

William P. Weintraub
Eamonn O'Hagan
STUTMAN, TREISTER & GLATT P.C.
675 Third Avenue, Suite 2216
New York, New York 10017-5714
Telephone: (212) 235-0800
Facsimile: (212) 235-0848

Counsel to Shutterfly, Inc.

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

In re	)	Chapter 11
)	
EASTMAN KODAK COMPANY, <i>et al.</i>,	)	Case No. 12-10202 (ALG)
)	
Debtors.	)	(Jointly Administered)
)	
<hr/> SHUTTERFLY, INC.,)	
)	
Plaintiff,	)	Adv. Proc. No. 13-_____ (ALG)
)	
v.)	
)	
KODAK IMAGING NETWORK, INC. and)	
EASTMAN KODAK COMPANY)	
)	
Defendants.)	
<hr/>)	

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Shutterfly, Inc. ("Shutterfly" or "Plaintiff"), by and through its undersigned counsel, for its Complaint against Kodak Imaging Network, Inc. ("KIN") and Eastman Kodak Company ("Kodak," and together, with KIN, the "Defendants"), alleges upon knowledge as to itself and its conduct and upon information and belief as to all other matters as follows:



NATURE OF THE ACTION

1. Shutterfly brings this adversary proceeding to enforce its rights under a Court-approved, post-petition transfer agreement entered into with the Defendants (the "Transfer Agreement"). Pursuant to the Transfer Agreement, Shutterfly acquired certain rights and data concerning the Defendants' "Kodak Gallery" web business for \$23.8 million.

2. Similar to services provided by Shutterfly, the Kodak Gallery business allowed customers to share images online and to create photo books (and other merchandise) for online purchase from Kodak. The Kodak Gallery business also enabled customers to order prints from their mobile devices for pick-up at retail chains such as Target and CVS.

3. Because the Kodak Gallery business was a direct competitor of Shutterfly, a significant driver of the purchase price agreed to by Shutterfly was the Defendants' non-compete covenant contained in section 5.6 of the Transfer Agreement. That provision prohibited the Defendants from "essentially duplicat[ing]" the Kodak Gallery business in the United States and/or Canada for a period of 3 years. This prohibition expressly covered, *inter alia*, the use of "KIN technology (including its product creation path and designs) to recreate . . . the [Kodak] Gallery or duplicative service on a Kodak-branded . . . web or mobile platform." Transfer Agreement at § 5.6 (emphasis added).

4. In direct contravention of its obligations under section 5.6 of the Transfer Agreement, the Defendants are currently providing a service marketed as the "My Kodak Moments App." According to the Defendants' marketing materials, the "My Kodak Moments App" allows consumers to, *inter alia*, (i) utilize KIN's "Smart Fit Technology" – previously used with the Kodak Gallery business – to create photo books with images stored on Facebook social media accounts, and (ii) to purchase those photo books directly from Kodak. Just as with the

Kodak Gallery business, the "My Kodak Moments App" also enables customers to order prints from their mobile devices for pick-up at Target stores. The foregoing business activities are explicitly prohibited by section 5.6 of the Transfer Agreement because they "essentially duplicate[]" the Kodak Gallery business by using KIN technology to recreate duplicative service on a Kodak-branded web or mobile platform.

5. Shutterfly previously put the Defendants on notice of the foregoing violations and demanded that they immediately cease such activities. Through multiple communications, the Defendants have denied that their activities violate the Transfer Agreement and have refused to cease such activities. Shutterfly brings this adversary proceeding to recover damages caused by Defendants' breaches of the Transfer Agreement and to enjoin further violations.

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff is a Delaware corporation with its principal place of business at 2800 Bridge Parkway, Redwood City, California 94065.

7. Defendant Kodak is a Debtor in the above-captioned chapter 11 cases and a New Jersey corporation with its principal place of business at 343 State Street, Rochester, New York 14650.

8. Defendant KIN is a Debtor in the above-captioned chapter 11 cases and a Delaware corporation with its principal place of business at 1480 64th St., Ste. 300 Emeryville, California 94608.

9. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 as well as paragraph 29 of this Court's order approving the transactions contemplated by Transfer Agreement [Chapter 11 Docket No. 1066] (the "Sale Order").

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

11. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Plaintiff does not consent to the entry of final orders or judgment by this Court if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

GENERAL ALLEGATIONS

12. Shutterfly is an internet-based social expression and personal publishing business. Shutterfly provides a full range of personalized photo-based products and services that enable consumers to upload, edit, enhance, organize, find, share, print, and preserve their digital photos. A major component of Shutterfly's business consists of its personalized products and services, including photo book products, greeting cards, stationery, calendars, and other photo-based merchandise that its customers can create, design and purchase.

13. On January 19, 2012, the Defendants and certain of their affiliates (collectively, the "Debtors") initiated voluntary cases under chapter 11 of 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").

14. On March 2, 2012, the Debtors filed their Motion for Order (I)(A) Authorizing Certain Debtors' Entry into the Stalking Horse Purchase Agreement, (B) Authorizing and Approving the Bidding Procedures and Break-Up Fee, (C) Approving the Notice Procedures, (D) Authorizing the Filing of Certain Documents Under Seal and (E) Setting a Date for the Sale Hearing and (II) Authorizing and Approving the Sale of Certain Assets of Kodak Imaging Network Inc. Free and Clear of All Claims and Interests [Chapter 11 Docket No. 474] (the "Bid Procedures Motion").

15. Through the Bid Procedures Motion, the Debtors sought, *inter alia*, approval of the Defendants' entry into the Transfer Agreement, dated March 1, 2012. Under the Transfer Agreement, Shutterfly was to serve as the stalking horse bidder in an auction for certain assets (including customer data and image archives) associated with the Kodak Gallery business (the "Acquired Assets"). The Court entered an order approving the Bid Procedures Motion on March 22, 2012 [Chapter 11 Docket No. 706].

16. As acknowledged by the Debtors in the Bid Procedures Motion, Shutterfly and its advisors "made a substantial investment in time and incurred substantial out-of-pocket expenses in connection with the negotiation and execution of the [Transfer Agreement], and likely will continue to expend considerable time, energy and resources pursuing the purchase of the Acquired Assets." Bid Procedures Motion ¶ 20. The Debtors further acknowledged that the Kodak Gallery business was "no longer important to the Debtors' long-term business model, nor does the Gallery Business fit in with the Debtors' strategic goals." *Id.* ¶ 53.

17. After the Debtors failed to receive additional "Qualified Bids" by the applicable bidding deadline, the auction for the Acquired Assets was cancelled. On May 1, 2012, the Court entered the Sale Order, which approved the sale of the Acquired Assets to Shutterfly under the terms of the Transfer Agreement (as amended on March 30, 2012). A copy of the Transfer Agreement and Amendment No. 1 thereto are attached to this Complaint as Exhibit A.

18. As noted above, Shutterfly paid \$23.8 million for the Acquired Assets. Shutterfly paid the Defendants an additional \$2.8 million under the Transfer Agreement for storage and infrastructure costs attendant to the migration of the Kodak Gallery business to Shutterfly. A significant driver of the purchase price that Shutterfly was willing to pay was the

Defendant's non-compete covenant contained in section 5.6 of the Transfer Agreement, which provides in its entirety as follows:

Non-Compete. Kodak agrees that it will not, and will cause KIN not to, in the United States and/or Canada and during the period beginning on the day after the Closing Date and ending on the third anniversary of that date, directly or indirectly, for its own account or on behalf of or together with any other person, engage in any online business that **essentially duplicates the Business,**¹¹ **including** but not limited to (i) using the "Kodak Gallery" name or (ii) **using KIN technology (including its product creation path and designs) to recreate** the Gallery or **duplicative service on a Kodak-branded,** white label (where the white label partner fulfills at least 90% of its orders off site and ships to home), or co-branded **web or mobile platform;** provided that the foregoing shall not affect (A) the licensing or other transfer of any intellectual property (other than the Acquired Assets) by Kodak to any one or more third parties or (B) certain existing Kodak business lines as currently conducted (and reasonably extended therefrom), namely (i) the Retail Systems Solutions business, (ii) the Paper and Output Solutions business, (iii) the digital camera and devices business, and (iv) the event imaging solutions business.

Transfer Agreement at § 5.6 (emphasis added). The Transfer Agreement also provides that "[e]ach of the Parties may seek equitable relief, including the remedies of specific performance and injunction, with respect to any actual or attempted breach of this Agreement." *Id.* at § 8.9. The Transfer Agreement is governed by New York law. *Id.* at § 8.11.

19. The Defendants are in breach of section 5.6 of the Transfer Agreement as a result of their operation of the "My Kodak Moments App." As noted above, the "My Kodak Moments App" allows consumers to, *inter alia*, (i) utilize KIN's "Smart Fit Technology" – previously used in connection with the Kodak Gallery business – to create photo books from images stored on Facebook accounts, and (ii) to purchase those photo books directly from Kodak. Just as with the Kodak Gallery business, the "My Kodak Moments App" also enables customers to order prints from their mobile devices for pick-up at Target stores. A copy of the

¹ The Transfer Agreement defines the terms "Business" and "Gallery" to mean "the business of online sharing,

Defendants' website advertising for the "My Kodak Moments App" is attached hereto as Exhibit B.

20. The Defendants' business activities described above are explicitly prohibited by section 5.6 of the Transfer Agreement because they "essentially duplicate[] the Business." That is, the "My Kodak Moments App" uses KIN technology (including its creation path and design) to recreate service that is duplicative of the Kodak Gallery business on a Kodak-branded web or mobile platform.

21. Shutterfly has incurred – and continues to incur – damages as a result of the Defendants' breaches of the Transfer Agreement. Although Shutterfly has requested that the Defendants voluntarily cease their prohibited conduct, the Defendants have refused to do so.

COUNT I
(Breach of Contract)

22. Plaintiff incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

23. The Transfer Agreement constituted an enforceable contract between Shutterfly and the Defendants.

24. Shutterfly has fully performed its obligations under the Transfer Agreement.

25. The Defendants have breached the Transfer Agreement through their operation of the "My Kodak Moments App."

26. The Defendants' breaches of the Transfer Agreement have resulted in damages to Plaintiff in an amount to be quantified at trial.

storing and merchandising of images through the 'Kodak Gallery' websites." Transfer Agreement, Preamble.

COUNT II
(Injunction)

27. Plaintiff incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

28. Even if Shutterfly is compensated for the damages caused by the Defendants' breaches of the Transfer Agreement to date, there is no adequate remedy at law to prevent future violations of the Transfer Agreement by the Defendants.

29. Plaintiff will be caused irreparable harm by continued violations of the Transfer Agreement by the Defendants as described herein.

30. Pursuant to section 8.9 of the Transfer Agreement, Plaintiff requests an injunction barring the Defendants from their continued violations of the Transfer Agreement (as described herein) during the time period prescribed by section 5.6 thereof.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully request that the Court enter judgment: (a) awarding Plaintiff its actual damages caused by the Defendants' breach of the Transfer Agreement including, without limitation, costs, expenses and attorneys fees; (b) enjoining the Defendants from further violations of the Transfer Agreement as described herein; (c) awarding the Plaintiff prejudgment interest at the maximum legal rate; and (d) granting Plaintiff such other and further relief as is just and proper.

Dated: March 22, 2013
New York, New York

/s/ William P. Weintraub
William P. Weintraub
Eamonn O'Hagan
STUTMAN, TREISTER & GLATT P.C.
675 Third Avenue, Suite 2216
New York, New York 10017-5714
Telephone: (212) 235-0800
Facsimile: (212) 235-0848

Attorneys for Shutterfly, Inc.

EXHIBIT A

TRANSFER AGREEMENT

between

KODAK IMAGING NETWORK, INC.

EASTMAN KODAK COMPANY

and

SHUTTERFLY, INC.

dated

MARCH 1, 2012

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EXHIBITS

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TRANSFER AGREEMENT

This Transfer Agreement (“Agreement”) is made this 1st day of March, 2012 (“the Effective Date”) between Kodak Imaging Network, Inc. (“KIN”) and Eastman Kodak Company (“Kodak” and, together with KIN, “Sellers”) and Shutterfly, Inc. (“Transferee” and, together with Sellers, the “Parties”). Capitalized terms are used with the meaning given to them in Section 1.1 of this Agreement.

WHEREAS, KIN is engaged in the business of online sharing, storing and merchandising of images through the “Kodak Gallery” websites (the “Business” or the “Gallery”);

WHEREAS, on January 19, 2012 (the “Petition Date”), Kodak, KIN and their affiliated debtors-in-possession filed petitions under Chapter 11 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (as in effect on the date hereof and as may be amended from time to time, the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), commencing their Chapter 11 bankruptcy cases (the “Bankruptcy Cases”);

WHEREAS, Sellers desire to transfer to Transferee certain rights of KIN in the data and content associated with the customers of the Gallery, and Transferee desires to acquire from Sellers such data and content, upon the terms and conditions hereinafter set forth;

WHEREAS, Sellers and Transferee intend to effectuate the Transactions through a sale of the Acquired Assets pursuant to section 363 of the Bankruptcy Code; and

WHEREAS, Sellers’ ability to consummate the transactions set forth in this Agreement is subject, among other things, to the entry of the Sale Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the parties agree as follows:

ARTICLE I. **DEFINITIONS**

SECTION 1.1. Definitions. In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms.

“Acquired Assets” means all of KIN’s rights to the User Data and the Archives of the Transferable Users and, solely with respect to the Business, Kodak’s rights to the User Data.

“Action” means any legal action, suit or arbitration, or any inquiry, proceeding or investigation, by or before any Governmental Authority.

“Administrative Expense” means an expense of administration in the Bankruptcy Cases of the type described in section 503(b) of the Bankruptcy Code and with the priority described in section 507(a)(2) of the Bankruptcy Code.

“Alternative Transaction” means any one of the following transactions with or by any person or group other than Transferee: (a) a merger, consolidation or similar transaction involving KIN in which any unaffiliated person or group acquires direct control of KIN, (b) a sale, lease or other disposition directly or indirectly by merger, consolidation, tender offer, share exchange or otherwise of a material portion of the Acquired Assets, or (c) reorganization of KIN other than a reorganization solely within the group of the Affiliates of Sellers including all of the Sellers.

“Affiliate” means, as to any person, any other person which directly or indirectly controls, or is under common control with, or is controlled by, such person. As used in this definition, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) of such person.

“Agreement” has the meaning specified in the preamble.

“Allocation Schedule” has the meaning specified in Section 2.3(d).

“Archives” has the meaning specified in Section 2.1(a).

“Auction” has the meaning specified in the Bidding Procedures.

“Avoidance Actions” means any and all claims for relief of Sellers under chapter 5 of the Bankruptcy Code.

“Bankruptcy Cases” has the meaning specified in the recitals.

“Bankruptcy Code” has the meaning specified in the recitals.

“Bankruptcy Court” has the meaning specified in the recitals.

“Bankruptcy Rules” means the United States Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the U.S. Bankruptcy Court for the Southern District of New York.

“Bidding Procedures” means the procedures for the submission, evaluation, and qualification of competing bids on the Acquired Assets, and for the Auction among qualified bidders for the purchase of the Acquired Assets, in substantially the form attached hereto as Exhibit B, and with any changes thereto as Sellers and Transferee may approve (such approval not to be unreasonably withheld, conditioned or delayed).

“Bidding Procedures and Sale Motion” means a motion seeking approval of the Bidding Procedures and entry of the Bidding Procedures Order and the Sale Order.

“Bidding Procedures Order” means an order of the Bankruptcy Court, in substantially the form attached hereto as Exhibit C and with any changes thereto as Sellers and Transferee may

approve (such approval not to be unreasonably withheld, conditioned or delayed), approving the Bidding Procedures and authorizing payment of the Break-Up Fee.

“Break-Up Fee” has the meaning specified in Section 7.2.

“Business” has the meaning specified in the recitals.

“Business Day” means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

“Claim” has the meaning ascribed to the term “claim” in Section 101(5) of the Bankruptcy Code.

“Closing” has the meaning specified in Section 6.4.

“Closing Date” has the meaning specified in Section 6.4.

“Closing Price” has the meaning specified in Section 2.3(a)(i).

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Copyrights” means all United States and foreign copyrights, whether registered or unregistered, including all United States copyright registrations and applications for registration and foreign equivalents, all moral rights, all common-law copyright rights, and all rights to register and obtain renewals and extensions of copyright registrations, together with all other copyright rights accruing by reason of any international copyright convention.

“Deposit” has the meaning specified in Section 2.4.

“Effective Date” has the meaning specified in the preamble.

“Encumbrances” means all Liens, encumbrances, easements, encroachments, retentions of title, conditional sale arrangements, restrictive covenants, licenses, rights of first offer, rights of first refusal, options or any other limitations, restrictions, or interests of any kind.

“Escrow Agent” has the meaning specified in Section 2.4.

“Escrow Agreement” has the meaning specified in Section 2.4.

“Final Order” means an order of the Bankruptcy Court or other court of competent jurisdiction (a) as to which no appeal, notice of appeal, motion for leave to appeal, motion to amend, vacate or make additional findings of fact, motion to alter or amend judgment, motion for rehearing, amendment, vacatur, additional findings or alteration or amendment of judgment or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order, and without the possibility for further appeal or rehearing thereon; and (b) as to which the time for instituting or filing an appeal shall have expired.

“Gallery Users” has the meaning specified in Section 2.1(a).

“Governmental Authority” means any federal, state, local or foreign, governmental entity or any subdivision, agency, instrumentality, authority, department, commission, board, bureau, official or other regulatory, administrative or judicial authority thereof or any federal, state, local or foreign court, tribunal or arbitrator or any self-regulatory organization, agency or commission.

“Indemnified Parties” has the meaning specified in Section 8.8.

“Law” means any applicable law, including common law, statute, ordinance, rule, regulation, code, order, judgment, injunction, decree or judicial or administrative binding interpretation that is promulgated or issued by any Governmental Authority, including without limitation the Bankruptcy Code and the Bankruptcy Rules.

“Lien” means any lien (statutory, contractual, or otherwise), pledge, mortgage, deed of trust, security interest, hypothecation, charge, or similar interest, right, restriction, or limitation.

“Migration” means the transfer by KIN of User Data and Archives of Transferable Users from their existing location to Transferee’s storage sites.

“Migration Completion Notice” has the meaning specified in Section 5.4(c).

“Opted-out Users” has the meaning specified in Section 2.1(c).

“Ordinary Course of Business” means the ordinary and usual course of day-to-day operations of the Business (including acts and omissions of Sellers in the ordinary and usual course), consistent with practice in the period from the Petition Date to the Effective Date, as such practice may be modified in non-material respects from time to time to the extent necessary to reflect the Bankruptcy Cases and orders of the Bankruptcy Court, and except to the extent otherwise permitted or required under this Agreement.

“Outside Date” has the meaning specified in Section 7.1(c).

“Parties” has the meaning specified in the preamble.

“Permitted Encumbrances” means (i) the rights and interests of each Gallery User to such Gallery User’s User Data and Archives; and (ii) any other immaterial rights and interests (other than a Lien) set forth in the Sale Order or that are not discharged by the Sale Order under Law.

“Personally Identifiable Information” has the meaning ascribed thereto under Bankruptcy Code §101(41A).

“Petition Date” has the meaning specified in the recitals.

“Proceeding” means any action, arbitration, audit, claim, charge, demand, complaint, cause of action, hearing, investigation, litigation, or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Purchase Price” has the meaning specified in Section 2.3(a).

“Representative” means with respect to a particular person, any duly authorized director, officer, employee, agent, consultant, advisor or other representative of such person, including legal counsel, accountants and financial advisors.

“Sale Order” means an order of the Bankruptcy Court, substantially in the form attached hereto as Exhibit D and with any changes thereto as Sellers and Transferee may approve (such approval not to be unreasonably withheld, conditioned or delayed), authorizing Sellers’ entry into and performance of this Agreement.

“Schedule” means any Schedule to this Agreement.

“Sellers” has the meaning set forth in the preamble.

“Sellers Privacy Notice” means the Kodak.com and kodakgallery.com Online Privacy Notice (updated December 29, 2011), a copy of which is attached to Schedule 3.3.

“Services” means the services performed by the Gallery for its customers.

“Shutterfly Litigation” has the meaning specified in Section 5.5(b).

“Stipulation” has the meaning specified in Section 5.5(b).

“Storage Agreements” means the storage agreements with suppliers required to store the User Data and Archives.

“Storage and Infrastructure Costs” means the costs incurred by KIN or the Gallery for the maintenance, storage and migration of User Data and Archives during the Transition Period.

“Successful Bidder” has the meaning specified in the Bidding Procedures.

“Tax” or “Taxes” (and with correlative meaning, “Taxable” and “Taxing”) means (i) any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental, natural resources, real property, personal property, *ad valorem*, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar taxes, duty, levy or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not) and (ii) any transferee liability in respect of any items described in clause (i) above.

“Tax Return” means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including any information return, claim for refund, amended return or declaration of estimated Tax.

“Terms of Service” means the Gallery Terms of Service (last revised September 25, 2009), including the Return Policy and Copyright Policy, copies of which are attached to Schedule 3.3.

“Third Parties” means persons not Affiliated with Sellers or Transferee.

“Transactions” means the transactions contemplated by this Agreement.

“Transfer Taxes” has the meaning specified in Section 5.7.

“Transferable Users” has the meaning specified in Section 2.1(c).

“Transferee Default Termination” has the meaning specified in Section 2.4.

“Transferee’s Privacy Policy” means the Shutterfly.com Privacy Policy (dated November 20, 2008), a copy of which is attached to Schedule 4.4, as the same may be amended from time to time.

“Transition End Date” has the meaning specified in Section 5.4(c).

“Transition Period” has the meaning specified in Section 2.2(a).

“Transition Procedures” has the meaning specified in Section 2.2(a).

“User Data” has the meaning specified in Section 2.1(a).

“Website” means the customer experiences at the URLs www.kodakgallery.com and www.kodakgallery.ca.

SECTION 1.2. Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

- (i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.
- (ii) Any reference in this Agreement to \$ shall mean U.S. dollars.
- (iii) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.
- (iv) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

- (v) The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.
- (vi) The words such as “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.
- (vii) The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) The parties participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

ARTICLE II.

TRANSFER OF ACQUIRED ASSETS

SECTION 2.1. Acquired Assets.

