

Form PTO-1594  
(rev 3/1)

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

U. S. Department of Commerce  
Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

**WNC Insurance Holding Corp.**

- Individual(s)  Association
- General Partnership  Limited Partnership
- Corporation - **Delaware**
- Other

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and Address of receiving party(ies)

**ING Capital LLC,  
(as the Collateral Agent)  
1325 Avenue of the Americas  
New York, NY 10019**

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation
- Other - **Delaware Limited Liability Company**

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

- Assignment  Merger
- Security Agreement  Change of Name
- Other: **Pledge and Security Agreement**

Execution Date: **January 8, 2004**

4. Application number(s) or registration number(s):

A. Trademark Application No(s).

**See Attached**

B. Trademark Registration No(s).

**See Attached**

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

**Carole Aciman, Esq.  
SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP  
Four Times Square  
New York, New York 10036**

6. Total number of applications/registrations involved: 13

7. Total fee (37 CFR 3.41) **\$340**

All fees and any deficiencies are authorized to be charged to Deposit Account  
**(Our Ref. 290710/34)**

8. Deposit Account No. 19-2385

DO NOT USE THIS SPACE

9. 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.*

Carole Aciman

Name

*Carole Aciman*

Signature

April 15, 2004

Date

Total number of pages including cover sheet, attachments, and document: **87**

CH \$340.00 192385 78276467

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**CONTINUATION OF ITEM 1. Name of Conveying Party(ies)**

1. Wilshire National Insurance Agency of Texas, Inc. a Texas corporation
2. Precise Adjustments, Inc. a Texas corporation
3. Wilshire National Corporation a California corporation
4. Insurance Management Services, Inc. a Wisconsin corporation
5. WNC Insurance Services, Inc. a California corporation
6. WNC Acquisition, Inc. a California corporation

**CONTINUATION OF ITEM 4. Trademark Application and Registration Numbers**

A. Trademark Application No(s).	B. Trademark Registration No(s).
<b>78275457</b>	<b>2633705</b>
<b>78275453</b>	<b>2571645</b>
<b>78235747</b>	<b>2556196</b>
<b>78235810</b>	<b>2657440</b>
<b>78235821</b>	<b>2629818</b>
<b>78235687</b>	<b>2656627</b>
	<b>2601233</b>

**EXECUTION COPY**

**PLEDGE AND SECURITY AGREEMENT**

**dated as of January 8, 2004**

**between**

**EACH OF THE GRANTORS PARTY HERETO**

**and**

**ING CAPITAL LLC,  
as the Collateral Agent**



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This **PLEDGE AND SECURITY AGREEMENT**, dated as of January 8, 2004 (this "**Agreement**"), between **EACH OF THE UNDERSIGNED**, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (each, a "**Grantor**"), and ING Capital LLC, as collateral agent for the Secured Creditors (as herein defined) (in such capacity as collateral agent, the "**Collateral Agent**").

All terms not otherwise defined herein shall have, for the purposes hereof, the meanings set forth in the Credit Agreement referenced below.

#### **RECITALS:**

**WHEREAS**, reference is made to that certain Credit Agreement, dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among WNC Acquisition, Inc. a California Corporation (the "**Company**"), the lenders party thereto from time to time (the "**Lenders**"), and ING Capital LLC, as Administrative Agent;

**WHEREAS**, in consideration of the extensions of credit and other accommodations of Lenders as set forth in the Credit Agreement, each Grantor has agreed to secure such Grantor's obligations under the Credit Documents as set forth herein; and

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and the Collateral Agent agree as follows:

#### **SECTION 1. DEFINITIONS; GRANT OF SECURITY.**

**1.1 General Definitions.** In this Agreement, the following terms shall have the following meanings:

"**Account Debtor**" shall mean each Person who is obligated on a Receivable or any Supporting Obligation related thereto.

"**Accounts**" shall mean all "accounts" as defined in Article 9 of the UCC.

"**Agreement**" shall have the meaning set forth in the preamble.

"**Additional Grantors**" shall have the meaning assigned in Section 5.3.

"**Assigned Agreements**" shall mean all agreements and contracts to which such Grantor is a party as of the date hereof, or to which such Grantor becomes a party after the date hereof, including, without limitation, each Material Contract, as each such agreement may be amended, supplemented or otherwise modified from time to time.

"**Cash Proceeds**" shall have the meaning assigned in Section 7.7.

"**Chattel Paper**" shall mean all "chattel paper" as defined in Article 9 of the UCC, including, without limitation, "electronic chattel paper" or "tangible chattel paper", as each term is defined in Article 9 of the UCC.

"**Closing Date**" means January 8, 2004.

**"Credit Event"** means the date of the making of a Loan pursuant to the Credit Agreement.

**"Collateral"** shall have the meaning assigned in Section 2.1.

**"Collateral Account"** shall mean any account established by the Collateral Agent to receive Collateral except that which is prohibited under any applicable law or regulation (including the Bankruptcy Code) to be assigned by the applicable Grantor.

**"Collateral Records"** shall mean books, records, ledger cards, files, correspondence, customer lists, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary in the collection thereof or realization thereupon.

**"Collateral Support"** shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

**"Commercial Tort Claims"** shall mean all "commercial tort claims" as defined in Article 9 of the UCC, including, without limitation, all commercial tort claims listed on Schedule 4.8 (as such schedule may be amended or supplemented from time to time).

**"Controlled Foreign Corporation"** shall mean "controlled foreign corporation" as defined in the Tax Code.

**"Copyright Licenses"** shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(B) (as such schedule may be amended or supplemented from time to time).

**"Copyrights"** shall mean all United States, and foreign copyrights (including Community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, registrations and applications referred to in Schedule 4.7(A) (as such schedule may be amended or supplemented from time to time), (ii) all extensions and renewals thereof, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present and future infringements thereof, and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit.

**"Credit Agreement"** shall have the meaning set forth in the recitals.

**"Deposit Accounts"** (i) shall mean all "deposit accounts" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4 under the heading "Deposit Accounts" (as such schedule may be amended or supplemented from time to time); provided, however, the term "Deposit Accounts" shall exclude all Excluded Accounts to the extent security interest in such Excluded Accounts are prohibited under any applicable law or regulation to be assigned by the applicable Grantor.

**"Documents"** shall mean all "documents" as defined in Article 9 of the UCC.

**"Equipment"** shall mean: (i) all "equipment" as defined in Article 9 of the UCC, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC) and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

**"Excluded Accounts"** shall mean the deposit, securities and/or trust accounts listed on Schedule A attached hereto (as such schedule may be amended or supplemented from time to time).

**"Excluded Receivables"** shall mean any rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records representing any amounts related to premiums owed by insureds and due to insurance carriers in connection with any of such Grantor's Permitted Businesses.

**"General Intangibles"** (i) shall mean all "general intangibles" as defined in Article 9 of the UCC, including "payment intangibles" also as defined in Article 9 of the UCC and (ii) shall include, without limitation, all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations, all Assigned Agreements and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

**"Goods"** (i) shall mean all "goods" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

**"Grantors"** shall have the meaning set forth in the preamble.

**"Instruments"** shall mean all "instruments" as defined in Article 9 of the UCC.

**"Insurance"** shall mean: (i) all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent is the loss payee thereof) and (ii) any key man life insurance policies.

**"Intellectual Property"** shall mean, collectively, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses.

**"Inventory"** shall mean: (i) all "inventory" as defined in Article 9 of the UCC and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such



inventory or otherwise used or consumed in any Grantor's business; all goods in which any Grantor has an interest in mass or a joint or other interest or right of any kind; and all goods which are returned to or repossessed by any Grantor, all computer programs embedded in any goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

**"Investment Accounts"** shall mean the Collateral Account, Securities Accounts and Deposit Accounts; provided, however, the term "Investment Accounts" shall exclude all Excluded Accounts to the extent security interest in such Excluded Accounts are prohibited under any applicable law or regulation to be assigned by the applicable Grantor.

**"Investment Related Property"** shall mean: (i) all "investment property" (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit; provided, however, the term "Investment Related Property" shall exclude all Excluded Accounts to the extent security interest in such Excluded Accounts are prohibited under any applicable law or regulation to be assigned by the applicable Grantor.

**"Lender"** shall have the meaning set forth in the recitals.

**"Letter of Credit Right"** shall mean "letter-of-credit right" as defined in Article 9 of the UCC.

**"Money"** shall mean "money" as defined in the UCC (trust or claim excluded).

**"Patent Licenses"** shall mean all agreements providing for the granting of any right in or to Patents (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(D) (as such schedule may be amended or supplemented from time to time).

**"Patents"** shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.7(C) hereto (as such schedule may be amended or supplemented from time to time), (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions and improvements described therein, (v) all rights to sue for past, present and future infringements thereof, (vi) all licenses, claims, damages, and proceeds of suit arising there from, and (vii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

**"Permitted Sale"** shall mean those sales, transfers or assignments permitted by the Credit Agreement.

**"Pledged Debt"** shall mean all Indebtedness owed to such Grantor, including, without limitation, all Indebtedness described on Schedule 4.4(A) under the heading "Pledged Debt" (as such schedule may be amended or supplemented from time to time), issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

**"Pledged Equity Interests"** shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests.

**"Pledged LLC Interests"** shall mean all interests in any limited liability company including, without limitation, all limited liability company interests listed on Schedule 4.4(A) under the heading "Pledged LLC Interests" (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such limited liability company interests and any interest of such Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

**"Pledged Partnership Interests"** shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership including, without limitation, all partnership interests listed on Schedule 4.4(A) under the heading "Pledged Partnership Interests" (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

**"Pledged Trust Interests"** shall mean all interests in a Delaware business trust or other trust including, without limitation, all trust interests listed on Schedule 4.4(A) under the heading "Pledged Trust Interests" (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such trust interests and any interest of such Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

**"Pledged Stock"** shall mean all shares of capital stock owned by such Grantor, including, without limitation, all shares of capital stock described on Schedule 4.4(A) under the heading "Pledged Stock" (as such schedule may be amended or supplemented from time to time), and the certificates, if any, representing such shares and any interest of such Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

**"Pledge Supplement"** shall mean any supplement to this agreement in substantially the form of Exhibit A.

**"Proceeds"** shall mean all "proceeds" as defined in Article 9 of the UCC.

**"Receivables"** shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting

or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records; provided, however, that the term "Receivables" shall exclude any Excluded Receivables to the extent security interest in such Excluded Receivables is prohibited under any applicable law or regulation to be assigned by the applicable Grantor.

