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U.S. DEPT. OF LABOR  
PUBLIC DISCLOSURE  
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**C. L. KING & ASSOCIATES, INC.**

Nine Elk Street  
Albany, New York 12207  
(518) 431-3500

August 27, 2001

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Top Hat Plan Exemption  
Pension and Welfare Benefit Administration  
Room N-5644  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

**RE: Notice of Amended Plan of Deferred Compensation**

Gentlemen:

Pursuant to DOL Reg. 2520.104-23, the undersigned employer hereby files the following information with respect to its plan of deferred compensation:

1. Name and Address of Employer:

C. L. King & Associates, Inc.  
Nine Elk Street  
Albany, New York 12207

2. Federal Employer Identification Number:

13-2700327

3. The employer maintains one (1) plan of deferred compensation primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees.

4. Two (2) employees are currently covered by such plan.

5. This is an amended and restated plan, effective January 1, 2001. The original plan document, effective January 1, 2000, was submitted to your office on January 21, 2001.

Very truly yours,


*Mae A. Campbell*

C. L. KING & ASSOCIATES, INC.

## CERTIFICATION

I, Peter E. Bulger, hereby certify that I am the duly elected Secretary of C.L. King & Associates, Inc. ("the Corporation"), a corporation duly organized under the laws of the State of New York, that I have in my possession the corporate records regarding the Corporation, that attached hereto is a true and correct copy of a resolution duly adopted by the Board of Directors of the Corporation by unanimous written consent dated July 23, 2001, and that the resolution has not been rescinded or amended and remains in full force and effect.

**IN WITNESS WHEREOF**, the undersigned has hereunto set his hand this 22 day of August 2001.

  
\_\_\_\_\_  
Peter E. Bulger, Secretary

**Action by Unanimous Written Consent of Directors  
Without a Meeting**

The undersigned, being all of the members of the Board of Directors (collectively, the "Directors") of C.L. King & Associates, Inc. (the "Corporation"), hereby adopt, by this written action without a meeting, the following resolutions with the same force and effect as if they had been unanimously adopted at a duly commenced Meeting of the Board of Directors of the Corporation:

RESOLVED, that the Corporation has established a Deferred Compensation Plan (the "Plan") for certain long time, highly compensated employees effective January 1, 2000; and it was further

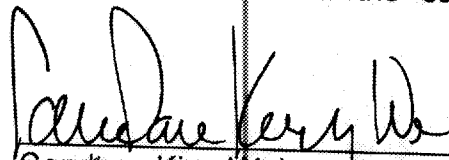
RESOLVED, that the Corporation is hereby amending the Plan as permitted by the terms thereof in the form attached hereto (the "Amended Plan"); and it was further

RESOLVED, that the Amended Plan is not intended to be a "Qualified" retirement plan under ERISA or under any other Federal Law, and all benefits to be paid thereunder shall be subject to the express terms and conditions of the Plan, as amended from time to time; and it is further

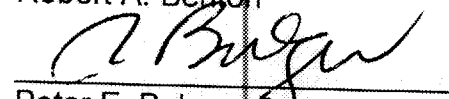
RESOLVED, that the Plan shall have an effective date of January 1, 2001.

IN WITNESS WHEREOF, the undersigned Directors have executed this action by unanimous written consent of Directors without a Meeting as of the date set forth below in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

Dated: July 23, 2001

  
Candace King Weir

  
Robert A. Benton

  
Peter E. Bulger

**DEFERRED COMPENSATION PLAN  
OF  
C. L. KING & ASSOCIATES, INC.**

WHEREAS, the Employee Retirement Income Security Act of 1974, as amended by the Tax Equity and Fiscal Responsibility Act of 1982, the Reform Equity Act of 1984 and the Tax Reform Act of 1986, all as amended, place limitations on the maximum amounts payable from any qualified retirement plan and;

WHEREAS, C. L. King & Associates, Inc. (hereinafter "C. L. King") has established a Deferred Compensation Plan (the "Plan") for certain qualified participants, effective January 1, 2000; and,

WHEREAS, C.L. King desires to amend the Plan as permitted by the terms thereof;

NOW, THEREFORE, the Plan shall be and is hereby amended, effective January 1, 2001, to read as follows:

**ARTICLE I**

**ESTABLISHMENT AND PURPOSE OF PLAN**

- 1.1 Purpose of the Plan. The purpose of this Deferred Compensation Plan (the "Plan") is to provide Participants with benefits upon certain events of termination or retirement from employment as defined herein, if they are eligible to receive such benefits under the Plan. This Plan is not intended to be a qualified retirement plan under ERISA or other federal law and all benefits paid hereunder are subject to the terms and conditions of this Plan.