(a) Upon the terms and subject to the conditions set forth in this Agreement, KIN shall transfer, assign, convey and deliver, and Kodak shall cause to be sold, transferred, assigned, conveyed and delivered, to Transferee, and Transferee shall accept and acquire, free and clear of all Claims and Encumbrances other than Permitted Encumbrances, all of KIN’s and, to the extent related solely to the Gallery, Kodak’s right, title and interest in and to the data and content associated with each of the Gallery’s transacting customers and registered users in the United States and Canada (collectively, “Gallery Users”) including but not limited to each Gallery User’s customer historical, billing, transactions, usage, and similar information used by the Business in serving such customers (“User Data”) as well as images uploaded by Gallery Users to storage sites of the Business, including embedded metadata and related customer content (“Archive”), other than the User Data and the Archives of Opted-out Users.

(b) Transferee acknowledges and agrees that under KIN’s Terms of Service, KIN does not own the User Data and does not claim any Copyright in any Gallery User’s images or other information in any Gallery User’s Archive but has the right to transfer possession of the same to Transferee unless the Gallery User opts-out of any transfer of his or her User Data as provided in the Sellers’ Privacy Notice.

(c) The parties agree that the Acquired Assets will be transferred to Transferee only to the extent that any Gallery User has not chosen to opt-out of having such Gallery User’s User Data and Archive transferred as described in Exhibit A (the “Opted-out Users”). The Gallery Users who have not opted-out are sometimes referred to as the “Transferable Users”.

(d) The parties agree that KIN will only transfer the Acquired Assets to Transferee as of the Closing Date and Sellers will not transfer any other rights or tangible or intangible assets to Transferee, and that, without limiting the foregoing, Sellers are not transferring: (i) any rights with respect to users of Gallery residing outside the United States and Canada, (ii) any intellectual property including as more particularly described in Section 5.5, (iii) any equipment, contracts, software or other tangible or intangible property, (iv) any accounts receivable, and (v) rights of Kodak other than those in User Data and Archives, including, without limitation, all rights of Kodak to the data in its general database, subject to such limitations as are imposed under Sections 5.6 and 5.12 herein.

SECTION 2.2. Transition of Acquired Assets.

(a) The parties agree that the transfer of the Acquired Assets of the Transferable Users will require a transition period of up to several months beginning on the Closing Date and ending no later than nine (9) months after the Closing Date (the “Transition Period”) and that cooperation and coordination between KIN and Transferee is required. KIN and Transferee have agreed upon initial procedures for the identification of the Opted-out Users and the Transferable Users and the transition of the Transferable Users and Acquired Assets set forth on Exhibit A to this Agreement (“Transition Procedures”).

(b) Effective as of the Closing Date, Sellers will transfer, convey and assign to Transferee all of their rights and interest in and to the User Data and Archives of the Transferable Users and will execute such written instruments, extend such other cooperation and perform such other acts as may commercially reasonably be requested by Transferee to convey to Transferee rights in and to, and possession of, the User Data and Archives of the Transferable Users as provided for in this Agreement subject to KIN’s Terms of Service and Sellers’ Privacy Notice and pursuant to offering Gallery Users the right to opt-out of such transfer and assignment.

SECTION 2.3. Consideration.

(a) Purchase Price. Transferee shall pay KIN an aggregate purchase price for the Acquired Assets of Twenty-Three Million Eight Hundred Thousand Dollars (\$23,800,000.00) (“Purchase Price”) payable as follows:

- (i) on the Closing Date, Transferee shall pay by wire transfer of immediately available funds Nineteen Million Forty Thousand Dollars (\$19,040,000.00) (“Closing Price”) to such account of Sellers as Kodak shall direct not fewer than two Business Days prior to the Closing Date; and
- (ii) on the date which is two Business Days following the Transition End Date, Transferee shall pay by wire transfer of immediately available funds Four Million Seven Hundred Sixty Thousand Dollars (\$4,760,000.00) (the “Transition Price”) to such account of Sellers as Kodak shall direct not fewer than two Business Days prior to the Transition End Date.

(b) Consideration for Storage and Infrastructure Costs. On or before the 1st day of each calendar month following the Closing Date through the later of the month of the Transition End Date or the third month following the Closing Date, Transferee will pay Sellers Seven Hundred Thousand Dollars (\$700,000) per month to compensate Sellers for the Storage and Infrastructure Costs incurred by Sellers directly related to the Migration. Transferee will bear the costs of any contracts it enters into to facilitate Migration. In addition, Transferee shall bear the costs of any new or incremental products and/or services requested by Transferee to be provided under existing KIN contracts. Transferee will reimburse Sellers for such costs as provided herein. At the reasonable request of Transferee, KIN will obtain a price quotation for the requested new or incremental product and/or service. Upon approval of the price quotation by Transferee, KIN will submit an order for the new or incremental product or service. Kodak will provide invoices for any such service to Transferee and Transferee will reimburse KIN within ten Business Days after receipt by Transferee of copies of invoices with respect thereto. To the extent that the Migration is not complete by the 60th day following the Closing Date, the Parties shall agree on the functions required to be staffed and Transferee will reimburse KIN for the salary (excluding pensions, benefits and other costs) of KIN's providing the agreed upon positions.

(c) Except as expressly provided in this Agreement, the parties shall pay their own expenses and fees incurred in connection with the Transactions.

(d) As soon as practicable after the date of this Agreement, Transferee shall deliver to Kodak for Kodak's review and approval, on its own behalf and on behalf of the Gallery, the allocation schedule (the "Allocation Schedule") allocating the consideration among the Acquired Assets. The Allocation Schedule shall be reasonable and shall be prepared in accordance with Section 1060 of the Code and the regulations thereunder. On or before the 10th Business Day following its receipt of the Allocation Schedule from Transferee as herein provided, Kodak shall either deliver notice of its approval of such Allocation Schedule to Transferee or, in the event that Kodak shall have objections to all or any portion of the Allocation Schedule, Kodak shall deliver to Transferee a written objection to such Allocation Schedule, which written objection shall set forth in reasonable detail the basis for the objections of Sellers. In the event that Kodak shall deliver a written objection to the Allocation Schedule, Kodak and Transferee shall thereafter work in good faith for a period of 15 Business Days to resolve any and all objections set forth therein, and upon the resolution of all such objections, Kodak and Transferee shall give notice to the other Party of its agreement to the Allocation Schedule. To the extent that Transferee and Kodak agree upon the Allocation Schedule, Transferee and Sellers will each file IRS Form 8594, and all Tax Returns, in accordance with such Allocation Schedule; provided, however, that if Kodak and Transferee do not agree upon an Allocation Schedule, each party may file IRS Form 8594 and all Tax Returns in the manner determined by such party. Transferee, on the one hand, and Sellers, on the other hand, each agrees to provide the other promptly with any other information required to complete Form 8594.

SECTION 2.4. Deposit. Within five (5) Business Days following the date of this Agreement, (a) Sellers and Transferee shall enter into an escrow agreement (the "Escrow Agreement"), on terms reasonably acceptable to Sellers and Transferee, with an escrow agent reasonably acceptable to Sellers and Transferee (the "Escrow Agent"), and (b) the Transferee

shall deposit into escrow with the Escrow Agent an amount equal to Two Million Three Hundred Eighty Thousand Dollars (\$2,380,000) (such amount, together with any interest accrued thereon prior to the Closing Date, the “Deposit”) by wire transfer of immediately available funds pursuant to the terms of the Escrow Agreement no later than the Bid Deadline (as defined in the Bidding Procedures). The Deposit shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of Sellers or Transferee. The Deposit shall become payable to Sellers upon the earlier of (x) the Closing or (y) the termination of this Agreement pursuant to Section 7.1(e) or Section 7.1(i) (the “Transferee Default Termination”). At the Closing, the Deposit shall be delivered to an account designated by Sellers by wire transfer of immediately available funds as payment of a portion of the Closing Price. In the event the Deposit becomes payable to Sellers by reason of a Transferee Default Termination, the Escrow Agent shall, within two (2) Business Days after receiving a joint instruction from Sellers and Transferee or an order of the Bankruptcy Court, directing the disbursement to Sellers, disburse the Deposit to an account designated by Sellers by wire transfer of immediately available funds to be retained by Sellers for their own account. If this Agreement or the Transactions are terminated other than for a termination which constitutes a Transferee Default Termination, Sellers and Transferee shall instruct the Escrow Agent to, and the Escrow Agent shall, within two (2) Business Days after such instruction, return to Transferee the Deposit by wire transfer of immediately available funds. The Escrow Agent’s escrow fees and charges shall be paid by Transferee.

ARTICLE III. **SELLERS’ REPRESENTATIONS**

As an inducement to Transferee to enter into this Agreement and to consummate the transactions contemplated hereby, Sellers jointly and severally represent and warrant to Transferee as follows:

SECTION 3.1. Organization of Sellers. Each of Kodak and KIN is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization set forth opposite each such entities’ name on Schedule 3.1. KIN has full corporate or similar power and authority to possess, operate and use the Acquired Assets and to carry on the Business as now conducted.

SECTION 3.2. Authority of Sellers.

(a) Subject to limitations imposed by the Bankruptcy Code and Bankruptcy Rules, Sellers have full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Subject to limitations imposed by the Bankruptcy Code and Bankruptcy Rules, the execution, delivery and performance by Sellers of this Agreement have been duly and validly authorized and no additional corporate authorization or consent is required in connection therewith. Neither Kodak nor any affiliate of Kodak other than KIN has any rights in or to any User Data or Archives with respect to the Business, and after the Closing, neither Seller nor any Affiliate thereof will retain any rights in or to the User Data and Archives other than the User Data and Archives of Opted-Out Gallery Users and such rights in User Data as Kodak and its affiliates may have consistent with Section 5.6 herein.

SECTION 3.3. Terms of Service and Privacy Notice. True and complete copies of Sellers' Terms of Service and Privacy Notice as in effect since the dates set forth therein are attached to Schedule 3.3 have been posted on the Website. KIN's ability to transfer User Data and Archives to Transferee pursuant to the terms of this Agreement are allowed by KIN's Terms of Service and Privacy Notice subject to each Gallery User's ability to opt out of the transfer. KIN has not engaged in any practice or implied policy that would prevent the transfer of User Data and Archives to Transferee pursuant to this Agreement, subject to the Gallery User's right to opt-out of the transfer.

SECTION 3.4. Brokers. Other than Bank of America Merrill Lynch, there is no investment banker, broker, finder or other intermediary who has been retained by or is authorized to act on behalf of Sellers or any Affiliate of Sellers who might be entitled to any fee or commission in connection with the Transaction, which fee is the sole responsibility of Sellers.

ARTICLE IV.
TRANSFEEE'S REPRESENTATIONS

As an inducement to Sellers to enter into this Agreement and to consummate the Transactions, Transferee hereby represents and warrants to Sellers and agrees as follows:

SECTION 4.1. Organization and Authority of Transferee.

(a) Transferee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Transferee is in good standing in each of the jurisdictions in which the ownership or leasing of its properties, or the acquisition of the Acquired Assets, requires or will require such qualification. Transferee has full power and authority to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement by Transferee has been duly authorized and approved by Transferee's board of directors and does not require any further authorization or consent of Transferee or its directors or shareholders. This Agreement has been duly authorized, executed and delivered by Transferee and is the legal, valid and binding agreement of Transferee enforceable against Transferee in accordance with its terms.

(b) Neither the execution and delivery of this Agreement nor the consummation of the Transactions nor compliance with or fulfillment of the terms, conditions and provisions of this Agreement will:

- (i) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, or an event of default under (x) Transferee's organizational documents, (y) any Final Order to which Transferee is a Party or by which it is bound or (z) any Law binding upon Transferee; or
- (ii) require the approval, consent, authorization or act of, or the making by Transferee of any declaration, filing or registration with, any person.

SECTION 4.2. Availability of Funds. Transferee has as of the date hereof, and will have as of the Closing, sufficient funds to enable Transferee to pay the Closing Price in full at Closing and the Transition Price in full on the Transition End Date and all reimbursements of

Storage and Infrastructure Costs pursuant to Section 2.3(b), its share of any Transfer Taxes pursuant to Section 5.7 and all of its fees and expenses. Transferee's obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any person.

SECTION 4.3. Transferee Experience. Transferee is experienced and sophisticated with respect to transactions of the type contemplated by this Agreement. In consultation with experienced counsel and advisors of its choice, Transferee has conducted its own independent review and analysis of the Acquired Assets and the rights and obligations it is acquiring under this Agreement. Transferee acknowledges that it and its Representatives have been permitted such access to the books and records, contracts and other properties related to the Acquired Assets as it required to complete its review, and that it and its Representatives have been provided with an opportunity to meet with the officers and other employees of Sellers, to discuss the conduct of the Business.

SECTION 4.4. Transferee's Acknowledgments; Exclusivity of Representations and Warranties. Transferee acknowledges and agrees that except for the representations and warranties expressly contained in Article III, neither Sellers nor any other person makes any other express or implied representation or warranty to Transferee. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ACQUIRED ASSETS ARE TRANSFERRED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, AND TRANSFEEE HEREBY EXPRESSLY DISCLAIMS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL CONDITIONS OR WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF OR RELATED TO TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OR ENFORCEABILITY. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT, NOTHING CONTAINED IN THIS AGREEMENT WILL CONSTITUTE A LIMITATION OR WAIVER OF ANY PARTY TO ANY CLAIMS FOR FRAUD.

SECTION 4.5. Brokers. Other than Evercore Partners, there is no investment banker, broker, finder or other intermediary who has been retained by or is authorized to act on behalf of Transferee or any Affiliate of Transferee who might be entitled to any fee or commission in connection with the Transaction, which fee is the sole responsibility of Transferee.

ARTICLE V. **COVENANTS**

The parties covenant and agree to take the following actions:

SECTION 5.1. Privacy Policy. Transferee shall treat all Personally Identifiable Information and non-personally identifiable information, obtained as a result of the transfer of the Acquired Assets in accordance with Transferee's Privacy Policy and Law.

SECTION 5.2. Access to the Business by Transferee. From the date hereof until the earlier of the Transition End Date and any termination of this Agreement in accordance with its terms, Sellers shall permit Transferee's authorized Representatives reasonable access during

regular business hours and upon reasonable notice to the offices and business records of KIN with respect to the Acquired Assets to the extent Transferee reasonably requests, subject to such limitations as may be required under applicable privacy and other Laws. Any such investigation shall be conducted in a manner so as not to interfere in any material respect with the operations of the Business.

SECTION 5.3. Conduct of Business Prior to the Closing Date.

(a) From the date hereof until the earlier of the Closing Date and any termination of this Agreement in accordance with its terms, KIN shall maintain the Acquired Assets and operate and carry on the Business and the Websites only in the Ordinary Course of Business, except as otherwise expressly required by this Agreement, or with the express written consent of Transferee. From the date hereof until the earlier of the Closing Date and any termination of this Agreement in accordance with its terms, Sellers shall use commercially reasonable efforts to maintain the current levels of (i) services available to Gallery Users on the Website; (ii) customer service in accordance with the Website's current practices; and (iii) marketing and promotions, in each case consistent with operating the Business in the Ordinary Course of Business and subject to the limitations of the Bankruptcy Code, the Bankruptcy Rules and any orders of the Bankruptcy Court.

(b) From the date hereof until the earlier of the Closing Date and any termination of this Agreement in accordance with its terms, KIN will provide Transferee with reports each week, in form and substance consistent with those provided by KIN currently to its management, with respect to: the number of unique transacting Gallery Users, orders, average order value and weekly revenues.

SECTION 5.4. Cooperation on Migration.

(a) Commencing immediately after the Closing Date, KIN and Transferee shall cooperate with each other to migrate the User Data and Archive of the Transferable Users ("Migration") to Transferee. KIN will take such actions reasonably required to enable it to maintain the hardware, infrastructure, bandwidth, network and other resources reasonably necessary to store the User Data and Archive, including maintaining the Storage Agreements until the Transition End Date. KIN shall also, at its sole expense except as otherwise provided in Section 2.3(b), throughout the Migration, dedicate and provide sufficient staffing reasonably necessary to maintain Website performance service levels as described in Exhibit A which are agreed as sufficient to facilitate the successful Migration of the User Data and Archives of the Transferable Users to Transferee as well as customer service levels as described in Exhibit A.

(b) Notwithstanding the expiration of the Transition Period, KIN shall deliver or cause its Affiliates to deliver to Transferee any User Data of Transferable Users that either comes into KIN's or such Affiliate's possession or which KIN discovers to be in its or such Affiliate's possession within one hundred eighty (180) days after such expiration.

(c) At such time as all of the Acquired Assets have been transferred and delivered to Transferee, Sellers will send a written notice to Transferee (the "Migration Completion Notice") certifying to Transferee that such transfer and delivery has been completed and proposing an end

date for the Transition Period, which date shall be no earlier than the fifth Business Day following delivery of the Migration Completion Notice and no later than nine (9) months after the Closing Date (such date, the "Transition End Date"). To the extent Transferee has any reasonable objections to the status of the Migration, Transferee shall deliver a written notice to Sellers as promptly as practicable and in no event later than five Business Days following delivery of the Migration Completion Notice by Sellers, such notice to set forth all such objections and to describe in reasonable detail their basis. In the event that Transferee timely delivers such written notice, Sellers and Transferee shall thereafter work in good faith for a period of 15 Business Days and use commercially reasonable efforts to resolve any and all reasonable objections set forth therein, and upon the resolution of all such objections, Sellers shall promptly deliver to Transferee a new Migration Completion Notice.

SECTION 5.5. Certain Matters.

(a) Stipulation. The parties agree that all discussions, data, material and information exchanged in the course of negotiating this Agreement, including the fact of the negotiations themselves, as well as both the terms and existence of the letter agreement, dated as of February 18, 2012, between Kodak and Transferee and this Agreement, and all information made available to Transferee pursuant to the terms of this Agreement, including without limitation pursuant to Section 5.2, are subject to the stipulation entered into by the parties on July 14, 2011 (the "Stipulation"), and to all applicable privileges, including, but not limited to, the privilege provided by Fed. R. Evid. 408, the privilege provide by Cal. Evid. Code § 1152, and any other privilege or immunity that may attach under federal, state, or common law. In furtherance of the Stipulation, to the extent Gallery Users whose User Data and Archives are transferred to Transferee from the Gallery in connection with the Transactions place sales orders after the Closing Date, such sales shall be treated for all intents and purposes as sales from any other customer of Transferee.

(b) No License Express or Implied. Nothing in this Agreement or the Transactions shall create a license, express or implied, to any Kodak or KIN intellectual property, including without limitation, any license to the patents asserted in a certain litigation, Eastman Kodak Company v. Shutterfly, Inc., Civil Action No. 10-1079-SLR, now pending in the United States District Court for the District of Delaware ("Shutterfly Litigation"). Notwithstanding the foregoing, no revenue generated by Kodak Gallery prior to the 60th day following the Closing Date shall be subject to damages in the Shutterfly Litigation.

SECTION 5.6. Non-Compete. Kodak agrees that it will not, and will cause KIN not to, in the United States and/or Canada and during the period beginning on the day after the Closing Date and ending on the third anniversary of that date, directly or indirectly, for its own account or on behalf of or together with any other person engaged in any online business that essentially duplicates the Business, including but not limited to (i) using the "Kodak Gallery" name or (ii) using KIN technology (including its product creation path and designs) to recreate the Gallery or duplicative service on a Kodak-branded, white label (where the white label partner fulfills at least 90% of its orders off site and ships to home), or co-branded web or mobile platform; provided that such non-compete shall not affect certain existing Kodak business lines as currently conducted (and reasonably extended therefrom), namely (i) the Retail Systems

Solutions business, (ii) the Paper and Output Solutions business, (iii) the digital camera and devices business, and (iv) the event imaging solutions business.

SECTION 5.7. Transfer Taxes. On the Closing Date, Sellers will make the Acquired Assets available through electronic download by Transferee. Sellers and Transferee shall cooperate in determining the applicability, if any, of any sales Tax, use Tax, documentary stamp Tax or similar Tax attributable to the transfer of the Acquired Assets and not exempted under the Sale Order or by section 1146(a) of the Bankruptcy Code ("Transfer Taxes"). Transfer Taxes shall be borne one-half by KIN and one-half by Transferee. Transferee and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Acquired Assets (including access to books and records) as is reasonably necessary for the filing of all Tax Returns and other reasonably required purposes, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. In the event either Transferee or KIN is required under applicable Law to file any Tax Return and pay any Transfer Taxes, and the aggregate of the Transfer Taxes paid by such party exceeds one-half of the Transfer taxes payable with respect to the Transactions, such party shall give notice to the other party of the excess and the party which has paid less than one-half of the Transfer Taxes shall reimburse the other party to the extent required. Transferee and Sellers shall retain all books and records with respect to Taxes pertaining to the Acquired Assets for a period of at least six years following the Closing Date. On or after the end of such period, each Party shall provide the other with at least 10 days prior written notice before destroying any such books and records, during which period the Party receiving such notice can elect to take possession, at its own expense, of such books and records. Sellers and Transferee shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Acquired Assets.

SECTION 5.8. Payments by Gallery Users.

(a) Regardless of whether payments are made to Sellers or Transferee, Sellers and Transferee agree that all accounts receivable, and payments with respect thereto, from Gallery Users: (i) for goods or services ordered and fulfilled prior to the Closing Date are for the account of KIN, (ii) for goods and services ordered by Opted-out Users whether before or after the Closing Date are for the account of KIN, (iii) for good or services ordered by Gallery Users from KIN during the period the Websites continue after the Closing Date under Paragraph 6 of Exhibit A are for the account of KIN; and (iv) for goods or services ordered from and fulfilled by Transferee after the Closing Date (whether or not the User Data and Archives of such Transferable User have migrated to Transferee as of the date of the order or payment) are for the account of Transferee; such that the party fulfilling such order is entitled to the revenues.

(b) In the event that Sellers or Transferee receive a payment with respect to any account receivable which, under Section 5.8(a), belongs to the other party, the recipient shall hold such payment in trust for the benefit of the proper party and on or before the tenth Business Day of the month following the month of receipt, the recipient shall pay such amount to the proper party. All payments received from Transferable Users shall be deemed payments with respect to the longest outstanding account receivable unless Sellers or Transferee have received

written notice from the paying Gallery User that such longest outstanding account receivable is in dispute and that the payment is in respect of a different account.