**"Receivables Records"** shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of Grantor or any computer bureau or agent from time to time acting for Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or Secured Creditors, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

**"Record"** shall have the meaning specified in Article 9 of the UCC.

**"Secured Obligations"** shall have the meaning assigned in Section 2.1.

**"Secured Creditors"** means the Lenders, the Administrative Agent and the Collateral Agent and shall include, without limitation, all former Lenders, Administrative Agent and Collateral Agent to the extent that any Obligations owing to such Persons were incurred while such Persons were Lenders, Administrative Agent or Collateral Agent, as applicable, and such Obligations have not been paid or satisfied in full.

**"Securities"** shall mean any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

**"Securities Accounts"** (i) shall mean all "securities accounts" as defined in Article 8 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(A) under the heading "Securities Accounts" (as such schedule may be amended or supplemented from time to time); provided, however, that the term "Securities Accounts" shall exclude Excluded Accounts to the extent security interest in such Excluded Accounts are prohibited under any applicable law or regulation to be assigned by the applicable Grantor.

**"Supporting Obligation"** shall mean all "supporting obligations" as defined in Article 9 of the UCC.

**"Trademark Licenses"** shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether such Grantor is licensee or licensor

thereunder) including, without limitation, each agreement referred to in Schedule 4.7(F) (as such schedule may be amended or supplemented from time to time).

**"Trademarks"** shall mean all United States and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, designs and general intangibles of a like nature, all registrations and applications, excluding intent-to-use applications, for any of the foregoing including, but not limited to: (i) the registrations and applications referred to in Schedule 4.7(E) (as such schedule may be amended or supplemented from time to time), (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill, and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

**"Trade Secret Licenses"** shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(G) (as such schedule may be amended or supplemented from time to time).

**"Trade Secrets"** shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to: (i) the right to sue for past, present and future misappropriation or other violation of any Trade Secret, and (ii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

**"UCC"** shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

**"United States"** shall mean the United States of America.

**1.2 Definitions; Interpretation.** All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement or, if not defined therein, in the UCC. References to "Sections," "Exhibits" and "Schedules" shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC

shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

## SECTION 2. GRANT OF SECURITY.

**2.1 Grant of Security.** Each Grantor hereby grants to the Collateral Agent a security interest in and continuing lien on all of such Grantor's right, title and interest in, to and under all personal property of such Grantor including, but not limited to the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (all of which being hereinafter collectively referred to as the "Collateral"):

- (a) Accounts;
- (b) Chattel Paper;
- (c) Documents;
- (d) General Intangibles;
- (e) Goods;
- (f) Instruments;
- (g) Insurance;
- (h) Intellectual Property;
- (i) Investment Related Property;
- (j) Letter of Credit Rights;
- (k) Money;
- (l) Receivables and Receivable Records;
- (m) Commercial Tort Claims;

(n) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and

(o) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

**2.2 Certain Limited Exclusions.** Notwithstanding anything herein to the contrary, in no event shall the security interest granted under Section 2.1 hereof attach to (a) any Lease, license, contract, property rights or agreement (including, without limitation, agreements creating a purchase money obligation or capital leases) to which any Grantor is a party or any of its rights or interests thereunder or the asset relating thereto or covered thereby if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Grantor therein or thereon or (ii) in a breach or termination pursuant to the terms of, or a default under, any such Lease license, contract property rights or agreement (other than to the extent that any such term would be rendered

ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity), provided however that such security interest shall attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such Lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above; (b) in any of the outstanding capital stock of a Controlled Foreign Corporation in excess of 65% of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote; provided that immediately upon the amendment of the Code to allow the pledge of a greater percentage of the voting power of capital stock in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and the security interest granted by each Grantor shall attach to, such greater percentage of capital stock of each Controlled Foreign Corporation; (c) Excluded Accounts or any Excluded Receivables; to the extent security interest in such Excluded Accounts or Excluded Receivables are prohibited under any applicable law or regulation to be assigned by the applicable Grantor; provided that immediately upon the amendment of such applicable law or regulation to allow the pledge of Excluded Accounts or Excluded Receivables, the Collateral shall include, and the security interest granted by each Grantor shall attach to Excluded Accounts and/or Excluded Receivables.

### **SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.**

**3.1 Security for Obligations.** This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a) (and any successor provision thereof)), of all Obligations with respect to every Grantor (the "Secured Obligations").

**3.2 Continuing Liability Under Collateral.** Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any Secured Creditor and (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any Secured Creditor shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Agent nor any Secured Creditor have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests and (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

### **SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.**

**4.1 Generally.**

(a) Representations and Warranties. Each Grantor represents and warrants, as of the Closing Date and on the date of each Credit Event, that:

(i) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of the Collateral, in each case free and clear of any and all Liens, rights or claims of all other Persons, including, without limitation, liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as debtor under a security agreement entered into by another Person other than Permitted Liens;

(ii) it has indicated on Schedule 4.1(A) (as such schedule may be amended or supplemented from time to time): (w) the type of organization of such Grantor, (x) the jurisdiction of organization of such Grantor, (y) its organizational identification number and (z) the jurisdiction where the chief executive office or its sole place of business is, and for the one-year period preceding the date hereof has been, located;

(iii) the full legal name of such Grantor is as set forth on Schedule 4.1(A) and it has not done in the last five (5) years, and does not do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 4.1(B) (as such schedule may be amended or supplemented from time to time);

(iv) except as provided on Schedule 4.1(C), it has not changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years;

(v) it has not within the last five (5) years become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, which has not heretofore been terminated other than the agreements identified on Schedule 4.1(D) hereof (as such schedule may be amended or supplemented from time to time);

(vi) upon the timely filing of all UCC financing statements naming each Grantor as "debtor" and the Collateral Agent as "secured party" and describing the Collateral in the filing offices set forth opposite such Grantor's name on Schedule 4.1(E) hereof (as such schedule may be amended or supplemented from time to time) and other filings delivered by each Grantor, e.g., upon execution of a control agreement in the form of Exhibit C hereto with respect to any Deposit Account, upon consent of the issuer with respect to Letter of Credit Rights, and to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in Patents, Trademarks and Copyrights in the applicable intellectual property registries, including but not limited to the United States Patent and Trademark Office and the United States Copyright Office, the security interests granted to the Collateral Agent hereunder constitute valid and perfected first priority Liens (subject in the case of priority only to Permitted Liens and to the rights of the United States government (including any agency or department thereof) with respect to United States government Receivables) on all of the Collateral;

(vii) except as otherwise in accordance with Section 4.4.4(c) herein, all actions and consents, including all filings, notices, registrations and recordings necessary for the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained, except for such actions or consent the failure of which to obtain could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(viii) other than the financing statements filed in favor of the Collateral Agent, no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (x) financing statements for which proper termination statements have been delivered to the Collateral Agent for filing and (y) financing statements filed in connection with Permitted Liens;

(ix) except as set forth on Schedule 4.1(E), no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (i) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Collateral Agent hereunder or (ii) the exercise by Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for the filings contemplated by clause (vi) above and (B) as may be required, in connection with the disposition of any Investment Related Property, by laws generally affecting the offering and sale of Securities;

(x) all information supplied by any Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects;

(xi) it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut;

(xii) Except as described on Schedule 4.1(D), such Grantor has not become bound as a debtor, either by contract or by operation of law, by a security agreement previously entered into by another Person; and;

(xiii) Such Grantor has been duly organized as an entity of the type as set forth opposite such Grantor's name on Schedule 4.1(A) solely under the laws of the jurisdiction as set forth opposite such Grantor's name on Schedule 4.1(A) and remains duly existing as such. Such Grantor has not filed any certificates of domestication, transfer or continuance in any other jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees

that:

(i) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except Permitted Liens, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest therein adverse to the Collateral Agent or any other Secured Party;



(ii) it shall not produce, use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral which could reasonably be expected, individually or in the aggregate, to cause a Material Adverse Effect;

(iii) it shall not change such Grantor's name, identify, corporate structure (e.g., by merger, consolidation, change in corporate form or otherwise), sole place of business or chief executive office, type of organization or jurisdiction of organization or establish any trade names unless it shall have (a) notified the Collateral Agent in writing, by executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, at least ten (10) days prior to any such change or establishment, identifying such new proposed name, identify, corporate structure, sole place of business or chief executive office, jurisdiction of organization or trade name and providing such other information in connection therewith as the Collateral Agent may reasonably request and (b) taken all actions necessary to maintain the continuous validity, perfection and the same of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby;

(iv) it shall not take or permit any action which could materially impair the Collateral Agent's rights in the Collateral; and

(v) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except as Permitted Sales.

#### 4.2 Equipment and Inventory.

(a) **Representations and Warranties.** Each Grantor represents and warrants, on the Closing Date and on the date of each Credit Event, that:

(i) all of the Equipment and Inventory with a value in excess of \$100,000 kept only at the locations specified in Schedule 4.2 (except for any Equipment which is in transit between such locations, computer or communications equipment in possession of employees of such Grantor or in the possession of a repairman);

(b) **Covenants and Agreements.** Each Grantor covenants and agrees that:

(i) except for any Equipment which is in transit between such locations, computer or communications equipment in possession of employees of such Grantor or in the possession of a repairman, it shall keep the Equipment, Inventory and any Documents evidencing any Equipment and Inventory in the locations specified on Schedule 4.2 (as such schedule may be amended or supplemented from time to time) unless it shall have (a) notified the Collateral Agent in writing, by executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, at least fifteen (15) days prior to any change in locations, identifying such new locations and providing such other information in connection therewith as the Collateral Agent may reasonably request and (b) taken all actions necessary to maintain the continuous validity and perfection of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby, or to enable the Collateral Agent to exercise

and enforce its rights and remedies hereunder, with respect to such Equipment and Inventory;

(ii) it shall keep materially correct and accurate records of the Inventory, as is customarily maintained under similar circumstances by Persons of established reputation engaged in similar business, and in any event in conformity with GAAP (in all material respects);

(iii) it shall not deliver any Document evidencing any Equipment and Inventory to any Person other than (i) the issuer of such Document to claim the Goods evidenced therefor, (ii) the Collateral Agent or (iii) in accordance with Permitted Sales;

(iv) except as permitted in (i) above, if any Equipment or Inventory with a value in excess of \$100,000 is in possession or control of any third party, each Grantor shall join with the Collateral Agent in notifying the third party of the Collateral Agent's security interest and use commercially reasonable efforts to obtain an acknowledgment from the third party that it is holding the Equipment and Inventory for the benefit of the Collateral Agent; and

**4.3 Receivables.**

(a) Representations and Warranties. Each Grantor represents and warrants, on the Closing Date and on the date of each Credit Event, that:

(i) each Receivable (except with respect to any Receivable that is cancelled or otherwise written off in the ordinary course of business) (a) is and will be the legal, valid and binding obligation of the Account Debtor in respect thereof, representing an unsatisfied obligation of such Account Debtor, (b) is and will be enforceable in accordance with its terms, (c) is not and will not be subject to any setoffs, defenses, taxes, counterclaims (except with respect to refunds, returns and allowances in the ordinary course of business with respect to damaged merchandise) and (d) is and will be in compliance with all applicable laws, whether federal, state, local or foreign;

(ii) none of the Account Debtors in respect of any Receivable in excess of \$100,000 individually or \$500,000 in the aggregate is the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign. No Receivable in excess of \$100,000 individually or \$500,000 in the aggregate requires the consent of the Account Debtor in respect thereof in connection with the pledge hereunder, except any consent which has been obtained;

(iii) no Receivable is evidenced by, or constitutes, an Instrument or Chattel Paper which has not been delivered to, or otherwise subjected to the control of, the Collateral Agent to the extent required by, and in accordance with Section 4.3(c); and

(b) Covenants and Agreements: Each Grantor hereby covenants and agrees that:

(i) it shall keep and maintain at its own cost and expense reasonably satisfactory and materially complete records of the Receivables, in a manner consistent with prudent business practices, including, but not limited to, the originals of all

documentation with respect to all Receivables and records of all payments received and all credits granted on the Receivables;

(ii) it shall mark conspicuously, in form and manner reasonably satisfactory to the Collateral Agent, all Chattel Paper, Instruments and other evidence of Receivables (other than any delivered to the Collateral Agent as provided herein), as well as the Receivables Records with an appropriate reference to the fact that the Collateral Agent has a security interest therein;

(iii) it shall perform in all material respects all of its obligations with respect to the Receivables in the ordinary course of business;

(iv) it shall not amend, modify, terminate or waive any provision of any Receivable in any manner which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the value of such Receivable as Collateral. Other than in the ordinary course of business as generally conducted by it on and prior to the date hereof, and except as otherwise provided in subsection (v) below, following the occurrence and during the continuation of an Event of Default, such Grantor shall not (w) grant any extension or renewal of the time of payment of any Receivable, (x) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (y) release, wholly or partially, any Person liable for the payment thereof, or (z) allow any credit or discount thereon;

(v) except as otherwise provided in this subsection, each Grantor shall continue to collect all amounts due or to become due to such Grantor under the Receivables and any Supporting Obligation in the ordinary course of business and exercise each material right it may have under any Receivable, any Supporting Obligation or Collateral Support, in each case, at its own expense, and in connection with such collections and exercise, such Grantor shall take such action as such Grantor may deem necessary or advisable, consistent with past business practice. Notwithstanding the foregoing, the Collateral Agent shall have the right following the occurrence and during the continuation of an Event of Default, upon three (3) business days prior written notice to such Grantor, the Collateral Agent may: (1) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent; (2) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Agent; and (3) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Collateral Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in the Collateral Account maintained under the sole dominion and control of the Collateral Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and

shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon; and

(c) Delivery and Control of Receivables. With respect to any Receivables that is evidenced by, or constitutes, Chattel Paper or Instruments, each Grantor shall cause each originally executed copy thereof to be delivered to the Collateral Agent (or its agent or designee) appropriately indorsed to the Collateral Agent or indorsed in blank: (i) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (ii) with respect to any such Receivables hereafter arising, within ten (10) days of such Grantor acquiring rights therein. With respect to any Receivables which would constitute "electronic chattel paper" under Article 9 of the UCC, each Grantor shall take all steps necessary to give the Collateral Agent control over such Receivables (within the meaning of Section 9-105 of the UCC): (i) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (ii) with respect to any such Receivables hereafter arising, within ten (10) days of such Grantor acquiring rights therein. Any Receivable not otherwise required to be delivered or subjected to the control of the Collateral Agent in accordance with this subsection (c) shall be delivered or subjected to such control upon request of the Collateral Agent.

**4.4 Investment Related Property. Investment Related Property Generally**

(a) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) in the event it acquires rights in any Investment Related Property after the date hereof, it shall deliver to the Collateral Agent a completed Pledge Supplement, but in no event, more frequently than on a quarterly basis, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, reflecting such new Investment Related Property and all other Investment Related Property. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Collateral Agent shall attach to all Investment Related Property immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a supplement to Schedule 4.4 as required hereby;

(ii) except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Investment Related Property, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Related Property, then (a) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (b) such Grantor shall immediately take all steps, if any, necessary to ensure the validity, perfection, priority and, if applicable, control of the Collateral Agent over such Investment Related Property (including, without limitation, delivery thereof to the Collateral Agent for Investment Related Property valued individually in excess of \$100,000) and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Collateral Agent and shall segregate such dividends, distributions, Securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing and such Grantor has not received notice to the contrary, the Collateral Agent authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the

normal course of the business of the issuer and consistent with the past practice of the issuer and all scheduled payments of interest;

(iii) each Grantor consents to the grant by each other Grantor of a Security Interest in all Investment Related Property to the Collateral Agent.

(b) Delivery and Control.

(i) Each Grantor agrees that with respect to any Investment Related Property in which it currently has rights it shall comply with the provisions of this Section 4.4.1(b) on or before the Closing Date and with respect to any Investment Related Property hereafter acquired by such Grantor it shall comply with the provisions of this Section 4.4.1(b) immediately upon acquiring rights therein, in each case in form and substance reasonably satisfactory to the Collateral Agent. With respect to any Investment Related Property that is represented by a certificate or that is an "instrument" valued individually in excess of \$100,000 (other than any Investment Related Property credited to a Securities Account) it shall cause such certificate or instrument to be delivered to the Collateral Agent, indorsed in blank by an "effective indorsement" (as defined in Section 8-107 of the UCC), regardless of whether such certificate constitutes a "certificated security" for purposes of the UCC. With respect to any Investment Related Property that is an "uncertificated security" for purposes of the UCC (other than any "uncertificated securities" credited to a Securities Account), it shall cause the issuer of such uncertificated security to either (i) register the Collateral Agent as the registered owner thereof on the books and records of the issuer or (ii) execute an agreement substantially in the form of Exhibit B hereto, pursuant to which such issuer agrees to comply with the Collateral Agent's instructions with respect to such uncertificated security, without further consent by such Grantor promptly upon the occurrence of a Default or an Event of Default.

(c) Voting and Distributions.

(i) So long as no Event of Default shall have occurred and be continuing and such Grantor has not received notice to the contrary:

- (1) each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Credit Agreement; it being understood, however, that neither the voting by such Grantor of any Pledged Stock for, or such Grantor's consent to, the election of directors (or similar governing body) at a regularly scheduled annual or other meeting of stockholders or with respect to incidental matters at any such meeting, nor such Grantor's consent to or approval of any action otherwise permitted under this Agreement and the Credit Agreement, shall be deemed inconsistent with the terms of this Agreement or the Credit Agreement within the meaning of this Section 4.4(d)(i)(A); and
- (2) the Collateral Agent shall promptly execute and deliver (or cause to be executed and delivered) to each Grantor all proxies, and other instruments as such Grantor may from time to time reasonably request for the purpose of enabling such Grantor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise pursuant to clause (A) above;

- (3) Upon the occurrence and during the continuation of an Event of Default:
- (A) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise such voting and other consensual rights; and
  - (B) in order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (1) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (2) the each Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth in Section 6.

#### 4.4.2 Pledged Equity Interests

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on the date of each Credit Event, that:

(i) Schedule 4.4(A) (as such schedule may be amended or supplemented from time to time) sets forth under the headings "Pledged Stock," "Pledged LLC Interests," "Pledged Partnership Interests" and "Pledged Trust Interests," respectively, all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule;

(ii) except as set forth on Schedule 4.4(B), it has not acquired any equity interests of another entity or substantially all the assets of another entity within the past five (5) years;

(iii) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens, rights or claims of other Persons other than Permitted Liens and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests;

(iv) without limiting the generality of Section 4.1(a)(v), no consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary in connection with the creation, perfection or first priority status of the security interest of the Collateral Agent in any Pledged Equity Interests or the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof;

(v) none of the Pledged LLC Interests nor Pledged Partnership Interests are or represent interests in issuers that: (a) are registered as investment companies or (b) are dealt in or traded on securities exchanges or markets;

(vi) all of the Pledged LLC Interests and Pledged Partnership Interests are or represent interests in issuers that have opted to be treated as securities under the uniform commercial code of the jurisdiction of formation of the issuer.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees

that:

(i) without the prior written consent of the Collateral Agent, it shall not vote to enable or take any other action to: (a) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially and adversely affects the validity, perfection or priority of the Collateral Agent's security interest, (b) other than as permitted under the Credit Agreement, permit any issuer of any Pledged Equity Interest to dispose of all or a material portion of their assets or (c) cause any issuer of any Pledged Partnership Interests or Pledged LLC Interests which are not securities (for purposes of the UCC) on the date hereof to elect or otherwise take any action to cause such Pledged Partnership Interests or Pledged LLC Interests to be treated as securities for purposes of the UCC; provided, however, notwithstanding the foregoing, if any issuer of any Pledged Partnership Interests or Pledged LLC Interests takes any such action in violation of the foregoing in this clause (c), such Grantor shall promptly notify the Collateral Agent in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish the Collateral Agent's "control" thereof;

(ii) it shall comply with all of its material obligations under any partnership agreement or limited liability company agreement relating to Pledged Partnership Interests or Pledged LLC Interests and shall in its commercially reasonable business judgment enforce all of its rights with respect to any Investment Related Property;

(iii) except as permitted by the Credit Agreement, without the prior written consent of the Collateral Agent, it shall not permit any issuer of any Pledged Equity Interest to merge or consolidate unless (i) such issuer creates a security interest that is perfected by a filed financing statement (that is not effective solely under section 9-508 of the UCC) in collateral in which such new debtor has or acquires rights, and (ii) all the outstanding capital stock or other equity interests of the surviving or resulting corporation, limited liability company, partnership or other entity is, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding equity interests of any other constituent Grantors; provided that if the surviving or resulting Grantors upon any such merger or consolidation involving an issuer which is a Controlled Foreign Corporation, then such Grantor shall only be required to pledge equity interests in accordance with Section 2.2; and

(iv) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property to the Collateral Agent and, without limiting the foregoing, consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the Collateral Agent or its nominee following the occurrence and during the continuation of an Event of Default and to the substitution of the

Collateral Agent or its nominee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

(v) it shall notify the Collateral Agent of any default under any Pledged Debt that has caused, either individually or in the aggregate, a Material Adverse Effect.

