

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Case No. 12-10202 (ALG)
Debtors.)	(Jointly Administered)

**STIPULATION AND ORDER BY AND AMONG EASTMAN KODAK COMPANY,
CERTAIN OF ITS AFFILIATES AND ROCHESTER SILVER WORKS, LLC**

This stipulation and agreed order (the “**Stipulation and Order**”) is made by and among Eastman Kodak Company (“**Kodak**” or “**Reorganized Kodak**”, as applicable) and certain of its affiliates, as reorganized debtors (collectively, the “**Debtors**” or the “**Reorganized Debtors**”, as applicable), and Rochester Silver Works, LLC (“**RSW**”, and together with the Reorganized Debtors, the “**Parties**”), by and through their respective undersigned counsel.

RECITALS

WHEREAS, the Debtors and RSW are party to the contracts listed on Exhibit 1 hereto (each, an “**Assumed Contract**”) and the contracts listed on Exhibit 2 hereto (each, an “**Assigned Contract**”);²

WHEREAS, on January 18, 2013, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered an order (the “**January 18 RED Order**”)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is 343 State Street, Rochester, NY 14650.

² All contracts listed in the exhibits attached hereto include all amendments, extensions, supplements and/or restatements.

[Docket No. 2893] authorizing, among other things, the assumption and assignment of certain contracts and leases, including the Assigned Contracts, by the Debtors to RED Rochester, LLC (“**RED**”) in connection with the sale of the Debtors’ utility operations, and establishing procedures to set cure amounts for such contracts and leases (the “**Cure Procedures**”);

WHEREAS, on July 19, 2013, pursuant to the Cure Procedures, the Debtors filed and served on RSW a notice of cure amounts setting forth the proposed cure amounts for the Assigned Contracts;

WHEREAS, on July 29, 2013, RSW filed the *Limited Objection and Reservation of Rights of Rochester Silver Works, LLC with Respect to Debtors’ Notice of Amounts Necessary to Cure Defaults Under Executory Contracts Proposed to Be Assumed and Assigned to RED-Rochester, LLC* [Docket No. 4456] (the “**Cure Notice Objection**”);

WHEREAS, on August 28, 2013, the Court entered an order [Docket No. 4986] (the “**August 28 RED Order**”) approving, among other things, the assumption and assignment of the Assigned Contract entitled “Lease Agreement dated as of September 30, 2011 by and between Eastman Kodak Company, Tenant and Rochester Silver Works, LLC, Landlord – Premises: Building 144 and a Portion of Building 101” and approving a cure amount of \$0 in connection therewith;

WHEREAS, on August 16, 2013, the Debtors filed the *First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and Its Debtor Affiliates* [Docket No. 4869] (as may be amended, modified or supplemented from time to time, the “**Plan**”);³

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

WHEREAS, on June 26, 2013, the Court entered an order approving, among other things, the disclosure statement and establishing procedures relating to the treatment of Executory Contracts and Unexpired Leases under the Plan [Docket No. 4167] (the “**Solicitation Procedures Order**”);

WHEREAS, on July 19, 2013, the Debtors filed the *First Notice of Proposed Assumption of Specified Contracts* [Docket No. 4395] (the “**First Assumption Notice**”) and on July 30, 2013, filed the *Second Notice of Proposed Assumption of Specified Contracts* [Docket No. 4483] (together with the First Assumption Notice, the “**Assumption Notices**”), in accordance with the procedures set forth in the Solicitation Procedures Order, regarding Kodak’s proposed assumption of, among others, certain of the Assumed Contracts;

WHEREAS, RSW filed (a) on July 29, 2013, the *Limited Objection and Reservation of Rights of Rochester Silver Works, LLC with Respect to Debtors’ First Notice of Proposed Assumption of Specified Contracts and Response to Cure Notice* [Docket No. 4455]; (b) on August 9, 2013, the *Limited Objection and Reservation of Rights of Rochester Silver Works, LLC with Respect to Debtors’ Second Notice of Proposed Assumption of Specified Contracts and Response to Cure Notice* [Docket No. 4721] and (c) on August 9, 2013, the *Limited Objection and Reservation of Rights of Rochester Silver Works, LLC with Respect to Confirmation of Debtors’ Plan of Reorganization* [Docket No. 4722] (collectively, the “**Plan Objections**”);

WHEREAS, on August 5, 2013, the Court adjourned consideration of the assumption and assignment of the Assumed Contracts listed in the First Assumption Notice until August 16, 2013, and on August 16, 2013, the Court adjourned consideration of the assumption

and assignment of the Assumed Contracts listed in the Assumption Notices until the hearing to be held on September 16, 2013;

WHEREAS, on August 19, 2013, the Debtors filed the *Debtors' Omnibus Motion for an Order (A) Authorizing the Debtors to Assume Certain Contracts and (B) Fixing the Cure Amounts for Such Contracts* (the "**Assumption Motion**"), seeking assumption of, among others, the balance of the Assumed Contracts (other than the Amended and Restated Sanitary Sewer Agreement, dated as of August 31, 2013, by and between Kodak and RSW) to which RSW has asserted certain informal objections (the "**Assumption Motion Objection**");

WHEREAS, on August 23, 2013, the Court entered the *Findings of Fact, Conclusions of Law and Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 4966], among other things, confirming the Plan; and

WHEREAS, subject to the Court's approval, in lieu of the procedures set forth in the January 18 RED Order, the August 28 RED Order and the Solicitation Procedures Order and to resolve the Cure Notice Objection, the Assumption Motion Objection and the Plan Objections, the Parties have elected to resolve such issues on the terms set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the covenants and conditions contained herein, the Parties stipulate and agree as follows:

1. This Stipulation and Order shall be effective when approved and entered by the Court.
2. The recitals above are incorporated by reference.

