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Submission Type

- New
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Conveyance Type

- Assignment License
 - Security Agreement Nunc Pro Tunc Assignment
 - Merger Change of Name
 - Other
- Effective Date
Month Day Year

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

State/Country

Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

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Name

Address (line 1)

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Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments.

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Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

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<input type="text" value="1617351"/>	<input type="text"/>	<input type="text"/>
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Number of Properties Enter the total number of properties involved.

#

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Our Ref. 313500-4)

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Sean D. Belanga

Name of Person Signing

Sean D. Belanga

Signature

10-23-00

Date Signed

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE STATE OF DELAWARE

IN RE: :
: Case No. 97-197(PJW)
KOL CORP., :
: Chapter 11
Debtor. :

ORDER UNDER 11 U.S.C. §§ 105, 363 AND 365 APPROVING
(i) ASSET PURCHASE AGREEMENT WITH D. F. KING & CO., INC.,
AND DEBTOR'S ASSUMPTION THEREOF, (II) SALE FREE AND
CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES, AND (III) ASSUMPTION AND ASSIGNMENT
OF CERTAIN RELATED EXECUTORY CONTRACTS

Upon the motion of KOL Corp., debtor and debt-
or-in-possession (the "Debtor"), dated February 7, 1997
(the "Motion"), for an order (the "Sale Order") under 11
U.S.C. §§ 105, 363 and 365 authorizing the Debtor to
sell, subject to the receipt of higher or better offers
("Competitive Bids"), substantially all of the assets of
the Debtor's ATHENA Division (as defined in the Motion,
the "Purchased Assets") free and clear of all liens,
claims, interests and encumbrances to (a) D. F. King &
Co., Inc. (the "Purchaser") pursuant to the terms and
conditions of an asset purchase agreement, dated as of
January 29, 1997 and annexed hereto as Exhibit A (the

0095221.04-42S1a

"Asset Purchase Agreement")¹, or (b) that entity making a Competitive Bid that is determined to be the highest and/or best bid for such Purchased Assets, and authorizing the assumption and assignment of certain related executory contracts, particularly identified and listed in Section 1.1(a)(iii) of the Disclosure Schedule to the Asset Purchase Agreement and Exhibit G to the Motion, in connection with the sale to the Purchaser; and

Upon this Court's order dated February 14, 1997, scheduling a hearing with respect to the sale of the Purchased Assets, prescribing the form and manner of notice thereof, and approving certain provisions of the Asset Purchase Agreement relating to sale and bidding procedures (the "Scheduling Order"); and

Adequate notice of the proposed sale, the Scheduling Order, the Hearing (as defined below), and the assumption and assignment of the executory contracts identified in Exhibit B hereto (the "Executory Contracts") having been given to all parties entitled thereto under the Scheduling Order, as evidenced by the affi-

¹ Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

davits of service and publication previously filed with this Court (the "Affidavits"); and

A hearing having been held before this Court on March 14, 1997 to consider the sale of the Purchased Assets and the assumption and assignment of the Executory Contracts listed on Exhibit B hereto (the "Hearing"), at which time all parties in interest were afforded an opportunity to be heard; and the Court having heard testimony and received evidence in support of approval of the sale of the Purchased Assets and the assumption and assignment of the Executory Contracts;

NOW, THEREFORE, based upon the Court's review of the Affidavits; and upon all of the evidence proffered or adduced at, memoranda and objections, if any, filed in connection with, and arguments of counsel made at, the Hearing; and upon the entire record of the Hearing; and after due deliberation thereon; and good cause appearing thereof;

IT IS HEREBY FOUND AND DETERMINED THAT:²

1. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052.

1134 and the "Standing Order of Referral of Cases of Bankruptcy Judges" by the District Court for the District of Delaware dated July 23, 1984.

2. Venue of this case in this district is proper pursuant to 28 U.S.C. § 1409(a).

3. Determination of the Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (N). The statutory predicates for the relief requested herein are sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") and Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 2002, 6004, 6006, and 9019.

4. The Debtor has followed the procedures for giving notice of the Motion and the Hearing on the sale of the Purchased Assets as set forth in the Scheduling Order.

5. Proper, timely, adequate and sufficient notice of the Motion, the Hearing and the sale of the Purchased Assets has been provided in accordance with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9019 and the Scheduling Order, and no other or further notice of the Motion, the Hearing, or of the entry of this Sale Order is required.

6. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all interested persons and entities, including (a) all parties who claim interests in or liens upon the Purchased Assets, (b) all parties to the Executory Contracts (listed on Exhibit B hereto) to be assumed and assigned to the Purchaser, and (c) all governmental taxing authorities who have, or as a result of the sale of Purchased Assets may have, claims, contingent or otherwise, against the Debtor or the Purchased Assets.

7. It is uncontroverted that (a) the Debtor has full corporate power and authority to execute the Asset Purchase Agreement and all other documents contemplated thereby and the sale of the Purchased Assets by the Debtor has been duly and validly authorized by all necessary corporate action of the Debtor and (b) the Debtor has all the corporate power and authority necessary to consummate the transactions contemplated by the Asset Purchase Agreement and (c) no consents or approvals, other than those expressly provided for in the Asset Purchase Agreement, are required for the Debtor to consummate such transactions.

8. The sale of the Purchased Assets reflects the exercise of the Debtor's sound business judgment.

The sale of the Purchased Assets is further justified by the compelling circumstances described in the Motion and established at the Hearing and in the record of this case.

9. Approval of the Asset Purchase Agreement and consummation of the sale of the Purchased Assets at this time are in the best interests of the Debtor, its creditors and estate. The Court finds that the Debtor has articulated good and sufficient business justification for the sale of the Purchased Assets pursuant to section 363(b) of the Bankruptcy Code outside of a plan of reorganization, for the assumption of the Asset Purchase Agreement, and for the assumption and assignment of the Executory Contracts, in that, among other things:

a. In the absence of a prompt sale of the Purchased Assets, their value will steadily decline because the Debtor lacks sufficient cash to continue its ATHENA Division operations;

b. A sale pursuant to section 363(b) is likely to produce a greater return to creditors in the Debtor's case than if the Purchased Assets were sold in connection with a plan of reorganization, because the unavoidable delay required to confirm a plan would deprive the Debtor's estate of the opportunity to realize

the maximum value of the Purchased Assets available through an immediate sale;

c. Claims against the Debtor's estate will be minimized as a result of the prompt consummation of a sale of the Purchased Assets and the concomitant assumption and assignment of the Executory Contracts to the Purchaser;

d. A sale to the Purchaser of the Purchased Assets at this time will result in the highest possible sale price; and

e. Unless a sale to the Purchaser is concluded expeditiously as provided for in the Motion and under the Asset Purchased Agreement, (i) the value of the Purchased Assets will decline precipitously and (ii) the Debtor, its estate and its creditors may realize substantially less value for the Purchased Assets.

10. The terms and conditions of the Asset Purchase Agreement are fair and reasonable. The Asset Purchase Agreement represents the highest and best offer for the Purchased Assets, the Purchase Price is fair and reasonable, and constitutes reasonably equivalent value under the Bankruptcy Code.

11. No non-debtor party to the Executory Contracts listed on Exhibit B hereto has objected to the

assumption and assignment to the Purchaser of the Executory Contracts, and there exist no defaults under such Executory Contracts requiring payment of any cure amounts in connection with such assumption and assignment.

12. The Purchaser has provided adequate assurance of Purchaser's future performance under the Executory Contracts listed on Exhibit B hereto within the meaning of sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy code.

13. The assumption and assignment to the Purchaser of the Executory Contracts is in the best interest of the Debtor, its creditors and estate.

14. The Asset Purchase Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith, and from arm's length bargaining positions. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code.

15. In the absence of a stay pending appeal, the Purchaser will be acting in good faith within the

meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Asset Purchase Agreement, including assumption and assignment of the Executory Contracts, at any time after the entry of this Sale Order.

16. The transfer of the Purchased Assets and the assignment of the Executory Contracts listed on Exhibit B hereto (a) are or will be legal, valid and effective transfers of property of the Debtor's estate to the Purchaser, and (b) vest or will vest the Purchaser with all right, title, and interest of the Debtor in and to the Purchased Assets and such Executory Contracts free and clear of all liens, claims, interests, and encumbrances under section 363(f) of the Bankruptcy Code.

17. All amounts to be paid by the Debtor pursuant to the Asset Purchase Agreement constitute administrative expenses under sections 503(b) and 507(a)(1) of the Bankruptcy Code and are immediately payable if and when the Debtor's obligations arise under the Asset Purchase Agreement without further order of the Court.

18. The transfer of the Purchased Assets and the assignment of the Executory Contracts listed on Exhibit B hereto do not and will not subject the Purchas-

er to any liability for claims against the Debtor by reason of such transfer under the laws of the United States, any state, territory or possession thereof or the District of Columbia applicable to such transactions.

19. All of the provisions of this Sale Order are nonseverable and mutually dependent.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion be, and it hereby is, granted.

2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits.

3. The terms and conditions of the Asset Purchase Agreement are hereby approved in all respects, and the sale of the Purchased Assets pursuant to the Asset Purchase Agreement is hereby authorized under section 363(b) of the Bankruptcy Code; provided, however, that (i) the amount actually paid by check by the Purchaser at the Closing pursuant to Section 1.3(a) of the Asset Purchase Agreement shall be not less than \$300,000; (ii) the aggregate Purchase Price shall remain \$1,000,000 and the principal amount of the Note delivered by the Purchaser at the Closing pursuant to Section 1.3(b) of

the Asset Purchase Agreement (and the amount of monthly payments due under the Note) shall be adjusted to reflect the actual check amount delivered by the Purchaser at the Closing; (iii) the amount of the Purchase Price received at the Closing and all payments made under the Note shall be held in the escrow account of counsel for the Debtor until further order of this Court; (iv) on and after the date of entry of this Sale Order, any and all payments received by the Debtor pursuant to the terms of any Executory Contract listed on Exhibit B hereto (x) shall be held in the escrow account of counsel for the Debtor, and (y) upon the Closing, if it occurs, shall be credited pro rata to the Purchaser and Seller in accordance with the terms of the Asset Purchase Agreement; and (v) on and after the Closing, any payment or portion of payment received by the Purchaser on account of pre-Closing period obligations under any Executory Contract listed on Exhibit B hereto shall be delivered to counsel for the Debtor and held in escrow for the benefit of the Debtors' estate pending further order of this Court. In all other respects, the terms and provisions of the Asset Purchase Agreement shall remain in full force and effect.

4. Pursuant to sections 363(b) and 365 of the Bankruptcy Code, the Debtor is hereby authorized, direct-

ed and empowered to fully assume, perform under, consummate and implement, the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession, any or all of the Purchased Assets, or as may be necessary or appropriate to the performance of the obligations contemplated by the Asset Purchase Agreement.

5. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser and upon the closing under the Asset Purchase Agreement shall be free and clear of all mortgages, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, easements, restrictions or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership (the foregoing collectively referred to as "Liens" herein) and all debts arising in any way in connection with any acts of the Debtor, claims (as that term in

defined in the Bankruptcy Code), obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity or otherwise (the foregoing collectively referred to as "Claims" herein), with all such Liens and Claims to attach to the Purchase Price and any proceeds of collateral encumbered by the security interest granted to the Debtor by the Purchaser pursuant to the Asset Purchase Agreement in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets. Notwithstanding any other provision of the Asset Purchase Agreement or this Sale Order, each and every payment of the Purchase Price shall be paid to and deposited in the escrow account of Debtor's counsel until further order of this Court.

6. Except as expressly permitted by the Asset Purchase Agreement, all persons and entities holding Liens or Claims of any kind and nature with respect to the Purchased Assets hereby are barred from asserting such Liens and Claims of any kind and nature against the

Purchaser, its successors or assigns, or the Purchased Assets.