#### 4.4.3 Pledged Debt

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on the date of each Credit Event, that:

(i) Schedule 4.4 (as such schedule may be amended or supplemented from time to time) sets forth under the heading "Pledged Debt" all of the Pledged Debt owned by any Grantor and all of such Pledged Debt has been duly authorized, authenticated or issued, and delivered and is the legal, valid and binding obligation of the issuers thereof and is not in default and constitutes all of the issued and outstanding inter-company indebtedness.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) it shall notify the Collateral Agent of any default under any Pledged Debt that has caused, either individually or in the aggregate, a Material Adverse Effect.

#### 4.4.4 Investment Accounts

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on the date of each Credit Event, that:

(i) Schedule 4.4 hereto (as such schedule may be amended or supplemented from time to time) sets forth under the heading "Securities Accounts", all of the Securities Accounts in which each Grantor has an interest. Each Grantor is the sole entitlement holder of each such Securities Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Agent pursuant thereto) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or securities or other property credited thereto;

(ii) Schedule 4.4 hereto (as such schedule may be amended or supplemented from time to time) sets forth under the headings "Deposit Accounts" all of the Deposit Accounts in which each Grantor has an interest. Each Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Agent pursuant thereto) having either sole dominion and control (within the meaning of common law) or "control" (within the meanings of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(iii) Each Grantor has taken all actions necessary or desirable, including those specified in Section 4.4.4(c), to: (a) establish Collateral Agent's "control"



(within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Related Property constituting Certificated Securities and Uncertificated Securities; and (b) deliver all Instruments to the Collateral Agent.

(iv) Any and all funds or Securities Entitlements held in or credited to any Excluded Accounts are funds or interests being held by such Grantor solely in its fiduciary capacity and not in its individual capacity.

(b) Covenant and Agreement.

(i) Each Grantor hereby covenants and agrees with the Collateral Agent and each other Secured Creditor that it shall not transfer any Collateral in any Investment Account to a successor or replacement account until a control agreement has been entered into by the appropriate Grantor, Collateral Agent and securities intermediary or depository institution at which such successor or replacement account is to be maintained in accordance with the provisions of Section 4.4.4(c).

(ii) Each Grantor agrees that such Grantor will not consent to, and will take all actions necessary to prevent any Person (other than the Collateral Agent) (i) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, in any such Securities Account or securities or other property credited thereto or (ii) having either sole dominion and control (within the meaning of common law) or "control" (within the meaning of Sections 9-104 of the UCC) over, in any such Deposit Account or any money or other property deposited therein.

(iii) Each Grantor agrees that it will not deposit, transfer or credit any funds, Securities Entitlements or other interest in any Excluded Accounts other than funds, Securities Entitlements or other interest held by such Grantor in its fiduciary capacity.

(c) Delivery and Control

(i) With respect to any Investment Related Property consisting of Securities Accounts or Securities Entitlements, it shall cause the securities intermediary maintaining such Securities Account or Securities Entitlement to enter into an agreement substantially in the form of Exhibit C hereto, promptly upon the occurrence of a Default or an Event of Default, pursuant to which it shall agree to comply with the Collateral Agent's "entitlement orders" without further consent by such Grantor. With respect to any Investment Related Property that is a "Deposit Account," it shall cause the depository institution maintaining such account to enter into an agreement substantially in the form of Exhibit D hereto, promptly upon the occurrence of a Default or an Event of Default, pursuant to which the Collateral Agent shall have "control" (within the meaning of Section 9-104 of the UCC) over such Deposit Account.

In addition to the foregoing, if any issuer of any Investment Related Property is located in a jurisdiction outside of the United States, each Grantor shall take such additional actions, including, without limitation, causing the issuer to register the pledge on its books and records or making such filings or recordings, in each case as may be necessary, under the laws of such issuer's jurisdiction to insure the validity, perfection and priority of the security interest of the Collateral Agent. Upon the occurrence and continuation of an Event of Default, the Collateral Agent shall have the right, without notice to any Grantor,

to transfer all or any portion of the Investment Related Property to its name or the name of its nominee or agent. In addition, the Collateral Agent shall have the right at any time, without notice to any Grantor, to exchange any certificates or instruments representing any Investment Related Property for certificates or instruments of smaller or larger denominations.

#### 4.5 [Reserved]

#### 4.6 Letter of Credit Rights

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date, that:

(i) all material letters of credit to which such Grantor has rights is listed on Schedule 4.6 (as such schedule may be amended or supplemented from time to time) hereto; and

(ii) it has obtained the consent of each issuer of any material letter of credit to the assignment of the proceeds of the letter of credit to the Collateral Agent.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any material letter of credit hereafter arising it shall use commercially reasonable efforts to obtain the consent of the issuer thereof to the assignment of the proceeds of the letter of credit to the Collateral Agent and shall deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto.

#### 4.7 Intellectual Property.

(a) Representations and Warranties. Except as disclosed in Schedule 4.7(H) (as such schedule may be amended or supplemented from time to time), each Grantor hereby represents and warrants, on the Closing Date, that:

(i) Schedule 4.7 (as such schedule may be amended or supplemented from time to time) sets forth a true and complete list of (i) all United States, state and foreign Patents, Trademarks, and Copyrights owned by each Grantor and (ii) all Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses material to the business of such Grantor;

(ii) it is the owner of the entire right, title, and interest in and to all Intellectual Property on Schedule 4.7 (as such schedule may be amended or supplemented from time to time), and owns or has the valid right to use all other Intellectual Property necessary to conduct its business, free and clear of all Liens, claims, encumbrances and licenses, except for Permitted Liens and the licenses set forth on Schedule 4.7(B), (D), (F) and (G) (as each may be amended or supplemented from time to time);

(iii) all material Intellectual Property is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and each Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to

maintain each and every registration and application of Copyrights, Patents and Trademarks in full force and effect;

(iv) all material Intellectual Property is valid and enforceable; no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity of, such Grantor's right to register, or such Grantor's rights to own or use, any Intellectual Property and no such action or proceeding is pending or, to the best of such Grantor's knowledge, threatened;

(v) all Copyrights, Patents and Trademarks are standing in the name of each Grantor; and none of the Trademarks, Patents, Copyrights or Trade Secrets has been licensed by any Grantor to any affiliate or third party, except as disclosed in Schedule 4.7(B), (D), (F), or (G) (as each may be amended or supplemented from time to time);

(vi) each Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks material to the business of such Grantor, proper marking practices in connection with the use of Patents material to the business of such Grantor, and appropriate notice of copyright in connection with the publication of Copyrights material to the business of such Grantor;

(vii) the conduct of such Grantor's business does not infringe upon or otherwise violate any trademark, patent, copyright, trade secret or other intellectual property right owned or controlled by a third party which could reasonably be expected to have a Material Adverse Effect; no claim has been made that the use of any Intellectual Property owned or used by Grantor (or any of its respective licensees) violates the asserted rights of any third party;

(viii) to the knowledge of each Grantor, no third party is infringing upon or otherwise violating any rights in any Intellectual Property owned or used by such Grantor, or any of its respective licensees which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(ix) no settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by Grantor or to which Grantor is bound that adversely effect Grantor's rights to own or use any material Intellectual Property; and

(x) each Grantor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale, transfer or agreement of any material Intellectual Property that has not been terminated or released. There is no effective financing statement or other document or instrument now executed, or on file or recorded in any public office, granting a security interest in or otherwise encumbering any part of the Intellectual Property, other than in favor of the Collateral Agent or created pursuant to a Permitted Lien.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees follows:

(i) it shall not do any act or omit to do any act whereby any of the Intellectual Property which is material to the business of Grantor may lapse, or become

abandoned, dedicated to the public, or unenforceable, or which would adversely affect the validity, grant, or enforceability of the security interest granted therein;

(ii) it shall not, with respect to any Trademarks which are material to the business of any Grantor, cease the use of any of such Trademarks except as permitted by the Loan Documents;

(iii) it shall, within thirty (30) days of the creation or acquisition of any Copyrightable work which is material to the business of Grantor, apply to register the Copyright in the United States Copyright Office;

(iv) it shall promptly notify the Collateral Agent if it knows that any item of the Intellectual Property that is material to the business of any Grantor may become (a) abandoned or dedicated to the public or placed in the public domain, (b) invalid or unenforceable, or (c) subject to any adverse determination or development (including the institution of proceedings) in any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court;

(v) it shall take all reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue any application and maintain any registration of each Trademark, Patent, and Copyright owned by any Grantor and material to its business which is now or shall become included in the Intellectual Property including, but not limited to, those items on Schedule 47(A), (C) and (E) (as each may be amended or supplemented from time to time);

(vi) in the event that any Intellectual Property owned by or exclusively licensed to any Grantor is infringed, misappropriated, or diluted by a third party, such Grantor shall promptly take all reasonable actions, in its commercially reasonable business judgment, to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages;

(vii) it shall promptly (but in no event more than thirty (30) days after any Grantor obtains knowledge thereof) report to the Collateral Agent (i) the filing of any application to register any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by such Grantor or through any agent, employee, licensee, or designee thereof) and (ii) the registration of any Intellectual Property by any such office, in each case by executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto;

(viii) it shall, promptly upon the reasonable request of the Collateral Agent, execute and deliver to the Collateral Agent any document required to acknowledge, confirm, register, record, or perfect the Collateral Agent's interest in any part of the Intellectual Property, whether now owned or hereafter acquired;

(ix) except with the prior consent of the Collateral Agent or as permitted under the Credit Agreement, each Grantor shall not execute, and there will not

be on file in any public office, any financing statement or other document or instruments, except financing statements or other documents or instruments filed or to be filed in favor of the Collateral Agent and each Grantor shall not sell, assign, transfer, license, grant any option, or create or suffer to exist any Lien upon or with respect to the Intellectual Property, except for the Lien created by and under this Agreement and the other Credit Documents or permitted thereby;

(x) it shall hereafter use commercially reasonable efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that could or might in any way materially impair or prevent the creation of a security interest in, or the assignment of, such Grantor's rights and interests in any property included within the definitions of any Intellectual Property acquired under such contracts;

(xi) it shall use proper statutory notice in connection with its use of any of the material Intellectual Property; and

(xii) it shall continue to collect, at its own expense, all amounts due or to become due to such Grantor in respect of the Intellectual Property or any portion thereof. In connection with such collections, each Grantor may take such action as such Grantor may deem reasonably necessary or advisable to enforce collection of such amounts. Notwithstanding the foregoing, the Collateral Agent shall have the right at any time, to notify, or require any Grantor to notify, any obligors with respect to any such amounts of the existence of the security interest created hereby.