SECTION 5.9. Terms of Service and Privacy Notice. From and after the date of this Agreement until the Transition End Date, each of Sellers and Transferee shall use commercially reasonable efforts to comply with KIN's Terms of Service and Privacy Notice, including without limitation as it applies to a Gallery User's right to opt out of the transfer contemplated by this Agreement.

SECTION 5.10. Bankruptcy Sale Process. Sellers will (i) as promptly as possible, but in no event later than the date that is two (2) Business Days from the date hereof, file with the Bankruptcy Court the Bidding Procedures and Sale Motion, which will attach the proposed forms of Bidding Procedures Order and Sale Approval Order; and (ii) notify, as required by the Bankruptcy Code and the Bankruptcy Rules, all parties entitled to notice of such motion and proposed orders, as modified by orders in respect of notice which may be issued at any time and from time to time by the Bankruptcy Court, and such additional parties as Sellers, in consultation with Transferee, have determined should be notified.

SECTION 5.11. Canadian Customer List. At Closing, Kodak shall cause Kodak Canada, Inc. to convey to Transferee all right, title and interest, if any, of Kodak Canada, Inc. in and to the Canadian customer list and to the User Data that comprises such list, free and clear of all Claims and Encumbrances other than Permitted Encumbrances.

SECTION 5.12. Database Information. Kodak will not use information in its general database about Gallery Users in violation of Section 5.6. Kodak will not sell, transfer, license or lease an extract containing only the User Data of Gallery Users to any third party. Kodak will not transfer the Archive to any purchaser, but may transfer a particular Gallery User's Archive back to such Gallery User. Sellers will not retain Archives after the later of (i) sixty (60) days following the Closing Date and (ii) the Transition End Date.

SECTION 5.13. Further Assurances/Reasonable Commercial Efforts.

(a) Each of the Sellers and Transferee shall use their reasonably commercial efforts to timely take, or cause to be taken, all actions, and timely do, or cause to be done, all matters reasonably necessary, proper or advisable to consummate all aspects of the transaction contemplated by this Agreement, including without limitation, timely filing all pleadings and executing and delivering such documents and papers reasonably necessary to consummate the transaction contemplated by this Agreement.

(b) Sellers will not materially modify the Bidding Procedures in a manner inconsistent with this agreement without the consent of Transferee, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VI.
CONDITIONS TO CLOSING; CLOSING

SECTION 6.1. Conditions to Obligations of Each Party. The respective obligations of each party to effect the Transactions shall be subject to the fulfillment (or, if permitted by Law, waiver) on or prior to the Closing Date, of the following conditions:

(a) The Sale Order will have been entered, will not have been modified, revised or amended in any material respect (except to the extent such modification, revision or amendments have been approved by Sellers and Transferee (such approval not to be unreasonably withheld, conditioned or delayed)) and will not have been stayed, vacated or reversed for the lesser of (i) fourteen days after entry of the Sale Order or (ii) such shorter time period ordered by the Bankruptcy Court pursuant to Rule 6004(h) of the Bankruptcy Rules and no notice of appeal of the Sale Order has been filed where such appeal challenges the validity of the Transactions under section 363(m) of the Bankruptcy Code (other than on the grounds that the Transferee did not purchase the Acquired Assets in good faith), provided that the Transferee, with the consent of Sellers, can waive such requirements.

(b) No Governmental Authority shall have enacted, issued, promulgated or entered any order that is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the Transactions that has not been withdrawn or terminated.

SECTION 6.2. Conditions to Obligations of Transferee. The obligation of Transferee to effect the Transactions shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions:

(a) the representations and warranties of Sellers contained in this Agreement shall be true and correct in all material respects when made and on and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of such date, and Transferee shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof; and

(b) each covenant and obligation that Sellers are required to perform or comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects, and Transferee shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof.

Any condition specified in this Section 6.2 may be waived by Transferee; provided that no such waiver shall be effective against Transferee unless it is set forth in a writing executed by Transferee.

SECTION 6.3. Conditions to Obligations of Sellers. The obligation of Sellers to transfer the Acquired Assets contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions:

(a) the representations and warranties of Transferee contained in this Agreement shall be true and correct in all material respects when made and on and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of such date and

Sellers shall have received a certificate of Transferee to such effect signed by a duly authorized officer thereof;

(b) each covenant and obligation that Transferee 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, and Sellers shall have received a certificate of Transferee to such effect signed by a duly authorized officer thereof; and

(c) the Closing Price shall have been delivered to Sellers.

Any condition specified in this Section 6.3 may be waived by Sellers; provided that no such waiver shall be effective against Sellers unless it is set forth in writing executed by Sellers.

SECTION 6.4. Closing.

(a) Upon the terms and conditions set forth in this Agreement, the closing of the Transactions (the "Closing") shall take place at the offices of Nixon Peabody LLP, 300 S. Riverside Plaza, 16th Floor, Chicago, Illinois, on the fifth Business Day after the Sale Order becomes a Final Order; or at such other place or time as Transferee and Sellers may mutually agree. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date."

ARTICLE VII. TERMINATION

SECTION 7.1. Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, by written notice promptly given to the other Parties hereto, at any time prior to the Closing Date:

(a) by mutual written consent of Transferee and Sellers;

(b) by either Transferee or Sellers upon written notice given within two Business Days after the stated date if: (i) the Bidding Procedures Order is not entered by March 31, 2012 or (ii) the Sale Order is not entered on or prior to May 2, 2012;

(c) by either Transferee or Sellers upon written notice of such termination to the other Parties, if the Closing shall not have occurred on or prior the earlier of May 16, 2012 (the "Outside Date") or the fifth Business Day after the Sale Order has become a Final Order;

(d) by Transferee if there has been a material breach by Sellers of any of their representations, warranties or covenants that would result in a condition set forth in Section 6.2 not being met, which breach is not curable, or if curable, is not cured within thirty (30) days after written notice of such breach, specifying such breach in reasonable detail, is given by Transferee to Sellers; provided, solely with respect to Section 5.13(b), such thirty (30) day period shall be ten (10) days after written notice of such breach, specifying such breach in reasonable detail, is given by Transferee to Sellers;

(e) by Sellers if there has been a material breach by Transferee of any of its representations, warranties or covenants that would result in a condition set forth in Section 6.3 not being met, which breach is not curable, or if curable, is not cured within thirty (30) days;

(f) by Transferee, if Sellers elect to terminate the Bidding Process (as defined in the Bidding Procedures) prior to entry by the Bankruptcy Court of the Sale Order or an order authorizing Sellers to enter into an Alternative Transaction;

(g) by Transferee, upon the earlier of (i) the entry by the Bankruptcy Court of the Sale Order approving a sale to the Successful Bidder (other than to the Transferee), and (ii) the expiration of ten (10) Business Days from the conclusion of the Auction where Transferee is not designated as the Highest Bidder;

(h) by either Transferee or Sellers if an Alternative Transaction is consummated; or

(i) by Sellers, upon Transferee's breach of its obligation to close the Transactions at the Closing following the Bankruptcy Court's entry of the Sale Order approving the Transactions, which breach is not cured within five (5) days from the receipt of written notice thereof from Sellers (but not later than the Outside Date).

Notwithstanding the foregoing provisions of this Section 7.1, the right to terminate this Agreement pursuant to Section 7.1 shall not be available to the party seeking to terminate if such party has breached this Agreement or, to the extent applicable, the Bidding Procedures, and such breach has been the cause of, or has resulted in, the event or condition giving rise to a right to terminate this Agreement.

SECTION 7.2. Break-Up Fee. In the event that (i) this Agreement is terminated by Transferee pursuant to paragraphs (d), (f) or (g) of Section 7.1, (ii) when this Agreement is so terminated, Transferee is not in material breach of this Agreement, and (iii) an Alternative Transaction is consummated within six (6) months following the date of such termination, Sellers will pay to Transferee, from the first available proceeds of such Alternative Transaction in immediately available funds, not more than five (5) Business Days after the date of such consummation, a cash fee of Six Hundred Thousand Dollars (\$600,000) (the "Break-Up Fee"). Notwithstanding anything to the contrary herein, Sellers' obligation to pay the Break-Up Fee pursuant to this Section 7.2 is expressly subject to entry of the Bidding Procedures Order. To the extent that Sellers fail to pay any amount of the Break-Up Fee if and when the same is due and payable, Transferee shall have an Administrative Expense Claim against Sellers and their bankruptcy estate for such unpaid amount as set forth in the Bidding Procedures Order.

SECTION 7.3. Effect of Termination. In the event of termination of this Agreement by either Party, all rights and obligations of the Parties under this Agreement shall terminate without any liability of any Party to any other Party except as otherwise provided in this Article VII and except that each Party shall be liable for any willful breach of this Agreement by such Party. Notwithstanding the foregoing, the provisions of Section 5.5, Section 7.2 and Article VIII shall expressly survive the expiration or termination of this Agreement.

ARTICLE VIII.
GENERAL PROVISIONS

SECTION 8.1. Public Disclosure. Subject to the Parties' disclosure obligations imposed by Law, the Parties shall (a) cooperate with each other in the development and distribution of all news releases, other public information disclosures and announcements, including announcements and notices to customers with respect to this Agreement or any of the Transactions and (b) not issue any such announcement or statement prior to consultation with, and the approval of, the other party (such approval not to be unreasonably withheld, conditioned or delayed); provided that approval shall not be required (i) where a party determines, based on advice of counsel and after consultation with the other party, that such disclosure is required by Law or the rules of any stock exchange on which the securities of such party or any of its Affiliates are listed; (ii) in the case of Sellers, where an announcement or statement is intended to inform of the public of developments in the Bankruptcy Court's conduct of the Bankruptcy Cases other than with respect to the transactions contemplated by this Agreement; or (iii) for ordinary customer communications regarding Gallery Users' Kodak Gallery orders or customer service inquiries. The Parties shall use their reasonable business efforts to cause a mutually agreeable press release or announcement to be issued no later than two Business Days following the date hereof.

SECTION 8.2. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be given or delivered by personal delivery, by facsimile, email or by a nationally recognized private overnight courier service addressed as follows:

If to Transferee, to:

Shutterfly, Inc.
2800 Bridge Parkway
Redwood City, CA 94065
Attn: Charlotte Falla
Phone: (650) 610-3555
Facsimile: 650-593-3574
Email:cfalla@shutterfly.com

With a copy to:

Vectis Law Group
2225 E. Bayshore Road, Suite 200
Palo Alto, CA 94303-3220
Attn: Patrick Costello
Phone: (650) 320-1688
Facsimile:
Email:pcostello@vectislawgroup.com

Fenwick & West LLP
555 California Street, 12th Floor
San Francisco, CA 94104
Attn: David Michaels
Phone: (415) 875-2455
Facsimile: (415) 281-1350
Email: dmichaels@fenwick.com

If to Sellers, to:

Eastman Kodak Company
343 State Street
Rochester, New York 14650-0218
Attn: General Counsel
Phone: (585) 724-9549
Facsimile: (585) 724-4332
Email: Patrick.sheller@kodak.com
with a copy to:

Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604
Attn: Deborah J. McLean
Phone: (585) 263-1307
Facsimile: (866) 947-0724
Email: dmclean@nixonpeabody.com

and to:

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498
Attn: Andrew G. Dietderich
Phone: (212) 558-4000
Facsimile: (212) 558-3588
Email: dietdericha@sullcrom.com

or to such other address or facsimile number as such Party may indicate by a notice delivered to the other Party hereto.

Any notice, consent, authorization, direction or other communication delivered as aforesaid shall be deemed to have been effectively delivered and received, if: sent by a nationally recognized private overnight courier service, on the date following the date upon which it is delivered for overnight delivery to such courier service, if delivered personally (with written confirmation of receipt), on the date of such delivery or, if sent via facsimile or email, on the date of the transmission of the facsimile or email, provided that the sender thereof receives

written confirmation that the facsimile or email was successfully delivered to the intended recipient.

SECTION 8.3. Assignment. None of the Parties may assign or delegate its rights or obligations under this Agreement (whether by operation of Law, change of control, or otherwise), either in whole or in part, without the prior written consent of the other Parties, except that Sellers may assign, delegate or transfer any of its rights or obligations under this Agreement to an Affiliate of Sellers, to any purchaser or successor of interest of all or substantially all of the Business or to any succeeding entity upon consummation of a plan of reorganization pursuant to chapter 11 of the U.S. Bankruptcy Code. Any attempted assignment in violation of this Section 8.3 will be void and without effect. Subject to the foregoing, this Agreement will benefit and bind the Parties' successors and permitted assigns.

SECTION 8.4. Entire Agreement. This Agreement and the Schedules referred to herein contain the entire understanding of the Parties with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of intent between or among any of the Parties with respect to such subject matter.

SECTION 8.5. Schedules. For purposes of the representations and warranties of Sellers contained in this Agreement, disclosure on any Schedule of any facts or circumstances shall be deemed to be adequate response and disclosure of such facts or circumstances with respect to all representations or warranties by Sellers calling for disclosure of such information, whether or not such disclosure is specifically associated with or purports to respond to one or more of such representations or warranties, if it is reasonably apparent from the Schedule that such disclosure is applicable. The inclusion of any information in any Schedule or other document delivered by Sellers pursuant to this Agreement shall not be deemed to be an admission or evidence of the materiality of such item, nor shall it establish a standard of materiality for any purpose whatsoever.

SECTION 8.6. Amendment; Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and signed, in the case of an amendment, by Transferee and Sellers, or in the case of a waiver, by the Party against whom the waiver is to be effective. No failure or delay by any of the Parties in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided will be cumulative and, except as otherwise expressly provided herein, not exclusive of any rights or remedies provided by Law.

SECTION 8.7. Survival. All of the representations and warranties of Transferee contained in this Agreement will survive Closing for a period of one (1) year from the Closing Date. None of the representations and warranties of Sellers contained in this Agreement shall survive Closing and Sellers shall have no liability to Transferee after Closing for any breach thereof. The covenants and agreements of the Parties set forth in this Agreement will survive until fully performed or until such performance is expressly waived in writing by the other Parties. Sellers' rights to be indemnification pursuant to Section 8.8 shall survive indefinitely.

SECTION 8.8. Indemnification. Transferee agrees to indemnify and defend Sellers, their Affiliates, directors, officers, shareholders, partners, members, attorneys, accountants, agents, representatives, advisors and employees, each in their capacity as such (the "Indemnified Parties") from, against and in respect of any and all actual, losses, damages or expenses, including reasonable costs and attorneys' fees, asserted against, any of the Indemnified Parties in respect of third-party claims, directly relating to, arising out of or resulting from Transferee's breach of its covenant set forth in Section 5.1. Transferee will select counsel and control defense. The Sellers will have the right to participate, at the Sellers's expense, in any Claim and to select attorneys to defend it, which attorneys will be independent of any attorneys chosen by Transferee relating to such claim or related claim. Transferee will not settle, compromise or otherwise enter into any agreement regarding the disposition of any Claim against the Sellers without the prior written consent and approval of the Sellers, unless such settlement, compromise or disposition provides for monetary relief which is to be paid by Transferee and a complete and unconditional release of the Sellers.

SECTION 8.9. Injunctive Relief. Each of the Parties may seek equitable relief, including the remedies of specific performance and injunction, with respect to any actual or attempted breach of this Agreement.

SECTION 8.10. Execution in Counterparts; Electronic Delivery. This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 8.11. Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in that State.

(b) To the fullest extent permitted by applicable Law, each Party: (i) agrees that any claim, action or proceeding by such Party seeking any relief whatsoever arising out of, or in connection with, this Agreement, or the transactions contemplated hereby shall be brought only in (x) the U.S. Bankruptcy Court, if brought prior to the entry of a final decree closing the Bankruptcy Case, and (y) in the United States District Court for the Southern District of New York or, if that court lacks subject matter jurisdiction, the Supreme Court of the State of New York, County of New York (collectively, the "New York Courts") ; (ii) agrees to submit to the jurisdiction of the Bankruptcy Court or the New York Courts, as applicable, pursuant to the preceding clauses (i)(x) and (y) for purposes of all legal proceedings arising out of, or in connection with, this Agreement or the transactions contemplated hereby; (iii) waives and agrees not to assert any objection that it may now or hereafter have to the laying of the venue of such action brought in any such court or any claim that any such action brought in such court has been brought in an inconvenient forum; (iv) agrees that the mailing of process or other papers in connection with any such action or proceeding in the manner provided by the Bankruptcy Court, if the Bankruptcy Case is still pending, or as provided in Section 8.2 should be valid and

sufficient service thereof; and (v) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdictions by suit on the judgment and in any other manner provided by applicable Law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLERS, TRANSFEREE, OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

SECTION 8.12. No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

SECTION 8.13. No Set-off, Deduction or Counterclaim. Any payment payable by any of the Parties under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for, any amount which is due and payable to such party by the other Parties under this Agreement.

SECTION 8.14. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the validity or enforceability of the other provisions or of this Agreement as a whole will not be affected; and, in such event, such provision will be changed and interpreted so as best to accomplish the objectives of such provision within the limits of applicable Law or applicable court decision.

SECTION 8.15. Bulk Sales Law. Subject to the entry of the Sale Order, each of the Parties waives compliance by the other Parties with any applicable bulk sales Law.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Transfer Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

TRANSFeree:

Shutterfly, Inc.

By: _____



Name: JEFFREY HOUSEBOLD
Title: CEO

SELLERS:

Eastman Kodak Company

By: _____

Name:
Title:

Kodak Imaging Network, Inc.

By: _____

Name:
Title:

IN WITNESS WHEREOF, each of the Parties hereto has caused this Transfer Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

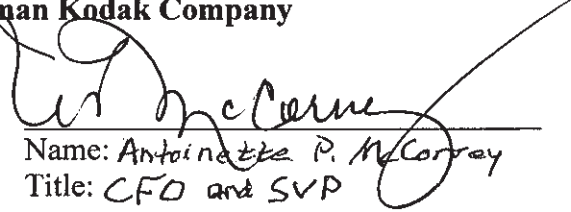
TRANSFeree:

Shutterfly, Inc.

By: _____
Name:
Title:

SELLERS:

Eastman Kodak Company

NK By: 
Name: *Antoinette P. McCorrey*
Title: *CFO and SVP*

Kodak Imaging Network, Inc.

By: _____
Name:
Title:

IN WITNESS WHEREOF, each of the Parties hereto has caused this Transfer Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

TRANSFeree:

Shutterfly, Inc.

By: _____
Name:
Title:

SELLERS:

Eastman Kodak Company

By: _____
Name:
Title:

Kodak Imaging Network, Inc.


By: 
Name: VICTOR CHO
Title: CEO & PRESIDENT KODAK
IMAGING NETWORK.

EXHIBIT A

TRANSITION PROCEDURES

Subject to modifications as provided in the Agreement or the Sale Order, the following actions have been agreed upon by the Parties, subject to modification as provided in the Agreement.

1. **Customer List.** Within 5 Business Days after the expiration of the period during which Opted-out Users may decide not to transfer to Transferee, such period to be twenty-one (21) days after the Redirect (as defined below). KIN will provide Transferee with a list of all Gallery Users other than Opted-out Users, including their names, mailing addresses and email addresses to the extent in the possession of KIN.
2. **Actions on the Website.** During the Transition Period, KIN will disable the ability to create new accounts on the Website after the Redirect (as defined below) is “live”, and encourage Gallery Users to finish projects.
3. **Communications Plan.** By the Closing Date, Transferee and KIN shall mutually agree upon a communications/notification plan (“Communications Plan”) to provide Gallery Users with information concerning the transfer of their User Data and Archive to Transferee and setting forth a calendar of email deployments to Gallery Users as well as any additional notifications and notification channels. Any communications concerning the Transaction that are disclosed to the public by any of Transferee, KIN, Kodak or their respective affiliates and representatives are subject to the prior written consent of Kodak and Transferee as to timing and content except to the extent required by the Bankruptcy Cases and applicable Law.
4. **Initial Gallery User Notification.** Within 10 Business Days after the Closing Date, KIN will post a prominent notice on the Websites located at www.kodakgallery.com and www.kodakgallery.ca and on the Gallery Facebook page and also send an email notice to its Gallery Users, stating that the Gallery service will no longer be available as of a stated date (as mutually agreed upon by KIN and Transferee) and that Gallery Users’ User Data and Archives will be transferred to Transferee, subject to the rights of customers. The notice on the Website and each such subsequent Gallery User notice shall contain a prominently placed link to the “Landing Page” (as defined below).
5. **Redirect and Landing Page.** Within 10 business days of the Closing Date, KIN will automatically redirect users coming to www.kodakgallery.com and from other Gallery User “touchpoints,” including but not limited to www.ofoto.com, Gallery’s Facebook page, etc. (the “Redirect”), to a mutually agreed upon Landing Page. The Landing Page shall (a) contain an explanation of the process by which the User Data and Archives will be transferred to Transferee, and (b) provide a means for Gallery Users to opt out of transferring their User Data and Archives to Transferee should they choose to do so. The Redirect and Landing Page shall be operative for a period of three (3) years from the Closing Date. KIN shall host and maintain the Landing Page throughout the Transition

Period and Transferee shall host and maintain the Landing Page throughout the balance of such three-year period.

6. Website Continuation. For 60 Days after the Closing Date, or such shorter period as KIN and Transferee may agree, KIN shall maintain website functionality sufficient to allow existing Gallery Users to complete projects and to place orders; provided, however, that KIN shall not allow new accounts to be created after the Redirect is “live”. KIN and Transferee shall agree upon a period after the Closing Date during which Gallery Users may upload new images to their accounts.
7. Gallery Customer Service. Transferee shall include customer service contact information on all communications relating to the Transition and Migration to resolve any customer service issues associated with either the Transition or the Migration; provided, however, that KIN will also make available to Transferee all information in its possession, and assistance reasonably requested by Transferee to enable Transferee to resolve customer service issues. During the Transition Period, KIN will continue to provide customer service for those customers with questions about their past Gallery purchases and issues.

BIDDING PROCEDURES

The procedures set forth herein (the “Bidding Procedures”) govern the proposed sale (the “Sale”) by Eastman Kodak Company (“Kodak”) and Kodak Imaging Network, Inc. (“KIN”), as debtors and debtors in possession (collectively, the “Debtors” or “Sellers”) of certain assets of KIN’s business “Kodak Gallery” (the “Transferred Assets”).

The Sale will be implemented pursuant to the Transfer Agreement, dated March 1, 2012 (as it may be amended, the “Stalking Horse Purchase Agreement” or the “Stalking Horse Bid”), by and among Shutterfly, Inc. (the “Stalking Horse Purchaser”) and Sellers, subject to the receipt of higher or otherwise better bids in accordance with these Bidding Procedures. All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Stalking Horse Purchase Agreement.