7. THE PURCHASER IS NOT ASSUMING NOR SHALL IT IN ANY WAY WHATSOEVER BE LIABLE OR RESPONSIBLE, AS A SUCCESSOR OR OTHERWISE, FOR ANY LIABILITIES, DEBTS OR OBLIGATIONS OF THE DEBTOR OR ANY LIABILITIES, DEBTS OR OBLIGATIONS IN ANY WAY WHATSOEVER RELATING TO OR ARISING FROM THE OPERATION OF THE DEBTOR'S ASSETS PRIOR TO CLOSING OR ANY LIABILITIES CALCULABLE BY REFERENCE TO THE DEBTOR OR ITS ASSETS OR OPERATIONS, OR RELATING TO CONTINUING CONDITIONS EXISTING ON OR PRIOR TO CLOSING, WHICH LIABILITIES, DEBTS AND OBLIGATIONS ARE HEREBY EXTINGUISHED INSOFAR AS THEY MAY GIVE RISE TO SUCCESSOR LIABILITY, WITHOUT REGARD TO WHETHER THE CLAIMANT ASSERTING ANY SUCH LIABILITIES, DEBTS OR OBLIGATIONS HAS DELIVERED TO PURCHASER A RELEASE THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PURCHASER SHALL NOT BE LIABLE OR RESPONSIBLE, AS A SUCCESSOR OR OTHERWISE, FOR THE DEBTOR'S LIABILITIES, DEBTS OR OBLIGATIONS, WHETHER CALCULABLE BY REFERENCE TO THE DEBTOR OR ITS OPERATIONS, OR UNDER OR IN CONNECTION WITH (I) ANY EMPLOYMENT OR LABOR AGREEMENTS, (II) ANY PENSION, WELFARE, COMPENSATION OR OTHER EMPLOYEE BENEFIT PLANS, AGREEMENTS, PRACTICES AND PROGRAMS, INCLUDING WITHOUT LIMITATION, ANY PENSION

PLAN OF THE DEBTOR, (III) THE CESSATION OF THE DEBTOR'S OPERATIONS, DISMISSAL OF EMPLOYEES, OR TERMINATION OF EMPLOYMENT OR LABOR AGREEMENTS OR PENSION, WELFARE, COMPENSATION OR OTHER EMPLOYEE BENEFIT PLANS, AGREEMENTS, PRACTICES AND PROGRAMS, OBLIGATIONS WHICH MIGHT OTHERWISE ARISE OR PURSUANT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, FAIR LABOR STANDARDS ACT, TITLE VII OF CIVIL RIGHTS ACT OF 1964, THE AGE DISCRIMINATION AND EMPLOYMENT ACT OF 1967, FEDERAL REHABILITATION ACT OF 1973, NATIONAL LABOR RELATIONS ACT, OR CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985, (IV) WORKMEN'S COMPENSATION, OCCUPATIONAL DISEASE OR UNEMPLOYMENT OR TEMPORARY DISABILITY INSURANCE CLAIMS, (V) ENVIRONMENTAL LIABILITIES, DEBTS, CLAIMS OR OBLIGATIONS ARISING FROM CONDITIONS FIRST EXISTING ON OR PRIOR TO CLOSING (INCLUDING WITHOUT LIMITATION THE PRESENCE OF HAZARDOUS, TOXIC, POLLUTING, OR CONTAMINATING SUBSTANCES OR WASTES) WHICH MAY BE ASSERTED ON ANY BASIS, INCLUDING WITHOUT LIMITATION UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, 42 U.S.C. SECTION 9601 ET SEQ., (VI) ANY BULK SALES OR SIMILAR LAW, (VII) ANY TAX STATUTES OR ORDINANCES INCLUDING, WITHOUT LIMITATION, THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND (VIII) ANY

PRODUCTS LIABILITY OR SIMILAR CLAIMS WHETHER PURSUANT TO ANY STATE OR ANY FEDERAL LAWS OR OTHERWISE.

8. THE RECITATION, IN THE IMMEDIATELY PRECEDING PARAGRAPH OF THIS SALE ORDER, OF SPECIFIC AGREEMENTS, PLANS OR STATUTES IS NOT INTENDED, AND SHALL NOT BE CONSTRUED, TO LIMIT THE GENERALITY OF THE CATEGORIES OF LIABILITIES, DEBTS OR OBLIGATIONS REFERRED TO THEREIN;

9. NO PERSON OR ENTITY, INCLUDING WITHOUT LIMITATION, ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY, DEPARTMENT OR INSTRUMENTALITY, SHALL ASSERT AGAINST THE PURCHASER OR ITS SUCCESSORS IN INTEREST ANY LIABILITY, DEBT OR OBLIGATION RELATING TO OR ARISING FROM THE OPERATION OF THE DEBTOR'S ASSETS OR ANY LIABILITIES CALCULABLE BY REFERENCE TO THE DEBTOR OR ITS ASSETS OR OPERATIONS, AND ALL PERSONS AND ENTITIES ARE HEREBY ENJOINED FROM ASSERTING ANY SUCH LIABILITIES, DEBTS OR OBLIGATIONS AGAINST THE PURCHASER.

10. The Debtor is hereby authorized in accordance with section 365 of the Bankruptcy Code to (a) assume and assign to the Purchaser each of the Executory Contracts listed on Exhibit B hereto pursuant to the provisions of sections 365 of the Bankruptcy Code, in each case free and clear of all Liens, and (b) execute and deliver to the Purchaser such documents or other

instruments as may be necessary to assign and transfer such Executory Contracts to the Purchaser.

11. The Executory Contracts listed on Exhibit B hereto shall, upon assignment to the Purchaser, be deemed to be valid and binding and in full force and effect and enforceable in accordance with their terms, and, pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to such Executory Contracts after such assignment.

12. Each non-debtor party to an Executory Contract listed on Exhibit B hereto is hereby barred from asserting against the Debtor or the Purchaser any default existing as of the date of the Hearing if such default was not raised or asserted in response to the Motion.

13. On and after the date of the closing of the Asset Purchase Agreement (the "Closing Date"), each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Liens on or Claims against the Purchased Assets, if any, as such Liens or Claims may have been recorded or may otherwise exist.

14. This Sale Order (a) is and shall be effective as a determination that, on the Closing Date, all

Liens existing as to the Purchased Assets prior to the Closing Date have been unconditionally released, discharged and terminated, and that the conveyance described in decretal paragraph 5 hereof has been effected, and (b) is and shall be binding upon and govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

15. Each and every federal, state, and local governmental agency or department hereby is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

16. If any person or entity that has filed financing statements or other documents or agreements evidencing Liens on or interests in the Purchased Assets

shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens or other interests which the person or entity has with respect to the Purchased Assets, the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets.

17. All entities who are presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession of said Purchased Assets to the Purchaser on the Closing Date.

18. As of the Closing Date, all agreements of any kind whatsoever and all orders of this Court entered prior to the date hereof shall be deemed amended and/or modified to the extent required to permit the consummation of the transaction contemplated by the Asset Purchase Agreement.

19. This Court retains jurisdiction (i) to enforce and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the

agreements executed in connection therewith, (ii) to compel delivery of the Purchased Assets to the Purchaser, (iii) to resolve any disputes arising under or related to the Asset Purchase Agreement, except as otherwise provided therein, and (iv) to interpret, implement and enforce the provisions of this Sale Order.

20. Nothing contained in any plan of reorganization (or liquidation) confirmed in this case or the order of confirmation confirming any such plan of reorganization (or liquidation) shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Sale Order.

21. The Purchaser is a purchaser in good faith of the Purchased Assets and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

22. In the absence of a stay pending appeal, if the Purchaser elects to close under the Asset Purchase Agreement at any time after entry of this Sale Order, then, with respect to the Asset Purchase Agreement, including the assumption and assignment of the Executory Contracts approved and authorized herein, the Purchaser shall be entitled to the protections of section 363(m) of

the Bankruptcy Code if this Sale Order or any authorization contained herein is reversed or modified on appeal.

23. The terms and provisions of the Asset Purchase Agreement, together with the terms and provisions of this Sale Order, shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate and creditors, the Purchaser, and their respective affiliates, successors and assigns, and any affected third parties including but not limited to all non-debtor parties to the Executory Contracts listed on Exhibit B hereto to be assigned to the Purchaser pursuant to the Asset Purchase Agreement and persons asserting a claim against or interest in the Debtor's estate or any of the Purchased Assets to be sold to the Purchaser pursuant to the Asset Purchase Agreement, notwithstanding any subsequent appointment of any trustee for the Debtor under any chapter of title 11 of the United States Code, as to which trustee such terms and provisions likewise shall be binding in all respects.

24. The failure specifically to include any particular provisions of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the efficiency of such provision, it being the intent of the

court that the Asset Purchase Agreement be authorized and approved in its entirety.

25. The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material.

26. The transfer of the Purchased Assets to the Purchaser is not subject to taxation under any state or local law imposing a stamp, transfer or similar tax in accordance with section 1146(c) of the Bankruptcy Code.

27. As provided by Bankruptcy Rule 7062, this Sale Order shall be effective and enforceable immediately upon entry.

28. The transfer of the Purchased Assets and the assignment of the Executory Contracts listed on Exhibit B hereto do not and will not subject the Purchaser to any liability for claims against the Debtor by reason of such transfer under the laws of the United States, any state, territory or possession thereof or the District of Columbia applicable to such transactions.

Dated: Wilmington, Delaware
Mark 15, 1997


United States Bankruptcy Judge

Exhibit A

(Asset Purchase Agreement)

ASSET PURCHASE AGREEMENT

by and among

D. F. King & Co., Inc.

KOL Corp.,

Jimmy R. Hoffman (individually and
as Trustee of the KAS Investment Trust)

and

Joseph Rafael (individually and
as Trustee of the Toby Rafael Investment Trust)

dated as of January 29, 1997

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ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "Agreement") made as of this 29th day of January, 1997 by and among D. F. King & Co., Inc., a Delaware corporation ("Buyer"), KOL Corp., a Delaware corporation ("Seller"), Jimmy R. Hoffman, individually and as Trustee of the KAS Investment Trust, and Joseph Rafael, individually and as Trustee of the Toby Rafael Investment Trust (Jimmy R. Hoffman and Joseph Rafael, in such capacities, being referred to herein as the "Executives").

WHEREAS, Seller is engaged in the development, marketing and distribution of computer-assisted telephone interviewing and telemarketing software known as Tel-ATHENA, including any preexisting or derivative works and related upgrades or enhancements and all copyright, trademark, patent, trade secret and other intellectual property rights in any of the foregoing anywhere throughout the world (collectively, "Tel-ATHENA"), through its ATHENA Division ("ATHENA");

WHEREAS, Seller plans to file a petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), and to operate as a debtor-in-possession (the case arising out of the same as so administered by the Bankruptcy Court, being referred to hereinafter as the "Bankruptcy Case"); and

WHEREAS, Buyer desires to purchase from Seller, as a debtor-in-possession, and Seller desires to sell to Buyer, the Assets (as defined below) upon the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements set forth in this Agreement, Buyer, Seller and the Executives do hereby agree as follows:

ARTICLE I PURCHASE AND SALE OF ASSETS

1.1 Assets Purchased.

(a) Subject to the terms and conditions of this Agreement, and pursuant to Sections 105(a), 363(b), 363(f), 363(m) and 365 of the Bankruptcy Code, Seller shall sell, convey, transfer, assign and deliver to Buyer free and clear of all

liens, claims and other encumbrances, and Buyer shall purchase, acquire and accept from Seller, all of Seller's right, title (where applicable) and interest in, to and under the assets, business and operations of ATHENA, including without limitation the following: (i) Tel-ATHENA, except the Right of Retention (as defined below), together with all related user manuals and documentation; (ii) all other Intellectual Property (as defined below) and other similar intangibles owned or in the possession of Seller and relating to ATHENA, including all information and documents relating to research and development activities (whether completed or not); (iii) certain existing employment, lease, license, support and maintenance agreements and contracts and other client contracts (the "Assigned Contracts"), which are particularly identified and listed in Section 1.1(a)(iii) of the disclosure schedule delivered by Seller to Buyer on or prior to the date hereof (the "Disclosure Schedule"); (iv) the equipment relating to ATHENA listed in Section 1.1(a)(iv) of the Disclosure Schedule; (v) prorated amounts, in cash, of all prepayments made to Seller under the Assigned Contracts, which amounts are set forth opposite the contracts as to which such amounts were paid in Section 1.1(a)(iii) of the Disclosure Schedule; and (vi) the items listed on Schedule I hereto (collectively, the "Assets"). Expressly excluded from the Assets being acquired by Buyer hereunder are any accounts receivable representing payments in arrears owed to Seller for (i) license fees for license periods ending prior to the closing of the transactions contemplated by this Agreement (the "Closing") or (ii) services performed by Seller prior to the Closing.

(b) It is expressly agreed and understood that in undertaking the transactions contemplated hereby Buyer does not assume, and shall not be liable for, any liabilities of KOL or the Executives or any other person or entity, including without limitation to the following: (i) any of the debts, accounts, obligations or other liabilities of Seller, ATHENA, the Executives or CRC Information Systems, Inc., a New York corporation ("CRC"), including without limitation the liabilities or expenses of any of them with respect to or in connection with this Agreement and the transactions contemplated hereby; (ii) any liens, claims and other encumbrances against the Assets purchased by Buyer hereunder; (iii) any other claims, judgments, orders, decrees or actions or threatened actions against Seller, ATHENA, the Executives, CRC or the officers, directors, employees or agents of Seller or CRC (including without limitation any claims, judgments, orders, decrees, actions or threatened actions, including without limitation any pending or threatened litigation described or referenced in Section 3.10 of the Disclosure Sched-

ule or arising therefrom or in connection therewith); (iv) any liabilities or obligations whatsoever to Seller or Seller's employees, including without limitation, liabilities or obligations (A) with respect to any benefits or other provisions under any "employee benefit plan" as that term is defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and the rules and regulations promulgated thereunder, (B) for such employees' services with Seller or any affiliate of Seller or (C) otherwise in connection with such employees' employment by Seller, whether or not any or all of such employees are offered employment by or become employees of Buyer; (v) any Tax (as defined in Section 3.11 herein) or Tax liability of Seller or CRC, including but not limited to any Tax liability or obligation arising out of or in connection with the Assets (collectively, the "Excluded Liabilities").

