the United States reserves the right to reconsider and withdraw from the Settlement Agreement if the results of public comment so warrant, as provided in Section IX of the Settlement Agreement, and provided further that none of these three agreements shall take effect until all of them take effect;

NOW THEREFORE, in consideration of the mutual promises contained herein and the United States' provision of the covenants not to sue contained in the Settlement Agreement, it is hereby agreed as follows:

I. DEFINITIONS

1.1 Unless otherwise expressly provided herein, terms used in this Funding Agreement shall have the meaning assigned to them in the Settlement Agreement. In addition, terms defined in the recitals, above, shall have the meaning set forth therein.

II. JURISDICTION

2.1 The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334. To the extent that such consent may be necessary, each Party consents to the Court's entry of a final order approving this Funding Agreement.

III. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

3.1 This Funding Agreement applies to, is binding upon, and shall inure to the benefit of the United States and DEC. This Funding Agreement may not be assigned and shall not create any rights enforceable by Debtors, the Debtors' legal successors and assigns (including, but not limited to, Debtors in any new or reorganized form as a result of the Bankruptcy Cases), or any trustee, examiner, or receiver appointed in the Bankruptcy Cases or any non-Party.

IV. ENFORCEMENT OF FUNDING OBLIGATIONS

4.1 DEC shall use the funds in the Trust to pay the costs of EBP Environmental Response Actions. In the event the costs of EBP Environmental Response Actions exceed $49,000,000, DEC shall be responsible for payment of such costs in excess of $49,000,000, using funds from whatever source, up to a limit of an additional $50,000,000. In the event the costs of EBP Environmental Response Actions exceed $99,000,000, DEC shall be responsible for payment of fifty percent (50%) of such costs in excess of $99,000,000, using funds from whatever source, with Kodak being responsible for payment of the other fifty percent (50%), as provided in the Settlement Agreement. (DEC's obligations, referred to in this paragraph, to pay the costs of EBP Environmental Response Actions, using the Trust and other sources, are hereinafter referred to as the "DEC Funding Obligations.")

4.2 DEC hereby agrees that the United States has the right to enforce the DEC Funding Obligations in the event of any breach thereof by DEC, notwithstanding any action or

inaction by Kodak; *provided*, however, that the United States shall give DEC notice and a reasonable period of time to cure any alleged breach prior to initiating such an enforcement action; and *provided further*, that the DEC Funding Obligations are limited and conditioned by the following paragraph 4.3.

4.3 DEC's responsibility to pay the amounts required by the DEC Funding Obligations (after the Trust monies are exhausted) is subject in whole or in part to the availability of funds appropriated by the state legislature. To the extent necessary, DEC shall use best efforts to obtain timely appropriations, and DEC will work with the New York State Division of the Budget to obtain the necessary appropriations. DEC shall keep EPA apprised of the status and results of such efforts.

V. JUDICIAL APPROVAL AND CONDITION PRECEDENT

5.1 This Funding Agreement is contingent upon the execution, judicial approval and going into effect of the Settlement Agreement, the execution of this Funding Agreement, and the execution of the MOA. This Funding Agreement shall be of no force or effect if the Settlement Agreement is not executed, judicially approved, or does not go into effect, or if the MOA is not executed.

5.2 If for any reason (a) the Settlement Agreement is withdrawn by the United States or (b) the Settlement Agreement is not approved by the Bankruptcy Court: (i) this Funding Agreement shall be null and void, and the Parties shall not be bound hereunder or under any documents executed in connection herewith; (ii) the Parties shall have no liability to one another arising out of or in connection with this Funding Agreement or under any documents executed in connection herewith; and (iii) this Funding Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

VI. INTEGRATION, AMENDMENTS, AND COUNTERPARTS

6.1 This Funding Agreement, the Settlement Agreement, the MOA, and any other documents to be executed in connection herewith or referred to herein shall constitute the sole and complete agreement of the Parties with respect to the matters addressed therein. In the event of any inconsistency between this Funding Agreement and the Settlement Agreement, the Settlement Agreement shall control.

6.2 This Funding Agreement may be modified, amended or supplemented through a written document signed by the Parties without order of the Court, provided that no such modification, amendment or supplement may be made without order of the Court if it materially alters the terms of this Funding Agreement.

6.3 This Funding Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

6.4 Each of the individuals signing this Funding Agreement represents and warrants that he or she has the authority to sign on behalf of the entity for which he/she has acted as signatory.