These Bidding Procedures describe, among other things, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below), the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined below), the ultimate selection of the Successful Bidder(s) (as defined below), and Bankruptcy Court approval of the Sale (collectively, the “Bidding Process”). Where these Bidding Procedures state that an election is to be made or action taken by the Debtors, such decision or action shall be made in the sole discretion of the Debtors unless otherwise indicated.

The form of these Bidding Procedures was approved by order dated [_____] (the “Bidding Procedures Order”), of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) (in which the Debtors’ chapter 11 bankruptcy cases, jointly administered under Case No. 12-10202 (ALG), are pending) pursuant to Debtors’ Motion for Orders (I)(A) Authorizing Debtors’ Entry into the Stalking Horse Purchase Agreement, (B) Authorizing and Approving the Bidding Procedures and Break-Up Fee, (C) Approving the Notice Procedures, (D) Authorizing the Filing of Certain Documents under Seal and (E) Setting a Date for the Sale Hearing and (II) Authorizing and Approving the Sale of Certain Assets of Kodak Imaging Network, Inc. Free and Clear of All Claims and Interests, filed March [2], 2012.

If the Stalking Horse Purchase Agreement is terminated by Sellers or the Stalking Horse Purchaser for any reason at any time prior to the consummation of a Successful Bid (as defined below), the Debtors may elect to terminate the Bidding Process. If the Debtors elect to terminate the Bidding Process, neither the Stalking Horse Purchaser nor the Debtors will have any obligations with respect thereto; provided that, for the avoidance of doubt, such termination of the Bidding Process will not affect Sellers’ obligations with respect to the Break-Up Fee or any liability of the Stalking Horse Purchaser for breach, in each case as provided in the Stalking Horse Purchase Agreement.

Preliminary Participation Requirements

In order to participate in the Bidding Process, each interested person or entity must deliver the following documents to the parties described below (the “Preliminary Bid Documents”), together with such other documents as the Debtors may request:

- (a) an executed confidentiality agreement (a “Bidder Confidentiality Agreement”), which shall inure to the benefit of any purchaser of the Transferred Assets, and shall be in the form attached hereto as Appendix A or in such other form as the Debtors may require in light of the nature of the confidential information to be shared and the identity and business of the interested person or entity; and
- (b) preliminary proof of the financial capacity of the potential bidder to close the Sale, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the potential bidder (or, if the potential bidder is an entity is formed for the purpose of acquiring the Transferred Assets, the party that will fund the purchase price and bear liability for a breach of the Stalking Horse Purchase Agreement), the adequacy of which the Debtors and its advisors will determine their discretion after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent.

The Preliminary Bid Documents must be transmitted so as to be received no later than []: [], Eastern Time, on [] by each of the following parties (collectively, the “Notice Parties”): (a) the Debtors, c/o Eastman Kodak Company, 343 State Street, Rochester, NY 14650-0126 (Attn: Jeremy R. Salesin and Dorothy H. Cusker); (b) Sullivan & Cromwell LLP, counsel to the Debtors, 125 Broad Street, New York, New York 10004 (Attn: Andrew G. Dietderich and Michael H. Torkin); (c) Nixon Peabody LLP, counsel to the Debtors, 1300 Clinton Square, Rochester, NY 14604 (Attn: Deborah J. McLean, Esq.) (d) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Brian S. Masumoto, Esq.); (e) Milbank, Tweed, Hadley & McCloy LLP, proposed counsel to the Official Committee of Unsecured Creditors, 1 Chase Manhattan Plaza, New York, New York (Attn: Dennis F. Dunne, Tyson M. Lomazow and Brian Kinney); (f) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders, One Bryant Park, New York, New York 10036 (Attn: Michael S. Stamer, David Botter and Stephen Kuhn); (g) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders, 450 Lexington Ave, New York, New York 10017 (Attn: Marshall S. Huebner and Brian M. Resnick); (h) the Stalking Horse Purchaser, c/o Shutterfly, Inc., 2800 Bridge Parkway, Redwood City, CA 94065 (Attn: Charlotte Falla); and (i) Vectis Law Group, counsel to the Stalking Horse Purchaser, 2225 E. Bayshore Road, Suite 200, Palo Alto, CA 94303 (Attn: Patrick M. Costello); provided, however, that the Debtors may consider Preliminary Bid Documents submitted after the foregoing deadline if the Debtors, after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, determine it will be helpful to the success of the Bidding Process.

Within three (3) Business Days after a potential bidder delivers the Preliminary Bid Documents, the Debtors shall determine and notify such potential bidder whether it qualifies as a “Potential Bidder” and deliver to such Potential Bidder an electronic copy of the Stalking Horse Purchase Agreement, together with all exhibits and schedules thereto; provided that the Debtors may redact any information contained therein that the Debtors determine to be confidential commercial information. The Stalking Horse Purchaser will be considered a Potential Bidder so long as the Stalking Horse Purchase Agreement is in effect. No person or entity which does not qualify as a Potential Bidder may bid or otherwise participate in the Bidding Process.

Due Diligence

Until the Bid Deadline (as defined below) and subject to the Bidder Confidentiality Agreement, the Debtors may provide in their discretion such due diligence access or additional information as may be reasonably requested by any Potential Bidder. All due diligence requests shall be directed to Subra Narayan, Eastman Kodak Company, c/o Karen Baker, 1999 Lake Avenue, Rochester, NY 14650 (t: 650.350.4077), or Kenneth Fillion, Eastman Kodak Company, 343 State Street, Rochester, NY 14650 (t: 585.724.5800).

Each Potential Bidder who submits a bid will be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets and liabilities of the Debtors and their Affiliates in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express, implied, by operation of law or otherwise, regarding the Debtors or their Affiliates, or the completeness of any information provided in connection with its bid or the Bidding Process, except to the extent expressly stated in definitive documentation entered into by the Debtors and the Successful Bidder.

Bid Deadline

A Potential Bidder who desires to make a bid must deliver the Bid Requirements (as defined below) so as to be received by the Notice Parties no later than [__:__], Eastern Time, on [_____] (the "Bid Deadline"). The Debtors may extend the Bid Deadline in their discretion after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent. If the Debtors extend the Bid Deadline, the Debtors will promptly notify all Potential Bidders, the Creditors' Committee, the Second Lien Noteholders Committee and counsel to the DIP Agent of such extension.

Bid Requirements

A bid will be considered only if the bid includes all of the following (the "Bid Requirements"):

- (a) authorization for the Debtors to provide the Bid Documents and Marked Agreement to the Notice Parties;
- (b) a duly authorized and executed Stalking Horse Purchase Agreement to purchase all or a substantial portion of the Transferred Assets, including the purchase price for the Transferred Assets, together with all exhibits, schedules and ancillary agreements, together with a version marked to show those amendments and modifications to the Stalking Horse Purchase Agreement (a "Marked Agreement") and the proposed Sale Order, which may not be materially more burdensome to the Debtors than the Stalking Horse Purchase Agreement or inconsistent with these Bidding Procedures;
- (c) constitutes a good faith, bona fide offer to purchase the Transferred Assets and to assume such liabilities as the Proposed Bidder proposes to assume;

- (d) results in a value (after provision for the payment of the Break-Up Fee) as determined by the Debtors pursuant to the Bid Assessment Criteria, either individually or, in conjunction with another Qualified Bid, greater than or equal to the net value the Debtors would receive under the Stalking Horse Purchase Agreement plus \$500,000.00 (it being understood that the Debtors will value any assumption of liabilities or other non-cash consideration in their discretion);
- (e) the identity of each entity that will be participating in connection with the bid and the terms of such participation;
- (f) the identity of the assets to be purchased and the contracts and leases to be assumed;
- (g) an unambiguous commitment to pay all amounts required to cure any defaults pursuant to section 365(b) of the Bankruptcy Code and to provide adequate assurance of future performance under any executory contracts or unexpired leases the Potential Bidder proposes to be assumed;
- (h) information sufficient in the judgment of the Debtors, after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, to demonstrate to the satisfaction of the Debtors that the Potential Bidder has the financial wherewithal and operational ability to consummate the transaction contemplated by the Marked Agreement, or in the absence of such financial wherewithal, written evidence of a firm commitment for financing the consummation of the transaction contemplated by the Marked Agreement, or other evidence of ability to consummate the transaction contemplated by the Marked Agreement that is satisfactory to the Debtors after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent;
- (i) unless the Debtors otherwise determine, is not conditioned on any contingency, including, without limitation, obtaining any of the following: (i) financing, (ii) shareholder or board of directors approval, and/or (iii) the outcome or completion of a due diligence review;
- (j) evidence of approval by the board of directors (or other appropriate governing body) of the Potential Bidder, and, if applicable, its parent company, with respect to the submission of the bid and the execution and delivery of the Marked Agreement and the proposed Sale Order;
- (k) identifies with particularity each and every condition to closing;
- (l) is received on or before the Bid Deadline;
- (m) unless the Debtors otherwise determine, includes a cash deposit equal to 10% of the Purchase Price under the Stalking Horse Purchase Agreement to an escrow account designated by the Debtors (the “Good Faith Deposit”);
- (n) does not include an entitlement to any break-up fee, transaction fee, termination fee or any similar type of payment or, unless the Debtors otherwise determine, any expense reimbursement or any similar type of reimbursement; and
- (o) is irrevocable until such outside date as the Debtors determine or the earlier consummation of a transaction with the Successful Bidder or an Alternative Bidder.

A Potential Bidder who submits a bid that satisfies all of the Bid Requirements and the Due Diligence Requirements (as defined below) shall be a “Qualified Bidder” and its submitted bid will constitute a “Qualified Bid.” The Debtors shall notify the Potential Bidders whether their bids have been determined to be Qualified Bids by no later than [__: __], Eastern Time, on [____]. The Stalking Horse Purchaser shall be deemed a Qualified Bidder and the Stalking Horse Purchase Agreement shall be deemed a Qualified Bid for all purposes in connection with the Bidding Process.

Evaluation of Qualified Bids

Prior to the Auction (as defined below), the Debtors shall evaluate the Qualified Bids and identify the Qualified Bid or combination of Qualified Bids that is, in the Debtors’ judgment after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, the highest or otherwise best offer (the “Starting Bid”). Within twenty-four (24) hours of such determination, but in no event later than one (1) Business Day prior to the date of the Auction, the Debtors shall distribute copies of the Starting Bid to each Qualified Bidder. If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur, the Stalking Horse Purchase Agreement will be deemed the Successful Bid (as defined herein) and, subject to the Debtors’ termination rights under the Stalking Horse Purchase Agreement, the Debtors will pursue entry of the Sale Order as soon as practicable.

A Qualified Bid will be valued by the Debtors based upon several factors, including, without limitation, items such as the net value and recovery to the Debtors’ estates provided by such bid, the total consideration to be received by the Debtors, the number and complexity of transactions that would be required to consummate the Qualified Bid, the number of counterparties to such transactions, the amount of assets included or excluded from the Qualified Bid, whether the Qualified Bid contemplates offers of comparable employment to KIN Debtor’s employees, the number, type and nature of any changes to the Stalking Horse Purchase Agreement, the potential disruption to the Debtors that would result from the Qualified Bid being consummated in comparison to that resulting from the Stalking Horse Purchase Agreement and the likelihood and timing of consummating such transactions (the “Bid Assessment Criteria”), each as determined by the Debtors in their sole discretion. The Debtors’ determination of the value of a Qualified Bid, or the relative value of Qualified Bids, shall be final as between the Debtors, the Stalking Horse Purchaser and any Qualified Bidders and shall not be subject to challenge by the Stalking Horse Purchaser or any Qualified Bidder in such capacity.

Due Diligence from Bidders

Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their representatives (the “Due Diligence Requirements”). Failure of a Qualified Bidder to fully comply with the Due Diligence Requirements will be a basis for the Debtors to determine that a bid made by an otherwise Qualified Bidder is not a Qualified Bid.

Auction

In the event that, on or before the Bid Deadline, the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Purchase Agreement, the Debtors will conduct an auction in accordance with the following procedures (the “Auction”) upon notice to all Qualified Bidders. The Auction will commence at [__ : __], Eastern Time, on [____] at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, NY or such later time or other place as the Debtors shall timely notify the Stalking Horse Bidder, all other Qualified Bidders and the Notice Parties.

- (a) Unless the Debtors otherwise determine, only the Debtors, the Stalking Horse Purchaser, any representative of each of the Creditors’ Committee, the Second Lien Noteholders Committee and the DIP Agent, and any Qualified Bidder (and the legal and financial advisors to each of the foregoing), will be entitled to attend the Auction, and only the Stalking Horse Purchaser and the Qualified Bidders will be entitled to make any Subsequent Bids at the Auction.
- (b) The Debtors may employ and announce at the Auction additional procedural rules that they determine appropriate under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, provided that such rules are (i) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, the Bankruptcy Rules or any order of the Bankruptcy Court entered in connection herewith and (ii) disclosed to each Qualified Bidder.
- (c) Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale.
- (d) Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by a Qualified Bidder that (i) improves upon such Qualified Bidder’s immediately prior Qualified Bid (a “Subsequent Bid”) and (ii) the Debtors determine that such Subsequent Bid is (a) for the first round, a higher or otherwise better offer than the Starting Bid, and (b) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (defined below). The first minimum incremental bid at the Auction shall have a value as determined by the Debtor of at least \$500,000.00 over the Starting Bid, with any subsequent bid increases to be made in minimum increments of at least \$200,000.00. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise best offer (the “Leading Bid”) and the time in which a Subsequent Bid must be received. The Debtors may permit ‘passes’ and otherwise modify these procedures as the Debtors determine appropriate in the circumstances after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent.
- (e) For purposes of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Stalking Horse Purchaser), the Debtors will give the Stalking Horse Purchaser a credit equal to the Break Up Fee.
- (f) Absent irregularities in the conduct of the Auction, the Bankruptcy Court will not consider bids made after the Auction is closed.

Selection Of Successful Bid

The Debtors reserve the right to (i) determine in their discretion, after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, which bid is the highest or best (the "Highest Bid(s)") and the bidder(s) making such bid(s), the "Highest Bidder(s)") based on the Bid Assessment Criteria or such other considerations as they deem appropriate and (ii) reject at any time prior to entry of a Bankruptcy Court order approving an offer, without liability, any offer, other than the Stalking Horse Bid, that the Debtors, in their discretion after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, deem to be (x) inadequate or insufficient, (y) not in conformity with the requirements of the Bidding Procedures Order, the Bankruptcy Code, the Bankruptcy Rules or any order of the Bankruptcy Court entered in connection herewith or (z) contrary to the best interests of the Debtors. If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Highest Bid at the Auction and (ii) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Highest Bid and entry of the Sale Order approving such Highest Bid.

Sale Hearing

The Sale Hearing will be held before the Honorable Allan L. Gropper at [__: __], Eastern Time, on [____], in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004. The Sale Hearing may be adjourned without further notice by an announcement of the adjourned date at the Sale Hearing. If the Debtors do not receive any Qualified Bids (other than the Qualified Bid of the Stalking Horse Purchaser), the Debtors will report the same to the Bankruptcy Court at the Sale Hearing and will proceed with a sale of the Transferred Assets to the Stalking Horse Purchaser following entry of the Sale Order in accordance with the terms of the Stalking Horse Purchase Agreement. If the Debtors do receive additional Qualified Bids, then, at the Sale Hearing, the Debtors will seek approval of the Highest Bid and, if the Highest Bid is not promptly approved and the Debtors so elect, the next highest or best Qualified Bid received in the Auction. The Qualified Bid approved by the Bankruptcy Court and reflected in the entry of the Sale Order shall be deemed to be the "Successful Bid", and the applicable Qualified Bidder the "Successful Bidder", for purposes hereof.

In addition, at the Debtors' election, one or more other Qualified Bid(s) received in the Auction constituting the next highest or best bid(s) may be approved alongside the Successful Bid (such bids, the "Alternate Bid(s)," and such bidder(s), the "Alternate Bidder(s)"); *provided, however*, that in no event shall the Stalking Horse Purchase Agreement be deemed an Alternate Bid or the Stalking Horse Purchaser deemed an Alternate Bidder without the Stalking Horse Purchaser's consent, in its sole discretion. Following approval of the Sale to the Successful Bidder(s), if the Successful Bidder(s) fail(s) to consummate the Sale because of (a) failure of a condition precedent beyond the control of either the Debtors or the Successful Bidder(s) upon which occurrence the Debtors have filed a notice with the Bankruptcy Court advising of such failure or (b) a breach or failure to perform on the part of such Successful Bidder(s) upon which

occurrence the Debtors have filed a notice with the Bankruptcy Court advising of such breach or failure to perform, then the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not directed, to effectuate a Sale to the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Bankruptcy Court.

Break-Up Fee

If the Stalking Horse Purchaser is not the Successful Bidder and the Sale is consummated with a Successful Bidder pursuant to a Successful Bid, the Break-Up Fee shall be paid to the Stalking Horse Purchaser out of the first available proceeds received on account of the Successful Bid (the "Sale Proceeds") in accordance with the Stalking Horse Purchase Agreement; provided, however, that to the extent the Sale Proceeds do not cover the full amount of the Break-Up Fee, the Break-Up Fee shall be deemed an allowed expense of administration against Sellers and their estates under Section 503(b) of the Bankruptcy Code.

Return of Good-Faith Deposit

Each Good Faith Deposit shall be returned to each Qualified Bidder not selected by the Debtors as the Successful Bidder(s) or Alternative Bidder(s) by no later than the fifth (5th) Business Day following the conclusion of the Auction. The Good Faith Deposits of the Successful Bidder(s) and Alternative Bidder(s) will be retained in escrow until the earlier of (a) the closing of the Sale and (b) the permanent withdrawal of the Transferred Assets for sale by the Debtors. At the closing of the Sale contemplated by the Successful Bid, any Alternative Bidder(s)' Good Faith Deposit shall be returned to the Alternative Bidder(s) and the Successful Bidder(s) will be entitled to credit the amount of its Good Faith Deposit against the price paid for the Transferred Assets. If the Successful Bidder(s) fail to consummate the Sale because of a breach or failure to perform on the part of such Successful Bidder(s), the Successful Bidder(s)' Good Faith Deposit shall be forfeited to the Debtors as liquidated damages.

Beneficiaries; Modification of Procedures

No person or entity other than the Debtors and the Stalking Horse Purchaser shall be a beneficiary of or have a right to enforce these bidding procedures or the Bidding Process. The Debtors may amend these bidding procedures or the Bidding Process after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, *provided* that (a) no amendment inconsistent with the Stalking Horse Purchase Agreement may be made without the consent of the Stalking Horse Purchaser, such consent not to be unreasonably withheld, conditioned or delayed, and (b) no amendment to these Bidding Procedures shall affect the right of the Stalking Horse Purchaser to terminate the Stalking Horse Purchase Agreement, pursuant to the terms and conditions set forth therein, in the event of a delay in reaching the milestones specified therein.

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)

ORDER (A) AUTHORIZING DEBTORS' ENTRY INTO THE STALKING HORSE PURCHASE AGREEMENT, (B) AUTHORIZING AND APPROVING THE BIDDING PROCEDURES AND BREAK-UP FEE, (C) APPROVING THE NOTICE PROCEDURES, (D) AUTHORIZING THE FILING OF CERTAIN DOCUMENTS UNDER SEAL AND (E) SETTING A DATE FOR THE SALE HEARING²

Upon the motion (the "**Motion**")³ of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the "**Debtors**"), for an order (i)(a) authorizing Kodak Imaging Network, Inc. ("**KIN**") and Eastman Kodak Company ("**Kodak**" and, together with KIN, the "**Sellers**") to enter into that certain transfer agreement dated as of March 1, 2012, with Shutterfly, Inc. (the "**Stalking Horse Purchaser**") for the sale of certain assets of KIN's business "Kodak Gallery" (as further defined in the Stalking Horse Purchase Agreement, the "**Acquired Assets**") as a "stalking-horse" sale agreement (as appended to the Motion as Exhibit B and, together with all Schedules and Exhibits

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 This form of order is subject to comments from the Unsecured Creditors Committee, the Ad Hoc Committee of Second Lien Note Holders and Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders.

³ All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

thereto, the “**Stalking Horse Purchase Agreement**”), (b) authorizing and approving the bidding procedures (appended hereto as Exhibit 1, the “**Bidding Procedures**”) and the Break-Up Fee (as defined below), including⁴ granting administrative expense status to the Break-Up Fee, (c) approving the form and manner of notice of the Sale (the “**Notice Procedures**”), (d) authorizing the Debtors to file certain documents under seal and (e) setting the time, date and place for a hearing (the “**Sale Hearing**”) to consider the sale of the Acquired Assets (the “**Sale**”); (ii) authorizing and approving the sale of the Acquired Assets, free and clear of all claims and interests, pursuant to section 363 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), except as set forth in the Stalking Horse Purchase Agreement; and (iii) granting such other and further relief as this Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); ”); and upon consideration of the Sale Declaration]; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:⁵

⁴ For the avoidance of doubt, as used in this Order, “including” means “including without limitation”.

⁵ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. See Fed. R. Bankr. P. 7052.

A. The statutory and legal predicates for the relief requested in the Motion are sections 105 and 363 of the Bankruptcy Code, and rules 2002, 6004, and 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6004-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”).

B. Good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order (including with respect to the proposed Bidding Procedures and the Break-Up Fee) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 6004(a).

C. The Debtors’ proposed sale notice, substantially in the form attached to the Motion as Exhibit D (the “**Sale Notice**”), is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction (if necessary), and the Sale Hearing, and no other or further notice is required.

D. No further or other notice beyond that described in the foregoing Paragraphs is required in connection with the Transactions.

E. The Bidding Procedures, in the form attached hereto as Exhibit 1, are fair, reasonable, and appropriate and are designed to maximize recovery with respect to the sale of the Acquired Assets.

F. The Debtors have demonstrated compelling and sound business justifications for authorizing the sale of the Acquired Assets, entry into the Stalking Horse Purchase Agreement and the payment of the Break-Up Fee under the circumstances, timing, and procedures set forth herein, in the Motion and in the Stalking Horse Purchase Agreement.

G. Entry into the Stalking Horse Purchase Agreement with the Stalking Horse Purchaser as a “stalking-horse” sale agreement is in the best interest of the Debtors and the Debtors’ estates and creditors. The Stalking Horse Purchase Agreement will enable the Debtors to secure an adequate floor for the Auction and will provide a clear benefit to the Debtors’ estates.