(c) It is agreed by Buyer and Seller that, at the Closing, Seller shall transfer and assign to Buyer its right, title and interest in the Assigned Contracts by assuming and assigning the Assigned Contracts pursuant to the Order (as defined below) and the provisions of Section 365 of the Bankruptcy Code.

1.2 Retained Rights. Following the Closing, Seller shall retain a non-exclusive, perpetual royalty-free right to use Tel-ATHENA at 200 ports (including 70 existing ports at which Tel-ATHENA is currently in use by Seller) at no cost to Seller (the "Right of Retention"). Buyer also will provide to Seller, upon Seller's request made at any time following the Closing, a non-exclusive, perpetual royalty-free license for the use of Tel-ATHENA by Seller of up to an additional 200 ports, for a one-time license fee (the "Post-Closing License Fee") equal to the lesser of \$1,200 per port or the then prevailing per port license market rate quoted by Buyer to prospective licensees not then possessing one or more licenses for the use of Tel-ATHENA (the "Post-Closing Licenses"). Such Post-Closing Licenses shall not include the rights to any related equipment (including without limitation dialers) or any required support software (including without limitation Unidata database software). Seller shall bear the cost of any equipment related to, or any support software for use with, Tel-ATHENA pursuant to any Post-Closing Licenses. The terms of the Right of Retention and Post-Closing Licenses shall be evidenced by a license retention agreement substantially in the form attached hereto as Exhibit A (the "Tel-ATHENA License Retention Agreement").

1.3 Consideration. Subject to the terms and conditions of this Agreement, in reliance upon the representations, warranties and agreements of Seller and the Executives contained herein and in consideration of the sale, assignment, transfer and delivery of the Assets by Seller, at the Closing, Buyer shall pay an aggregate of \$1,000,000 (the "Purchase Price") to Seller as follows:

(a) Buyer will deliver to Seller a check in an amount equal to \$500,000, less any amounts paid by Buyer to Seller pursuant to the Tel-ATHENA Licensing Agreement With Support and Maintenance in a Separate Agreement, dated June 12, 1996, between Buyer and Seller (together with all amendments thereto, the "Tel-ATHENA License"), in respect of each day in the term of the Tel-ATHENA License beginning September 1, 1996 (whether such amounts are paid prior to, on or after September 1, 1996) and continuing until the Closing; and

(b) Buyer will deliver to Seller a Secured Promissory Note for \$500,000, substantially in the form attached hereto as Exhibit B (the "Note"), secured by substantially all of the Assets under a KOL Security Agreement between Seller and Buyer, substantially in the form attached hereto as Annex I to Exhibit B hereto (the "KOL Security Agreement").

1.4 Rights of Offset. Buyer shall be permitted to offset against payments to be made by Buyer under the Note any and all amounts owed to Buyer by Seller pursuant to (a) Section 1.2, (b) the Support and Maintenance Agreement (as defined below), (c) the Third-Party Vendor Agreement (as defined below) and (d) any indemnification payments required to be made by Seller pursuant to Section 7.1 in accordance with the provisions of Section 7.3. The express terms of the Note shall incorporate Buyer's offset rights as set forth in this Section 1.4 and Section 7.3.

1.5 Closing.

(a) Subject to paragraph (b) of this Section 1.5, the Closing shall take place at the offices of D. F. King & Co., Inc., 77 Water Street, New York, New York on the closing date (the "Closing Date") which, at Buyer's sole discretion, shall be: (i) the day the Order (as defined below) is entered by the Bankruptcy Court or as soon thereafter as is reasonably possible, but

in any event no later than the first Friday following the entry of the Order or (ii) the day the Order becomes a final, nonappealable and unappealed order of the Bankruptcy Court (the "Final Order Date") or as soon thereafter as is reasonably possible, but in any event no later than the first Friday following the Final Order Date or (iii) in the event of an appeal from or motion to reconsider the Order, (x) the day that such appeal is finally dismissed or such motion is finally denied, or as soon thereafter as is reasonably possible, but in any event no later than the first Friday following such day or (y) any date during the pendency of such appeal or motion designated by Buyer, as provided in paragraph (b) of this Section 1.5 herein.

(b) Notwithstanding anything to the contrary in this Agreement, but subject to the third sentence of this Section 1.5(b), and at Buyer's sole discretion as provided in Section 1.5(a) herein, Seller shall be obligated to consummate the transactions provided for in this Agreement during the pendency of an appeal from or a motion to reconsider the Order and notwithstanding that any appeal period shall not have expired, unless on the Closing Date (as determined by Buyer pursuant to Section 1.5(a) herein) implementation of the Order has been stayed by the Bankruptcy Court or another court of competent jurisdiction (a "Stay") or one or more parties to this Agreement has been enjoined by the Bankruptcy Court or another court of competent jurisdiction from consummating the transactions contemplated by this Agreement (an "Injunction"); provided, however, that in such case, Buyer shall be entitled to the benefit of Section 363(m) of the Bankruptcy Code. If, on the Closing Date, there is in effect a Stay or Injunction and the Stay or Injunction is dissolved within five business days from its issuance, Seller shall be obligated (at Buyer's sole discretion) to consummate the transactions on, and the Closing Date shall be, the first business day (or such later date designated by Buyer) after the date on which the Stay or Injunction is dissolved if this Agreement has not been terminated prior to such time. Nothing contained in this Section 1.5(b) shall waive the requirements of this Agreement that all conditions to the obligations of Seller and Buyer identified in Article VI of this Agreement shall have been satisfied (or waived) at or prior to the Closing Date.

1.6 Deliveries of Seller. At the Closing, in addition to any other documents specifically required to be delivered pursuant to this Agreement, Seller shall deliver or cause to be delivered to Buyer:

- (a) the Assets;

(b) a certified copy of the order of the Bankruptcy Court, in form and substance satisfactory and acceptable to Buyer, approving this Agreement and the consummation of the transactions, including without limitation the assumptions and assignments, contemplated hereby (the "Order");

(c) a Bill of Sale, Assignment and Assumption Agreement, substantially in the form attached hereto as Exhibit C (the "Bill of Sale");

(d) a Trademark Assignment executed by Seller, substantially in the form attached hereto as Exhibit D (the "Trademark Assignment");

(e) an Assignment and Assumption Agreement executed by Seller, substantially in the form attached hereto as Exhibit E (the "Assignment and Assumption Agreement");

(f) copies of the executed originals of any and all agreements or other documents pertaining to the Assets;

(g) a notification from Seller to Buyer as to the number of ports, if any, as to which Seller has then determined to exercise its rights for Post-Closing Licenses, together with the applicable Post-Closing License Fees; and

(h) such other deeds, endorsements, assignments (including without limitation for the assignment to Buyer of any copyright for Tel-ATHENA registered by Seller prior to Closing), instruments and other documents as are reasonably requested by Buyer in furtherance of the transactions contemplated hereby or necessary to vest in Buyer good and marketable title to the Assets.

1.7 Deliveries of Buyer. At the Closing, in addition to any other document specifically required to be delivered pursuant to this Agreement, Buyer shall deliver or cause to be delivered to Seller:

(a) the Purchase Price (including without limitation the Note and related security agreement); and

(b) the Bill of Sale.

ARTICLE II BANKRUPTCY PROCEDURES

2.1 Chapter 11 Petition. Within five days following execution of this Agreement, Seller shall file a petition for reorganization relief (the "Petition") under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court (the date of such filing, the "Petition Date"). Within five days following the Petition Date, Seller shall (a) file such documents and other papers with the Bankruptcy Court as may be required or appropriate under the Bankruptcy Code and (b) take such other actions as may be required or appropriate under the Bankruptcy Code, in each case, in order to obtain the Order. As with the Order, all papers seeking entry of the Order, or any other order approving the sale, conveyance, transfer, assignment and delivery of the Assets to Buyer, and other orders required to facilitate the transactions contemplated hereby and by the Order, shall, when submitted to the Bankruptcy Court for approval, be in form and substance satisfactory and acceptable to both Buyer and Seller.

2.2 Notice. Upon entry of the Procedures Order (as defined below), Seller shall mail to all creditors of Seller, all creditors of CRC, CRC's bankruptcy trustee, all parties to the Assigned Contracts and all other persons and entities to be identified by Buyer, a notice substantially in the form attached hereto as Exhibit F (or, with the express prior consent of Buyer, a notice in any other form proposed by Seller), informing such parties of the filing of the Petition and the existence of this Agreement.

2.3 Sale Motion. Within five days following the Petition Date, Seller shall file in the Bankruptcy Court a motion (the "Sale Motion") seeking (i) entry of an order, in form and substance satisfactory and acceptable to Buyer (the "Procedures Order"), approving, among other things (including without limitation those set forth in Section 2.5), auction procedures to apply to Seller's sale of the Assets (the "Sale Procedures") and (ii) entry of the Order authorizing and approving this Agreement and consummation of the transactions contemplated by this Agreement. Following completion of the Sale Procedures, if the Buyer is the high bidder in accordance with the Sale Procedures, Seller shall immediately request the entry of the Order, substantially in the

form attached hereto as Exhibit G, (i) approving the transactions contemplated by this Agreement in accordance with the terms hereof, (ii) directing that Seller's transfer of its right, title and interest in and to the Assets to Buyer be free and clear of all claims and interests pursuant to Sections 363(b) and (f) of the Bankruptcy Code, (iii) finding that Buyer is a good faith purchaser and is afforded the protection of Section 365(m) of the Bankruptcy Code, (iv) finding that there has been compliance with the requirements of the Sale Procedures, together with any other procedure order approved by the Bankruptcy Court, as the same may be amended, (v) not purporting to alter the requirements or other provisions of the Sale Procedures or any such procedure order in any material respect, (vi) directing that the Purchase Price be immediately delivered to Seller's chapter 11 estate upon receipt of the same by Seller and (vii) authorizing and approving Seller's assumption and assignment to Buyer of the Assigned Contracts as set forth in Section 2.4.

2.4 Executory Contracts. Within five days following the Petition Date, Seller, as debtor-in-possession, shall file an appropriate pleading (which may be the Sale Motion) with the Bankruptcy Court seeking to assume and assign to Buyer pursuant to Section 365 of the Bankruptcy Code the Assigned Contracts. In the event that the Bankruptcy Court determines that Seller is in monetary default under any Assigned Contract and must cure such monetary default prior to Bankruptcy Court approval of Seller's assumption and assignment to Buyer of such Assigned Contract, Seller shall cure any such monetary default under such Assigned Contract (unless otherwise agreed to with Buyer) and, if required, Buyer shall take all reasonable actions required by the Bankruptcy Court to establish adequate assurance of future performance with respect to such Assigned Contract, unless Buyer determines in its reasonable discretion that such actions are commercially unreasonable or unduly burdensome. Only in the event that the Bankruptcy Court approves by a final and nonappealable order Seller's assumption and assignment of an Assigned Contract shall that Assigned Contract be assumed by Seller and assigned to Buyer, in which case Buyer shall become obligated in accordance with the terms of such Assigned Contract.

2.5 Procedures Order. The Procedures Order shall (i) schedule the date, time and place for, and prescribe the form and manner of notice of, a hearing on authorization and approval, subject to higher and better offers, of the Agreement, Seller's assumption of its obligations thereunder, and Seller's assumption and assignment to Buyer of the Assigned Contracts, (ii) approve the Sale Procedures, including terms for competing offers and

over-bid procedures acceptable to Buyer, (iii) approve the expense reimbursement provisions of Section 8.2 effective immediately upon entry of the Procedures Order and (iv) authorize Buyer at its option to either (A) extend the Tel-ATHENA License for up to 12 months or (B) purchase a corporate license to use Tel-ATHENA on an unlimited number of ports for a one-time license fee payment of \$500,000 to Seller or, if the case may be, a person or entity other than Buyer (the "Other Buyer") who or which acquires the Assets, which license shall include (x) a right of access to and the ability to modify the Tel-ATHENA source code for Buyer's exclusive use and (y) a right to Seller's (or, if the case may be, the Other Buyer's) support and maintenance services, which shall be provided at a separate cost equal to that charged to, and otherwise on the same terms as are afforded to other Tel-ATHENA licensees, all as they may hereafter be agreed upon by Buyer and Seller (the "License Extension Rights").