#### 4.8 Commercial Tort Claims

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date, that Schedule 4.8 (as such schedule may be amended or supplemented from time to time) sets forth all Commercial Tort Claims of each Grantor in excess of \$250,000 individually or \$500,000 in the aggregate; and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim in excess of \$250,000 individually or \$500,000 in the aggregate hereafter arising it shall deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

### SECTION 5. ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES; ADDITIONAL GRANTORS.

5.1 Access; Right of Inspection. The Collateral Agent shall upon reasonable request have full and free access during normal business hours to all the books, correspondence and records of each Grantor, and the Collateral Agent and its representatives may examine the same, take extracts there from and make photocopies thereof. The Collateral Agent and its representatives shall upon reasonable request have the right to enter any premises during normal business hours of each Grantor and inspect any property of each Grantor where any of the Collateral of such Grantor granted pursuant to this Agreement is located for the purpose of inspecting the same, observing its use or otherwise protecting its interests therein.

#### 5.2 Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary; or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Collateral Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) take all actions necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Intellectual Property with any intellectual property registry in which said Intellectual Property is registered or in which an application for registration is pending including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, and the foreign counterparts on any of the foregoing;

(iii) upon the occurrence of and during the continuation of an Event of Default and upon request by the Collateral Agent, assemble the Collateral and allow inspection of the Collateral by the Collateral Agent, or persons designated by the Collateral Agent; and

(iv) at the Collateral Agent's reasonable request, appear in and defend any action or proceeding that may adversely affect such Grantor's title to or the Collateral Agent's security interest in all or any material part of the Collateral.

(b) Each Grantor hereby authorizes the Collateral Agent to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Collateral Agent may determine, in its reasonable discretion, are necessary to perfect the security interest granted to the Collateral Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its reasonable discretion, is necessary or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Each Grantor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail.

(c) Each Grantor hereby authorizes the Collateral Agent to modify this Agreement after obtaining such Grantor's approval of or signature to such modification by amending Schedule 4.7 (as such schedule may be amended or supplemented from time to time) to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by any Grantor after the execution hereof or to delete

any reference to any right, title or interest in any Intellectual Property in which any Grantor no longer has or claims any right, title or interest.

**5.3 Additional Grantors.** From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "Additional Grantor"), by executing a Counterpart Agreement. Upon delivery of any such counterpart agreement to the Collateral Agent, notice of which is hereby waived by Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Collateral Agent not to cause any Subsidiary of Company to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

## **SECTION 6. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.**

**6.1 Power of Attorney.** Each Grantor hereby irrevocably appoints the Collateral Agent (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent's reasonable discretion, and in accordance with the Credit Agreement, to take any action and to execute any instrument that the Collateral Agent may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

- (a) upon the occurrence and during the continuance of any Event of Default, to obtain insurance required to be maintained by such Grantor or paid to the Collateral Agent pursuant to the Credit Agreement;
- (b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;
- (c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;
- (d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral;
- (e) to prepare and file any UCC financing statements against such Grantor as debtor;
- (f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as debtor; and
- (g) if a Grantor has failed to do so after receiving written notice of such failure from Collateral Agent, to take or cause to be taken all actions necessary to perform or

comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its reasonable discretion, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand.

Notwithstanding the foregoing, except as expressly permitted herein, the Collateral Agent may not, acting in its capacity as such Grantor's attorney-in-fact, upon the occurrence and during the continuance of any Event of Default, take any actions described in (a) through (g) above with respect to such Grantor's (i) Excluded Receivables and (ii) Excluded Accounts.

**6.2 No Duty on the Part of Collateral Agent or Secured Creditors.** The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Creditors in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Creditor to exercise any such powers. Except as set forth herein, the Collateral Agent and the Secured Creditors shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own bad faith, gross negligence or willful misconduct.

## SECTION 7. REMEDIES.

### 7.1 Generally.

(a) If any Event of Default shall have occurred and be continuing and applicable cure periods have expired, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Collateral Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

- (i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;
- (ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;
- (iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems reasonably appropriate; and
- (iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such



time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable.

(b) The Collateral Agent or any Secured Creditor may be the purchaser of any or all of the Collateral at any public or private (to the extent to portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the Collateral Agent, as collateral agent for and representative of the Secured Creditors, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantors shall be liable for the deficiency and the reasonable fees of any attorneys employed by the Collateral Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way alter the rights of the Collateral Agent hereunder.

(c) The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely effect the commercial reasonableness of any sale of the Collateral.

(d) The Collateral Agent shall have no obligation to marshal any of the Collateral.

**7.2 Application of Proceeds.** Except as expressly provided elsewhere in this Agreement, all proceeds received by the Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by the Collateral Agent against, the Secured Obligations in the following order of priority: first, to the payment of all costs and expenses of such sale, collection or other realization, including

reasonable compensation to the Collateral Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith, and all amounts for which the Collateral Agent is entitled to indemnification hereunder (in its capacity as the Collateral Agent and not as a Lender) and all advances made by the Collateral Agent hereunder for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by the Collateral Agent in connection with the exercise of any right or remedy hereunder or under the Credit Agreement, all in accordance with the terms hereof or thereof; second, to the extent of any excess of such proceeds, to the payment of all other Secured Obligations for the ratable benefit of the Lenders and the Lender Counterparties; and third, to the extent of any excess of such proceeds, to the payment to, or upon the order of such Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

**7.3 Sales on Credit.** If Collateral Agent sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by purchaser and received by Collateral Agent and applied to indebtedness of the Purchaser. In the event the purchaser fails to pay for the Collateral, Collateral Agent may resell the Collateral and Grantor shall be credited with proceeds of the sale.

**7.4 Deposit Accounts.**

If any Event of Default shall have occurred and be continuing, to the extent Obligations are then due and payable, the Collateral Agent may apply the balance from any Deposit Account or instruct the bank at which any Deposit Account is maintained to pay the balance of any Deposit Account to or for the benefit of the Collateral Agent.

**7.5 Investment Related Property.**

Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Collateral Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Collateral Agent all such information as the Collateral Agent may reasonably request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Collateral Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

## 7.6 Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default:

(i) the Collateral Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Agent or otherwise, in the Collateral Agent's reasonable discretion, to enforce any Intellectual Property, in which event such Grantor shall, at the reasonable request of the Collateral Agent, do any and all lawful acts and execute any and all documents required by the Collateral Agent in aid of such enforcement and such Grantor shall promptly, upon demand, reimburse and indemnify the Collateral Agent as provided in Section 10 hereof in connection with the exercise of its rights under this Section, and, to the extent that the Collateral Agent shall elect not to bring suit to enforce any Intellectual Property as provided in this Section, at the reasonable request of the Collateral Agent, each Grantor agrees to use all commercially reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of such Grantor's rights in any material Intellectual Property by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing as shall be necessary to prevent such infringement or violation;

(ii) upon written demand from the Collateral Agent, each Grantor shall grant, assign, convey or otherwise transfer to the Collateral Agent an absolute assignment of all of such Grantor's right, title and interest in and to the Intellectual Property and shall execute and deliver to the Collateral Agent such documents as are necessary to carry out the intent and purposes of this Agreement;

(iii) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that the Collateral Agent (or any Secured Creditor) receives cash proceeds in respect of the sale of, or other realization upon, the Intellectual Property;

(iv) within five (5) Business Days after written notice from the Collateral Agent, each Grantor shall make available to the Collateral Agent, to the extent within such Grantor's power and authority, such personnel in such Grantor's employ on the date of such Event of Default as the Collateral Agent may reasonably designate, by name, title or job responsibility, to permit such Grantor to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such Grantor under or in connection with the Trademarks, Trademark Licenses, such persons to be available to perform their prior functions on the Collateral Agent's behalf and to be compensated by the Collateral Agent at such Grantor's expense on a per diem, pro-rata basis consistent with the salary and benefit structure applicable to each as of the date of such Event of Default; and

(v) upon three (3) business days prior written notice to such Grantor, the Collateral Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of the Intellectual Property, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such

amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor would have done;

- (1) all amounts and proceeds (including checks and other instruments) received by Grantor in respect of amounts due to such Grantor in respect of the Collateral or any portion thereof shall be received in trust for the benefit of the Collateral Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to the Collateral Agent in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 7.7 hereof; and
- (2) Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to the Collateral Agent of any rights, title and interests in and to the Intellectual Property shall have been previously made and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, the Collateral Agent shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Collateral Agent as aforesaid, subject to any disposition thereof that may have been made by the Collateral Agent; provided, after giving effect to such reassignment, the Collateral Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Collateral Agent granted hereunder, shall continue to be in full force and effect; and provided further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Collateral Agent and the Secured Creditors.

(c) Solely for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 7 and at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, to the extent it has the right to do so a nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located.

## **SECTION 8. COLLATERAL AGENT.**

The Collateral Agent has been appointed to act as Collateral Agent hereunder by Lenders and, by their acceptance of the benefits hereof, the other Secured Creditors. The Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement and the Credit Agreement. In furtherance of the foregoing provisions of this Section, each Secured Creditor, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Creditor that all rights and remedies hereunder may be exercised solely

by the Collateral Agent for the benefit of Lenders in accordance with the terms of this Section. Collateral Agent may resign at any time in accordance with Section 11.06 of the Credit Agreement. Upon the acceptance of any appointment as Administrative Agent under the terms of the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent shall thereby also be deemed the successor Collateral Agent and such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent under this Agreement, and the retiring or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement, and (ii) execute and deliver to such successor Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created hereunder, whereupon such retiring or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement. After any retiring or removed Collateral Agent's resignation or removal hereunder as the Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder.

#### **SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.**

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured Obligations, the cancellation or termination of the Commitments, be binding upon each Grantor, its successors and assigns, and inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns. Without limiting the generality of the foregoing, but subject to the terms of the Credit Agreement, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Secured Obligations, the cancellation or termination of the Commitments, the security interest granted hereby shall automatically terminate hereunder and of record, without further action by any Grantor, and all rights to the Collateral shall revert to Grantors. Upon any such termination the Collateral Agent shall, at Grantors' expense, execute and deliver to Grantors such documents as Grantors shall reasonably request to evidence such termination.

#### **SECTION 10. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM.**

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise.

**SECTION 11. MISCELLANEOUS.**

Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 12.03 of the Credit Agreement. No failure or delay on the part of the Collateral Agent in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Credit Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Collateral Agent given in accordance with the Credit Agreement, assign any right, duty or obligation hereunder. This Agreement and the other Credit Documents embody the entire agreement and understanding between Grantors and the Collateral Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Credit Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart of this Pledge and Security Agreement by facsimile shall be equally as effective as delivery of an original executed counterpart of this Pledge and Security Agreement.

**THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ITS CONFLICTS OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAWS).**

IN WITNESS WHEREOF, each Grantor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

WNC INSURANCE HOLDING CORP.