## ARTICLE II

### DEFINITIONS

- 2.0 Definitions. For purposes of determining any amounts payable under this Plan the following definitions shall apply:
- 2.1 "Annual Benefit Amount" means, with respect to each Participant, the amount to be credited and recorded under the terms of this Plan for each calendar year.
- 2.2 "Base Commissions" means, for Calendar Year 2000, \$1,100,000; for Calendar Year 2001, \$1,200,000; for Calendar Year 2002, \$1,300,000; for Calendar Year 2003, \$1,400,000; and for Calendar Year 2004 and all subsequent Calendar Years, \$1,500,000.
- 2.3 "Beneficiary" means, with respect to a Participant, the person or persons who are designated as such by a Participant, in a fully executed Participation Agreement, to receive payments under the Plan upon Participant's death.
- 2.4 "Calendar Year" shall mean the 12 month period beginning on January 1 and ending on December 31 of each year.
- 2.5 "Cause" for purposes of Sections 3.4, 3.6, 3.7 and 3.8 of this Plan shall mean:
- (i) the continued failure of a Participant to perform substantially his or her employment duties with the Corporation (other than any such failure resulting from incapacity due to physical or mental illness or injury), after a written demand for substantial performance has been delivered to Participant by the Corporation;

- (ii) Participant's loss or suspension of his or her license to trade in securities, upon a final determination by the Securities Exchange Commission, self regulatory organizations or state licensing agency;
  - (iii) Any breach by Participant of any fiduciary duty owed to the Corporation or any of its affiliates, officers, clients or customers; or
  - (iv) The Participant's conviction of a crime, whether by plea of guilty or from a verdict after trial, which involves fraud, deceit, bribery, extortion, misappropriation, theft or conspiracy under the laws of the United States or of the State of New York.
- 2.6 "Credits" or its derivatives shall be the Annual Benefit Amount to be credited to a Participant for Plan Year 2000 and each following Plan Year.
- 2.7 "Corporation" means C. L. King & Associates, Inc., or any successor or assignee.
- 2.8 "Cumulative Account Balance" means the Initial Benefit Amount, plus the cumulative total of all Annual Benefit Amounts credited to a Participant's Record Account, plus cumulative Guaranteed Returns (as hereinafter defined).
- 2.9 "Early Retirement" means the Participant's retirement from employment with the Corporation prior to reaching Normal Retirement Age.
- 2.10 "Entry Date" means the date as of which a Participant qualifies for entry into the Plan, provided, however, that any Participant who qualifies and has entered the Plan on or before December 31, 2000 shall be deemed to have an Entry Date of January 1, 1999.
- 2.11 "Gross Sales Commissions" means all sales commissions earned by a Participant in a calendar year, excluding, however, all commissions on any transaction where

- the commission generated by or on behalf of the Corporation is less than \$.04 per share.
- 2.12 "Guaranteed Return" shall mean seven percent (7%), calculated as simple interest, of a Participant's Cumulative Account Balance as of December 31 of the Plan Year.
- 2.13 "Initial Benefit Amount" means that amount which shall be credited to a Participant's Record Account upon his or her entry into the Plan as calculated under Section 3.1.
- 2.14 "Participant" means any eligible employee of C. L. King who has executed a Participation Agreement with the Corporation. Only designated key sales employees and/or certain highly paid employees within the meaning of the Employee Retirement Income and Security Act of 1974 shall be eligible to participate in this Plan.
- 2.15 "Participation Agreement" means an Agreement, in the form annexed hereto, executed by the Participant and the Corporation admitting the Participant into the Plan and which specifies the effective date of participation.
- 2.16 "Plan" means this Deferred Compensation Plan of the Corporation and its successors as described herein, as amended from time to time.
- 2.17 "Permanent Disability" means a permanent inability, due to mental or physical condition, to perform substantially all of the functions and requirements of a Participant's employment with C.L. King. Inability for a period which continues or is expected to continue for 12 months or more shall be considered permanent.