2.6 Competing Bids. Notwithstanding any other provision of this Agreement to the contrary, (a) this Agreement and the consummation of the transactions contemplated hereby are subject to higher and better offers for the Assets made in compliance with the Sale Procedures and (b) in the event that any person or entity submits an offer for the Assets in compliance with the Sale Procedures (as approved by the Bankruptcy Court) that is deemed by Seller or the Bankruptcy Court to be a higher and better offer for the Assets than the offer for the Assets represented by the terms of this Agreement, then Buyer shall be free to bid for the Assets on terms different and varying from the terms set forth in this Agreement and any other agreement or instrument contemplated hereunder. In such event, Buyer shall have no further obligations to Seller or the Executives under this Agreement or the related agreements identified in paragraphs (a) through (g) of Section 5.1.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER
AND THE EXECUTIVES

Seller and the Executives represent and warrant to, and covenant with, Buyer as follows:

3.1 Organization, Power and Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite power and authority (corporate or otherwise) to own its properties and assets and to carry on its business as such business is now conducted. Seller has no subsidiaries, owns ATHENA and the

Assets directly and does business under the name CRC Data Systems. Seller has delivered to Buyer complete and correct copies of Seller's Certificate of Incorporation and Seller's By-laws as of the date of this Agreement, each of which are set forth in Section 3.1 of the Disclosure Schedule and have been previously delivered to Buyer and initialed by Seller's counsel.

3.2 No Required Consents. Except as contemplated by this Agreement or as set forth in Section 3.2 of the Disclosure Schedule, no consents, approvals, authorizations, declarations or filings, including without limitation any consent, approval or authorization of, or declaration or filing with, any governmental authority or any other person or entity, are required on the part of Seller or the Executives in connection with the execution and delivery of this Agreement or consummation of the transactions contemplated hereby.

3.3 Authorization. Seller has the requisite corporate power and authority and the Executives have the legal capacity to enter into this Agreement and the other agreements, documents and instruments to be executed and delivered by Seller or the Executives pursuant hereto (the "Additional Seller's Documents") and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Additional Seller's Documents by Seller and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of Seller and, if legally required, the stockholders of Seller, and no other corporate actions or proceedings on the part of Seller or its stockholders are necessary to authorize this Agreement and the Additional Seller's Documents and the transactions contemplated hereby and thereby. When fully executed and delivered, this Agreement and each of the Additional Seller's Documents will constitute the valid and binding agreements of Seller or the Executives, as applicable, enforceable against Seller and each of the Executives, respectively, in accordance with their respective terms.

3.4 Capitalization. As of the date of this Agreement, the authorized capital stock of Seller consists of 10,000 shares of common stock, par value \$.01 per share (the "Common Stock"), 200 shares of which are issued and outstanding (the "Outstanding Common Stock"). Except as set forth in Section 3.4 of the Disclosure Schedule, all of the Outstanding Common Stock has been duly authorized, validly issued, fully paid, nonassessable and free of any mortgage, pledge, security interest, encumbrance, lien, claim or charge of any kind or right of others of whatever nature, preemptive rights or other restrictions with respect

thereto. The Outstanding Common Stock is, and, as of the Closing Date, the then Outstanding Common Stock will be, owned of record and beneficially by the entities or individuals and in the amounts set forth in Section 3.4 of the Disclosure Schedule. There are no securities outstanding which are convertible into or exercisable or exchangeable for shares of capital stock of Seller, and there are no outstanding options, rights, contracts, warrants, subscriptions, conversion rights or other agreements or commitments pursuant to which Seller may be required to purchase, redeem, issue or sell any shares of capital stock or other securities of Seller or in any way relating to the issuance or voting of any capital stock or other securities of Seller.

3.5 Financial Statements. Except as set forth in Section 3.5 of the Disclosure Schedule, Seller does not have and has not ever had any audited financial statements. The financial information of Seller as of and for the periods ended December 31, 1995 and December 31, 1994 and the financial information of CRC as of December 31, 1993 and December 31, 1992, heretofore delivered to Buyer and set forth in Section 3.5 of the Disclosure Schedule (collectively, the "Financial Statements"), is correct, complete and accurate in all material respects and fairly presents the financial condition of Seller or CRC, as applicable, as of the dates and for the periods indicated. The books and records of Seller include all material entries and transactions necessary for a fair presentation of the Financial Statements. Except as disclosed in writing to Buyer in Section 3.5 of the Disclosure Schedule, the Financial Statements have been prepared in accordance with generally accepted accounting principles as historically and consistently applied, with the exception of the absence of footnote disclosure.

3.6 No Undisclosed Liabilities. Except (a) as set forth in Section 3.6 of the Disclosure Schedule, (b) as and to the extent of the amounts specifically reflected or reserved against in the Financial Statements, (c) for any contingent liabilities disclosed in the footnotes (if any) to the Financial Statements, (d) for write-offs or discounts of receivables and actual returns taken, made or accepted by Seller after the date of this Agreement or (e) for current liabilities which were incurred, and obligations under agreements, commitments or contracts which were entered into, in the ordinary course of business and consistent with past practice, Seller does not have liabilities or obligations of any nature (whether absolute, accrued, known or unknown, contingent or otherwise and whether due or to become due). Without limiting the foregoing, to the extent minimum royalties under any contract, agreement, arrangement or

understanding have not been paid in full, such royalties are adequately accrued for in the Financial Statements.

3.7 Interim Change. Except as set forth in Section 3.7 of the Disclosure Schedule, since December 31, 1995, Seller has been operating ATHENA only in, and has not engaged in any material transaction relating to ATHENA other than in, the ordinary course of business and consistent with past practice, and Seller has not:

(a) suffered any change, nor has there occurred or arisen any event, having or which in the future could reasonably be expected to have a Material Adverse Effect (as defined below) on Seller or ATHENA;

(b) forgiven or cancelled any debts or claims or waived, released or relinquished any contract right or any other rights of the business of Seller, other than in the ordinary course of business and consistent with past practice;

(c) paid, discharged or satisfied any liens, encumbrances, liabilities or obligations (absolute, accrued, contingent or otherwise), other than in the ordinary course of business and consistent with past practice;

(d) suffered any damage, destruction or loss of property, whether or not covered by insurance, which has had or could reasonably be expected to have a Material Adverse Effect;

(e) changed its policy with respect to the recording of return reserve provisions or provisions for bad debt;

(f) created, incurred or assumed any long-term debt (including obligations in respect of capital leases), or assumed, guaranteed, endorsed or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other individual, corporation, partnership, joint venture, association, organization or other entity (a "Person"), except for the endorsement of checks in the ordinary course of collection, or made any loans, advances or capital contributions to, or investments in, any other Person;

(g) been subjected to any mortgage, pledge, lien, charge or other encumbrance of any kind or, except for liens for current Taxes not yet due and except for sales of inventory in the ordinary course of business and consistent with past practice, sold, assigned or transferred any of its properties or assets (real, personal or mixed, tangible or intangible);

(h) (i) increased in any manner the wages, salaries or compensation of any employees of ATHENA or employees of Seller contributing to the operations of ATHENA, whose names are set forth in Section 3.7(h) of the Disclosure Schedule (the "ATHENA Employees") except as required under any written plan, agreement or arrangement in effect as of December 31, 1995, (ii) paid or agreed to pay any pension, retirement allowance or other employee benefit not required or contemplated by any plan, agreement or arrangement in effect as of December 31, 1995 to any ATHENA Employee or other person or (iii) committed itself to any pension, profit-sharing, bonus, severance pay, retirement or other benefit plan, agreement or arrangement, or to any employment or consulting agreement with or for the benefit of any ATHENA Employee or to amend any such plan, agreement or arrangement in effect as of December 31, 1995, except as may have been required to comply with applicable law;

(i) acquired (i) by merger or consolidation with, or by the purchase of the assets of, or by any other manner, any corporation, partnership, association or other business organization or division thereof or (ii) any assets that are material in the aggregate to Seller, except purchases of inventory, materials and supplies in the ordinary course of business and consistent with past practice and capital expenditures for additions to property, plant, equipment or intangible capital assets not exceeding \$20,000 in the aggregate;

(j) entered into any agreement, contract or commitment, other than in the ordinary course of business or as contemplated by this Agreement, with respect to the manufacture of any software product of Seller or ATHENA or any update, upgrade or derivative thereof, whether now in process, under contract or in publication, which has ever been or is currently being devel-

oped, licensed, manufactured, sold, distributed or otherwise published by Seller;

(k) made any change in its accounting principles or methods, except as may have been required by a change in generally accepted accounting principles;

(l) amended the Certificate of Incorporation or By-Laws of Seller; or

(m) authorized, or committed or agreed, whether in writing or otherwise, to take, any of the actions described elsewhere in this Section 3.7.

3.8 Title to Assets. Except as set forth in Section 3.8 of the Disclosure Schedule, Seller has and (with Bankruptcy Court approval) will convey to Buyer good and marketable title to the Assets free and clear of all liens (other than liens for current Taxes not yet due and minor imperfections of title or minor encumbrances, if any, which in the aggregate do not have a Material Adverse Effect), other than property that is leased or licensed. "Material Adverse Effect" shall mean that such event, change or effect is materially adverse to the business, operations, properties, assets (including intangible assets), liabilities (including contingent liabilities), financial condition or results of operations of ATHENA. Except as set forth in Section 3.8 of the Disclosure Schedule, Seller has valid and enforceable leases or licenses, as the case may be, with respect to the Assets consisting of property that is leased or licensed, under which there exists no default, event of default or event which, with notice or lapse of time or both, would constitute a default, except for such defaults which could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Seller is in possession of all of the Assets, including without limitation all information and documents relating to research and development activities (whether or not completed).

3.9 No Violation. Except as set forth in Section 3.9 of the Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will violate any provision of the Certificate of Incorporation or By-Laws of Seller, violate or be in conflict with, or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or cause the acceleration of the maturity of any

debt or obligation pursuant to, or result in the creation or imposition of any security interest, lien or other encumbrance upon any property or assets of Seller, CRC or the Executives (including without limitation the Assets) under, any agreement or commitment to which Seller, CRC or any of the Executives is a party or by which Seller, CRC or any of the Executives is bound, or to which the property of Seller or CRC or any of the Executives is subject, or violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority.

3.10 Litigation. Except as set forth in Section 3.10 of the Disclosure Schedule, there are:

(a) no actions, suits, inquiries, investigations or proceedings pending or, to the best knowledge of Seller and the Executives, threatened against Seller or the Executives or any individual in his or her capacity as an officer, director, employee or stockholder of Seller, at law or in equity, before any court or governmental or other regulatory or administrative agency or commission, or by any private person or entity, and there is no material claim against Seller or the Executives or any such individual, which, in any such case, could reasonably be expected to, directly or indirectly, affect the Assets or the transactions contemplated by this Agreement; and

(b) no existing or pending orders, judgments or decrees of any court or governmental agency by which Seller or the Executives or any individual in his or her capacity as an officer, director, employee or stockholder of Seller, may be bound or which may give rise to any material claims against the Assets, the transactions contemplated by this Agreement or the rights and interests to be acquired by Buyer pursuant hereto.

3.11 Taxes. Except as disclosed in Section 3.11 of the Disclosure Schedule:

(a) all returns, declarations, reports, estimates, information returns and statements (collectively, "Tax Returns") required to be filed by Seller for all periods ending on or before the Closing Date have been (or will be) timely filed, and all such Tax Returns are true, correct and complete; the Company is

not required to file any state Tax Returns other than in the State of New York, the State of Illinois and the State of Delaware;

(b) Seller has not requested any extension of time within which to file any Tax Return, which Tax Return has not since been filed, and there are no outstanding waivers or comparable consents regarding the application of the statute of limitations with respect to any Taxes or Tax Returns that have been given by Seller;

(c) Seller has timely paid all Taxes due or claimed to be due by it to any federal, state, local or foreign taxing authority with respect to periods (or portion thereof) ending on or before the Closing Date;

(d) there are no liens for Taxes upon the assets of Seller except liens for Taxes not yet due;

(e) no deficiency for any Taxes has been proposed, asserted or assessed against Seller which has not been resolved and paid in full; there are no outstanding waivers or comparable consents regarding the application of the statute of limitations with respect to any Taxes or Tax Returns that have been given by Seller;

(f) no audit or other proceeding by any federal, state, local or foreign court, governmental, regulatory, administrative or similar authority is presently pending with respect to any Taxes or Tax Returns of Seller;

(g) no Tax is required to be withheld from the Purchase Price as a result of the transfers contemplated by this Agreement pursuant to any provision of the Internal Revenue Code of 1986, as amended (the "Code") or any other provision of federal, state, foreign or local Tax law;

(h) Seller has complied (and until the Closing will comply) in all material respects with all applicable laws, rules and regulations relating to the payment and withholding of Taxes (including, without limitation, withholding of Taxes pursuant to Sections 1441 and 1442 of the Code or similar provisions under

any foreign laws) and has, within the time and in the manner prescribed by law, withheld from employee wages and paid over to the proper governmental authorities all amounts required to be so withheld and paid over under all applicable law; and

(i) Seller has no obligations under any Tax sharing agreement or similar contract or arrangement; except as set forth in Section 3.11 of the Disclosure Schedule, no power of attorney has been granted by Seller with respect to any matter relating to Taxes which is currently in force.