By:   
Name:  
Title:

**WILSHIRE NATIONAL INSURANCE  
AGENCY OF TEXAS, INC.**

By: 

Name:

Title:



**PRECISE ADJUSTMENTS, INC.**

By: 

Name:

Title:

**WILSHIRE NATIONAL  
CORPORATION**

By: 

Name:

Title:

**INSURANCE MANAGEMENT  
SERVICES, INC.**

By: 

Name:  
Title:

4376853A


**WNC INSURANCE SERVICES, INC.**

By: 

Name:

Title:

**WNC ACQUISITION INC.**

By: 

Name:

Title:

437605 3A

**ING CAPITAL LLC,  
as the Collateral Agent**

By: 

**Name: Mark R. Newsome  
Title: Vice President**

**SCHEDULE A  
EXCLUDED ASSETS**

attached hereto is incorporated by reference herein.

Schedule I to  
Schedule A

Company Name	Account Name	Bank Name	Account #
WNC Insurance Services, Inc.	Surplus Lines Trust Account	Progressive State Bank	160075
WNC Insurance Services, Inc.	Surplus Lines Savings Account	Washington Mutual	342-882085-2
First Guaranty Mortgage Services, Inc.	Premium Trust Account	Washington Mutual	388-141149-6
WNC Insurance Services, Inc.	Hudson Premium Trust	Washington Mutual	388-141808-8
WNC Insurance Services, Inc.	Safeco Premium Trust	Washington Mutual	392-126169-4
WNC Insurance Services, Inc.	Surplus Lines Trust Acct	Riverside Bank	01 45 06 0
WNC Insurance Services, Inc.	Employee Savings Trust Acct	Washington Mutual	935-809295-9
WNC Insurance Services, Inc.	Surplus Lines Trust/Money Mk	Washington Mutual	935-809305-6
WNC Insurance Services, Inc.	Employee Event Account	Washington Mutual	393-369358-8]
WNC Insurance Services, Inc.	Surplus Lines Trust	Washington Mutual	935-058348-5
First Guaranty Mortgage	Trustee Underwriters Lloyds	Washington Mutual	935-809296-7
WNC Insurance Services, Inc.	Surplus Lines Trust CO. 10	WM Business Bk	935-062784-5
WNC Insurance Services, Inc.	Surplus Lines Trust CO. 10	Washington Mutual	342-882081-0
WNC Insurance Services, Inc.	Money Market Co. 10	Washington Mutual	342-882084-4
WNC Insurance Services, Inc.	Glencoe Premium Trust	WM Business Bank	393-369348-9
WNC Insurance Services, Inc.	Glencoe Premium Trust MM	WM Business Bank	342-882127-2



**SCHEDULE 4.1  
GENERAL INFORMATION**

(A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business and Organizational Identification Number of each Grantor:

<u>Full Name</u>	<u>Type of Organization</u>	<u>Jurisdiction of Organization</u>	<u>Chief Executive Office/Sole Place of Business</u>	<u>Organizational ID #</u>
WNC Insurance Holding Corp.	Corporation	Delaware	899 El Centro Street Pasadena, CA 91030	3745173
WNC Acquisition, Inc.	Corporation	California	899 El Centro Street Pasadena, CA 91030	2569646
WNC Insurance Services, Inc.	Corporation	California	899 El Centro Street Pasadena, CA 91030	CO752210
Insurance Management Services, Inc.	Corporation	Wisconsin	899 El Centro Street Pasadena, CA 91030	53151
Wilshire National Corporation	Corporation	California	899 El Centro Street Pasadena, CA 91030	CO777567
Wilshire National Insurance Agency of Texas, Inc.	Corporation	Texas	899 El Centro Street Pasadena, CA 91030	00662991
Precise Adjustments, Inc.	Corporation	Texas	899 El Centro Street Pasadena, CA 91030	80018294

(B) Other Names (including any Trade-Name or Fictitious Business Name) under which each Grantor has conducted business for the past five (5) years:

<u>Grantor</u>	<u>Trade/Assumed Name</u>
WNC Insurance Services, Inc.	WNC First Insurance Services

(C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business and Corporate Structure within past five (5) years:

1. The following changes:

<u>Name of Grantor</u>	<u>Date of Change</u>	<u>Description of Change</u>
WNC Insurance Services, Inc.	--	Change in chief executive office
WNC Insurance Services Inc. dba WNC First Insurance Services	June 30, 2002	Changed name to a dba

2. The acquisitions and mergers identified on Schedule 4.4(B) are incorporated herein by reference thereto.

(D) Agreements pursuant to which any Grantor is found as debtor within past five (5) years:

<u>Name of Grantor</u>	<u>Description of Agreement</u>
WNC Insurance Services, Inc.	Promissory Note executed in favor of Washington Mutual Bank, FA.
Insurance Management Services, Inc.	Security Agreement executed in favor of U.S. Bank, N.A. f/k/a Firststar Bank, N.A.
Insurance Management Services, Inc.	General Business Security Agreement executed in favor of HNI Risk Services, Inc. f/k/a HNI Company, Inc.
Insurance Management Services, Inc.	General Business Security Agreement executed in favor of William Walczak.

(E) Financing Statements:

<u>Grantor</u>	<u>Filing Office</u>
WNC Insurance Holding Corp.	Delaware Secretary of State
WNC Acquisition, Inc.	California Secretary of State
WNC Insurance Services, Inc.	California Secretary of State
Insurance Management Services, Inc.	The Department of Financial Institutions of the State of Wisconsin

<b>Grantor</b>	<b>Filing Office</b>
Wilshire National Corporation	California Secretary of State
Wilshire National Insurance Agency of Texas, Inc.	Texas Secretary of State
Precise Adjustments, Inc.	Texas Secretary of State

**SCHEDULE 4.1(E)**

**AUTHORIZATIONS, APPROVALS, FILINGS AND NOTICES**

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**SCHEDULE 4.2  
LOCATION OF EQUIPMENT AND INVENTORY**

<b>Grantor</b>	<b>Address/City/State/Zip Code</b>	<b>County</b>
WNC Insurance Services, Inc. (South Pasadena)	899 El Centro St. South Pasadena, CA 910303	Los Angeles
WNC Insurance Services, Inc. (Miami)	9150 SW 87 <sup>th</sup> Ave. #200 Miami, FL 33176	Dade
WNC Insurance Services, Inc. (Denver)	43 Inverness Dr. East Englewood, CO 80112	Arapahoe
WNC Insurance Services, Inc. (Dallas)	17300 Dallas Pkwy. Ste. 3000 Dallas, TX 75370	Dallas
Precise Adjustments, Inc.	211 W. Pleasant Run Rd. Lancaster, TX 75146	Dallas

**SCHEDULE 4.4  
INVESTMENT RELATED PROPERTY**

(A) Pledged Stock:

<u>Grantor</u>	<u>Issuer</u>	<u>Type of Organization</u>	<u># of Shares Owned</u>	<u>Total Shares Outstanding</u>	<u>% of Interest Pledged</u>	<u>Certificate No. (if uncertificated, please indicate so)</u>	<u>Par Value</u>
WNC Insurance Holding Corp.	WNC Acquisition, Inc.	Corporation	1,000	1,000	100%	C-1	\$0.01
WNC Acquisition, Inc.	WNC Insurance Services, Inc.	Corporation	2,000 Shares of Common Stock	2,000 Shares of Common Stock	100%	2	\$1.00
WNC Acquisition, Inc.	WNC Insurance Services, Inc.	Corporation	1,690 Shares of Class II, Nonvoting Stock	1,690 Shares of Class II, Nonvoting Stock	100%	13	\$1.00
WNC Insurance Services, Inc.	Insurance Management Services, Inc.	Corporation	550	550	100%	8	No par value
WNC Insurance Services, Inc.	Wilshire National Corporation	Corporation	1,000	1,000	100%	2 and 3	\$10.00
WNC Insurance Services, Inc.	Wilshire National Insurance Agency of Texas, Inc.	Corporation	1,000	1,000	100%	2	\$1.00
WNC Insurance Services, Inc.	Precise Adjustments, Inc.	Corporation	1,000	1,000	100%	2	\$1.00

Pledged LLC Interests:

None.

Pledged Partnership Interests:

None.

Pledged Trust Interests:

None.

**Pledged Debt:**

None.

**Securities Account:**

1. Schedule 1 attached hereto is incorporated by reference.

**Deposit Accounts:**

2. Schedule 1 attached hereto is incorporated by reference.

(B)

<b>Grantor</b>	<b>Date of Acquisition</b>	<b>Description of Acquisition</b>
WNC Insurance Services, Inc.	October 6, 2003	WNC Insurance Services, Inc. acquired 100% of the issued and outstanding capital stock of Insurance Management Services, Inc.
WNC Insurance Services, Inc.	March 29, 2002	WNC Insurance Services, Inc. acquired certain residential insurance policies and commissions from GE Home Advantage Insurance Agency, LLC.
WNC Insurance Services, Inc.	April 1, 2001	WNC Insurance Services, Inc. acquired 100% of the issued and outstanding capital stock of First Guaranty Companies.
WNC Insurance Services, Inc.	November 29, 2000	WNC Insurance Services, Inc. acquired 100% of the issued and outstanding capital stock of First Line Insurance Services, Inc.

Schedule I

Company Name	Account Name	Bank Name	Account #
WNC Insurance Services, Inc.	General Account	Washington Mutual	935-809293-3
WNC Insurance Services, Inc.	General Account	Washington Mutual	935-058343-5



**SCHEDULE 4.6**  
**DESCRIPTION OF LETTERS OF CREDIT**

**SCHEDULE 4.7  
INTELLECTUAL PROPERTY**

## (A) Copyrights

None.

## (B) Copyright Licenses

None.

## (C) Patents

None.

## (D) Patent Licenses

None.