H. The Break-Up Fee is fair and reasonable and provides a benefit to the Debtors’ estates and creditors.

I. The Debtors’ payment of the Break-Up Fee under the conditions set forth in section 7.2 of the Stalking Horse Purchase Agreement is (a) an actual and necessary cost of preserving the Debtors’ estates, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtors’ estates and creditors and all parties in interest herein, (c) reasonable and appropriate, and (d) necessary to ensure that the Stalking Horse Purchaser will continue to pursue the proposed Stalking Horse Purchase Agreement to undertake the sale of the Acquired Assets. Notwithstanding anything to the contrary in this or any other order of this Court, the Break-Up Fee shall constitute an administrative expense with priority pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code.

J. The filing of certain documents under seal, including Exhibit A to the Stalking Horse Purchase Agreement, is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein.

K. The Bidding Procedures comply with the requirements of Local Rule 6004-1.

L. The entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and therefore

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

The Bidding Procedures

2. The Bidding Procedures attached hereto as Exhibit 1 are hereby approved.

The Debtors are hereby authorized to conduct a sale by auction of the Acquired Assets pursuant to the Bidding Procedures and the terms of this Order.

3. The Stalking Horse Purchaser shall be deemed a Qualified Bidder pursuant to the Bidding Procedures for all purposes for so long as the Stalking Horse Purchase Agreement is in effect.

4. The Bidding Procedures shall apply to the Potential Bidders and Qualified Bidders and the conduct of the sale of the Acquired Assets and the Auction.

The Stalking Horse Purchase Agreement

5. Subject to the Bidding Procedures and approval of the sale at the Sale Hearing, the Debtors' entry into the Stalking Horse Purchase Agreement is hereby approved.

The Break-Up Fee

6. To the extent due under section 7.2 of the Stalking Horse Purchase Agreement, the Debtors are authorized to pay to the Stalking Horse Purchaser a fee of six-hundred thousand dollars (\$600,000) (the "**Break-Up Fee**"), which shall be payable as provided for pursuant to the terms of the Stalking Horse Purchase Agreement.

7. The Debtors' obligation to pay the Break-Up Fee pursuant to section 7.2 of the Stalking Horse Purchase Agreement shall survive termination of the Stalking Horse Purchase Agreement, shall constitute an administrative expense claim under section 503(b) of the Bankruptcy Code, and shall be payable under the terms and conditions of the Stalking Horse Purchase Agreement and this Order, notwithstanding section 507(a) of the Bankruptcy Code.

Notice Procedures

8. The Sale Notice, in substantially the same form as annexed to the Motion as Exhibit D, is sufficient to provide effective notice to all interested parties of the Bidding Procedures, the Auction and the Sale, pursuant to Bankruptcy Rules 2002(a)(2) and 6004 and the Case Management Procedures, as applicable, and are hereby approved.

9. As soon as reasonably practicable after entry of this Bidding Procedures Order, the Debtors (or their agent) shall serve the Sale Notice, in substantially the form attached as Exhibit D to the Motion, by first-class mail, postage prepaid, and/or via overnight mail, facsimile, hand delivery or electronic transmission upon (i) all entities reasonably known to have expressed an interest in a transaction with respect to the Acquired Assets since August 1, 2010, (ii) all entities reasonably known to have asserted any claim, lien, encumbrance or interest in the Acquired Assets, (iii) the Office of the United States Trustee for the Southern District of New York; (iv) Milbank, Tweed, Hadley & McCloy LLP, proposed counsel to the Creditors' Committee; (v) counsel to any other statutory committee appointed in these chapter 11 cases; (vi) counsel to the agent under the prepetition revolving credit facility; (vii) U.S. Bank, National Association, as indenture trustee; (viii) Wilmington Trust, National Association, as indenture trustee; (ix) the Securities and Exchange Commission; (x) the Internal Revenue Service; (xi) the Environmental Protection Agency; (xii) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders; (xiii) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders; (xiv) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (xv) the additional persons agreed between the Debtors and the Stalking Horse Purchaser to be served in accordance with the terms of the Stalking Horse Purchase Agreement (collectively, the "Notice Parties").

Objection Procedures

10. Any party that seeks to object to the relief requested in the Motion pertaining to approval of the sale of the Acquired Assets shall file a formal objection that complies with the objection procedures as set forth in the Motion. Each objection shall state the legal and factual basis of such objection and may be orally supplemented at the Sale Hearing.

11. Any and all written objections as contemplated by this Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules, the Local Rules and the Case Management Procedures; (d) filed with the Bankruptcy Court; and (e) served on the Notice Parties in accordance with the Case Management Procedures so as to be received on or before the appropriate deadline as set forth in the Motion.

12. Failure to object to the relief requested in the Motion shall be deemed to be “consent” for purposes of section 363(f) of the Bankruptcy Code.

13. The General Objection Deadline (as defined in the Motion) is **4:00 p.m. (ET) on [●]**.

14. The Supplemental Objection Deadline (as defined in the Motion) is **4:00 p.m. (ET) on [●]**.

15. All objections to the Motion or the relief requested therein (and all reservations of rights included therein), as it pertains to the entry of this Order, are overruled to the extent they have not been withdrawn, waived or otherwise resolved.

Other Relief Granted

16. The Auction is scheduled for **[9:00 a.m.] (ET) on [●]** at [●] or such other location as shall be timely communicated in accordance with the Bidding Procedures.

17. The Sale Hearing shall be held in this Court on ● at ● (ET). The Sale Hearing may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Sale Hearing or by the filing of a hearing agenda.

18. The Debtors are authorized to conduct the Sale (as defined in the Bidding Procedures) in accordance with the Bidding Procedures and without the necessity of complying with any state or local bulk transfer laws or requirements.

19. The Debtors are authorized to file Exhibit A to the Stalking Horse Purchase Agreement under seal. The Debtors shall provide such Exhibit to the Clerk's Office of the United States Bankruptcy Court for the Southern District of New York in a prominently marked envelope with a cover sheet attached containing (i) the caption, (ii) the docket number of the Motion, (iii) the docket number of this Order, (iv) a statement identifying the contents of the envelope as Exhibit A and (v) the legend "DOCUMENTS TO BE KEPT UNDER SEAL" in bold print.

20. In the event there is a conflict between this Order and the Motion or the Stalking Horse Purchase Agreement, this Order shall control and govern.

21. This Order shall be binding in all respects upon any trustees, examiners, "responsible persons" or other fiduciaries appointed in the Debtors' bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code.

22. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, the Second Lien Noteholder Committee, the Creditors' Committee or the agent for the DIP

Financing (as defined below), or shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Order.

23. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its entry, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise, (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order. For the avoidance of doubt, the Break-Up Fee approved by this Order shall be immediately appealable and failure to appeal in accordance with the Bankruptcy Rules or other applicable law shall constitute a waiver of such rights.

24. All net proceeds from the consummation of the Sale or the Alternative Transaction (as defined in the Stalking Horse Purchase Agreement) shall be treated in accordance with the terms of the Debtors' postpetition secured debtor-in-possession financing (the "**DIP Financing**") and any order of this Court approving the DIP Financing.

25. To the extent that any inconsistency exists between this Order and the terms of the DIP Financing or any order of this Court approving such DIP Financing, the terms of the DIP Financing and the order approving the same shall control.

26. The requirements set forth in Local Rule 9013-1(b) are satisfied.

27. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

28. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

29. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: [•], 2012
New York, New York

Allan L. Gropper
United States Bankruptcy Judge

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)

**ORDER AUTHORIZING AND APPROVING THE SALE OF
CERTAIN ASSETS OF KODAK IMAGING NETWORK, INC.
FREE AND CLEAR OF ALL CLAIMS AND INTERESTS²**

Upon the motion (the “**Motion**”)³ of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for an order (i)(a) authorizing Kodak Imaging Network, Inc. (“**KIN**”) and Eastman Kodak Company (“**Kodak**” and, together with KIN, the “**Sellers**”) to enter into that certain transfer agreement dated as of March 1, 2012, with Shutterfly, Inc. (the “**Stalking Horse Purchaser**”) as a “stalking-horse” sale agreement (the “**Stalking Horse Purchase Agreement**”), (b) authorizing and approving the Bidding Procedures and the Break-Up Fee, including granting administrative expense status to the Break-Up Fee, (c) approving the Notice Procedures, (d) authorizing the Debtors to file certain documents under seal and (e) setting the

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 This form of order is subject to comments from the Unsecured Creditors Committee, the Ad Hoc Committee of Second Lien Note Holders and Citicorp North America, Inc., as agent for the Debtors’ postpetition secured lenders.

³ All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion, or if not defined in the Motion, are to be given the meanings ascribed to them in the Purchase Agreement.

time, date and place for the Sale Hearing (as defined below); (ii) authorizing and approving the sale of certain assets of KIN's business "Kodak Gallery", free and clear of all claims and interests, pursuant to section 363 of the Bankruptcy Code, except as set forth in the Stalking Horse Purchase Agreement; and (iii) granting them such other and further relief as the Court deems just and proper; and the Court having entered an order approving, among other things, the Bidding Procedures (the "**Bidding Procedures Order**") based upon the evidence presented at the bidding procedures hearing held on [●], 2012 (the "**Bidding Procedures Hearing**"); and the Auction (as defined below) having been held in accordance with the Bidding Procedures Order; and at the conclusion of the Auction [●] (the "**Purchaser**") was chosen as the Successful Bidder in accordance with the Bidding Procedures; and the Court having conducted a hearing on the Motion on [●], 2012 (the "**Sale Hearing**"); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the purchase agreement attached hereto as Exhibit A (the "**Purchase Agreement**"), by and among Sellers and the Purchaser, and the transactions contemplated thereby (the "**Transactions**"); and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at the Bidding Procedures Hearing and the Sale Hearing[; and upon consideration of the Sale Declaration]; and upon the record of the Bidding Procedures Hearing and the Sale Hearing and these chapter 11 cases, and after due deliberation thereon, and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:⁴

A. The statutory and legal predicates for the relief requested in the Motion are Sections 105, 362 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9014 and 9018, and Local Rule 6004-1.

B. Notice of the Motion and the Sale Hearing has been provided to (i) the United States Trustee for the Southern District of New York; (ii) Milbank, Tweed, Hadley & McCloy LLP, proposed counsel to the Creditors' Committee; (iii) counsel to all other statutory committees appointed in these chapter 11 cases; (iv) counsel to the agent under the prepetition revolving credit facility; (v) U.S. Bank, National Association, as indenture trustee; (vi) U.S. Bank, National Association, as indenture trustee; (vii) Wilmington Trust, National Association, as indenture trustee; (viii) the Securities and Exchange Commission; (ix) the Internal Revenue Service; (x) the Environmental Protection Agency; (xi) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders; (xii) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of the Second Lien Noteholders; (xiii) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; (xiv) all entities reasonably known to have expressed an interest in a transaction with respect to the Acquired Assets since August 1, 2010 and (xv) all entities reasonably known to have asserted any claim, lien, encumbrance or interest in the Acquired Assets.

C. Based upon the affidavits of service filed with the Court: (a) notice of the Motion and the Sale Hearing was adequate and sufficient under the circumstances of these chapter 11 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, the Case Management Order and the Bidding

⁴ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. See Fed. R. Bankr. P. 7052.

Procedures Order, and (b) a reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein was afforded to all interested persons and entities.

D. No further or other notice beyond that described in the foregoing Paragraph B is required in connection with the Transactions.

E. The Sellers and their professionals marketed the Acquired Assets and conducted the marketing and sale process described in the Motion. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Acquired Assets.

F. On March 1, 2012, the Sellers and the Stalking Horse Purchaser entered into the Stalking Horse Purchase Agreement, subject to higher and better offers.

G. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders. The Debtors and their advisors undertook appropriate marketing efforts, and conducted the sale process (including⁵ the Auction) without collusion and in accordance with the Bidding Procedures. The Debtors (a) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Acquired Assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets and (c) considered any bids submitted on or before the Bid Deadline (as defined in the Bidding Procedures).

H. After the conclusion of the auction held on [●], 2012 (the “**Auction**”), the Debtors determined in a valid and sound exercise of their business judgment that the highest and best Qualified Bid (as defined in the Bidding Procedures Order) was that of the Purchaser.

⁵ For the avoidance of doubt, as used in this Order, “including” means “including without limitation”.

I. Subject to the entry of this Order, each Seller (i) has full power and authority to execute the Purchase Agreement and all other documents contemplated thereby, (ii) has all of the power and authority necessary to consummate the Transactions contemplated by the Purchase Agreement and (iii) has taken all corporate action necessary to authorize and approve the Purchase Agreement and all other documents contemplated thereby, the sale of the Acquired Assets (the “Sale”) and the consummation by the Debtors of the Transactions. No consents or approvals, other than those expressly provided for in the Purchase Agreement or this Order, are required for the Debtors to close the Sale and consummate the Transactions.

J. The Purchase Agreement and the Transactions were negotiated and have been and are undertaken by the Debtors and the Purchaser at arm’s length without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser is purchasing the Acquired Assets in good faith and the Purchaser has otherwise proceeded in good faith in connection with these proceedings in that *inter alia*: (i) the Debtors were free to deal with any other party in connection with the sale of the Acquired Assets; (ii) the Purchaser complied with the provisions in the Bidding Procedures Order; (iii) the Purchaser agreed to subject its bid to the competitive bidding process set forth in the Bidding Procedures Order; and (iv) no common identity of directors or controlling stockholders exists between the Purchaser and any of the Debtors. As a result of the foregoing, the Debtors and the Purchaser are entitled to the protections of section 363(m) of the Bankruptcy Code.

K. The total consideration provided by the Purchaser for the Acquired Assets is the highest and best offer received by the Sellers, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent

value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession thereof, or the District of Columbia, for the Acquired Assets.

L. No person or entity or group of persons or entities has offered to purchase the Acquired Assets pursuant to the Bidding Procedures in a transaction that would provide greater value to the Sellers than the Transactions. The Court's approval of the Motion, the Purchase Agreement, and all other documents contemplated thereby is in the best interests of the Debtors, their estates, their creditors and all other parties in interest.

M. The transfer of the Debtors' right, title and interest in the Acquired Assets to the Purchaser will be a legal, valid and effective transfer of the Acquired Assets, and, except for the Permitted Encumbrances (as defined in Section 1.1 of the Purchase Agreement), will vest the Purchaser with all of the Debtors' right, title and interest in and to the Acquired Assets, free and clear of (i) all claims as defined in section 101(5) of the Bankruptcy Code, including all rights or causes of action (whether in law or in equity), obligations, demands, restrictions, indemnities, consent rights, options, contract rights, covenants and interests of any kind or nature whatsoever, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "Claims") and (ii) all Interests (as defined herein) of any kind or nature whatsoever.

N. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Transactions if the sale of the Acquired Assets to the Purchaser was not free and clear of all Claims and Interests, except for the Permitted Encumbrances, or if the Purchaser would, or in the future could, be liable for such Claims and Interests. A sale of the Acquired Assets other than one free and clear of all Claims and Interests, except for Permitted Encumbrances, would yield substantially less value for the Debtors' estates, with less certainty,

than the Sale. Therefore, the Sale contemplated by the Purchase Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

O. The Debtors may sell the Acquired Assets free and clear of all Claims and Interests (subject only to Permitted Encumbrances), because, with respect to each creditor asserting a Claim or Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Claims and Interests (other than holders of Permitted Encumbrances) who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims or Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

P. Neither the Debtors nor the Purchaser engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Transactions to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

Q. The Purchase Agreement and the agreements contemplated thereby were not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Purchaser Parties have entered into the Purchase Agreement or any agreement contemplated thereby or is consummating the Sale with any fraudulent or otherwise improper purpose.

R. The Purchaser is not holding itself out to the public as a continuation of the Debtors and is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in

the Bankruptcy Code, and no common identity of incorporators, directors or stockholders existed between the Purchaser and any of the Debtors.

S. Entry into the Purchase Agreement, the agreements contemplated thereby and consummation of the Transactions constitute the exercise by the Debtors of sound business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest. The Court finds that the Debtors have articulated good and sufficient business reasons justifying the Sale of the Acquired Assets to the Purchaser.

T. The Sale pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' parties in interest nor impermissibly dictates the terms of a liquidating plan for the Debtors. The Sale does not constitute a *sub rosa* chapter 11 plan.

U. The Debtors have, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code. Specifically, the Acquired Assets to be transferred by the Debtors do not include the User Data and Archives of those Gallery Users who opt out of the transfer as provided in KIN's Privacy Notice. Furthermore, Sellers and Purchaser agree to use commercially reasonable efforts to comply with KIN's Terms of Service and Privacy Notice from the date of the Purchase Agreement until the end of the post-closing transition period, including without limitation as it applies to a Gallery User's right to opt out of the transfer contemplated by the Purchase Agreement. Accordingly, appointment of a consumer privacy ombudsman pursuant to sections 363(b)(1) or 332 of the Bankruptcy Code is not required with respect to the Transactions.

V. Time is of the essence in consummating the Sale. In order to maximize the value of the Debtors' assets, it is essential that the sale of the Acquired Assets occur within the time

constraints set forth in the Purchase Agreement. Accordingly, there is a cause to lift the stay contemplated by Bankruptcy Rule 6004(h).

W. There is no legal or equitable reason to delay the transactions contemplated by the Purchase Agreement.

X. Exhibit A to the Purchase Agreement contains substantial sensitive commercial information that would be damaging to the Debtors and the Purchaser if such information were to be disclosed to their competitors. Filing this Exhibit to the Purchase Agreement under seal is in the best interests of the Debtors, their estates, and all parties in interest; and therefore

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. All objections with regard to the relief sought in the Motion that have not been withdrawn, waived, settled or otherwise dealt with as expressly provided herein or on the record at the Sale Hearing, are hereby overruled on the merits, with prejudice.
3. Pursuant to sections 105 and 363 of the Bankruptcy Code (a) the Purchase Agreement, the agreements contemplated thereby, the Sale of the Acquired Assets, and consummation of the Transactions are hereby approved and the Debtors are authorized to comply with the Purchase Agreement[, and (b) the Alternate Bid (as defined in the Bidding Procedures) submitted by the Alternate Bidder (as defined in the Bidding Procedures) with a cash purchase price of [•] pursuant to the terms submitted therewith, is hereby approved and authorized as an Alternate Bid and shall remain open as an Alternate Bid pursuant to the terms of the Bidding Procedures Order and the bid terms submitted at the Auction.]
4. [In the event that the Sale contemplated by the Purchase Agreement cannot be consummated, the Alternate Bid shall be and is hereby approved, the execution of the asset sale

agreement pursuant to the Alternate Bid by the Debtors is approved and the Debtors are authorized to take such additional steps and execute such additional documents, including the ancillary agreements contemplated by the Alternate Bid, as may be necessary or desirable for the completion of the Sale and for the conveyance of the Debtors' right, title and interest in and to the Acquired Assets to the Alternate Bidder.]

5. Upon the Closing, (a) the Debtors are hereby authorized to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer and assignment of the Debtors' right, title and interest in the Acquired Assets to the Purchaser free and clear of any and all Claims and Interests pursuant to section 363 of the Bankruptcy Code including all liens, including any lien (statutory or otherwise), Lien (as defined in the Purchase Agreement), mortgage, pledge, security interest, charge, right of first refusal, hypothecation, encumbrance, easement, encroachment, right-of-way, restrictive covenant, rights of offset or recoupment, lease or conditional sale arrangement (collectively, the "**Liens**") and debts, liabilities, obligations, contractual rights and claims and labor, employment and pension claims, in each case, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or un-matured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "**Liabilities**" and together with the Liens, the "**Interests**") other than the Permitted Encumbrances, with such Interests to attach to the sale proceeds in the same validity, extent and priority as existed with respect to the Acquired Assets immediately prior to the Transactions, subject to any rights, claims and defenses of the Debtors and other parties in

interest, and (b) except for the Permitted Encumbrances or as otherwise required under applicable non-bankruptcy law, all such Interests shall be and hereby are released, terminated and discharged as to the Purchaser and the Acquired Assets.

6. Except with respect to enforcing the terms of the Purchase Agreement, the Bidding Procedures Order or this Order, no person shall take any action to prevent, enjoin or otherwise interfere with the consummation of the Sale of the Acquired Assets and the Transactions, including the transfer to the Purchaser of the Debtors' title to and the right to use and enjoy the Acquired Assets.

7. The transfer of the Debtors' right, title and interest in the Acquired Assets to the Purchaser pursuant to the Purchase Agreement shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtors' right, title and interest in the Acquired Assets, and vests with or will vest in the Purchaser all right, title and interest of the Debtors in the Acquired Assets, free and clear of all Claims and Interests of any kind or nature whatsoever (other than the Permitted Encumbrances), with any Interests attaching to the sale proceeds in the same validity, extent and priority as existed with respect to the Acquired Assets immediately prior to the Transactions, subject to any rights, claims and defenses of the Debtors and other parties in interest.

8. Upon the Closing, and except for the Permitted Encumbrances or as required under applicable non-bankruptcy law, the Purchaser shall not be liable for any Claims against, Interests in or obligations of, the Debtors or any of the Debtors' predecessors or affiliates, as a result of having purchased the Acquired Assets. Without limiting the generality of the foregoing, (a) the Purchaser shall have no liability or obligation to pay wages, bonuses, severance pay, benefits (including contributions or payments on account of any under-funding with respect

to any pension plans) or make any other payment to employees of the Debtors, other than as expressly set forth in the Purchase Agreement, (b) the Purchaser shall have no liability or obligation in respect of any employee pension plan, employee health plan, employee retention program, employee incentive program or any other similar agreement, plan or program to which any Debtors are a party (including liabilities or obligations arising from or related to the rejection or other termination of any such plan, program agreement or benefit), (c) the Purchaser shall in no way be deemed a party to or assignee of any such employee benefit, agreement, plan or program, and (d) all parties to any such employee benefit, agreement, plan or program are enjoined from asserting against the Purchaser any Claims arising from or relating to such employee benefit, agreement, plan or program.