For purposes of this Agreement, "Taxes" (including, with correlative meaning, the term "Tax") shall mean all taxes, charges, fees, levies or other assessments, including without limitation all net income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, estimated, severance, stamp, occupation, recording, property or other taxes, customs duties, fees, assessments or charges of any kind whatsoever, together with any interest, penalties, additions to tax or other additional amounts imposed with respect thereto imposed by any taxing authority domestic or foreign.

3.12 Intellectual Property.

(a) For purposes of this Agreement, "Intellectual Property" shall mean all industrial and intellectual property rights used in or necessary to the business of ATHENA as currently conducted and as currently proposed to be conducted, including all patents and patent applications; trademarks, trademark registrations and applications; trade names; service marks and service mark registrations and applications; the goodwill of the business connected with the use of and symbolized by such trademarks, trade names and service marks; copyright and copyright registrations and applications; computer software; technology, know-how, trade secrets, proprietary processes and formulae; and all technical manuals and documentation made or used in connection with any of the foregoing.

(b) Except as set forth in Section 3.12 of the Disclosure Schedule, Seller owns or has the right to use, sell or license the Intellectual Property, free and clear of all liens, claims and encumbrances. Section 3.12 of the Disclosure Schedule sets forth a complete and accurate list of all federal, state and foreign patents and patent applications, trademark or service

mark applications and registrations, copyright registrations and applications, and material unregistered copyrights, service marks, trademarks and trade names, each as owned by Seller. All Intellectual Property registrations are valid and subsisting, are held in the name of Seller and are validly maintained. No application or registration in Section 3.12 of the Disclosure Schedule is the subject of any pending, existing or threatened opposition, interference, cancellation proceeding or other legal or governmental proceeding before any registration authority in any jurisdiction.

(c) Except as set forth in Section 3.12 of the Disclosure Schedule, no person has a right to receive a royalty or similar payment in respect of any item of Intellectual Property pursuant to any contractual arrangements entered into by Seller or otherwise. No former or present employees, officers or directors of Seller hold any right, title or interest, directly or indirectly, in whole or in part, in or to any Intellectual Property.

(d) Section 3.12 of the Disclosure Schedule sets forth a complete and accurate list of all agreements pertaining to the use or grant of any right to use or practice any rights under any Intellectual Property, whether Seller is the licensee or licensor thereunder (collectively, the "Licenses"). The Licenses are valid and binding obligations of Seller, enforceable in accordance with their terms, and there are no breaches or defaults thereunder.

(e) Section 3.12 of the Disclosure Schedule lists all of the computer software that is owned, licensed, leased or otherwise used by Seller in connection with the operation of the business of ATHENA as currently conducted, and identifies which is owned, licensed, leased or otherwise used, as the case may be. Except as set forth in Section 3.12 of the Disclosure Schedule, all computer software listed in Section 3.12 of the Disclosure Schedule was developed (i) by employees of Seller within the scope of their employment or (ii) as "works-made-for-hire," as that term is defined under Section 101 of the United States Copyright Act, 17 U.S.C. § 101, pursuant to written agreements. With respect to all computer software owned by Seller, Seller has taken or caused to be taken all reasonable steps to obtain and retain valid and enforceable intellectual property rights therein.

(f) No trade secret, know-how or any other confidential information relating to Seller has been disclosed or

authorized to be disclosed to any third party, other than pursuant to a non-disclosure agreement that fully protects Seller's proprietary interest in and to such confidential information.

(g) The conduct of the business of ATHENA does not infringe upon any intellectual property right owned or controlled by any third party. There are no claims or suits pending or, to the best of Seller's knowledge, threatened, and Seller has received no notice of any claim or suit (i) alleging that Seller's activities in relation to ATHENA or the conduct of the business of ATHENA infringes upon or constitutes the unauthorized use of the proprietary rights of any third party or (ii) challenging the ownership, use, validity or enforceability of the Intellectual Property, nor is there, to the best knowledge of Seller, a valid basis for any such claim or suit.

(h) To the best knowledge of Seller, no third party is infringing upon any Intellectual Property owned or controlled by Seller, and no such claims have been made by Seller.

(i) There are no settlements, consents, judgments, orders or other agreements which restrict Seller's rights to use any Intellectual Property.

(j) Except as set forth in Section 3.12 of the Disclosure Schedule, the consummation of the transactions contemplated hereby will not (i) give rise to any right of termination, amendment, renegotiation, cancellation or acceleration with respect to any License or (ii) result in the loss or impairment of Seller's rights to own, use, license or sell any of the Intellectual Property or (iii) require the consent of any governmental agency or third party.

3.13 Contracts and Commitments.

(a) Except as set forth in Section 3.13(a) of the Disclosure Schedule, Seller (which, for the purpose of this Section 3.13 shall include ATHENA to the extent that ATHENA is a party to any contract, agreement, instrument, arrangement or understanding) is not a party to any contracts, agreements, instruments, arrangements or understandings, whether written or oral (any such contracts, agreements, arrangements, instruments or understandings as set forth in Section 3.13(a) of the Disclosure Schedule, all agreements relating to Intellectual Property set forth in Section 3.12 of the Disclosure Schedule and all Assigned Contracts set forth in Section 1.1(a)(iii) of the Disclosure Schedule being referred to as "Material Contracts"):

(i) for the marketing, sale, lease, license, rental or distribution of Tel-ATHENA;

(ii) to provide maintenance, service, customization, enhancements or upgrades to Tel-ATHENA licensees or users;

(iii) with developers of Tel-ATHENA who are not ATHENA Employees;

(iv) providing for the nondisclosure, or preservation of confidentiality, of trade secrets or proprietary or other nonpublic or sensitive information of or relating to ATHENA or the Assets;

(v) permitting resale, sublease, sublicense or distribution by Seller of third-party products relating to ATHENA or the Assets;

(vi) for the lease or licensure of any third-party software or Intellectual Property of ATHENA;

(vii) which may be reasonably expected to have or create a Material Adverse Effect;

(viii) with any supplier relating to ATHENA containing any provision permitting any party other than Seller to renegotiate the price or other terms or containing any pay-back or other similar provision;

(ix) relating to indebtedness for borrowed money or security therefor (including without limitation credit agreements, promissory notes, indentures, guarantees, security agreements, pledges, factoring, arrangements and agreements regarding interest rate or currency swaps, hedges or straddles or similar transactions); or

(x) regarding employment, consulting, employee or director severance or termination for ATHENA Employees.

(b) Except as set forth in Section 3.13(b) of the disclosure Schedule:

(i) no purchase contract agreement or arrangement of Seller (whether as a purchaser or seller thereunder) relating to ATHENA (or group of related contracts with the same party) (A) continues for a period of more than six months (including renewals or extensions at the option of another party); (B) requires payment of more than \$25,000 in any six-month period; or (C) is not terminable by Seller or ATHENA, as the case may be, without penalty upon notice of 60 days or less (excluding any contract or group of contracts with a customer of Seller or ATHENA for the sale, lease, license or rental of products or services relating to Tel-ATHENA if such contract or group of contracts was entered into by Seller in the ordinary course of business);

(ii) Seller does not have any outstanding contract relating to ATHENA with respect to the employment of any officer, individual, employee, agent, consultant, adviser, salesperson, representative or other person (whether of a legally binding nature or in the nature of informal understandings) on a full-time, part-time, contract or consulting basis, which is not terminable by Seller or ATHENA, as the case may be, on notice without cost or other liability to Seller or ATHENA, including without limitation any penalty or premium or provision for the payment of any bonus or commission based on Seller's or ATHENA's (and not the person's) sales or earnings (except for payments required by applicable statutes);

(iii) no ATHENA Employee is being paid a base salary of more than \$110,000 per annum for services rendered to Seller or ATHENA;

(iv) neither Seller nor ATHENA is restricted by any agreement, arrangement or understanding from carrying on the business of ATHENA in any material respect anywhere in the world (other than by geographic or use restrictions contained in licenses relating to Intellectual Property);

(v) Seller does not have any outstanding loan relating to ATHENA, other than reasonable travel advances to ATHENA Employees for travel and reasonable entertainment expenses in the ordinary course of business; and

(vi) neither Seller nor any Stockholder has any outstanding power of attorney relating to ATHENA or the Assets.

(c) Seller and the Executives have delivered to Buyer complete and correct copies of all Material Contracts, plans, leases, policies and licenses described or referred to in the schedules hereto, and such Material Contracts, plans, leases, policies and licenses are valid, binding and in full force and effect.

3.14 Compliance with Laws. Seller and ATHENA are in compliance with all applicable laws, regulations and other requirements of all national governmental authorities and of all states, municipalities and other political subdivisions and agencies thereof having jurisdiction over Seller relating to the operation of ATHENA or the development, marketing, sale, licensure or distribution of its products, the failure to comply with which could have a Material Adverse Effect or a material adverse effect on Buyer, or the Assets, except where the failure so to be in compliance would not have a Material Adverse Effect.

3.15 Employee Benefit Plans.

(a) Schedule 3.15(a) contains a true and complete list of each deferred compensation and each bonus or other incentive compensation, stock purchase, stock option and other equity compensation plan, program, agreement or arrangement; each severance or termination pay, medical, surgical, hospitalization, life insurance and other "welfare" plan, fund or program (within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")); each profit-sharing, stock bonus or other "pension" plan, fund or program (within the meaning of Section 3(2) of ERISA); each employment, termination or severance agreement; and each other employee benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to or required to be contributed to by the Seller or by any trade or business, whether or not incorporated (an "ERISA Affiliate"), that together with the Seller would be deemed a "single employer" within the meaning of Section 4001(b) of ERISA, or to which the Seller or an ERISA Affiliate is party, whether written or oral, for the benefit of any ATHENA Employee or former ATHENA Employee (the "Plans"). None of the Plans is subject to Section 302 or Title IV of ERISA or Section 412 of the Code.

(b) With respect to each Plan, Seller or the Seller has heretofore delivered to Buyer true and complete copies of each of the following documents:

(i) a copy of the Plan and any amendments thereto (or if the Plan is not a written Plan, a description thereof);

(ii) a copy of the three most recent annual reports and actuarial reports, if required under ERISA, and the three most recent reports prepared with respect thereto in accordance with Statement of Financial Accounting Standards No. 87;

(iii) a copy of the most recent Summary Plan Description required under ERISA with respect thereto;

(iv) if the Plan is funded through a trust or any third party funding vehicle, a copy of the trust or other funding agreement and the latest financial statements thereof; and

(v) the most recent determination letter received from the Internal Revenue Service with respect to each Plan intended to qualify under Section 401 of the Code.

(c) No liability under Title IV or Section 302 of ERISA has been incurred by the Seller or any ERISA Affiliate that has not been satisfied in full, and no condition exists that presents a material risk to the Seller or any ERISA Affiliate of incurring any such liability, other than liability for premiums due the Pension Benefit Guaranty Corporation (which premiums have been paid when due). Insofar as the representation made in this Section 3.15(c) applies to Sections 4064, 4069 or 4204 of Title IV of ERISA, it is made with respect to any employee benefit plan, program, agreement or arrangement subject to Title IV of ERISA to which the Seller or any ERISA Affiliate made, or was required to make, contributions during the five year period ending on the last day of the most recent plan year ended prior to the Closing Date.

(d) Neither the Seller, any Plan, any trust created thereunder nor any trustee or administrator thereof has engaged in a transaction in connection with which the Seller, any Plan, any such trust or any trustee or administrator thereof, or

any party dealing with any Plan or any such trust could be subject to either a civil penalty assessed pursuant to Section 409 or 502(i) of ERISA or a tax imposed pursuant to Section 4975 or 4976 of the Code.

(e) Each Plan has been operated and administered in all material respects in accordance with its terms and applicable law, including but not limited to ERISA and the Code.

(f) Each Plan intended to be "qualified" within the meaning of Section 401(a) of the Code is so qualified and the trusts maintained thereunder are exempt from taxation under Section 501(a) of the Code. Each Plan intended to satisfy the requirements of Section 501(c)(9) has satisfied such requirements.

(g) No Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for any ATHENA Employee or former ATHENA Employee for periods extending beyond such employee's retirement or other termination of service, other than (i) coverage mandated by applicable law, (ii) death benefits under any "pension plan" or (iii) benefits the full cost of which is borne by the current or former ATHENA Employee (or his or her beneficiary).