## (E) Trademarks

<b>TRADE/SERVICE MARK</b>	<b>STATUS</b>	<b>SERIAL NO. OR REG. NO.</b>	<b>OWNER AND MISCELLANEOUS COMMENTS</b>
1. REPORT.NET*	REGISTERED	2633705	WNC INSURANCE SERVICES, INC.
2. INSTRACK*	REGISTERED	2571645	WNC INSURANCE SERVICES, INC.
3. IAMINSURED*	REGISTERED	2556196	WNC INSURANCE SERVICES, INC.
4. INTERACTIVECLIENT.COM**	REGISTERED	2657440	WNC INSURANCE SERVICES, INC.
5. ICLIENT & DESIGN	REGISTERED	2629818	WNC INSURANCE SERVICES, INC. (ASSIGNED FROM INTERACTIVECLIENT)
6. WNC FIRST	REGISTERED	2656627	WNC INSURANCE SERVICES, INC.
7. THE BRIDGE TO YOUR INSURANCE NEEDS	REGISTERED	2601233	WNC INSURANCE SERVICES, INC. (FOR INSURANCE SERVICES)
8. GAPEXPRESS	PENDING REGISTRATION	78275457	WNC INSURANCE SERVICES – AWAITING

TRADE/SERVICE MARK	STATUS	SERIAL NO. OR REG. NO.	OWNER AND MISCELLANEOUS COMMENTS
			EXAMINER'S REVIEW
9. ICLIENT	PENDING REGISTRATION	78275453	WNC INSURANCE SERVICES, INC. – AWAITING EXAMINER'S REVIEW
10. WNC DESIGN	PENDING REGISTRATION	78235747	WNC INSURANCE SERVICES, INC. (FOR INSURANCE SERVICES) – PUBLISHED FOR OPPOSITION
11. WNC DESIGN	PENDING REGISTRATION	78235810	WNC INSURANCE SERVICES, INC. (FOR COMPUTER SOFTWARE AND BUSINESS FORMS) – AWAITING REVIEW OF OFFICE ACTION RESPONSE
12. STRENGTH. SERVICE. SPECIALTY	PENDING REGISTRATION	78235821	WNC INSURANCE SERVICES, INC. – PUBLISHED FOR OPPOSITION
13. WNC FIRST	PENDING REGISTRATION	78235687	WNC INSURANCE SERVICES, INC. (FOR COMPUTER SOFTWARE AND BUSINESS FORMS) – PUBLISHED FOR OPPOSITION

\* WNC Insurance Services, Inc. acquired 100% of the issued and outstanding capital stock of First Guaranty Companies on April 1, 2001. The rights of First Guaranty Companies in such trademark was assigned to WNC Insurance Services, Inc. by operation of law, however it was not properly recorded in the PTO Office. WNC Insurance Services, Inc. will take steps to correct this issue over the course of the next seventy-five (75) days.

\*\* Interactiveclient.com, Inc. assigned this trademark to WNC Insurance Services, Inc., but it was not properly recorded in the PTO Office. WNC Insurance Services, Inc. will take steps to correct this issue over the course of the next seventy-five (75) days.

(F) Trademark Licenses  
None.

(G) Trade Secret Licenses  
None.

(H) Intellectual Property Exceptions

1. WNC Insurance Services, Inc. acquired 100% of the issued and outstanding capital stock of First Guaranty Companies on April 1, 2001. The rights of First Guaranty Companies in such trademarks identified above by an "\*" were assigned to WNC Insurance Services, Inc. by operation of law, however it was not properly recorded in the PTO Office. WNC Insurance Services, Inc. will take steps to correct this issue over the course of the next seventy-five (75) days.
2. Interactiveclient.com, Inc. assigned the Interactiveclient.com trademark to WNC Insurance Services, Inc., but it was not properly recorded in the PTO Office. WNC Insurance Services, Inc. will take steps to correct this issue over the course of the next seventy-five (75) days.

**SCHEDULE 4.8  
COMMERCIAL TORT CLAIMS**

WNC Insurance Services, Inc. currently maintains a commercial tort claim against Interstate, an affiliate of Fireman's Fund, for contingent income on the policies it placed with Interstate the last several years.

EXHIBIT A  
TO PLEDGE AND SECURITY AGREEMENT

**PLEDGE SUPPLEMENT**

This **PLEDGE SUPPLEMENT**, dated [mm/dd/yy], is delivered pursuant to the Pledge and Security Agreement, dated as of [mm/dd/yy] (as it may be from time to time amended, restated, modified or supplemented, the "**Security Agreement**"), among [NAME OF COMPANY], the other Grantors named therein, and [NAME OF COLLATERAL AGENT], as the Collateral Agent. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

Grantor hereby confirms the grant to the Collateral Agent set forth in the Security Agreement of, and does hereby grant to the Collateral Agent, a security interest in all of Grantor's right, title and interest in and to all Collateral to secure the Secured Obligations, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located. Grantor represents and warrants that the attached Supplements to Schedules accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such Supplements to Schedules shall constitute part of the Schedules to the Security Agreement.

**IN WITNESS WHEREOF**, Grantor has caused this Pledge Supplement to be duly executed and delivered by its duly authorized officer as of [mm/dd/yy].

[NAME OF GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

SUPPLEMENT TO SCHEDULE A  
TO PLEDGE AND SECURITY AGREEMENT

EXCLUDED ACCOUNTS

Grantor	Name of Bank	Account Number	Account Name

SUPPLEMENT TO SCHEDULE 4.1  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

(A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business and Organizational Identification Number of each Grantor:

<u>Legal Name</u>	<u>Type of Organization</u>	<u>Jurisdiction of Organization</u>	<u>Chief Executive Office/Sole Place of Business</u>	<u>Organization I.D.#</u>
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(B) Other Names (including any Trade-Name or Fictitious Business Name) under which each Grantor has conducted business for the past five (5) years:

<u>Full Legal Name</u>	<u>Trade Name or Fictitious Business Name</u>
------------------------	---

(C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business and Corporate Structure within past five (5) years:

<u>Name of Grantor</u>	<u>Date of Change</u>	<u>Description of Change</u>
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(D) Agreements pursuant to which any Grantor is found as debtor within past five (5) years:

<u>Name of Grantor</u>	<u>Description of Agreement</u>
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(E) Financing Statements:

<u>Name of Grantor</u>	<u>Filing Jurisdiction(s)</u>
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SUPPLEMENT TO SCHEDULE 4.2  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

Name of Grantor

Location of Equipment and Inventory

EXHIBIT A-4

SUPPLEMENT TO SCHEDULE 4.4  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

(A)

Pledged Stock:

Pledged Partnership Interests:

Pledged LLC Interests:

Pledged Trust Interests:

Pledged Debt:

Securities Account:

Deposit Accounts:

(B)

Name of Grantor

Date of Acquisition

Description of Acquisition

EXHIBIT A-5

SUPPLEMENT TO SCHEDULE 4.5  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

<u>Name of Grantor</u>	<u>Description of Material Contract</u>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
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<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>
<p>[Faint, illegible text]</p>	<p>[Faint, illegible text]</p>

EXHIBIT A-6

SUPPLEMENT TO SCHEDULE 4.6  
TO PLEDGE AND SECURITY AGREEMENT

**Additional Information:**

**Name of Grantor**

**Description of Letters of Credit**

**SUPPLEMENT TO SCHEDULE 4.7  
TO PLEDGE AND SECURITY AGREEMENT**

**Additional Information:**

- (A) Copyrights
- (B) Copyright Licenses
- (C) Patents
- (D) Patent Licenses
- (E) Trademarks
- (F) Trademark Licenses
- (G) Trade Secret Licenses
- (H) Intellectual Property Exceptions

SUPPLEMENT TO SCHEDULE 4.8  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

Name of Grantor

Commercial Tort Claims

EXHIBIT A-9

EXHIBIT B  
TO PLEDGE AND SECURITY AGREEMENT

**UNCERTIFICATED SECURITIES CONTROL AGREEMENT**

This Uncertificated Securities Control Agreement dated as of \_\_\_\_\_, 20[ ] among \_\_\_\_\_ (the "Pledgor"), \_\_\_\_\_, as collateral agent for the Secured Creditors, (the "Collateral Agent") and \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Issuer"). Capitalized terms used but not defined herein shall have the meaning assigned in the Pledge and Security Agreement dated [as of the date hereof], among the Pledgor, the other Grantors party thereto and the Collateral Agent (the "Security Agreement"). All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

**Section 1. Registered Ownership of Shares.** The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of \_\_\_\_\_ shares of the Issuer's [common] stock (the "Pledged Shares") and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Collateral Agent.

**Section 2. Instructions.** If at any time the Issuer shall receive instructions originated by the Collateral Agent relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person.

**Section 3. Additional Representations and Warranties of the Issuer.** The Issuer hereby represents and warrants to the Collateral Agent:

(a) It has not entered into, and until the termination of the this agreement will not enter into, any agreement with any other person relating the Pledged Shares pursuant to which it has agreed to comply with instructions issued by such other person; and

(b) It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Pledgor or the Collateral Agent purporting to limit or condition the obligation of the Issuer to comply with Instructions as set forth in Section 2 hereof.

(c) Except for the claims and interest of the Collateral Agent and of the Pledgor in the Pledged Shares, the Issuer does not know of any claim to, or interest in, the Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Collateral Agent and the Pledgor thereof.

(d) This Uncertificated Securities Control Agreement is the valid and legally binding obligation of the Issuer.

**Section 4. Choice of Law.** This Agreement shall be governed by the laws of the State of [New York].

**Section 5. Conflict with Other Agreements.** In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail. No amendment or modification of this Agreement

Exhibit B-1

or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

**Section 6. Voting Rights.** Until such time as the Collateral Agent shall otherwise instruct the Issuer in writing, the Pledgor shall have the right to vote the Pledged Shares.

**Section 7. Successors; Assignment.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law. The Collateral Agent may assign its rights hereunder only with the express written consent of the Issuer and by sending written notice of such assignment to the Pledgor.

**Section 8. Indemnification of Issuer.** The Pledgor and the Collateral Agent hereby agree that (a) the Issuer is released from any and all liabilities to the Pledgor and the Collateral Agent arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer's negligence and (b) the Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer's negligence, and from and against any and all liabilities, losses, damages, reasonable costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

**Section 9. Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received.

Pledgor: [INSERT ADDRESS]  
Attention:  
Telecopier:

Collateral Agent: [INSERT ADDRESS]  
Attention:  
Telecopier:

Issuer: [INSERT ADDRESS]  
Attention:  
Telecopier:

Any party may change its address for notices in the manner set forth above.

**Section 10. Termination.** The obligations of the Issuer to the Collateral Agent pursuant to this Control Agreement shall continue in effect until the security interests of the Collateral Agent in the Pledged Shares have been terminated pursuant to the terms of the Security Agreement and the Collateral Agent has notified the Issuer of such termination in writing. The Collateral Agent agrees to provide Notice of Termination in substantially the form of Exhibit A hereto to the Issuer, with a copy to the Pledgor, upon the request of the Pledgor on or after the termination of the Collateral Agent's security interest in the Pledged Shares pursuant to the terms of the Security Agreement. The termination of this Control Agreement shall not terminate the



Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

**Section 11: Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[NAME OF PLEDGOR]

By: \_\_\_\_\_  
Name:  
Title:

ING CAPITAL LLC,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF ISSUER]

By: \_\_\_\_\_  
Name:  
Title:

Exhibit A

[Letterhead of Collateral Agent]

[Date]

[Name and Address of Issuer]

Attention: \_\_\_\_\_

Re: Termination of Control Agreement

You are hereby notified that the Uncertificated Securities Control Agreement between you, [the Pledgor] and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Pledged Shares (as defined in the Uncertificated Control Agreement) from [the Pledgor]. This notice terminates any obligations you may have to the undersigned with respect to the Pledged Shares, however nothing contained in this notice shall alter any obligations which you may otherwise owe to [the Pledgor] pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of Pledgor].