9. The Transactions have been undertaken by the Purchaser in good faith and the Purchaser is a good faith purchaser of the Acquired Assets as that term is used in Bankruptcy Code section 363(m). The Purchaser is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

10. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors and the Purchaser are each hereby authorized to take any and all actions, including the payment of any reasonable fee or cost, necessary or appropriate to: (i) consummate the Sale of the Acquired Assets to the Purchaser and the Closing of the Sale in accordance with the Motion, the Purchase Agreement and this Order; and (ii) perform, consummate, implement and close fully the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement. The Debtors are hereby authorized to perform each of their covenants and undertakings as provided in the

Purchase Agreement and the agreements contemplated thereby prior to or after Closing without further order of the Court.

11. The automatic stay pursuant to section 362 of the Bankruptcy Code is modified solely to the extent necessary, without further order of the Court, to allow the Purchaser to (i) give the Debtors any notice provided for in the Purchase Agreement, and (ii) enforce any of its remedies under the Purchase Agreement and any ancillary agreements in accordance with the terms and conditions thereof; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

12. For the avoidance of doubt, the Transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

13. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale and the Transactions.

14. The Debtors have, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code. Accordingly, appointment of a consumer privacy ombudsman pursuant to sections 363(b)(1) or 332 of the Bankruptcy Code is not required in connection with the consummation of the Transactions.

15. The consideration provided by the Purchaser for the Acquired Assets under the Purchase Agreement shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded, under section 363(n) or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any other similar state laws.

16. From and after the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of the Debtors' right, title and interest in the Acquired Assets and a bill of sale transferring good, valid and marketable title in such Acquired Assets to the Purchaser on the Closing Date pursuant to the terms of the Purchase Agreement, free and clear of all Claims and Interests (other than the Permitted Encumbrances).

17. Any and all Acquired Assets in the possession or control of any person or entity, including any vendor, supplier or employee of the Debtors shall be transferred to the Purchaser free and clear of all Claims and Interests (other than the Permitted Encumbrances) and shall be delivered at the time of Closing (or such other time as provided in the Purchase Agreement) to the Purchaser.

18. Upon the Closing, all holders of Claims and Interests (other than holders of Permitted Encumbrances) against the Debtors or the Acquired Assets are permanently and forever barred, restrained and enjoined from asserting any Claims or Interests or enforcing remedies, or commencing or continuing in any manner any action or other proceeding of any kind, against the Purchaser or the Acquired Assets on account of any of the Claims or Interests.

19. This Order is and shall be effective as a determination that, other than the Permitted Encumbrances, all Claims and Interests of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected.

20. If any person or entity that has filed statements or other documents or agreements evidencing Interests in the Acquired Assets shall not have delivered to the Debtors before the

Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Interests (other than the Permitted Encumbrances) that such person or entity has or may assert with respect to the Acquired Assets, the Debtors and the Purchaser are each hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets; *provided, however*, that this paragraph 20 shall not apply to the agent or collateral agent under the Debtors' secured Debtor-in-Possession Credit Agreement, dated as of January 20, 2012 (as amended from time to time, the "**DIP Credit Agreement**").

21. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Transactions.

22. No governmental unit may revoke or suspend any right or other permission relating to the use of the Acquired Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale.

23. All net proceeds from the consummation of the Sale or the Alternative Transaction (as defined in the Stalking Horse Purchase Agreement) shall be treated in accordance with the terms of the DIP Credit Agreement and any order of this Court approving the debtor-in-possession financing provided for thereunder (the "**DIP Financing**").

24. To the extent this Order is inconsistent with any prior order or pleading in these chapter 11 cases, the terms of this Order shall govern; *provided, however*, that to the extent any inconsistency exists between this Order and the terms of the DIP Financing or any order of this Court

approving such DIP Financing, the terms of the DIP Financing and the order approving the same shall control. To the extent there is any inconsistency between the terms of this Order and the terms of the Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of this Order shall govern.

25. Except as expressly provided in this Order or the Purchase Agreement, nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtors or their estates from asserting or otherwise impair or diminish any right (including any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not an Acquired Asset.

26. Nothing in this Order, the Purchase Agreement or the Transactions shall create a license, express or implied, to any Kodak or KIN intellectual property, including without limitation, any license to the patents asserted in a certain litigation, *Eastman Kodak Company v. Shutterfly, Inc.*, Civil Action No. 10-1079-SLR, now pending in the United States District Court for the District of Delaware (“**Shutterfly Litigation**”). Notwithstanding the foregoing, no revenue generated by Kodak Gallery prior to the Closing Date shall be subject to damages in the Shutterfly Litigation.

27. This Order shall not be modified by any chapter 11 plan confirmed in these chapter 11 cases or subsequent order of this Court unless expressly consented to in writing by the Purchaser.

28. This Order shall be binding in all respects upon all creditors and interest holders of any of the Debtors, the Creditors’ Committee, the Ad Hoc Committee of the Second Lien Noteholders, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Debtors’

bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code, and the Purchase Agreement shall not be subject to rejection or avoidance under any circumstances.

29. The failure specifically to include or make reference to any particular provisions of the Purchase Agreement or any ancillary agreement contemplated thereby in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement is authorized and approved in its entirety.

30. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order, including the authority to: (1) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Purchase Agreement, the ancillary agreements contemplated thereby, all amendments thereto and any waivers and consents thereunder; (2) protect the Purchaser, or the Acquired Assets, from and against any Claims or Interests; (3) compel delivery of all Acquired Assets to the Purchaser; (4) compel the Purchaser and the Debtors to perform all of their obligations under the Purchase Agreement; (5) resolve any disputes arising under or related to the Purchase Agreement, the Sale or the Transactions; and (6) provide any further relief that is necessary or appropriate in furtherance of this Order or the Transactions.

31. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written document signed by the parties in accordance with the terms thereof without further order of the Court; provided, however, that any such modification, amendment or supplement is not materially adverse to the Debtors; and provided further that no such modifications, amendments, or supplements may be made except following two days written notice to, or with the prior consent of, the Creditors' Committee, c/o Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New

York, New York (Attn: Dennis F. Dunne, Tyson M. Lomazow and Brian Kinney); the Ad Hoc Committee of Second Lien Noteholders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036 (Attn: Michael S. Stamer, David Botter and Stephen Kuhn); and Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders, c/o Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Marshall S. Huebner and Brian M. Resnick). The Debtors are hereby authorized to perform each of their covenants and undertakings as provided in the Purchase Agreement prior to or after Closing without further order of the Court.

32. Notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its entry, (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.⁶

33. The provisions of this Order are nonseverable and mutually dependent.

34. The Purchaser is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transaction contemplated by the Purchase Agreement based upon any arrangement made by or on behalf of the Debtors.

35. This Order applies only to assets owned by the Debtors. Consequently, notwithstanding any other provision of this Order or the Purchase Agreement to the contrary, the portions of this Order that approve the transfer of the Acquired Assets to the Purchaser free and clear of all Claims and Interests (other than the Permitted Encumbrances), or that modify, enjoin,

⁶ The Debtors reserve the right to incorporate the 14-day stay if appropriate in light of the views of the Court or any objecting party.

release or otherwise limit the rights of creditors of entities transferring Acquired Assets, apply only to Acquired Assets to the extent owned by the Debtors and do not apply to any assets to the extent owned by non-debtor entities.

36. The Sellers are hereby authorized and empowered to apply to any court, tribunal, regulatory, administrative or other governmental body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

37. Exhibit A to the Purchase Agreement shall be kept segregated and under seal by the Clerk of Court and shall not be made publicly available pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018.

38. The requirements set forth in Local Rule 9013-1(b) are satisfied.

39. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

Dated: [•], 2012
New York, New York

Allan L. Gropper
United States Bankruptcy Judge

SCHEDULE 3.1

Eastman Kodak Company is incorporated in the State of New Jersey

Kodak Imaging Network, Inc. is incorporated in the State of Delaware.

SCHEDULE 3.3

Gallery Terms of Service

<http://www.kodakgallery.com/gallery/footerLinksContent.jsp?pageID=600010>

Kodak and Gallery Privacy Notice

<http://www.kodak.com/ek/US/en/Privacy.htm>

SCHEDULE 4.4

Transferee Privacy Policy

<http://www.shutterfly.com/help/privacy.jsp>

AMENDMENT NO. 1
TO
TRANSFER AGREEMENT

This Amendment No. 1 (“Amendment”) is made this 30th day of March 2012 between Kodak Imaging Network, Inc. (“KIN”) and Eastman Kodak Company (“Kodak”) and Shutterfly, Inc. (“Shutterfly”) and amends the Transfer Agreement (“Transfer Agreement”), dated March 1, 2012, between KIN and Kodak and Shutterfly. Capitalized terms used in this Amendment and not defined herein are used with the meaning ascribed to such terms in the Agreement.

WHEREAS, the parties entered into the Agreement with the intention that it should serve as the “Stalking Horse Purchase Agreement” for the Acquired Assets in the Bankruptcy Cases; and

WHEREAS, certain Third Parties interested in the Bankruptcy Cases have proposed various revisions to the Transfer Agreement to which the Parties have agreed as set forth in this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in the Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The definition of “Alternative Transaction” set forth in Section 1.1 of the Agreement is hereby deleted and replaced in its entirety with the following:

“Alternative Transaction” means any one of the following transactions with or by any person or group other than Transferee: (a) a merger, consolidation or similar transaction involving KIN in which any unaffiliated person or group acquires direct control of KIN, (b) a sale, lease or other disposition directly or indirectly by merger, consolidation, tender offer, share exchange or otherwise of a material portion of the Acquired Assets, or (c) a reorganization of KIN, other than a reorganization pursuant to any bankruptcy plan of reorganization or solely within the group of the Affiliates of Sellers including all of the Sellers.

2. The first sentence of Section 2.4 of the Agreement is hereby amended to replace the term “Within five (5) Business Days” with the term “Not later than April 16, 2012”.

3. Section 5.6 of the Agreement is hereby deleted and replaced in its entirety with the following:

Section 5.6. Non-Compete. Kodak agrees that it will not, and will cause KIN not to, in the United States and/or Canada and during the period beginning on the day after the Closing Date and ending on the third anniversary of that date, directly or indirectly, for its own account or on behalf of or together with any other person, engage in any online business that essentially duplicates the Business, including but not limited to (i) using the “Kodak Gallery” name or (ii) using KIN technology (including its product creation path and designs) to

recreate the Gallery or duplicative service on a Kodak-branded, white label (where the white label partner fulfills at least 90% of its orders off site and ships to home), or co-branded web or mobile platform; provided that the foregoing shall not affect (A) the licensing or other transfer of any intellectual property (other than the Acquired Assets) by Kodak to any one or more third parties or (B) certain existing Kodak business lines as currently conducted (and reasonably extended therefrom), namely (i) the Retail Systems Solutions business, (ii) the Paper and Output Solutions business, (iii) the digital camera and devices business, and (iv) the event imaging solutions business.

4. Section 7.2 of the Agreement is hereby amended to replace the “Six Hundred Thousand Dollars (\$600,000)” amount of the Break-Up fee with the amount of “Two Hundred Fifty Thousand Dollars (\$250,000)”.

5. The form of Bidding Procedures attached as Exhibit B to the Agreement is hereby replaced in its entirety with the form of Bidding Procedures attached hereto as Exhibit B-1.

6. The form of Bidding Procedures Order attached as Exhibit C to the Agreement is hereby replaced in its entirety with the form of Bidding Procedures Order attached hereto as Exhibit C-1.

7. The form of Sale Order attached as Exhibit D to the Agreement is hereby replaced in its entirety with the form of Sale Order attached hereto as Exhibit D-1.


8. Except as amended by this Amendment, the Agreement continues in full force and effect in accordance with its terms.

[Signature pages follow]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Transfer Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

TRANSFeree:

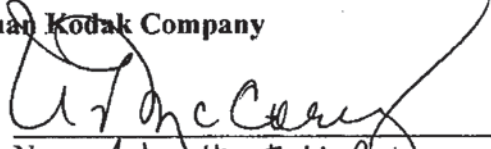
Shutterfly, Inc.

By: 
Name: **CHARLOTTE FALLA**
Title: **VP LEGAL & GENERAL COUNSEL**

SELLERS:

Eastman Kodak Company

By:



Name: Antoinette P. McCordy

Title: Chief Financial Officer and
Senior Vice President

Kodak Imaging Network, Inc.

By: 

Name: VICKI CITO

Title: CFO & PRESIDENT KODAK
IMAGING NETWORK

BIDDING PROCEDURES

The procedures set forth herein (the “Bidding Procedures”) govern the proposed sale (the “Sale”) by Eastman Kodak Company (“Kodak”) and Kodak Imaging Network, Inc. (“KIN”), as debtors and debtors in possession (collectively, the “Debtors” or “Sellers”) of certain assets of KIN’s business “Kodak Gallery” (the “Transferred Assets”).

The Sale will be implemented pursuant to the Transfer Agreement, dated March 1, 2012 (as it may be amended, the “Stalking Horse Purchase Agreement” or the “Stalking Horse Bid”), by and among Shutterfly, Inc. (the “Stalking Horse Purchaser”) and Sellers, subject to the receipt of higher or otherwise better bids in accordance with these Bidding Procedures. All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Stalking Horse Purchase Agreement.

These Bidding Procedures describe, among other things, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below), the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined below), the ultimate selection of the Successful Bidder(s) (as defined below), and Bankruptcy Court approval of the Sale (collectively, the “Bidding Process”). Where these Bidding Procedures state that an election is to be made or action taken by the Debtors, such decision or action shall be made in the sole discretion of the Debtors unless otherwise indicated.

The form of these Bidding Procedures was approved by order dated [_____] (the “Bidding Procedures Order”), of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) (in which the Debtors’ chapter 11 bankruptcy cases, jointly administered under Case No. 12-10202 (ALG), are pending) pursuant to Debtors’ Motion for Orders (I)(A) Authorizing Debtors’ Entry into the Stalking Horse Purchase Agreement, (B) Authorizing and Approving the Bidding Procedures and Break-Up Fee, (C) Approving the Notice Procedures, (D) Authorizing the Filing of Certain Documents under Seal and (E) Setting a Date for the Sale Hearing and (II) Authorizing and Approving the Sale of Certain Assets of Kodak Imaging Network, Inc. Free and Clear of All Claims and Interests, filed March 2, 2012.

If the Stalking Horse Purchase Agreement is terminated by Sellers or the Stalking Horse Purchaser for any reason at any time prior to the consummation of a Successful Bid (as defined below), the Debtors may elect to terminate the Bidding Process after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent. If the Debtors elect to terminate the Bidding Process, neither the Stalking Horse Purchaser nor the Debtors will have any obligations with respect thereto; provided that, for the avoidance of doubt, such termination of the Bidding Process will not affect Sellers’ obligations with respect to the Break-Up Fee or any liability of the Stalking Horse Purchaser for breach, in each case as provided in the Stalking Horse Purchase Agreement.

Preliminary Participation Requirements

In order to participate in the Bidding Process, each interested person or entity must deliver the following documents to the parties described below (the “Preliminary Bid Documents”), together with such other documents as the Debtors may request:

- (a) an executed confidentiality agreement (a “Bidder Confidentiality Agreement”), which shall inure to the benefit of any purchaser of the Transferred Assets, and shall be substantially in the form attached hereto as Appendix A or in such other form as the Debtors may require in light of the nature of the confidential information to be shared and the identity and business of the interested person or entity; and
- (b) preliminary proof of the financial capacity of the potential bidder to close the Sale, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the potential bidder (or, if the potential bidder is an entity is formed for the purpose of acquiring the Transferred Assets, the party that will fund the purchase price and bear liability for a breach of the Stalking Horse Purchase Agreement), the adequacy of which the Debtors and its advisors will determine their discretion after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent (as defined below).

The Preliminary Bid Documents must be transmitted so as to be received no later than 10:00 a.m., Eastern Time, on April 3, 2012, by each of the following parties (collectively, the “Notice Parties”): (a) the Debtors, c/o Eastman Kodak Company, 343 State Street, Rochester, NY 14650-0126 (Attn: Jeremy R. Salesin and Dorothy H. Cusker); (b) Sullivan & Cromwell LLP, counsel to the Debtors, 125 Broad Street, New York, New York 10004 (Attn: Andrew G. Dietderich and Michael H. Torkin); (c) Nixon Peabody LLP, counsel to the Debtors, 1300 Clinton Square, Rochester, NY 14604 (Attn: Deborah J. McLean, Esq.); (d) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Brian S. Masumoto, Esq.); (e) Milbank, Tweed, Hadley & McCloy LLP, counsel to the Official Committee of Unsecured Creditors, 1 Chase Manhattan Plaza, New York, New York (Attn: Dennis F. Dunne, Tyson M. Lomazow and Brian Kinney); (f) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders, One Bryant Park, New York, New York 10036 (Attn: Michael S. Stamer, David Botter and Stephen Kuhn); and (g) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders (the “DIP Agent”), 450 Lexington Ave, New York, New York 10017 (Attn: Marshall S. Huebner and Brian M. Resnick); provided, however, that the Debtors may consider Preliminary Bid Documents submitted after the foregoing deadline if the Debtors, after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, determine it will be helpful to the success of the Bidding Process.

Within three (3) Business Days after a potential bidder delivers the Preliminary Bid Documents, the Debtors shall determine after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent and notify such potential bidder whether it qualifies as a “Potential Bidder” and deliver to such Potential Bidder an electronic copy of the form bid purchase agreement (the “Bid Purchase Agreement”); provided that the

Debtors may redact any information contained therein that the Debtors determine to be confidential commercial information. The Stalking Horse Purchaser will be considered a Potential Bidder so long as the Stalking Horse Purchase Agreement is in effect. No person or entity which does not qualify as a Potential Bidder may bid or otherwise participate in the Bidding Process.

Due Diligence

Until the Bid Deadline (as defined below) and subject to the Bidder Confidentiality Agreement, the Debtors may provide in their discretion such due diligence access or additional information as may be reasonably requested by any Potential Bidder. All due diligence requests shall be directed to Subra Narayan, Eastman Kodak Company, c/o Donna Listrani, 343 State Street, Rochester, NY 14650 (t: 650.350.4077, Email: subra.narayan@kodak.com), or Kenneth Fillion, Eastman Kodak Company, 343 State Street, Rochester, NY 14650 (t: 585.724.5800, Email: kenneth.fillion@kodak.com).

Each Potential Bidder who submits a bid will be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets and liabilities of the Debtors and their Affiliates in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express, implied, by operation of law or otherwise, regarding the Debtors or their Affiliates, or the completeness of any information provided in connection with its bid or the Bidding Process, except to the extent expressly stated in definitive documentation entered into by the Debtors and the Successful Bidder.

Bid Deadline

A Potential Bidder who desires to make a bid must deliver the Bid Requirements (as defined below) so as to be received by the Notice Parties no later than 10:00 a.m., Eastern Time, on April 20, 2012 (the "Bid Deadline"). The Debtors may extend the Bid Deadline in their discretion after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent. If the Debtors extend the Bid Deadline, the Debtors will promptly notify all Potential Bidders, the Creditors' Committee, the Second Lien Noteholders Committee and the DIP Agent of such extension.

Bid Requirements

A bid will be considered only if the bid includes all of the following (the "Bid Requirements"):

- (a) authorization for the Debtors to provide the Marked Agreement for such bid to Qualified Bidders as set forth below;
- (b) a duly authorized and executed Bid Purchase Agreement to purchase all or a substantial portion of the Transferred Assets, including the purchase price for the Transferred Assets, together with all exhibits, schedules and ancillary agreements, together with a version marked to show those amendments and modifications to the Bid Purchase

Agreement (a “Marked Agreement”) and the proposed Sale Order, which may not be materially more burdensome to the Debtors than the Stalking Horse Purchase Agreement or inconsistent with these Bidding Procedures;

- (c) constitutes a good faith, bona fide offer to purchase the Transferred Assets and to assume such liabilities as the Proposed Bidder proposes to assume;
- (d) results in a value (after provision for the payment of the Break-Up Fee) as determined by the Debtors after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent pursuant to the Bid Assessment Criteria, either individually or, in conjunction with another Qualified Bid, greater than or equal to the net value the Debtors would receive under the Stalking Horse Purchase Agreement plus \$500,000.00 (it being understood that the Debtors will value any assumption of liabilities or other non-cash consideration in their discretion after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent);
- (e) the identity of each entity that will be participating in connection with the bid and the terms of such participation;
- (f) the identity of the assets to be purchased and the contracts and leases to be assumed;
- (g) an unambiguous commitment to pay all amounts required to cure any defaults pursuant to section 365(b) of the Bankruptcy Code and to provide adequate assurance of future performance under any executory contracts or unexpired leases the Potential Bidder proposes to be assumed;
- (h) information sufficient in the judgment of the Debtors, after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, to demonstrate to the satisfaction of the Debtors that the Potential Bidder has the financial wherewithal and operational ability to consummate the transaction contemplated by the Marked Agreement, or in the absence of such financial wherewithal, written evidence of a firm commitment for financing the consummation of the transaction contemplated by the Marked Agreement, or other evidence of ability to consummate the transaction contemplated by the Marked Agreement that is satisfactory to the Debtors after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent;
- (i) unless the Debtors otherwise determine, is not conditioned on any contingency, including, without limitation, obtaining any of the following: (i) financing, (ii) shareholder or board of directors approval, and/or (iii) the outcome or completion of a due diligence review;
- (j) evidence of approval by the board of directors (or other appropriate governing body) of the Potential Bidder, and, if applicable, its parent company, with respect to the submission of the bid and the execution and delivery of the Marked Agreement and the proposed Sale Order;
- (k) identifies with particularity each and every condition to closing;
- (l) is received on or before the Bid Deadline;

- (m) unless the Debtors otherwise determine, includes a cash deposit equal to 10% of the Purchase Price under the Stalking Horse Purchase Agreement to an escrow account designated by the Debtors (the “Good Faith Deposit”);
- (n) does not include an entitlement to any break-up fee, transaction fee, termination fee or any similar type of payment or, unless the Debtors otherwise determine, any expense reimbursement or any similar type of reimbursement; and
- (o) is irrevocable until such outside date as the Debtors determine or the earlier consummation of a transaction with the Successful Bidder or an Alternative Bidder.

A Potential Bidder who submits a bid that satisfies all of the Bid Requirements and the Due Diligence Requirements (as defined below) shall be a “Qualified Bidder” and its submitted bid will constitute a “Qualified Bid.” The Debtors shall (i) notify the Potential Bidders whether their bids have been determined to be Qualified Bids by no later than 10:00 a.m., Eastern Time, on April 24, 2012, and (ii) after such notification, provide a copy of the Marked Agreement (as it may have been revised prior to the determination that it constitutes a Qualified Bid) for each Qualified Bid to all Qualified Bidders to be received by electronic transmission no later than 12:00 p.m., Eastern Time, on April 24, 2012. The Stalking Horse Purchaser shall be deemed a Qualified Bidder and the Stalking Horse Purchase Agreement shall be deemed a Qualified Bid for all purposes in connection with the Bidding Process.