(h) There are no pending, threatened or anticipated claims by or on behalf of any Plan, by any ATHENA Employee or beneficiary of any ATHENA Employee covered under any such Plan or otherwise involving any such Plan (other than routine claims for benefits).

3.16 Employees. Seller has fully complied with all applicable laws and regulations with respect to the ATHENA Employees, employment and employment practices, terms and conditions of employment and wages and hours and has not engaged in any unfair labor practice. In addition, Seller has fully performed and satisfied its contractual obligations to the ATHENA Employees. There is no unfair labor practice complaint against Seller pending before the National Labor Relations Board; there is no labor strike, dispute, slowdown or stoppage actually pending or threatened against or affecting Seller; and Seller is not a party to any collective bargaining agreement.

3.17 Insurance. Section 3.17 of the Disclosure Schedule sets forth a list of all policies or binders of insurance held by or on behalf of Seller or ATHENA in respect of the Assets (specifying the insurer, amount of the coverage, type of insur-

ance, expiration date of each policy, risks insured and any pending claims thereunder). There has not been any failure to give any notice or present any claim under any such policy or binder in a timely fashion or in the manner or detail required by the policy or binder. There are no outstanding past due premiums or claims, and there are no provisions for retroactive or retrospective premium adjustments. No notice of cancellation or nonrenewal with respect to, or disallowance of any claim under, any such policy or binder has been received by Seller or ATHENA or any officer or director thereof. Section 3.17 of the Disclosure Schedule also sets forth a description of all outstanding bonds and other surety arrangements issued or entered into in connection with the business of ATHENA.

3.18 Environmental Matters.

(a) During any period that Seller has leased or owned its properties or owned or operated any facilities, there have been no disposals, releases or threatened releases of oil or petroleum or Hazardous Materials (as hereinafter defined) on, from or under such properties or facilities. Neither Seller nor the Executives has any knowledge after due inquiry of any presence, disposals, releases or threatened releases of oil or petroleum or Hazardous Materials on, from or under any of such properties or facilities, which may have occurred prior to Seller having taken possession of any of such properties or facilities. For the purposes of this Agreement, the terms "facility," "disposal," "release" and "threatened release" shall have the definitions assigned thereto by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended ("CERCLA"). For the purposes of this Agreement, "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste which is or becomes prior to the Closing regulated under, or defined as a "hazardous substance," "pollutant," "contaminant," "toxic chemical," "hazardous material," "toxic substance" or "hazardous chemical" under (i) CERCLA; (ii) any similar federal, state or local law; or (iii) regulations promulgated under any of the above laws or statutes.

(b) None of the properties, facilities or operations of Seller is in violation of any federal, state or local law, ordinance, regulation or order relating to industrial hygiene or to the environmental conditions on, under or about such properties or facilities, including, but not limited to, soil and ground water condition. During the time that Seller has owned or leased its properties and facilities, neither Seller nor, to the best knowledge of the Executives and Seller after due

inquiry, any third party, has used, generated, manufactured or stored on, under or about such properties or facilities or transported to or from such properties or facilities any Hazardous Materials.

(c) During the time that Seller has owned or leased its properties and facilities, there has been no litigation brought or threatened against and no request for information made to Seller by, or any settlement reached by Seller with, any party or parties alleging the presence, disposal, release or threatened release of any oil or petroleum or Hazardous Materials on, from or under any of such properties or facilities.

3.19 Transactions with Interested Persons. Except as set forth in Section 3.19 of the Disclosure Schedule, to the best knowledge of Seller and the Executives, no officer, employee or director of Seller or any of their respective spouses or children, owns, directly or indirectly, on an individual or joint basis, any material interest in, or serves as an officer or director of, any customer, competitor or supplier of ATHENA, or any organization which has a Material Contract with Seller relating to ATHENA.

3.20 Warranty or Other Claims. Except as set forth in Section 3.20 of the Disclosure Schedule, neither Seller nor either Executive knows or has reason to know of any existing or threatened claims against any of them, or any facts upon which a claim against any of them could be based, relating in any way to services or products which are materially defective or materially fail to meet any service or product warranties relating to the Assets.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

4.1 Organization, Power and Authority. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

4.2 Authorization. Buyer has the requisite corporate power and authority to enter into this Agreement and the other agreements, documents and instruments to be executed and delivered by the Buyer pursuant hereto (the "Additional Buyer's Documents") and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agree-

ment and the Additional Buyer's Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of Buyer, and no other corporate proceedings on the part of Buyer or its stockholders are necessary to authorize this Agreement and the Additional Buyer's Documents and transactions contemplated hereby and thereby. When fully executed and delivered, this Agreement and each of the Additional Buyer's Documents will constitute the valid and binding agreements of Buyer, enforceable against Buyer in accordance with their respective terms.

ARTICLE V
ADDITIONAL REPRESENTATIONS AND COVENANTS

5.1 Related Agreements and Instruments.

(a) Buyer agrees to execute and deliver to each of JSH Enterprises, Inc. ("JSH") and JTR Associates, Inc. ("JTR"), and each of the Executives agrees to cause JSH and JTR, as applicable, to execute and deliver to Buyer, on or prior to the Closing Date, a Noncompetition Agreement, substantially in the form attached hereto as Exhibit H (each, a "Noncompetition Agreement"). Seller agrees to comply with the terms and provisions of the Noncompetition Agreements as an affiliate of the Executives.

(b) Buyer agrees to execute and deliver to each JSH and JTR, and each of the Executives agrees to cause JSH and JTR, as applicable, to execute and deliver to Buyer, on or prior to the Closing Date, a Consulting Agreement, substantially in the form attached hereto as Exhibit I (the "Consulting Agreement").

(c) Buyer and Seller agree to execute and deliver to each other, on or prior to the Closing Date, the Tel-ATHENA License Retention Agreement.

(d) Buyer and Seller agree to execute and deliver to each other, on or prior to the Closing Date, a Support and Maintenance Agreement, substantially in the form attached hereto as Exhibit J (the "Support and Maintenance Agreement").

(e) Buyer and Seller agree to execute and deliver to each other on or prior to the Closing Date a Third-Party Vendor Agreement, substantially in the form attached hereto as Exhibit K (the "Third-Party Vendor Agreement").

(f) Buyer and Seller agree to execute and deliver to each other the KOL Security Agreement on or prior to the Closing Date.

(g) Buyer agrees to execute and deliver to JSH and JTR, and each of the Executives agrees to cause JSH or JTR, as applicable, to execute and deliver, on or prior to the Closing Date, a Subordinated Security Agreement, substantially in the form attached hereto as Exhibit L (the "Subordinated Security Agreement").

(h) Or on prior to February 10, 1997 (but in any event prior to the Closing Date), Seller agrees to deliver to Buyer a complete and accurate list of all agreements and arrangements (whether written or oral) known to Seller, other than the agreements listed in Section 3.1(a)(iii) of the Disclosure Schedule, pursuant to which any person or entity has been granted any right to use any Intellectual Property of ATHENA, whether granted directly by Seller or otherwise. The list shall include a full description of each such agreement or arrangement, consisting of the title of the agreement (if any), the date on which the agreement or arrangement was signed or became effective and the parties thereto.

5.2 Covenants with Respect to the Schedules. During the period from the date of each of the schedules and exhibits hereto through the delivery by Buyer of the last installment of the Purchase Price pursuant to Section 1.3 hereof or the termination or expiration of this Agreement, whichever shall first occur, Seller and the Executives shall promptly inform Buyer in writing of (i) any fact or circumstance of which Seller or the Executives is then aware which would make any of the representations and warranties not true and (ii) any proposed additions to, subtractions from, alterations to or modifications of the information disclosed by Seller in any Section of the Disclosure Schedule which could have a Material Adverse Effect, which additions, subtractions, alterations or modifications shall not be deemed to actually amend the Disclosure Schedule without the express written consent of Buyer, or a material adverse effect on the Assets or Buyer's rights or responsibilities under this Agreement.

5.3 Conduct of Business. Prior to the Closing, unless Buyer shall otherwise agree in writing, or as otherwise expressly contemplated by this Agreement:

(a) subject to orders of the Bankruptcy Court, Seller shall conduct the business of ATHENA only in the ordinary and usual course consistent with past practice, and Seller shall use its reasonable efforts to preserve intact the present business organization, keep available the services of its respective present officers and key employees and preserve the goodwill of those having business relationships with ATHENA;

(b) until the Petition Date, Seller shall pay and perform when due its obligations related to ATHENA incurred in the ordinary course of business consistent with current practice;

(c) Seller shall not (i) amend its Certificate of Incorporation, By-Laws or other organizational documents, (ii) split, combine or reclassify any shares of its outstanding capital stock, (iii) declare, set aside or pay any dividend or other distribution payable in cash, stock or property or (iv) directly or indirectly redeem or otherwise acquire any shares of its capital stock;

(d) Seller shall not: (i) enter into any joint venture or strategic alliance relationship relating in any way to ATHENA or the Assets; (ii) merge or consolidate with another entity; (iii) acquire or purchase an equity interest in or a substantial portion of the assets of another corporation, partnership or other business organization or otherwise acquire any assets outside the ordinary and usual course of business of Seller and consistent with past practice or otherwise enter into any material contract, commitment or transaction outside the ordinary and usual course of business of Seller consistent with past practice, except for asset acquisitions and material contracts, commitments and transactions which would not have a Material Adverse Effect (or a material adverse effect on the Assets or Seller's ability to perform its obligations hereunder or consummate the transactions contemplated hereby); (iv) sell, lease, license, waive, release, transfer, encumber or otherwise dispose of any of the Assets outside the ordinary and usual course of business of Seller and consistent with past practice; (v) incur, assume or prepay any material indebtedness or any other material liabilities other than in the ordinary course of business of Seller and consistent with

past practice; (vi) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other person other than in the ordinary course of business of Seller and consistent with past practice; (vii) authorize or make any loans, advances or capital contributions to, or investments in, any other person, except for loans, advances or capital contributions which would not have a Material Adverse Effect (or a material adverse effect on the Assets or Seller's ability to perform its obligations hereunder or consummate the transactions contemplated hereby); (viii) permit any insurance policy covering ATHENA or the Assets to be cancelled or terminated other than in the ordinary course of business of Seller; or (ix) enter into any contract, agreement, commitment or arrangement with respect to any of the foregoing which could have a Material Adverse Effect or a material adverse effect on the Assets or Seller's ability to perform its obligations hereunder or consummate the transactions contemplated hereby;

(e) Seller shall not take any action with respect to, or make any material change in, its accounting policies or procedures, except as may be required by a change in generally accepted accounting principles;

(f) Seller shall not make any Tax election or settle or compromise any income Tax liability or file any Tax Return which may have a Material Adverse Effect or a material adverse effect on the Assets or Seller's ability to perform its obligations hereunder or consummate the transactions contemplated hereby prior to the last day (including extensions) prescribed by law;

(g) neither Seller nor the Executives shall take any action that would cause any of the representations or warranties of Seller or either of the Executives to be untrue; and

(h) Seller shall not agree to take any of the actions described in subsections (c) through (g) of this Section 5.3.

5.4 Payment of Taxes. Subject to any applicable order of the Bankruptcy Court, Seller shall be liable for and Seller or the Executives shall pay (i) any and all Taxes, fees and other charges which shall become due or shall have accrued on account of the operation and conduct of Seller's business on or before the date of Closing, or on account of Seller's use, acquisition, ownership or sale of any of the Assets, and (ii) any other sales, use, stamp, transfer or other similar Tax, fee or duty imposed with respect to the transactions contemplated by this Agreement.

5.5 Further Assurances. Seller and the Executives shall, from time to time following the Closing Date, upon the request of Buyer and without further cost or expense to Buyer, execute, acknowledge, seal and deliver all such instruments and documents of conveyance and transfer, and do all such further things as Buyer may request to perfect the transfer and delivery to Buyer of all of the rights and interests in the Assets and to more effectively consummate the transactions contemplated hereby. Seller and each of the Executives each shall use its or his best efforts:

(a) to obtain and deliver to Buyer all such consents, licenses, permits and approvals as may be required for Seller and each of the Executives to perform its obligations hereunder; and

(b) to obtain for Buyer all such consents, licenses, permits and approvals as Buyer shall deem necessary or desirable to accomplish the purchase of the Assets or to enable Buyer fully to develop, modify, enhance, distribute, lease, license, sell or use any of the Assets.

5.6 Access. For a period of at least three years after the Closing Date, Seller agrees to retain (a) all financial and tax records and minute books of Seller and ATHENA relating to the period on or before the Closing Date and (b) any documents and other materials relating to Seller and ATHENA which are not conveyed pursuant to this Agreement. After such three-year period, Seller and the Executives will not dispose of such materials without first giving Buyer the opportunity, at Buyer's expense, to remove and retain all or any part of such materials as it may select. During the period such materials are so retained, Seller shall, on reasonable notice, afford representatives of Buyer access thereto, during regular business hours, to examine and copy such materials. After the Closing, Buyer and Seller shall provide each other with such assistance as may reasonably be requested by such party, at a reasonable cost to

the requesting party, in connection with the preparation of any Tax Return, audit or judicial or administrative proceeding or determination relating to liability for Taxes of Buyer or Seller.