3. Pursuant to and in accordance with sections 365 and 1123(b)(2) under chapter 11 of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*) (as amended, the “**Bankruptcy Code**”) and the Plan, Kodak shall assume each Assumed Contract effective as of the Effective Date, and upon the Effective Date, each Assumed Contract shall vest in Reorganized Kodak in accordance with the terms of this Stipulation and Order. Without limiting the obligations of any Party to render full performance under any Assumed Contract, Reorganized Kodak shall continue to pay RSW any amounts due in the ordinary course under the terms of the Assumed Contracts.

4. RSW acknowledges and agrees that (i) the Debtors have cured all defaults under each Assumed Contract within the meaning of section 365(b), (ii) no amount or other compensation, including any compensation for any actual pecuniary loss resulting from a default under such Assumed Contract, is required to be paid to RSW by the Debtors or the Reorganized Debtors in connection with the assumption of any Assumed Contract, and (iii) the Debtors have provided adequate assurance of future performance under section 365(b)(1)(C) of the Bankruptcy Code.

5. RSW acknowledges and agrees that (i) all defaults under each Assigned Contract have been cured within the meaning of section 365(b), (ii) no amount or other compensation, including any compensation for any actual pecuniary loss resulting from a default under such Assigned Contract, is required to be paid to RSW by the Debtors, the Reorganized Debtors or RED in connection with the assumption of any Assigned Contract, and (iii) the Debtors and RED have provided adequate assurance of future performance under subsections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

6. This Stipulation and Order resolves the Cure Notice Objection, the Assumption Motion Objection and the Plan Objections.

7. This Stipulation and Order is entered into in order to resolve, settle and compromise the Cure Notice Objection, the Assumption Motion Objection and the Plan Objections and to avoid the cost, expense and effort of litigation associated with such objections, and shall not be construed as an admission of liability of any Party or an admission relating to the merits of any dispute. No statement made or action taken in the negotiation of this Stipulation and Order may be used by any Party for any purpose whatsoever.

8. Each Party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby.

9. This Stipulation and Order shall bind and inure to the benefit of the Debtors, the Reorganized Debtors and their permitted successors and assigns and shall bind and inure to the benefit of RSW and its permitted successors and assigns.

10. The language used in this Stipulation and Order will be deemed to be the language chosen by the Parties to this Stipulation and Order to express their mutual intent, and no rule of strict construction shall be applied against any Party. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

11. Notwithstanding anything to the contrary set forth in this Stipulation and Order (including paragraph 12), or in any document or pleading described herein, Reorganized Kodak and RSW each reserve all rights, claims, and defenses, whether or not arising under or related to any of the Assumed Contracts or the Assigned Contracts, relating to any disputes with respect to flow meters and/or rich water.

12. This Stipulation and Order contains all of the terms, conditions and representations and warranties agreed upon by the Parties relating to the assumption of the Assumed Contracts, the assumption and assignment of the Assigned Contracts, the Cure Notice Objection, the Assumption Motion Objection and the Plan Objections and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the Parties, oral or written, respecting such subject matter. This Stipulation and Order may not be amended except by written agreement executed by all Parties hereto.

13. This Stipulation and Order may be executed in counterparts, and any Party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. The Parties agree that the delivery of this Stipulation and Order may be effected by means of an exchange of signatures via facsimile transmission, .pdf or other electronic transmission.

14. The Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation and Order.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF and in agreement herewith, by and through their counsel, the Parties have executed and delivered this Stipulation and Order as of the date first set forth below.

Dated: September 17, 2013
New York, New York

/s/ Andrew G. Dietderich

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Co-counsel to Rochester Silver
Works, LLC

Co-counsel to Rochester Silver
Works, LLC

SO ORDERED THIS ____ DAY OF SEPTEMBER, 2013

HON. ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Assumed Contracts

<u>Contract Counterparty</u>	<u>Contract</u>	<u>Date of Agreement</u>	<u>Cure Amount</u>
Rochester Silver Works, LLC	Analytical Services Agreement	9/30/2011	\$0.00
Rochester Silver Works, LLC	Real Property Lease Agreement (Building 117)	9/30/2011	\$0.00
Rochester Silver Works, LLC	Real Property Lease Agreement (Approximately 10.21 Acres of Land and Buildings)	9/30/2011	\$0.00
Rochester Silver Works, LLC	Asset Purchase Agreement	9/30/2011	\$0.00
Rochester Silver Works, LLC	Agreement for Supply to Kodak	9/30/2011	\$0.00
Rochester Silver Works, LLC	Site Services Agreement	9/30/2011	\$0.00
Rochester Silver Works, LLC	Amended and Restated Sanitary Sewer Agreement	8/31/2013	\$0.00

EXHIBIT 2

Assigned Contracts

<u>Contract Counterparty</u>	<u>Contract</u>	<u>Date of Agreement</u>
Rochester Silver Works, LLC	Utility Services Agreement	9/30/2011
Rochester Silver Works, LLC	Fire Protection Water Services Agreement	9/30/2011
Rochester Silver Works, LLC	Building 101/144 Lease Agreement	9/30/2011