Evaluation of Qualified Bids

Prior to the Auction (as defined below), the Debtors shall evaluate the Qualified Bids and identify the Qualified Bid or combination of Qualified Bids that is, in the Debtors’ judgment after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, the highest or otherwise best offer (the “Starting Bid”). Within twenty-four (24) hours of such determination, but in no event later than one (1) Business Day prior to the date of the Auction, the Debtors shall distribute copies of the Starting Bid to each Qualified Bidder. If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur, the Stalking Horse Purchase Agreement will be deemed the Successful Bid (as defined herein) and, subject to the Debtors’ termination rights under the Stalking Horse Purchase Agreement, the Debtors will pursue entry of the Sale Order as soon as practicable.

Each Qualified Bid will be valued by the Debtors based upon several factors, including, without limitation, the views of the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent and items such as the net value and recovery to the Debtors’ estates provided by such bid, the total consideration to be received by the Debtors, the number and complexity of transactions that would be required to consummate the Qualified Bid, the number of counterparties to such transactions, the amount of assets included or excluded from the Qualified Bid, whether the Qualified Bid contemplates offers of comparable employment to KIN Debtor’s employees, the number, type and nature of any changes to the Bid Purchase Agreement, the potential disruption to the Debtors that would result from the Qualified Bid being consummated in comparison to that resulting from the Stalking Horse Purchase Agreement and the likelihood and timing of consummating such transactions (the “Bid Assessment Criteria”). The Debtors’ determination of the value of a Qualified Bid, or the relative value of Qualified Bids, shall be final as between the Debtors, the Stalking Horse Purchaser and any Qualified

Bidders and shall not be subject to challenge by the Stalking Horse Purchaser or any Qualified Bidder in such capacity.

Due Diligence from Bidders

Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their representatives (the “Due Diligence Requirements”). Failure of a Qualified Bidder to fully comply with the Due Diligence Requirements will be a basis for the Debtors to determine that a bid made by an otherwise Qualified Bidder is not a Qualified Bid.

Auction

In the event that, on or before the Bid Deadline, the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Purchase Agreement, the Debtors will conduct an auction in accordance with the following procedures (the “Auction”) upon notice to all Qualified Bidders. The Auction will commence at 10:00 a.m., Eastern Time, on April 26, 2012, at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 or such later time or other place as the Debtors shall timely notify the Stalking Horse Purchaser, all other Qualified Bidders and the Notice Parties.

- (a) Unless the Debtors otherwise determine, only the Debtors, the Stalking Horse Purchaser, any representative of each of the Creditors’ Committee, the Second Lien Noteholders Committee and the DIP Agent, and any Qualified Bidder (and the legal and financial advisors to each of the foregoing), will be entitled to attend the Auction, and only the Stalking Horse Purchaser and the Qualified Bidders will be entitled to make any Subsequent Bids at the Auction.
- (b) The Debtors may employ and announce at the Auction additional procedural rules that they determine appropriate under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, provided that such rules are (i) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, the Bankruptcy Rules or any order of the Bankruptcy Court entered in connection herewith and (ii) disclosed to each Qualified Bidder.
- (c) Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale.
- (d) Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by a Qualified Bidder that (i) improves upon such Qualified Bidder’s immediately prior Qualified Bid (a “Subsequent Bid”) and (ii) the Debtors determine that such Subsequent Bid is (a) for the first round, a higher or otherwise better offer than the Starting Bid, and (b) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (defined below). The first minimum incremental bid at the Auction shall have a value as determined by the Debtor of at least \$500,000.00 over the Starting Bid, with any subsequent bid increases to be made in minimum increments of at least \$200,000.00. After the first round of bidding and between each subsequent round of

bidding, the Debtors shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise best offer (the "Leading Bid") and the time in which a Subsequent Bid must be received. The Debtors may permit 'passes' and otherwise modify these procedures as the Debtors determine appropriate in the circumstances after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent.

- (e) For purposes of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Stalking Horse Purchaser), the Debtors will give the Stalking Horse Purchaser a credit equal to the Break Up Fee.
- (f) Absent irregularities in the conduct of the Auction, the Bankruptcy Court will not consider bids made after the Auction is closed.

Selection Of Successful Bid

The Debtors reserve the right to (i) determine in their discretion, after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, which bid is the highest or best (the "Highest Bid(s)") and the bidder(s) making such bid(s), the "Highest Bidder(s)") based on the Bid Assessment Criteria or such other considerations as they deem appropriate and (ii) reject at any time prior to entry of a Bankruptcy Court order approving an offer, without liability, any offer, other than the Stalking Horse Bid, that the Debtors, in their discretion after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, deem to be (x) inadequate or insufficient, (y) not in conformity with the requirements of the Bidding Procedures Order, the Bankruptcy Code, the Bankruptcy Rules or any order of the Bankruptcy Court entered in connection herewith or (z) contrary to the best interests of the Debtors. If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Highest Bid at the Auction and (ii) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Highest Bid and entry of the Sale Order approving such Highest Bid.

Sale Hearing

The Sale Hearing will be held before the Honorable Allan L. Gropper at 2:30 p.m., Eastern Time, on April 30, 2012, in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004. The Sale Hearing may be adjourned without further notice by an announcement of the adjourned date at the Sale Hearing. If the Debtors do not receive any Qualified Bids (other than the Qualified Bid of the Stalking Horse Purchaser), the Debtors will report the same to the Bankruptcy Court at the Sale Hearing and will proceed with a sale of the Transferred Assets to the Stalking Horse Purchaser following entry of the Sale Order in accordance with the terms of the Stalking Horse Purchase Agreement. If the Debtors do receive additional Qualified Bids, then, at the Sale Hearing, the Debtors will seek approval of the Highest Bid and, if the Highest Bid is not promptly approved and the Debtors so elect, the next highest or best Qualified Bid received in the Auction, as such will be determined by the Debtors after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent. The Qualified Bid approved by the Bankruptcy Court and

reflected in the entry of the Sale Order shall be deemed to be the “Successful Bid”, and the applicable Qualified Bidder the “Successful Bidder”, for purposes hereof.

In addition, at the Debtors’ election, one or more other Qualified Bid(s) received in the Auction constituting the next highest or best bid(s) may be approved alongside the Successful Bid (such bids, the “Alternate Bid(s),” and such bidder(s), the “Alternate Bidder(s)”); *provided, however*, that in no event shall the Stalking Horse Purchase Agreement be deemed an Alternate Bid or the Stalking Horse Purchaser deemed an Alternate Bidder without the Stalking Horse Purchaser’s consent, in its sole discretion. Following approval of the Sale to the Successful Bidder(s), if the Successful Bidder(s) fail(s) to consummate the Sale because of (a) failure of a condition precedent beyond the control of either the Debtors or the Successful Bidder(s) upon which occurrence the Debtors have filed a notice with the Bankruptcy Court advising of such failure or (b) a breach or failure to perform on the part of such Successful Bidder(s) upon which occurrence the Debtors have filed a notice with the Bankruptcy Court advising of such breach or failure to perform, then the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not directed, to effectuate a Sale to the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Bankruptcy Court.

Break-Up Fee

If the Stalking Horse Purchaser is not the Successful Bidder and the Sale is consummated with a Successful Bidder pursuant to a Successful Bid, the Break-Up Fee shall be paid to the Stalking Horse Purchaser out of the first available proceeds received on account of the Successful Bid (the “Sale Proceeds”) in accordance with the Stalking Horse Purchase Agreement; *provided, however*, that to the extent the Sale Proceeds do not cover the full amount of the Break-Up Fee, the Break-Up Fee shall be deemed an allowed expense of administration against Sellers and their estates under Section 503(b) of the Bankruptcy Code.

Return of Good-Faith Deposit

Each Good Faith Deposit shall be returned to each Qualified Bidder not selected by the Debtors as the Successful Bidder(s) or Alternative Bidder(s) by no later than the fifth (5th) Business Day following the conclusion of the Auction. The Good Faith Deposits of the Successful Bidder(s) and Alternative Bidder(s) will be retained in escrow until the earlier of (a) the closing of the Sale and (b) the permanent withdrawal of the Transferred Assets for sale by the Debtors. At the closing of the Sale contemplated by the Successful Bid, any Alternative Bidder(s)’ Good Faith Deposit shall be returned to the Alternative Bidder(s) and the Successful Bidder(s) will be entitled to credit the amount of its Good Faith Deposit against the price paid for the Transferred Assets. If the Successful Bidder(s) fail to consummate the Sale because of a breach or failure to perform on the part of such Successful Bidder(s), the Successful Bidder(s)’ Good Faith Deposit shall be forfeited to the Debtors as liquidated damages.

Beneficiaries; Modification of Procedures

No person or entity other than the Debtors and the Stalking Horse Purchaser shall be a beneficiary of or have a right to enforce these bidding procedures or the Bidding Process *provided, that*, nothing herein shall limit the rights of the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent to object that the Bidding Process was not conducted in accordance with these Bidding Procedures. The Debtors may amend these bidding procedures or the Bidding Process after consultation with the Creditors Committee, the Second Lien Noteholders Committee and the DIP Agent, *provided* that (a) no amendment inconsistent with the Stalking Horse Purchase Agreement may be made without the consent of the Stalking Horse Purchaser, such consent not to be unreasonably withheld, conditioned or delayed, and (b) no amendment to these Bidding Procedures shall affect the right of the Stalking Horse Purchaser to terminate the Stalking Horse Purchase Agreement, pursuant to the terms and conditions set forth therein, in the event of a delay in reaching the milestones specified therein.

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)

ORDER (A) AUTHORIZING CERTAIN DEBTORS’ ENTRY INTO THE STALKING HORSE PURCHASE AGREEMENT, (B) AUTHORIZING AND APPROVING THE BIDDING PROCEDURES AND BREAK-UP FEE, (C) APPROVING THE NOTICE PROCEDURES, (D) AUTHORIZING THE FILING OF CERTAIN DOCUMENTS UNDER SEAL AND (E) SETTING A DATE FOR THE SALE HEARING

Upon the motion (the “**Motion**”)² of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for an order (i)(a) authorizing Kodak Imaging Network, Inc. (“**KIN**”) and Eastman Kodak Company (“**Kodak**” and, together with KIN, the “**Sellers**”) to enter into that certain transfer agreement dated as of March 1, 2012, with Shutterfly, Inc. (the “**Stalking Horse Purchaser**”) for the sale of certain assets of KIN’s business “Kodak Gallery” (as further defined in the Stalking Horse Purchase Agreement, the “**Acquired Assets**”) as a “stalking-horse” sale agreement (as appended to the Motion as Exhibit B and, together with all Schedules and Exhibits thereto, the “**Stalking Horse Purchase Agreement**”), (b) authorizing and approving the bidding procedures (appended hereto as Exhibit 1, the “**Bidding Procedures**”) and the Break-Up Fee (as

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 capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

defined below), including³ granting administrative expense status to the Break-Up Fee, (c) approving the form and manner of notice of the Sale (the “**Notice Procedures**”), (d) authorizing the Debtors to file certain documents under seal and (e) setting the time, date and place for a hearing (the “**Sale Hearing**”) to consider the sale of the Acquired Assets (the “**Sale**”); (ii) authorizing and approving the sale of the Acquired Assets, free and clear of all claims and interests, pursuant to section 363 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), except as set forth in the Stalking Horse Purchase Agreement; and (iii) granting such other and further relief as this Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and upon consideration of the Declaration of Antoinette P. McCorvey In Support of the Debtors’ Motion for Orders (i)(a) Authorizing Certain Debtors’ Entry Into the Stalking Horse Purchase Agreement, (b) Authorizing and Approving the Bidding Procedures and Break-Up Fee, (c) Approving the Notice Procedures, (d) Authorizing the Filing of Certain Documents Under Seal and (e) Setting a Date for the Sale Hearing and (ii) Authorizing and Approving the Sale of Certain Assets of Kodak Imaging Network Inc. Free and Clear of All Claims and Interests, dated March 14, 2012 [Docket No. 597]; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or

³ For the avoidance of doubt, as used in this Order, “including” means “including without limitation”.

further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:⁴

A. The statutory and legal predicates for the relief requested in the Motion are sections 105 and 363 of the Bankruptcy Code, and rules 2002, 6004, and 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6004-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”).

B. Good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order (including with respect to the proposed Bidding Procedures and the Break-Up Fee) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 6004(a).

C. The Debtors’ proposed sale notice, substantially in the form attached to the Motion as Exhibit D (the “**Sale Notice**”), is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction (if necessary), and the Sale Hearing, and no other or further notice is required.

D. No further or other notice beyond that described in the foregoing Paragraphs is required in connection with the Transactions.

⁴ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. See Fed. R. Bankr. P. 7052.

E. The Bidding Procedures, in the form attached hereto as Exhibit 1, are fair, reasonable, and appropriate and are designed to maximize recovery with respect to the sale of the Acquired Assets.

F. The Debtors have demonstrated compelling and sound business justifications for authorizing the sale of the Acquired Assets, entry into the Stalking Horse Purchase Agreement and the payment of the Break-Up Fee under the circumstances, timing, and procedures set forth herein, in the Motion and in the Stalking Horse Purchase Agreement.

G. Entry into the Stalking Horse Purchase Agreement with the Stalking Horse Purchaser as a “stalking-horse” sale agreement is in the best interest of the Debtors and the Debtors’ estates and creditors. The Stalking Horse Purchase Agreement will enable the Debtors to secure an adequate floor for the Auction and will provide a clear benefit to the Debtors’ estates.

H. The Break-Up Fee is fair and reasonable and provides a benefit to the Debtors’ estates and creditors.

I. The Debtors’ payment of the Break-Up Fee under the conditions set forth in section 7.2 of the Stalking Horse Purchase Agreement is (a) an actual and necessary cost of preserving the Debtors’ estates, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtors’ estates and creditors and all parties in interest herein, (c) reasonable and appropriate, and (d) necessary to ensure that the Stalking Horse Purchaser will continue to pursue the proposed Stalking Horse Purchase Agreement to undertake the sale of the Acquired Assets. Notwithstanding anything to the contrary in this or any other order of this Court, the Break-Up Fee shall constitute an administrative expense with priority pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code.

J. The filing of certain documents under seal, including Exhibit A to the Stalking Horse Purchase Agreement, is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein.

K. The Bidding Procedures comply with the requirements of Local Rule 6004-1.

L. The entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and therefore

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

The Bidding Procedures

2. The Bidding Procedures attached hereto as Exhibit 1 are hereby approved.

The Debtors are hereby authorized to conduct a sale by auction of the Acquired Assets pursuant to the Bidding Procedures and the terms of this Order.

3. The Stalking Horse Purchaser shall be deemed a Qualified Bidder pursuant to the Bidding Procedures for all purposes for so long as the Stalking Horse Purchase Agreement is in effect.

4. The Bidding Procedures shall apply to the Potential Bidders and Qualified Bidders and the conduct of the sale of the Acquired Assets and the Auction.

The Stalking Horse Purchase Agreement

5. Subject to the Bidding Procedures and approval of the sale at the Sale Hearing, the Debtors' entry into the Stalking Horse Purchase Agreement is hereby approved.

The Break-Up Fee

6. To the extent due under section 7.2 of the Stalking Horse Purchase Agreement, the Debtors are authorized to pay to the Stalking Horse Purchaser a fee of two

hundred and fifty thousand dollars (\$250,000) (the “**Break-Up Fee**”), which shall be payable as provided for pursuant to the terms of the Stalking Horse Purchase Agreement.

7. The Debtors’ obligation to pay the Break-Up Fee pursuant to section 7.2 of the Stalking Horse Purchase Agreement shall survive termination of the Stalking Horse Purchase Agreement, shall constitute an administrative expense claim under section 503(b) of the Bankruptcy Code, and shall be payable under the terms and conditions of the Stalking Horse Purchase Agreement and this Order, notwithstanding section 507(a) of the Bankruptcy Code.

Notice Procedures

8. The Sale Notice, in substantially the same form as annexed to the Motion as Exhibit D, is sufficient to provide effective notice to all interested parties of the Bidding Procedures, the Auction and the Sale, pursuant to Bankruptcy Rules 2002(a)(2) and 6004 and the Case Management Procedures, as applicable, and are hereby approved.

9. As soon as reasonably practicable after entry of this Bidding Procedures Order, the Debtors (or their agent) shall serve the Sale Notice, in substantially the form attached as Exhibit D to the Motion, by first-class mail, postage prepaid, and/or via overnight mail, facsimile, hand delivery or electronic transmission upon (i) all entities reasonably known to have expressed an interest in a transaction with respect to the Acquired Assets since August 1, 2010, (ii) all entities reasonably known to have asserted any claim, lien, encumbrance or interest in the Acquired Assets, (iii) the Office of the United States Trustee for the Southern District of New York; (iv) Milbank, Tweed, Hadley & McCloy LLP, counsel to the Creditors’ Committee; (v) counsel to any other statutory committee appointed in these chapter 11 cases; (vi) counsel to the agent under the prepetition revolving credit facility; (vii) U.S. Bank, National Association, as indenture trustee; (viii) Wilmington Trust, National Association, as indenture trustee; (ix) the

Securities and Exchange Commission; (x) the Internal Revenue Service; (xi) the Environmental Protection Agency; (xii) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders; (xiii) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders; (xiv) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (xv) the additional persons agreed between the Debtors and the Stalking Horse Purchaser to be served in accordance with the terms of the Stalking Horse Purchase Agreement (collectively, the "**Notice Parties**").

Objection Procedures

10. Any party that seeks to object to the relief requested in the Motion pertaining to approval of the sale of the Acquired Assets shall file a formal objection that complies with the objection procedures as set forth in the Motion. Each objection shall state the legal and factual basis of such objection and may be orally supplemented at the Sale Hearing.

11. Any and all written objections as contemplated by this Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules, the Local Rules and the Case Management Procedures; (d) filed with the Bankruptcy Court; and (e) served on (i) the Debtors, (ii) Sullivan & Cromwell LLP, counsel to the Debtors, (iii) Nixon Peabody LLP, counsel to the Debtors, (iv) the Stalking Horse Purchaser, (v) Vectis Law Group, counsel to the Stalking Horse Purchaser and (vi) the Notice Parties in accordance with the Case Management Procedures so as to be received on or before the appropriate deadline as set forth in the Motion.

12. Failure to object to the relief requested in the Motion by the General Objection Deadline shall be deemed to be "consent" for purposes of section 363(f) of the Bankruptcy Code.

13. The General Objection Deadline (as defined in the Motion) is **4:00 p.m. (ET) on April 23, 2012.**

14. The Supplemental Objection Deadline (as defined in the Motion) is **5:00 p.m. (ET) on April 27, 2012.**

15. All objections to the Motion or the relief requested therein (and all reservations of rights included therein), as it pertains to the entry of this Order, are overruled to the extent they have not been withdrawn, waived or otherwise resolved.

Other Relief Granted

16. The Auction is scheduled for **10:00 a.m. (ET) on April 26, 2012** at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 or such later time or other location as shall be timely communicated in accordance with the Bidding Procedures.

17. The Sale Hearing shall be held in this Court at **2:30 p.m. (ET) on April 30, 2012.** The Sale Hearing may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Sale Hearing or by the filing of a hearing agenda.

18. The Debtors are authorized to conduct the Sale (as defined in the Bidding Procedures) in accordance with the Bidding Procedures and without the necessity of complying with any state or local bulk transfer laws or requirements.

19. The Debtors are authorized to file Exhibit A to the Stalking Horse Purchase Agreement under seal. The Debtors shall provide such Exhibit to the Clerk's Office of the United States Bankruptcy Court for the Southern District of New York in a prominently marked envelope with a cover sheet attached containing (i) the caption, (ii) the docket number of the Motion, (iii) the docket number of this Order, (iv) a statement identifying the contents of the

envelope as Exhibit A and (v) the legend “DOCUMENTS TO BE KEPT UNDER SEAL” in bold print.

20. In the event there is a conflict between this Order and the Motion or the Stalking Horse Purchase Agreement, this Order shall control and govern.

21. This Order shall be binding in all respects upon any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Debtors’ bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code.

22. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, the Second Lien Noteholder Committee, the Creditors’ Committee or the agent for the DIP Financing (as defined below), or shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Order.

23. Nothing in this Order shall be deemed or construed to impair the rights of the Creditors’ Committee, the Second Lien Noteholder Committee or the agent for the DIP Financing to raise at the Sale Hearing any objections to the Sale, including, but not limited to, the Stalking Horse Purchase Agreement (other than Sections 5.10 or 7.2 of the Stalking Horse Purchase Agreement) or any other purchase agreement submitted by a Successful Bidder or any Alternate Bidder, and any related orders.

24. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) the terms of this Order shall be immediately effective and

enforceable upon its entry, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise, (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order. For the avoidance of doubt, the Break-Up Fee approved by this Order shall be immediately appealable and failure to appeal in accordance with the Bankruptcy Rules or other applicable law shall constitute a waiver of such rights.

25. All net proceeds from the consummation of the Sale or the Alternative Transaction (as defined in the Stalking Horse Purchase Agreement) shall be treated in accordance with the terms of the Debtors' postpetition secured debtor-in-possession financing (the "**DIP Financing**") and any order of this Court approving the DIP Financing.