5.7 No Other Negotiations. Seller is not engaged in or shall immediately terminate any discussions with any third party concerning an Alternative Acquisition (as defined below). From and after the date of this Agreement until the earlier of the Closing Date or the termination of this Agreement in accordance with its terms, Seller shall not, directly or indirectly, (a) solicit from any other person, firm or corporation any inquiries or proposals relating to the disposition of either the Assets or the assets, business or operations of Seller or to the merger or other acquisition of Seller (any such disposition, merger or other acquisition being referred to as an "Alternate Transaction"); (b) enter into any written or oral agreement or understanding with any person or entity (other than Buyer) in furtherance of an Alternate Transaction; (c) enter into or continue any negotiations or discussions with any person or entity (other than Buyer) in furtherance of an Alternate Transaction; or (d) except as otherwise required by law, provide any nonpublic financial or other confidential or proprietary information regarding Seller or ATHENA to any person or entity (other than Buyer or Buyer's counsel) whom or which Seller or ATHENA (or their respective officers, directors, employees, agents or representatives) know, or have reason to believe, would have any interest in participating in an Alternate Transaction. The foregoing is subject to any order or ruling set forth by the Bankruptcy Court.

5.8 Closing Conditions. Each of Seller and Buyer shall use all reasonable efforts to cause the conditions precedent to Closing to be fulfilled.

5.9 Consents and Approvals.

(a) Prior to the Closing, each of Seller and Buyer shall use all reasonable efforts to obtain the authorizations, consents, orders and approvals of federal, state, local and foreign regulatory bodies and officials, courts (including, without limitation, the Bankruptcy Court) and other third parties that may be or become necessary for the performance of their respective obligations pursuant to this Agreement and the consummation of the transactions contemplated by this Agreement, and shall cooperate fully with each other in seeking promptly to obtain such authorizations, consents, orders and approvals as may be necessary for the performance of their respective obligations

pursuant to this Agreement. On or prior to the Closing, Seller shall use its best efforts to obtain all consents or approvals relating to the Assigned Contracts. Neither Seller nor Buyer shall take any action that is likely to have the effect of delaying, impairing or impeding the receipt of any required authorizations, consents, orders or approvals and shall use all reasonable efforts to secure such authorizations, consents, orders and approvals as promptly as possible.

(b) To the extent that the consents and approvals referred to in Section 5.9(a) relating to Assigned Contracts are not obtained by Seller, Seller will, upon the request of Buyer, as to each Assigned Contract for which consent or approval has not been obtained (the "Unassigned Contracts"), use reasonable efforts after the Closing, to provide the Buyer the benefits of such Unassigned Contracts, operate in any reasonable and lawful arrangement designed to provide such benefits to Buyer without incurring any obligation to any third party, and enforce, at the request of Buyer, for the account of Buyer, any rights of Seller arising from any such Unassigned Contract (including without limitation the right to elect to terminate in accordance with the terms thereof upon the request of Buyer).

5.10 Nonsolicitation. During the period from the Closing to the third anniversary of the Closing (the "Applicable Period"), Buyer shall not, directly or indirectly, recruit or assist others in recruiting, hire or otherwise solicit for employment, any employees of Seller listed on Schedule II hereto.

5.11 Consent to Jurisdiction. On and after the Petition Date, the Bankruptcy Court shall have jurisdiction over all matters, including without limitation (a) any legal action, suit or proceeding arising out of or relating to this Agreement or the agreements or transactions contemplated hereby and (b) the interpretation, implementation and enforcement of this Agreement, and the parties hereto irrevocably submit and consent to such jurisdiction. For any legal action, suit or proceeding arising after the Bankruptcy Case is closed, the parties hereto irrevocably submit and consent to the jurisdiction of the courts of the State of New York.

5.12 Tel-ATHENA License. From and after the Closing Date, the Tel-ATHENA License referred to in Section 1.3(a) hereof shall terminate and be of no further force or effect, and neither party thereto shall have any further obligation thereunder.

5.13 1996 Financial Statements. If not provided to Buyer prior to or at the Closing Date, Seller shall provide to Buyer as soon as practicable following the Closing Date a balance sheet and income statement of Seller as of and for the period ended December 31, 1996, prepared in accordance with generally accepted accounting principles as historically and consistently applied, with the exception of the absence of footnote disclosure.

ARTICLE VI
CONDITIONS PRECEDENT TO CLOSING

6.1 Conditions to the Obligations of Buyer and Seller. The obligations of Seller and Buyer to effect the Closing are subject to the satisfaction of or waiver by each of Seller and Buyer of the following conditions:

(a) The Order shall have been entered on the docket of the Bankruptcy Court;

(b) No stay of performance of the Order or the consummation of the transactions contemplated hereby shall be in effect; and

(c) No statute, rule, regulation, executive order, decree or injunction shall have been enacted, entered, promulgated or enforced by any court or governmental entity which prohibits or restricts the consummation of this Agreement and the transactions contemplated hereby.

6.2 Conditions to the Obligations of Buyer. The obligations of Buyer to effect the Closing are subject to the satisfaction of or waiver by Buyer of the following conditions:

(a) The representations and warranties of Seller and the Executives contained herein shall be true and correct in all material respects (without giving effect, for these purposes, to any materiality qualifications in such representations and warranties) as of the Closing Date, as if made on and as of the Closing Date.

(b) Seller and the Executives shall have performed and complied in all respects with all agreements, obligations, covenants (including without limitation those set forth in Article II hereof) and condi-

tions required by this Agreement to be performed or complied with by them on or prior to the Closing.

(c) The Bankruptcy Court, upon proper notice, shall have entered the Procedures Order.

(d) Seller, as a debtor-in-possession, shall have assumed its obligations under this Agreement and the Tel-ATHENA License pursuant to Section 365 of the Bankruptcy Code.

(e) The Bankruptcy Court, upon proper notice and opportunity for a hearing, shall have entered the Order (or other order, in form and substance satisfactory and acceptable to Buyer, approving the sale, conveyance, transfer, assignment and delivery of the Assets to Buyer (the "Other Order")) on the docket of the Bankruptcy Court within 45 days following the Petition Date, and the Order or Other Order, as the case may be, shall become final and not appealable and shall be unappealed, and its implementation shall not be subject to any Stay, on or prior to the date which is 90 days following the Petition Date.

(f) Any condition or direction contained in the Order shall have been fully complied with in all material respects.

(g) The Bankruptcy Court shall have authorized the assumption by Seller and assignment to the Buyer of the Assigned Contracts pursuant to Section 365 of the Bankruptcy Code, and Seller shall have cured any defaults under the Assigned Contracts prior to or upon their assumption and assignment as contemplated herein.

(h) Seller shall have delivered to Buyer appropriate instruments of transfer, conveyance, sale and assignment in respect of the Assets (including its rights to all patents, trademarks, trade names, assumed names and copyrights and all applications therefor), consisting of the duly executed Bill of Sale, Trademark Assignment, the Assignment and Assumption Agreement and such other good and sufficient instruments of conveyance, transfer, assignment (including without limitation an instrument assigning any copyright of Tel-ATHENA obtained by Seller prior to Closing), endorse-

ment and title, in such form and containing such terms and provisions as counsel for Buyer may request.

(i) Seller shall have provided to Buyer evidence acceptable to Buyer and its counsel that there are no liens or encumbrances affecting any of the Assets and that any such liens or encumbrances which may have existed at any prior time (including without limitation any liens of Chemical Bank (formerly known as Manufacturers Hanover Trust Company) and Platinum Funding Corp.) have been discharged.

(j) All consents to the assignment of the Assigned Contracts shall have been obtained by Seller. With respect to Seller's agreements with each of Intervoice, Inc. and Via Systems, Inc., either (i) Seller shall have obtained a consent to the assignment of such agreement from the non-Seller party thereto or (ii) Buyer and the non-Seller party thereto shall have entered into an agreement substantially identical to such agreement.

(k) Seller shall have delivered to Buyer all books, ledgers, documents and records relating to the Assets set forth on Schedule III hereto and copies of all agreements, Financial Statements and other documents required to be disclosed or delivered by this Agreement or any schedule or exhibit hereto.

(l) There shall not be any pending or threatened governmental action or any proceeding by or before any court or governmental body or agency (with the exception of the Bankruptcy Case) which shall seek to restrain, prohibit or invalidate the transactions contemplated by this Agreement or which might affect the right of Buyer to own, use or control any of the Assets free of all liens, claims and encumbrances after the Closing.

6.3 Conditions to the Obligations of Seller. The obligations of Seller and the Executives to effect the Closing are subject to the satisfaction of or waiver by Seller of the following conditions:

(a) The representations and warranties of Buyer contained herein shall be true and correct in all material respects (without giving effect, for these

purposes, to any materiality qualifications in such representations and warranties) as of the Closing Date.

(b) Buyer shall have performed and complied in all respects with all agreements, obligations, covenants and conditions required by this Agreement to be performed or complied with by it on or prior to the Closing.

(c) The Bankruptcy Court, upon proper notice and opportunity for a hearing, shall have entered the Order or Other Order, as the case may be, on the docket of the Bankruptcy Court within 45 days following the Petition Date, and the Order or Other Order, as the case may be, shall become final and not appealable and shall be unappealed, and its implementation shall not be subject to any Stay, on or prior to the date which is 90 days following the Petition Date.

(d) Buyer shall have provided to Seller evidence acceptable to Seller and its counsel that there are no liens or encumbrances affecting the Collateral (as that term is defined in the KOL Security Agreement), except as expressly agreed to by Seller.

(e) Buyer shall have provided evidence satisfactory to Seller that Buyer has obtained a \$1,500,000 line of credit dedicated to the payment of Buyer's obligations hereunder and under the Additional Buyer's Documents.

ARTICLE VII INDEMNIFICATION

7.1 Indemnification.

(a) Seller and the Executives jointly and severally agree to indemnify and hold harmless Buyer and its respective officers, directors, employees and agents against and in respect of any loss, liability (including without limitation any liability for Taxes), damage, deficiency, cost and expense (including without limitation reasonable expenses of investigation and reasonable attorneys' fees) (collectively, "Losses") incurred or sustained by any of them as a result of any breach by Seller or either of the Executives of this Agreement or any agreement, document or other instrument executed and delivered pursuant hereto or in connection herewith, including the representations,

warranties and covenants contained herein; provided, however, that no indemnification for any Loss shall be provided by Seller or the Executives pursuant to this Section 7.1(a) until the aggregate amount of all Losses suffered or incurred by Buyer or its officers, directors, employees or agents exceeds \$30,000 (the "Seller Minimum"), in which event Seller and the Executives shall be jointly and severally liable for the aggregate amount of such Losses, which amount shall include the Seller Minimum. No investigation made by Buyer shall affect any representation or warranty of Seller or the Executives contained in this Agreement or the indemnification obligations of Seller and the Executives set forth herein.

(b) Buyer agrees to indemnify and hold harmless Seller and its stockholders, officers, directors, employees and agents against and in respect of any Losses incurred or sustained by any of them as a result of any breach by Buyer of this Agreement or any agreement, document or other instrument executed and delivered pursuant hereto or in connection herewith, including the representations, warranties and covenants contained herein or therein.

(c) Notwithstanding the foregoing, Seller and the Executives shall be jointly and severally liable for, and shall indemnify and hold Buyer harmless against all Taxes which shall become due or shall have accrued (i) on account of the operation and conduct of Seller's business on or before the Closing Date, (ii) on account of Seller's use, acquisition, ownership or sale of any of the Assets or (iii) arising out of and in connection with and attributable to the transactions contemplated hereby.

7.2 Procedure for Indemnification.

(a) Any person or entity entitled to assert a claim for indemnification under this Agreement (the "Indemnitee") shall give prompt written notice to the indemnifying party (the "Indemnitor") of any claim or event known to it which gives rise or is reasonably likely to give rise to a claim for indemnification hereunder by the Indemnitee against the Indemnitor; provided that the failure of any Indemnitee to give notice as provided in this Section 7.2 shall not relieve the Indemnitor of its obligations under this Article VII, except to the extent that such failure has materially and adversely affected the rights of the Indemnitor. In the case of any claim for indemnification hereunder arising out of a claim, action, suit or proceeding brought by any person who is not a party to this Agreement (a "Third-Party Claim"), the Indemnitee shall also give the Indemni-

tor copies of any written claims, process or legal pleadings with respect to such Third-Party Claim promptly after such documents are received by the Indemnitee.