VII. RETENTION OF JURISDICTION

7.1 The Court (or, upon withdrawal of the Court's reference, the United States District Court for the Southern District of New York) shall retain jurisdiction over the subject matter of this Funding Agreement and the Parties for the duration of the performance of the terms and provisions of this Funding Agreement for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Funding Agreement or to effectuate or enforce compliance with its terms. All Parties consent to the exercise of such jurisdiction. Notwithstanding the foregoing, each Party reserves any right it may have to bring an action in

the United States District Court for the Southern District of New York for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Funding Agreement or to effectuate or enforce compliance with its terms.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:

FOR THE UNITED STATES OF AMERICA:

Date: 3/10/14

PREET BHARARA
United States Attorney
for the Southern District of New York

By: _____
CHRISTINE S. POSCABLO
ROBERT WILLIAM YALEN
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, NY 10007

Date: 3/7/14

_____
ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 3/10/14

Donald G. Frankel
DONALD G. FRANKEL
Senior Counsel
ALAN S. TENENBAUM
National Bankruptcy Coordinator
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 3/5/14

Judith A. Enck

JUDITH A. ENCK
Regional Administrator
EPA Region 2

Date: 3/5/14

ERIC SCHAAF
Regional Counsel
EPA Region 2

FOR THE NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Date: 3/5/14

EDWARD F. McTIERNAN, ESQ.
Deputy Commissioner and General Counsel

APPENDIX 2

TRANSFER AGREEMENT AND CERTIFICATION

1. a. _____ ("Transferee") has entered into an agreement dated _____with _____to acquire a property interest in the real property described in subparagraph 1.b. (the "Transfer Property"). The transfer is expected to occur on or about _____.

b. The Transfer Property is described as follows:

c. The nature of the property interest that Transferee is to acquire in the Transfer Property is: [check whichever is applicable:]

_____ Ownership in fee simple

_____ Leasehold

_____ Sub-leasehold

_____ Easement

_____ Other (described as follows: _____

_____)

2. Transferee agrees to be bound by all of the obligations, covenants, reservations, limitations and other conditions and requirements set forth in Sections 4.3 (Due Care and Cooperation), 4.4 (Access and Institutional Controls), 4.5 (Access to Information), 4.6 (Business

Confidential and Privileged Documents) and 4.7 (Retention of Records) and Articles V (Covenants and Reservations), VI (Contribution Protection), VII (Transfer of Covenant), VIII (Notices and Submissions), and XII (Retention of Jurisdiction) of the Settlement Agreement between Eastman Kodak Company ("Kodak") and the United States (hereinafter, the "Settlement Agreement"), which is attached hereto.

3. Transferee has not caused or contributed to the release or threat of release of any amount of the Pre-Existing Contamination.

4. Transferee's use of the Transfer Property will not result in a release or threat of release of any hazardous substance, hazardous waste, pollutant or contaminant except in compliance with law.

5. Transferee's use of the Transfer Property will not cause or contribute to the migration or new release or threat of release of or exacerbate any Pre-Existing Contamination, or any new threat to human health or the environment caused by any such migration, release, threat of release, or exacerbation.

6. Prior to acquiring the property interest in the Transfer Property, Transferee will make all appropriate inquiries into the previous ownership and uses of the Transfer Property, in accordance with 42 U.S.C. § 9601(40)(B).

7. Transferee will exercise appropriate care within the meaning of 42 U.S.C. §9601(40)(D) with respect to any Pre-Existing Contamination found at the Transfer Property.

8. Transferee will provide all legally required notices with respect to the discovery or release of any hazardous substance, hazardous waste, pollutants, and contaminants at or from the Transfer Property.

9. In the event that Transferee learns of a release or migration of Pre-Existing Contamination, Transferee shall immediately notify DEC, Kodak and EPA, in addition to complying with any applicable notification requirement under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law.

10. Transferee will provide full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the Transfer Property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the property).

11. Transferee will:

a. comply with any land use restrictions established or relied on in connection with a response action at the Transfer Property; and

b. not impede the effectiveness or integrity of any institutional control employed at the Transfer Property in connection with a response action.

12. Transferee will comply with any request for information or administrative subpoena issued by EPA under CERCLA or RCRA.

13. Transferee is not—

a. potentially liable, or affiliated with any other person that is potentially liable, for response costs at EBP or the Genesee River through—

(I) any direct or indirect familial relationship; or

(II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by

which the aforementioned property interest in the Transfer Property is conveyed or financed or by a contract for the sale of goods or services); or

b. the result of a reorganization of a business entity that was potentially liable.

14. Terms used herein that are defined in the Settlement Agreement or in RCRA or CERCLA or their implementing regulations shall have the meaning assigned to them therein.

15. I certify that, to the best of my knowledge and belief, the statements above are materially accurate and complete and that I am fully authorized to enter into the terms and conditions of this Transfer Agreement and Certification and legally bind Transferee.

_____
Signature

_____
Printed Name

_____
Title (if applicable)

_____
Name of Transferee