26. The requirements set forth in Local Rule 9013-1(b) are satisfied.

27. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

28. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

29. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: [•], 2012
New York, New York

Allan L. Gropper
United States Bankruptcy Judge

**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)

**ORDER AUTHORIZING AND APPROVING THE SALE OF
CERTAIN ASSETS OF KODAK IMAGING NETWORK, INC.
FREE AND CLEAR OF ALL CLAIMS AND INTERESTS**

Upon the motion (the “**Motion**”)² of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for an order (i)(a) authorizing Kodak Imaging Network, Inc. (“**KIN**”) and Eastman Kodak Company (“**Kodak**” and, together with KIN, the “**Sellers**”) to enter into that certain transfer agreement dated as of March 1, 2012, with Shutterfly, Inc. (the “**Stalking Horse Purchaser**”) as a “stalking-horse” sale agreement (the “**Stalking Horse Purchase Agreement**”), (b) authorizing and approving the Bidding Procedures and the Break-Up Fee, including granting administrative expense status to the Break-Up Fee, (c) approving the Notice Procedures, (d) authorizing the Debtors to file certain documents under seal and (e) setting the time, date and place for the Sale Hearing (as defined below); (ii) authorizing and approving the

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 capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion, or if not defined in the Motion, are to be given the meanings ascribed to them in the Purchase Agreement.

sale of certain assets of KIN's business "Kodak Gallery", free and clear of all claims and interests, pursuant to section 363 of the Bankruptcy Code, except as set forth in the Stalking Horse Purchase Agreement; and (iii) granting them such other and further relief as the Court deems just and proper; and the Court having entered an order approving, among other things, the Bidding Procedures (the "**Bidding Procedures Order**") based upon the evidence presented at the bidding procedures hearing held on March 20, 2012 (the "**Bidding Procedures Hearing**"); and the Auction (as defined below) having been held in accordance with the Bidding Procedures Order; and at the conclusion of the Auction [●] (the "**Purchaser**") was chosen as the Successful Bidder in accordance with the Bidding Procedures; and the Court having conducted a hearing on the Motion on April 30, 2012 (the "**Sale Hearing**"); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the purchase agreement attached hereto as Exhibit 1 (the "**Purchase Agreement**"), by and among Sellers and the Purchaser, and the transactions contemplated thereby (the "**Transactions**"); and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at the Bidding Procedures Hearing and the Sale Hearing[; and upon consideration of the Sale Declaration]; and upon the record of the Bidding Procedures Hearing and the Sale Hearing and these chapter 11 cases, and after due deliberation thereon, and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:³

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. See Fed. R. Bankr. P. 7052.

A. The statutory and legal predicates for the relief requested in the Motion are Sections 105, 362 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9014 and 9018, and Local Rule 6004-1.

B. Notice of the Motion and the Sale Hearing has been provided to (i) the United States Trustee for the Southern District of New York; (ii) Milbank, Tweed, Hadley & McCloy LLP, counsel to the Creditors' Committee; (iii) counsel to all other statutory committees appointed in these chapter 11 cases; (iv) counsel to the agent under the prepetition revolving credit facility; (v) U.S. Bank, National Association, as indenture trustee; (vi) U.S. Bank, National Association, as indenture trustee; (vii) Wilmington Trust, National Association, as indenture trustee; (viii) the Securities and Exchange Commission; (ix) the Internal Revenue Service; (x) the Environmental Protection Agency; (xi) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders; (xii) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of the Second Lien Noteholders; (xiii) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; (xiv) all entities reasonably known to have expressed an interest in a transaction with respect to the Acquired Assets since August 1, 2010 and (xv) all entities reasonably known to have asserted any claim, lien, encumbrance or interest in the Acquired Assets.

C. Based upon the affidavits of service filed with the Court: (a) notice of the Motion and the Sale Hearing was adequate and sufficient under the circumstances of these chapter 11 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, the Case Management Order and the Bidding Procedures Order, and (b) a reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein was afforded to all interested persons and entities.

D. No further or other notice beyond that described in the foregoing Paragraph B is required in connection with the Transactions.

E. The Sellers and their professionals marketed the Acquired Assets and conducted the marketing and sale process described in the Motion. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Acquired Assets.

F. On March 1, 2012, the Sellers and the Stalking Horse Purchaser entered into the Stalking Horse Purchase Agreement, subject to higher and better offers.

G. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders. The Debtors and their advisors undertook appropriate marketing efforts, and conducted the sale process (including⁴ the Auction) without collusion and in accordance with the Bidding Procedures. The Debtors (a) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Acquired Assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets and (c) considered any bids submitted on or before the Bid Deadline (as defined in the Bidding Procedures).

H. After the conclusion of the auction held on April 26, 2012 (the “**Auction**”), the Debtors determined in a valid and sound exercise of their business judgment that the highest and best Qualified Bid (as defined in the Bidding Procedures Order) was that of the Purchaser.

I. Subject to the entry of this Order, each Seller (i) has full power and authority to execute the Purchase Agreement and all other documents contemplated thereby, (ii) has all of the

⁴ For the avoidance of doubt, as used in this Order, “including” means “including without limitation”.

power and authority necessary to consummate the Transactions contemplated by the Purchase Agreement and (iii) has taken all corporate action necessary to authorize and approve the Purchase Agreement and all other documents contemplated thereby, the sale of the Acquired Assets (the “Sale”) and the consummation by the Debtors of the Transactions. No consents or approvals, other than those expressly provided for in the Purchase Agreement or this Order, are required for the Debtors to close the Sale and consummate the Transactions.

J. The Purchase Agreement and the Transactions were negotiated and have been and are undertaken by the Debtors and the Purchaser at arm’s length without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser is purchasing the Acquired Assets in good faith and the Purchaser has otherwise proceeded in good faith in connection with these proceedings in that *inter alia*: (i) the Debtors were free to deal with any other party in connection with the sale of the Acquired Assets; (ii) the Purchaser complied with the provisions in the Bidding Procedures Order; (iii) the Purchaser agreed to subject its bid to the competitive bidding process set forth in the Bidding Procedures Order; and (iv) no common identity of directors or controlling stockholders exists between the Purchaser and any of the Debtors. As a result of the foregoing, the Debtors and the Purchaser are entitled to the protections of section 363(m) of the Bankruptcy Code.

K. The total consideration provided by the Purchaser for the Acquired Assets is the highest and best offer received by the Sellers, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession thereof, or the District of Columbia, for the Acquired Assets.

L. No person or entity or group of persons or entities has offered to purchase the Acquired Assets pursuant to the Bidding Procedures in a transaction that would provide greater value to the Sellers than the Transactions. The Court's approval of the Motion, the Purchase Agreement, and all other documents contemplated thereby is in the best interests of the Debtors, their estates, their creditors and all other parties in interest.

M. The transfer of the Debtors' right, title and interest in the Acquired Assets to the Purchaser will be a legal, valid and effective transfer of the Acquired Assets, and, except for the Permitted Encumbrances (as defined in Section 1.1 of the Purchase Agreement), will vest the Purchaser with all of the Debtors' right, title and interest in and to the Acquired Assets, free and clear of (i) all claims as defined in section 101(5) of the Bankruptcy Code, including all rights or causes of action (whether in law or in equity), obligations, demands, restrictions, indemnities, consent rights, options, contract rights, covenants and interests of any kind or nature whatsoever, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "**Claims**") and (ii) all Interests (as defined herein) of any kind or nature whatsoever.

N. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Transactions if the sale of the Acquired Assets to the Purchaser was not free and clear of all Claims and Interests, except for the Permitted Encumbrances, or if the Purchaser would, or in the future could, be liable for such Claims and Interests. A sale of the Acquired Assets other than one free and clear of all Claims and Interests, except for Permitted Encumbrances, would yield substantially less value for the Debtors' estates, with less certainty, than the Sale. Therefore, the Sale contemplated by the Purchase Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

O. The Debtors may sell the Acquired Assets free and clear of all Claims and Interests (subject only to Permitted Encumbrances), because, with respect to each creditor asserting a Claim or Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Claims and Interests (other than holders of Permitted Encumbrances) who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims or Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

P. Neither the Debtors nor the Purchaser engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Transactions to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

Q. The Purchase Agreement and the agreements contemplated thereby were not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Purchaser Parties have entered into the Purchase Agreement or any agreement contemplated thereby or is consummating the Sale with any fraudulent or otherwise improper purpose.

R. The Purchaser is not holding itself out to the public as a continuation of the Debtors and is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors or stockholders existed between the Purchaser and any of the Debtors.

S. Entry into the Purchase Agreement, the agreements contemplated thereby and consummation of the Transactions constitute the exercise by the Debtors of sound business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest. The Court finds that the Debtors have articulated good and sufficient business reasons justifying the Sale of the Acquired Assets to the Purchaser.

T. The Sale pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' parties in interest nor impermissibly dictates the terms of a liquidating plan for the Debtors. The Sale does not constitute a *sub rosa* chapter 11 plan.

U. The Debtors have, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code. Specifically, the Acquired Assets to be transferred by the Debtors do not include the User Data and Archives of those Gallery Users who opt out of the transfer as provided in KIN's Privacy Notice. Furthermore, Sellers and Purchaser agree to use commercially reasonable efforts to comply with KIN's Terms of Service and Privacy Notice from the date of the Purchase Agreement until the end of the post-closing transition period, including without limitation as it applies to a Gallery User's right to opt out of the transfer contemplated by the Purchase Agreement. Accordingly, appointment of a consumer privacy ombudsman pursuant to sections 363(b)(1) or 332 of the Bankruptcy Code is not required with respect to the Transactions.

V. Time is of the essence in consummating the Sale. In order to maximize the value of the Debtors' assets, it is essential that the sale of the Acquired Assets occur within the time constraints set forth in the Purchase Agreement. Accordingly, there is a cause to lift the stay contemplated by Bankruptcy Rule 6004(h).

W. There is no legal or equitable reason to delay the transactions contemplated by the Purchase Agreement.

X. Exhibit A to the Purchase Agreement contains substantial sensitive commercial information that would be damaging to the Debtors and the Purchaser if such information were to be disclosed to their competitors. Filing this Exhibit to the Purchase Agreement under seal is in the best interests of the Debtors, their estates, and all parties in interest; and therefore

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. All objections with regard to the relief sought in the Motion that have not been withdrawn, waived, settled or otherwise dealt with as expressly provided herein or on the record at the Sale Hearing, are hereby overruled on the merits, with prejudice.
3. Pursuant to sections 105 and 363 of the Bankruptcy Code (a) the Purchase Agreement, the agreements contemplated thereby, the Sale of the Acquired Assets, and consummation of the Transactions are hereby approved and the Debtors are authorized to comply with the Purchase Agreement[, and (b) the Alternate Bid (as defined in the Bidding Procedures) submitted by the Alternate Bidder (as defined in the Bidding Procedures) with a cash purchase price of [•] pursuant to the terms submitted therewith, is hereby approved and authorized as an Alternate Bid and shall remain open as an Alternate Bid pursuant to the terms of the Bidding Procedures Order and the bid terms submitted at the Auction.]
4. [In the event that the Sale contemplated by the Purchase Agreement cannot be consummated, the Alternate Bid shall be and is hereby approved, the execution of the asset sale agreement pursuant to the Alternate Bid by the Debtors is approved and the Debtors are authorized to take such additional steps and execute such additional documents, including the

ancillary agreements contemplated by the Alternate Bid, as may be necessary or desirable for the completion of the Sale and for the conveyance of the Debtors' right, title and interest in and to the Acquired Assets to the Alternate Bidder.]

5. Upon the Closing, (a) the Debtors are hereby authorized to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer and assignment of the Debtors' right, title and interest in the Acquired Assets to the Purchaser free and clear of any and all Claims and Interests pursuant to section 363 of the Bankruptcy Code including all liens, including any lien (statutory or otherwise), Lien (as defined in the Purchase Agreement), mortgage, pledge, security interest, charge, right of first refusal, hypothecation, encumbrance, easement, encroachment, right-of-way, restrictive covenant, rights of offset or recoupment, lease or conditional sale arrangement (collectively, the "**Liens**") and debts, liabilities, obligations, contractual rights and claims and labor, employment and pension claims, in each case, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or un-matured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "**Liabilities**" and together with the Liens, the "**Interests**") other than the Permitted Encumbrances, with such Interests to attach to the sale proceeds in the same validity, extent and priority as existed with respect to the Acquired Assets immediately prior to the Transactions, subject to any rights, claims and defenses of the Debtors and other parties in interest, and (b) except for the Permitted Encumbrances or as otherwise required under applicable

non-bankruptcy law, all such Interests shall be and hereby are released, terminated and discharged as to the Purchaser and the Acquired Assets.

6. Except with respect to enforcing the terms of the Purchase Agreement, the Bidding Procedures Order or this Order, no person shall take any action to prevent, enjoin or otherwise interfere with the consummation of the Sale of the Acquired Assets and the Transactions, including the transfer to the Purchaser of the Debtors' title to and the right to use and enjoy the Acquired Assets.

7. The transfer of the Debtors' right, title and interest in the Acquired Assets to the Purchaser pursuant to the Purchase Agreement shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtors' right, title and interest in the Acquired Assets, and vests with or will vest in the Purchaser all right, title and interest of the Debtors in the Acquired Assets, free and clear of all Claims and Interests of any kind or nature whatsoever (other than the Permitted Encumbrances), with any Interests attaching to the sale proceeds in the same validity, extent and priority as existed with respect to the Acquired Assets immediately prior to the Transactions, subject to any rights, claims and defenses of the Debtors and other parties in interest.

8. Upon the Closing, and except for the Permitted Encumbrances or as required under applicable non-bankruptcy law, the Purchaser shall not be liable for any Claims against, Interests in or obligations of, the Debtors or any of the Debtors' predecessors or affiliates, as a result of having purchased the Acquired Assets. Without limiting the generality of the foregoing, (a) the Purchaser shall have no liability or obligation to pay wages, bonuses, severance pay, benefits (including contributions or payments on account of any under-funding with respect to any pension plans) or make any other payment to employees of the Debtors, other than as

expressly set forth in the Purchase Agreement, (b) the Purchaser shall have no liability or obligation in respect of any employee pension plan, employee health plan, employee retention program, employee incentive program or any other similar agreement, plan or program to which any Debtors are a party (including liabilities or obligations arising from or related to the rejection or other termination of any such plan, program agreement or benefit), (c) the Purchaser shall in no way be deemed a party to or assignee of any such employee benefit, agreement, plan or program, and (d) all parties to any such employee benefit, agreement, plan or program are enjoined from asserting against the Purchaser any Claims arising from or relating to such employee benefit, agreement, plan or program.

9. The Transactions have been undertaken by the Purchaser in good faith and the Purchaser is a good faith purchaser of the Acquired Assets as that term is used in Bankruptcy Code section 363(m). The Purchaser is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

10. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors and the Purchaser are each hereby authorized to take any and all actions, including the payment of any reasonable fee or cost, necessary or appropriate to: (i) consummate the Sale of the Acquired Assets to the Purchaser and the Closing of the Sale in accordance with the Motion, the Purchase Agreement and this Order; and (ii) perform, consummate, implement and close fully the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement. The Debtors are hereby authorized to perform each of their covenants and undertakings as provided in the Purchase Agreement and the agreements contemplated thereby prior to or after Closing without further order of the Court.

11. The automatic stay pursuant to section 362 of the Bankruptcy Code is modified solely to the extent necessary, without further order of the Court, to allow the Purchaser to (i) give the Debtors any notice provided for in the Purchase Agreement, and (ii) enforce any of its remedies under the Purchase Agreement and any ancillary agreements in accordance with the terms and conditions thereof; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

12. For the avoidance of doubt, the Transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

13. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale and the Transactions.

14. The Debtors have, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code. Accordingly, appointment of a consumer privacy ombudsman pursuant to sections 363(b)(1) or 332 of the Bankruptcy Code is not required in connection with the consummation of the Transactions.

15. The consideration provided by the Purchaser for the Acquired Assets under the Purchase Agreement shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded, under section 363(n) or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any other similar state laws.

16. From and after the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of

the Debtors' right, title and interest in the Acquired Assets and a bill of sale transferring good, valid and marketable title in such Acquired Assets to the Purchaser on the Closing Date pursuant to the terms of the Purchase Agreement, free and clear of all Claims and Interests (other than the Permitted Encumbrances).

17. Any and all Acquired Assets in the possession or control of any person or entity, including any vendor, supplier or employee of the Debtors shall be transferred to the Purchaser free and clear of all Claims and Interests (other than the Permitted Encumbrances) and shall be delivered at the time of Closing (or such other time as provided in the Purchase Agreement) to the Purchaser.

18. Upon the Closing, all holders of Claims and Interests (other than holders of Permitted Encumbrances) against the Debtors or the Acquired Assets are permanently and forever barred, restrained and enjoined from asserting any Claims or Interests or enforcing remedies, or commencing or continuing in any manner any action or other proceeding of any kind, against the Purchaser or the Acquired Assets on account of any of the Claims or Interests.

19. This Order is and shall be effective as a determination that, other than the Permitted Encumbrances, all Claims and Interests of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected.

20. If any person or entity that has filed statements or other documents or agreements evidencing Interests in the Acquired Assets shall not have delivered to the Debtors before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary

for the purpose of documenting the release of all Interests (other than the Permitted Encumbrances) that such person or entity has or may assert with respect to the Acquired Assets, the Debtors and the Purchaser are each hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets; *provided, however*, that this paragraph 20 shall not apply to the agent or collateral agent under the Debtors' secured Debtor-in-Possession Credit Agreement, dated as of January 20, 2012 (as amended from time to time, the "**DIP Credit Agreement**").

21. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Transactions.

22. No governmental unit may revoke or suspend any right or other permission relating to the use of the Acquired Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale.

23. All net proceeds from the consummation of the Sale or the Alternative Transaction (as defined in the Stalking Horse Purchase Agreement) shall be treated in accordance with (i) the terms of the DIP Credit Agreement (including, but not limited to, the mandatory prepayment obligations under Section 2.10(b) of the DIP Credit Agreement) and (ii) any order of this Court approving the debtor-in-possession financing provided for thereunder (the "**DIP Financing**").

24. To the extent there is any inconsistency between the terms of this Order and the terms of the Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of this Order shall govern.

25. Except as expressly provided in this Order or the Purchase Agreement, nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtors, their estates or their creditors from asserting or otherwise impair or diminish any right (including any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not an Acquired Asset.

26. Nothing in this Order, the Purchase Agreement or the Transactions shall create a license, express or implied, to any Kodak or KIN intellectual property, including without limitation, any license to the patents asserted in a certain litigation, *Eastman Kodak Company v. Shutterfly, Inc.*, Civil Action No. 10-1079-SLR, now pending in the United States District Court for the District of Delaware (“**Shutterfly Litigation**”). Notwithstanding the foregoing, no revenue generated by Kodak Gallery prior to the 60th day following the Closing Date shall be subject to damages in the Shutterfly Litigation.

27. This Order shall not be modified by any chapter 11 plan confirmed in these chapter 11 cases or subsequent order of this Court unless expressly consented to in writing by the Purchaser.

28. This Order shall be binding in all respects upon all creditors and interest holders of any of the Debtors, the Creditors’ Committee, the Ad Hoc Committee of the Second Lien Noteholders, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Debtors’ bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code, and the Purchase Agreement shall not be subject to rejection or avoidance under any circumstances.

29. The failure specifically to include or make reference to any particular provisions of the Purchase Agreement or any ancillary agreement contemplated thereby in this Order shall

not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement is authorized and approved in its entirety.

30. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order, including the authority to: (1) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Purchase Agreement, the ancillary agreements contemplated thereby, all amendments thereto and any waivers and consents thereunder; (2) protect the Purchaser, or the Acquired Assets, from and against any Claims or Interests; (3) compel delivery of all Acquired Assets to the Purchaser; (4) compel the Purchaser and the Debtors to perform all of their obligations under the Purchase Agreement; (5) resolve any disputes arising under or related to the Purchase Agreement, the Sale or the Transactions; and (6) provide any further relief that is necessary or appropriate in furtherance of this Order or the Transactions.

31. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written document signed by the parties thereto in accordance with the terms thereof; *provided, that*, (a) an order of the Court has approved such modification, amendment, or supplement; (b) without further order of the Court, each of the Creditors' Committee and the Ad Hoc Committee of Second Lien Noteholders have consented in writing to such modification, amendment, or supplement (such consent not to be unreasonably withheld, conditioned or delayed), provided that the DIP Agent shall have been provided two days written notice of such modification, amendment or supplement; or (c) without further order of the Court or written consent of the Creditors' Committee and the Ad Hoc Committee of Second Lien Noteholders, such modification, amendment or supplement is not material. The Debtors are hereby authorized to perform each

of their covenants and undertakings as provided in the Purchase Agreement prior to or after Closing without further order of the Court.

32. Notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its entry, (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.⁵

33. The provisions of this Order are nonseverable and mutually dependent.

34. The Purchaser is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transaction contemplated by the Purchase Agreement based upon any arrangement made by or on behalf of the Debtors.

35. This Order applies only to assets owned by the Debtors. Consequently, notwithstanding any other provision of this Order or the Purchase Agreement to the contrary, the portions of this Order that approve the transfer of the Acquired Assets to the Purchaser free and clear of all Claims and Interests (other than the Permitted Encumbrances), or that modify, enjoin, release or otherwise limit the rights of creditors of entities transferring Acquired Assets, apply only to Acquired Assets to the extent owned by the Debtors and do not apply to any assets to the extent owned by non-debtor entities.

36. The Sellers are hereby authorized and empowered to apply to any court, tribunal, regulatory, administrative or other governmental body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and shall provide reasonably

⁵ The Debtors reserve the right to incorporate the 14-day stay if appropriate in light of the views of the Court or any objecting party.

prompt notice of such action to the Creditors' Committee, the Second Lien Noteholders Committee, and Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders.

37. Exhibit A to the Purchase Agreement shall be kept segregated and under seal by the Clerk of Court and shall not be made publicly available pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018.

38. The requirements set forth in Local Rule 9013-1(b) are satisfied.

39. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

Dated: [•], 2012
New York, New York

Allan L. Gropper
United States Bankruptcy Judge

EXHIBIT B

KODAK FACEBOOK Apps



My KODAK MOMENTS App

Turn your favorite FACEBOOK photos into real, premium-quality photo books delivered right to your door.

[Find out more about My KODAK Moments App >](#)



KODAK Photo Collage Print App

Create photo collages using your FACEBOOK photos and print them at home on any printer connected to your PC.

[Find out how to create your collage >](#)

Connect & Print From FACEBOOK



Use your favorite FACEBOOK Pictures to create a photo book in minutes.

With the My KODAK MOMENTS App, you can effortlessly create a real, premium-quality photo book from FACEBOOK Albums with just a few clicks.

- Choose any picture you want from your FACEBOOK Albums, or your friends' albums
- Pictures are organized in the app the same way they are on the site, so you can quickly and easily find the ones you want
- FACEBOOK Photo Captions are included in your photo book, making it even easier to tell your story
- SMART FIT Technology automatically places your pictures in your book in seconds. From there you can easily organize them however you'd like.
- KODAK Quality goes into every book to ensure a professional-grade, finished keepsake
- Photo books are shipped directly to your home within days

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