(b) An Indemnitor may elect to compromise or defend, at such Indemnitor's own expense and by such Indemnitor's own counsel, any Third-Party Claim. If an Indemnitor elects to compromise or defend a Third-Party Claim, it shall, within 30 days of the date of its receipt of the notice provided pursuant to Section 7.2(a) hereof (or sooner, if the nature of such Third-Party Claim so requires), notify the related Indemnitee of its intent to do so, and such Indemnitee shall reasonably cooperate in the compromise of, or defense against, such Third-Party Claim. Such Indemnitor shall pay such Indemnitee's actual out-of-pocket expenses incurred in connection with such cooperation. After notice from an Indemnitor to an Indemnitee of its election to assume the defense of a Third-Party Claim, such Indemnitor shall not be liable to such Indemnitee under this Article VII for any legal expenses subsequently incurred by such Indemnitee in connection with the defense thereof; provided that such Indemnitee shall have the right to employ one counsel of its choice in each applicable jurisdiction (if more than one jurisdiction is involved) to represent such Indemnitee if, in the reasonable judgment of counsel to such Indemnitee, a conflict of interest between such Indemnitee and such Indemnitor exists in respect of such claim, and in that event, the fees and expenses of such separate counsel shall be paid by such Indemnitor. If an Indemnitee employs counsel of its choice with respect to a Third-Party Claim pursuant to the proviso of the immediately preceding sentence, any compromise or settlement of such Third-Party Claim shall require the prior written consent of the Indemnitor with respect to such Third-Party Claim. If an Indemnitor elects not to compromise or defend against a Third-Party Claim, or fails to notify an Indemnitee of its election as provided in this Section 7.2, such Indemnitee may negotiate, pay, compromise or defend such Third-Party Claim on behalf of and for the account and risk of the Indemnitor. No Indemnitor shall consent to entry of any judgment or enter into any settlement without the written consent of each related Indemnitee (which consent shall not be unreasonably withheld), unless such judgment or settlement provides solely for money damages or other money payments for which such Indemnitee is entitled to indemnification hereunder and includes as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect of such Third-Party Claim.

(c) If the amount of any Losses shall, at any time subsequent to payment by an Indemnitor to an Indemnitee pursuant to this Agreement, be reduced by recovery, settlement or otherwise, the amount of such reduction, less any expenses incurred in connection therewith, shall promptly be repaid by the Indemnitee to the related Indemnitor.

7.3 Rights of Offset for Indemnification. Buyer, at its option, may offset against payments to be made by Buyer under the Note all or part of any Losses actually incurred and paid by Buyer and with respect to which Buyer is entitled to indemnification from Seller or either Executive pursuant to this Agreement; provided, however, that Buyer shall not be required to offset any such claim in such manner and may proceed against Seller or either of the Executives at any time or times for recovery of indemnification claims. The express terms of the Note shall incorporate Buyer's offset rights as set forth in this Section 7.3 and Section 1.4.

ARTICLE VIII TERMINATION PRIOR TO CLOSING

8.1 Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated prior to the Closing Date, as follows:

(a) by the mutual written consent of Buyer and Seller;

(b) by Buyer if (i) any representation or warranty made by Seller or the Executives in this Agreement was not true and correct in all material respects when made, (ii) there has been a breach in any material respect of any of the covenants or agreements set forth in this Agreement on the part of Seller or either of the Executives, which breach is not curable or, if curable, is not cured within 30 days after written notice of such breach is given by Buyer to Seller and the Executives, (iii) Seller takes any action prohibited by Section 5.7 or (iv) a Stay or Injunction is in effect and is not dissolved within five business days from its issuance;

(c) by Seller if (i) any representation or warranty made by Buyer in this Agreement was not true and correct in all material respects when made or (ii) there has been a breach in any material respect of any

of the covenants or agreements set forth in this Agreement on the part of Buyer, which breach is not curable or, if curable, is not cured within 30 days after written notice of such breach is given by Seller to Buyer;

(d) by Seller or Buyer if the Closing Date has not occurred on or prior to the date which is 90 days after the entry by the Bankruptcy Court of the Order and this Agreement has not previously been terminated; provided, however, that the right to terminate the Agreement under this Section 8.1(d) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing Date to occur on or before such date; or

(e) by Seller or Buyer if the Bankruptcy Court orders the sale of the Assets to an Other Buyer; provided that termination of this Agreement under this Section 8.1(e) shall not be effective until Buyer's expenses have been paid pursuant to Section 8.2.

8.2 Effect of Termination.

(a) In the event of termination of this Agreement pursuant to this Article VIII, this Agreement shall become void, without liability on the part of any party hereto, except as provided in this Section 8.2 and except that nothing herein shall relieve any party from liability for any breach of this Agreement. Buyer and Seller shall have no rights with respect to the recovery of expenses, except as provided for in this Section 8.2.

(b) (i) If Buyer shall have terminated this Agreement pursuant to Section 8.1(b)(i) or (ii), then Seller shall promptly reimburse Buyer for all out-of-pocket expenses, up to an amount of \$40,000, incurred in connection with the negotiation, preparation, execution and consummation of this Agreement and the transactions contemplated hereby.

(ii) If Seller shall have terminated this Agreement pursuant to Section 8.1(c)(i) or (ii), then Buyer shall promptly reimburse Seller for all out-of-pocket expenses, up to an amount of \$40,000 incurred in connection with the negotiation, preparation, execu-

tion and consummation of this Agreement and the transactions contemplated hereby.

(iii) If Buyer shall have terminated this Agreement pursuant to Section 8.1(b)(iii), then Seller shall promptly, but in no event later than two business days after the date of such termination, reimburse Buyer for all out-of-pocket expenses, up to an amount of \$40,000, incurred in connection with the negotiation, preparation, execution and consummation of this Agreement and the transactions contemplated hereby.

(iv) If Buyer or Seller shall have terminated this Agreement pursuant to Section 8.1(e), then Seller shall promptly reimburse Buyer for all out-of-pocket expenses, up to an amount of \$40,000, incurred in connection with the negotiation, preparation, execution and consummation of this Agreement and the transactions contemplated hereby.

(v) Notwithstanding any other provision hereof, no fee or expense reimbursement shall be paid pursuant to this Section 8.2(b) to any party who shall be in material breach of its obligations hereunder at the time the Agreement is terminated.

ARTICLE IX MISCELLANEOUS

9.1 Broker's and Finder's Fees. Seller and the Executives each represent and covenant to Buyer, and Buyer represents and covenants to Seller, that it has not individually or together with others retained or otherwise engaged or become liable to any broker or intermediary in connection with or incident to the execution of this Agreement or the transactions contemplated hereby. Seller and the Executives jointly and severally shall be responsible for any commissions, finder's fees or other payments owed to any broker or intermediary in connection with or incident to the transactions contemplated by this Agreement.

9.2 Survival of Representations, Warranties and Covenants. Notwithstanding any investigation conducted before or after the Closing Date and notwithstanding any actual or implied knowledge or notice of any fact or circumstance which Buyer, Seller or the Executives may have as a result of such investigation or otherwise, each of Buyer, Seller and the Executives

shall be entitled to rely upon the representations, warranties and covenants of the other in this Agreement, and each of the representations, warranties and covenants contained in this Agreement or made in connection with the Closing hereunder shall survive the Closing for a period of eighteen months from the Closing Date, with the exception of any covenant which by its terms contemplates performance after the Closing.

9.3 Amendments, Waiver By Written Instrument. This Agreement may be amended, modified or supplemented, and any obligations hereunder may be waived, only by a written instrument executed by the parties hereto. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy by such party preclude any other or further exercise thereof or the exercise of any right or remedy. All rights and remedies hereunder are cumulative and are not exclusive of any rights and remedies provided by law.

9.4 Notices. All notices, requests and other communications hereunder shall be in writing and shall be deemed given upon receipt by the party that is the addressee thereof if (i) delivered personally, (ii) transmitted by facsimile (if confirmed), (iii) sent by FedEx or other reputable overnight courier or delivery service or (iv) mailed by registered or certified mail (postage prepaid, return receipt requested) to the parties at the following addresses and facsimile numbers (or to such other address or facsimile number for a party as shall be specified by like notice):

(a) If to Buyer:

D. F. King & Co., Inc.
77 Water Street
New York, New York 10005-4495
Attention: Peter C. Harkins
Facsimile No.: (212) 952-0137

With a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
Boston, Massachusetts 02108
Attention: Louis A. Goodman, Esq.
Facsimile No.: (617) 573-4822

-and-

Skadden, Arps, Slate, Meagher & Flom
(Delaware)
One Rodney Square
Wilmington, Delaware 19801
Attention: Mark S. Chehi, Esq.
Facsimile No.: (302) 651-3001

(b) If to Seller or Executives:

KOL Corp.
435 Hudson Street
New York, New York 10014
Attention: Jimmy R. Hoffman
Facsimile No.: (212) 924-9111

With a copy to:

Dornbush Mensch Mandlestam & Schaeffer LLP
747 Third Avenue
New York, New York 10017
Attention: Landey Strongin, Esq.
Facsimile No.: (212) 753-7673

Phillips, Goldman & Spence, P.A.
1200 North Broom Street
Wilmington, Delaware 19806
Attention: Stephen W. Spence, Esq.
Facsimile No.: (302) 655-4210

The address of a party, for the purposes of this Section 9.4, may be changed by giving written notice to the other parties to this Agreement of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the addresses as provided herein shall be deemed to continue in effect for all purposes hereunder.

9.5 Expenses. Except as otherwise contemplated by Section 5.4 and Article VIII, each party hereto shall pay its own expenses in connection with the preparation, execution and consummation of this Agreement and of the transactions contemplated hereby, including without limitation, the fees and disbursements of attorneys, accountants and outside advisors.

9.6 Announcements. Except as required by law, or expressly provided for herein for so long as this Agreement is in effect, no announcement of this Agreement or the transactions contemplated hereby shall be made by any of the parties without the written consent of the other party or parties, which consent shall not be unreasonably withheld.

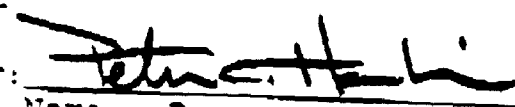
9.7 Integration, etc. This Agreement (including all exhibits and schedules hereto) constitutes the entire agreement between the parties with respect to the purchase of the Assets and supersedes all prior agreements and understandings, whether written or oral, between the parties in connection with such subject matter. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Delaware. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. All capitalized terms defined in this Agreement which are used in any exhibit or schedule shall, unless the context otherwise requires, have the same meaning therein as given herein. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. This Agreement is personal to Seller, and Seller shall not assign any of its rights (unless such right relates to Seller's right to any payment described herein) or delegate any of its obligations hereunder. At Buyer's election, this Agreement or any of Buyer's rights pursuant to this Agreement may be assigned by Buyer to an affiliate of Buyer, in which event such affiliate shall, for all purposes of this Agreement have the rights and obligations of Buyer hereunder with respect to this Agreement or any parts of this Agreement which may be assigned to such affiliate; provided, however, that Buyer guarantees the payment of the Purchase Price by such affiliate in the event of any such assignment.

9.8 Third Parties. Except as specifically set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person, corporation or other entity other than the parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as an agreement under seal as of the date first above written.

D. F. KING & CO., INC.

[SEAL]

By: 
Name: Peter C. Harkins
Title: Senior Vice President

KOL CORP.

[SEAL]

By: _____
Name: Jimmy R. Hoffman
Title: Chief Operating Officer

[SEAL]

Jimmy R. Hoffman, individually and
as Trustee of the KAS Investment
Trust

[SEAL]

Joseph Rafael, individually and as
Trustee of the Toby Rafael Invest-
ment Trust

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as an agreement under seal as of the date first above written.

D. F. KING & CO., INC.

[SEAL]

By: _____
Name: Peter C. Harkins
Title: Senior Vice President

KOL CORP.

[SEAL]

By: Jimmy R. Hoffman
Name: Jimmy R. Hoffman
Title: Chief Operating Officer

[SEAL]

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D. F. KING & CO., INC.

[SEAL]

By: _____
Name: Peter C. Harkins
Title: Senior Vice President

KOL CORP.

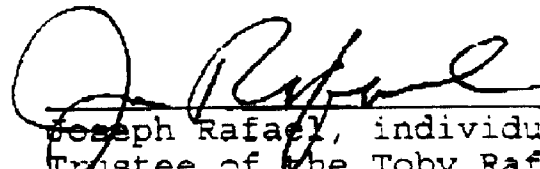
[SEAL]

By: _____
Name: Jimmy R. Hoffman
Title: Chief Operating Officer

[SEAL]

Jimmy R. Hoffman, individually and
as Trustee of the KAS Investment
Trust

[SEAL]



Joseph Rafael, individually and as
Trustee of the Toby Rafael Invest-
ment Trust