Such determinations shall be made by a physician appointed or approved by the Corporation.

- 2.18 "Record Account" means the internal record of accounts maintained by the Corporation indicating the Initial Benefit Amount, plus Annual Benefit Amounts and Guaranteed Returns as Credited for each Participant under this Plan.
- 2.19 "Retirement" means the ending of and withdrawal from employment with the Corporation by a Participant after the Participant has attained the "Normal Retirement Age" of sixty-five (65).
- 2.20 "Retirement Benefit" means the amount to be paid to Participant on his or her Retirement or Termination, as determined by this Plan.
- 2.21 "Termination" means the voluntary or involuntary termination of employment of a Participant with the Corporation, except where occurring by Normal Retirement.
- 2.22 "Years of Service" means the number of years elapsed, measured from the Participant's Entry Date to his or her date of Retirement or Termination.

### ARTICLE III

#### PAYMENT OF BENEFITS

- 3.1 Initial Benefit. Prior to the end of Plan Year 2000 the Corporation shall calculate the Initial Benefit Amount for each employee then qualified as a Participant in the Plan; (i) the Initial Benefit Amount shall be calculated by determining the Participant's Gross Sales Commissions during the Calendar Year preceding the year of the Participant's entry into the Plan; (ii) deducting therefrom the sum of One Million Dollars (\$1,000,000); (iii) multiplying the resulting difference by

5%; and (iv) adding to this sum an additional seven and fifty-five one-hundredths percent (7.55%). The resulting number shall be the Initial Benefit Amount which shall be Credited to the Participant's Record Account on or before December 31, 2000.

- 3.2 Following the end of Plan Year 2000 and each following Plan Year the Corporation shall calculate the Annual Benefit Amount earned by each Participant by multiplying the Participant's Gross Sales Commission in excess of Base Commissions by five percent (5%). The resulting Annual Benefit Amount shall be Credited to the Participant's Record Account on or before the next following March 15.
- 3.3 Guaranteed Return. Beginning in Calendar Year 2001, and for each Year thereafter, the Corporation shall Credit to each Participant's Record Account a Guaranteed Return equal to seven percent (7%), simple interest, of the Participant's Record Account balance existing as of December 31 of that Calendar Year. The record entry of this Guaranteed Return shall be made on or before March 15 of the next following Calendar Year.
- 3.4 Calculation of Retirement Benefit. In accordance with this Plan, a Participant upon Retirement, Early Retirement, or Termination (except where termination is for "Cause" as defined in Section 2.5), shall be entitled to receive an amount equal to his or her Cumulative Account Balance, subject to adjustment in accordance with Section 3.7 below.
- 3.5 Upon a Participant's Normal Retirement the Corporation will, within 90 days thereof, pay to the Participant his or her Retirement Benefit, together with any

Guaranteed Return earned but not yet credited, calculated as of the date of payment.

- 3.6 Where the Participant's employment is terminated prior to his or her Normal Retirement Date, either by Early Retirement, Permanent Disability, death or otherwise (except where Termination is for "Cause") the Retirement Benefit due, as adjusted under Section 3.7 if applicable, may, at the election of the Corporation, be paid out in five (5) equal annual payments commencing on the date which is 90 days after the Participant's Early Retirement or other Termination, and continuing until all amounts due hereunder have been paid. During any period of deferral all unpaid Cumulative Account Balances shall accrue simple interest at the rate of seven percent (7%) per year. If upon the death of a Participant there is no properly designated living Beneficiary, or if the Beneficiary is an entity and such entity is not then in existence, then any payments due under this Plan shall be made to the Participant's Estate.
- 3.7 In the event of a Participant's Normal Retirement, Early Retirement, Permanent Disability, death or other Termination (except where for "Cause") prior to a date which is five (5) years after his or her Entry Date, the Participant's Retirement Benefit payment shall be adjusted downward as follows:

<u>Years of Service from Date of Entry</u>	<u>Amount of Retirement Benefit</u>
1 year or less	20% of Cumulative Account Balance
2 years	25% of Cumulative Account Balance
3 years	33% of Cumulative Account Balance
4 years	50% of Cumulative Account Balance
5 years or more	100% of Cumulative Account Balance

- 3.8 Notwithstanding anything set forth above, if a Participant is terminated from employment for "Cause" as defined in Section 2.5, no Retirement Benefit or any other benefit shall be due or payable to the Participant from the Record Account or otherwise under this Plan, and all amounts previously credited shall be retained by the Corporation without further obligation to Participant under this Plan.
- 3.9 The Corporation, on written notice delivered to each Participant no later than March 30 of any Calendar Year, may suspend its obligation to make an Annual Benefit Contribution for that Calendar Year (which Contribution would otherwise be due on or before the next following March 15). Such event shall not constitute a termination of the Plan, unless the Corporation shall have elected to suspend such obligation for two (2) consecutive Calendar Years.
- 3.10 (a) In the event the Corporation terminates the Plan; then an amount equal to each Participant's Cumulative Account Balance shall be paid to each respective Participant in full, in accordance with this Section; (b) In the event Candace K. Weir sells or disposes of her controlling interest in the Corporation, then each Participant who is actively employed by the Corporation may elect to; (i) receive payment of an amount equal to such Participant's Cumulative Account Balance, in full, or; (ii) continue to maintain such Participant's Cumulative Account Balance in the Plan. Participants shall make such election in writing, directed to the Plan Administrator, within thirty (30) days of the Corporation giving written notice of the intended sale of Candace K. Weir's controlling interest. Each Participant's Cumulative Account Balance shall be paid to the respective Participant, in full, within ninety (90) days of Participant's election to liquidate

his or her Cumulative Account Balance or the termination of the Plan, as the case may be.

- 3.11 All Cumulative Account Balances and all other payments made under the Plan, including all returns and earnings thereon, shall vest in and be taxable to the Participant as ordinary income under the Internal Revenue Code at the time of payment.

#### ARTICLE IV

##### RIGHTS AND DUTIES OF PARTICIPANTS AND MEMBERS

- 4.1 No Participant or any other person shall have any interest in any fund or in any specific asset or assets of the Corporation by reason of this Plan, or for any other reason, or have any right to receive any distributions under the Plan except as to the extent expressly provided under the Plan. A Participant is a general creditor of the Corporation.
- 4.2 No right of any Participant or Beneficiary to receive payment hereunder shall be subject to alienation, transfer, sale, assignment, pledge, attachment, garnishment or encumbrance of any kind, except that a Participant may designate a Beneficiary to whom payment of any amounts due hereunder shall be paid in the event of the Participant's death. Any other attempt to alienate, sell, transfer, assign, pledge or otherwise encumber any such payments whether presently or hereafter payable shall be void. No payment or other obligation under this Plan shall be subject to the debts or liabilities of any Participant or Beneficiary.

- 4.3 Every person receiving or claiming payments under the Plan shall be presumed to be mentally competent until the date on which the Corporation receives a written notice in a form and manner acceptable to the Corporation that such person is incompetent and that a guardian, conservator or other person legally vested with the interest of his other estate has been appointed. If the guardian or conservator of the estate or any person receiving or claiming payments under the Plan is appointed, payments under this Plan may be made to such guardian or conservator provided that the proper proof of appointment and continuing qualification is furnished in a form and manner acceptable to the Corporation. Any payments so made shall be a discharge of any liability of the Corporation for such payments.
- 4.4 Each person entitled to receive a payment under this Plan, whether a Participant, Beneficiary, a guardian or otherwise, shall provide the Corporation with such information it may from time to time deem necessary or in its best interest administering the Plan. Any such person shall also furnish the Corporation with such documents, evidence, data or other information as the Corporation may from time to time deem necessary or advisable.

## ARTICLE V

### DUTIES OF THE PLAN ADMINISTRATOR

- 5.1 The Plan shall be administered by the Plan Administrator.
- 5.2 The Plan Administrator may from time to time establish rules and regulations for the administration of the Plan and adopt standard forms for such matters as

elections, beneficiary designations and applications for benefits, provided such rules and forms are not inconsistent with the provisions of the Plan.

5.3 All determinations of the Plan Administrator shall be binding on all parties. In construing or applying the provisions of the Plan, the Corporation shall have the right to rely upon an opinion of legal counsel, which may be independent legal counsel or legal counsel regularly employed by the Corporation, whether or not any question or dispute has arisen as to any distribution from the Plan.

5.4 The Plan Administrator of the Corporation shall be responsible for maintaining books and records for the Plan

## ARTICLE VI

### AMENDMENT OR TERMINATION

6.1 The Corporation reserves the right to amend, modify, terminate or discontinue the Plan on any provision hereof at any time. However, no such amendment, modification, termination, or discontinuance shall have the effect of reducing a Participant's Retirement Benefits computed as of the date of such amendment, modification, termination, or discontinuance.

## ARTICLE VII

### NOT A CONTRACT OF EMPLOYMENT

7.1 This Plan is not a contract of employment between a Participant and the Corporation. No provision of this Plan shall restrict the right of the Corporation

to terminate or discharge any Participant, or restrict the right of a Participant to terminate his employment.

- 7.2 Nothing contained in this Plan shall be construed to create a trust of any kind, or a fiduciary relationship between the Corporation and any Participant or his designated beneficiary or any other person. Any fund invested under the provisions of this Plan shall continue for all purposes to be part of the general funds of the Corporation and no person or entity other than the Corporation shall by virtue of the provisions of this Plan have any interest in such funds. To the extent that any Participant or other person acquires a right to receive payments from the Corporation under this Plan, such rights shall be no greater than the right of any unsecured general creditor of the Corporation.

## ARTICLE VIII

### CLAIMS PROCEDURE

- 8.1 If a benefit under this Plan is not paid to a Participant or Beneficiary and such person believes that he or she is entitled to receive it, a claim shall be made in writing to the Plan Administrator within sixty (60) days from the date payment was to be made. Such claim shall be reviewed by the Plan Administrator and the Corporation. If the claim is denied, in full or in part, the Plan Administrator shall provide written notice within ninety (90) days setting forth the specific reasons for the denial. The notice shall include specific reference to the provisions of this Plan upon which the denial is based and any additional material or information necessary to perfect the claim, if any. Such written notice shall also indicate the steps to be taken if a review of the denial is desired.

- 8.2 If the claim is denied and a review is desired, the claimant shall notify the Plan Administrator in writing within sixty (60) days. A claim shall be treated as denied if the Plan Administrator does not take action in the aforesaid ninety (90) day period. In requesting review, the claimant may review this Plan or any documents relating to it and submit any written issues and comments he or she may feel appropriate. In his or her sole discretion the Plan Administrator shall then review the claim and provide a written decision within sixty (60) days. This decision likewise shall state the specific provisions of this Plan on which the decision is based.
- 8.3 Any and all disputes arising under or in connection with this Agreement or the breach hereof, shall be settled by arbitration in Albany County, New York, before a single arbitrator in accordance with the rules of the American Arbitration Association then and there in effect. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.

## ARTICLE IX

### MISCELLANEOUS

- 9.1 Solely for the purpose of computing benefits to which a Participant may otherwise be entitled under any pension or profit sharing plan of the Corporation or any other arrangement of the Corporation for the benefit of its employees, compensation or monies paid or payable under this Plan Agreement shall not be deemed salary or other compensation to a Participant.

9.2 The Secretary of the Corporation is hereby designated as the Plan Administrator of this Plan.

9.3 Any notice hereunder shall be delivered personally, or by Certified Mail Return Receipt Requested, to the Corporation at its principal office, or if to the Participant, at his or her address as listed in the employment records of the Corporation.

## ARTICLE X

### CONSTRUCTION AND EXPENSES

10.1 Whenever the context so requires, words in the masculine include the feminine and words in the feminine include the masculine and the definition of any term in the singular may include the plural.

10.2 All expenses of administering the Plan shall be paid by the Corporation unless the Plan provides to the contrary.

10.3 The Plan shall be construed, administered and governed in all respects under the laws of the State of New York.

IN WITNESS WHEREOF, this Plan has been executed as the \_\_\_ day of May 2001.

C.L. KING & ASSOCIATES, INC.

By: *P. Bulger*

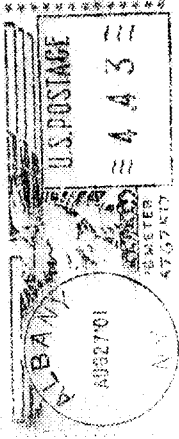
Name: PETER E. BULGER

Title: Senior Vice President

CLASSIFIED MAIL



7000 1670 0001 4522 2601



**CL KING & ASSOCIATES**

NINE ELK STREET • ALBANY, NY • 12207-1002

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