Very truly yours,

[NAME OF COLLATERAL AGENT],  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT C  
TO PLEDGE AND SECURITY AGREEMENT

**SECURITIES ACCOUNT CONTROL AGREEMENT**

This Securities Account Control Agreement dated as of \_\_\_\_\_, 20[ ] (this "Agreement") among \_\_\_\_\_ (the "Debtor"), \_\_\_\_\_, as collateral agent for the Secured Creditors (the "Collateral Agent") and \_\_\_\_\_, in its capacity as a "securities intermediary" as defined in Section 8-102 of the UCC (in such capacity, the "Securities Intermediary"). Capitalized terms used but not defined herein shall have the meaning assigned thereto in the Pledge and Security Agreement, dated [as of the date hereof], among the Debtor, the other Grantors party thereto and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"). All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

**Section 1. Establishment of Securities Account.** The Securities Intermediary hereby confirms and agrees that:

(a) The Securities Intermediary has established account number [IDENTIFY ACCOUNT NUMBER] in the name "[IDENTIFY EXACT TITLE OF ACCOUNT]" (such account and any successor account, the "Securities Account") and the Securities Intermediary shall not change the name or account number of the Securities Account without the prior written consent of the Collateral Agent;

(b) All securities or other property underlying any financial assets credited to the Securities Account shall be registered in the name of the Securities Intermediary, indorsed to the Securities Intermediary or in blank or credited to another securities account maintained in the name of the Securities Intermediary and in no case will any financial asset credited to the Securities Account be registered in the name of the Debtor, payable to the order of the Debtor or specially indorsed to the Debtor except to the extent the foregoing have been specially indorsed to the Securities Intermediary or in blank;

(c) All property delivered to the Securities Intermediary pursuant to the Security Agreement will be promptly credited to the Securities Account; and

(d) The Securities Account is a "securities account" within the meaning of Section 8-501 of the UCC.

**Section 2. "Financial Assets" Election.** The Securities Intermediary hereby agrees that each item of property (including, without limitation, any investment property, financial asset, security, instrument, general intangible or cash) credited to the Securities Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

**Section 3. Control of the Securities Account.** If at any time the Securities Intermediary shall receive any order from the Collateral Agent directing transfer or redemption of

Exhibit C-1

any financial asset relating to the Securities Account, the Securities Intermediary shall comply with such entitlement order without further consent by the Debtor or any other person. If the Debtor is otherwise entitled to issue entitlement orders and such orders conflict with any entitlement order issued by the Collateral Agent, the Securities Intermediary shall follow the orders issued by the Collateral Agent.

**Section 4. Subordination of Lien; Waiver of Set-Off.** In the event that the Securities Intermediary has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Securities Account or any security entitlement credited thereto, the Securities Intermediary hereby agrees that such security interest shall be subordinate to the security interest of the Collateral Agent. The financial assets and other items deposited to the Securities Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Collateral Agent (except that the Securities Intermediary may set off (i) all amounts due to the Securities Intermediary in respect of customary fees and expenses for the routine maintenance and operation of the Securities Account and (ii) the face amount of any checks which have been credited to such Securities Account but are subsequently returned unpaid because of uncollected or insufficient funds).

**Section 5. Choice of Law.** This Agreement and the Securities Account shall each be governed by the laws of the State of [New York]. Regardless of any provision in any other agreement, for purposes of the UCC, [New York] shall be deemed to be the Securities Intermediary's jurisdiction (within the meaning of Section 8-110 of the UCC) and the Securities Account (as well as the securities entitlements related thereto) shall be governed by the laws of the State of [New York].

**Section 6. Conflict with Other Agreements.**

(a) In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail;

(b) No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto;

(c) The Securities Intermediary hereby confirms and agrees that:

(i) There are no other agreements entered into between the Securities Intermediary and the Debtor with respect to the Securities Account;

(ii) It has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Securities Account and/or any financial assets credited thereto pursuant to which it has agreed to comply with entitlement orders (as defined in Section 8-102(a)(8) of the UCC) of such other person; and

(iii) It has not entered into, and until the termination of this Agreement, will not enter into, any agreement with the Debtor or the Collateral Agent purporting to limit or condition the obligation of the Securities Intermediary to comply with entitlement orders as set forth in Section 3 hereof.

Exhibit C-2

**Section 7. Adverse Claims.** Except for the claims and interest of the Collateral Agent and of the Debtor in the Securities Account, the Securities Intermediary does not know of any claim to, or interest in, the Securities Account or in any "financial asset" (as defined in Section 8-102(a) of the UCC) credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Securities Account or in any financial asset carried therein, the Securities Intermediary will promptly notify the Collateral Agent and the Debtor thereof.

**Section 8. Maintenance of Securities Account.** In addition to, and not in lieu of, the obligation of the Securities Intermediary to honor entitlement orders as agreed in Section 3 hereof, the Securities Intermediary agrees to maintain the Securities Account as follows:

(a) **Notice of Sole Control.** If, after the occurrence and continuation of an Event of Default, the Collateral Agent delivers to the Securities Intermediary a Notice of Sole Control in substantially the form set forth in Exhibit A hereto, the Securities Intermediary agrees that after receipt of such notice, it will take all instruction with respect to the Securities Account solely from the Collateral Agent.

(b) **Voting Rights.** Until such time as the Securities Intermediary receives a Notice of Sole Control pursuant to subsection (a) of this Section 8, the Debtor shall direct the Securities Intermediary with respect to the voting of any financial assets credited to the Securities Account.

(c) **Permitted Investments.** Until such time as the Securities Intermediary receives a Notice of Sole Control signed by the Collateral Agent, the Debtor shall direct the Securities Intermediary with respect to the selection of investments to be made for the Securities Account.

(d) **Statements and Confirmations.** The Securities Intermediary will promptly send copies of all statements, confirmations and other correspondence concerning the Securities Account and/or any financial assets credited thereto simultaneously to each of the Debtor and the Collateral Agent at the address for each set forth in Section 12 of this Agreement.

(e) **Tax Reporting.** All items of income, gain, expense and loss recognized in the Securities Account shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Debtor.

**Section 9. Representations, Warranties and Covenants of the Securities Intermediary.** The Securities Intermediary hereby makes the following representations, warranties and covenants:

(a) The Securities Account has been established as set forth in Section 1 above and such Securities Account will be maintained in the manner set forth herein until termination of this Agreement; and

(b) This Agreement is the valid and legally binding obligation of the Securities Intermediary.

**Section 10 Indemnification of Securities Intermediary.** The Debtor and the Collateral Agent hereby agree that (a) the Securities Intermediary is released from any and all liabilities to the Debtor and the Collateral Agent arising from the terms of this Agreement and the compliance of the Securities Intermediary with the terms hereof, except to the extent that such liabilities arise from the Securities Intermediary's negligence and (b) the Debtor, its successors and assigns shall

at all times indemnify and save harmless the Securities Intermediary from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Securities Intermediary with the terms hereof, except to the extent that such arises from the Securities Intermediary's negligence, and from and against any and all liabilities, losses, damages, reasonable costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

**Section 11. Successors; Assignment.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law. The Collateral Agent may assign its rights hereunder only with the express written consent of the Securities Intermediary and by sending written notice of such assignment to the Debtor.

**Section 12. Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received.

Debtor: [INSERT ADDRESS]  
Attention:  
Telecopier:

Collateral Agent: [INSERT ADDRESS]  
Attention:  
Telecopier:

Securities Intermediary: [INSERT ADDRESS]  
Attention:  
Telecopier:

Any party may change its address for notices in the manner set forth above.

**Section 13. Termination.** The obligations of the Securities Intermediary to the Collateral Agent pursuant to this Agreement shall continue in effect until the security interest of the Collateral Agent in the Securities Account has been terminated pursuant to the terms of the Security Agreement and the Collateral Agent has notified the Securities Intermediary of such termination in writing. The Collateral Agent agrees to provide Notice of Termination in substantially the form of Exhibit C hereto to the Securities Intermediary, with a copy to such Debtor, upon the request of the Debtor on or after the termination of the Collateral Agent's security interest in the Securities Account pursuant to the terms of the Security Agreement. The termination of this Agreement shall not terminate the Securities Account or alter the obligations of the Securities Intermediary to the Debtor pursuant to any other agreement with respect to the Securities Account.

**Section 14. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this Securities Account Control Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

**[DEBTOR]**

By: \_\_\_\_\_

Name:

Title:

**[NAME OF COLLATERAL AGENT],  
as Collateral Agent**

By: \_\_\_\_\_

Name:

Title:

**[NAME OF SECURITIES  
INTERMEDIARY],  
as Securities Intermediary**

By: \_\_\_\_\_

Name:

Title:

EXHIBIT A  
TO SECURITIES ACCOUNT CONTROL AGREEMENT

[Letterhead of Collateral Agent]

[Date]

[Name and Address of Securities Intermediary]

Attention:

Re: Notice of Sole Control

Ladies and Gentlemen:

As referenced in the Securities Account Control Agreement dated as of \_\_\_\_\_, 20[ ] among [NAME OF THE DEBTOR], you and the undersigned (a copy of which is attached), we hereby give you notice of our sole control over securities account number \_\_\_\_\_ (the "Securities Account") and all financial assets credited thereto. You are hereby instructed not to accept any direction, instructions or entitlement orders with respect to the Securities Account or the financial assets credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to [NAME OF THE DEBTOR].

Very truly yours,

[NAME OF COLLATERAL AGENT],  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

cc: [NAME OF THE DEBTOR]



EXHIBIT B  
TO SECURITIES ACCOUNT CONTROL AGREEMENT

Permitted Investments

[TO COME]

EXHIBIT C  
TO SECURITIES ACCOUNT CONTROL AGREEMENT

[Letterhead of the Collateral Agent]

[Date]

[Name and Address of Securities Intermediary]

Attention:

Re: Termination of Securities Account Control Agreement

You are hereby notified that the Securities Account Control Agreement dated as of \_\_\_\_\_, 20[ ] among you, [NAME OF THE DEBTOR] and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) \_\_\_\_\_ from [NAME OF THE DEBTOR]. This notice terminates any obligations you may have to the undersigned with respect to such account, however nothing contained in this notice shall alter any obligations which you may otherwise owe to [NAME OF THE DEBTOR] pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [NAME OF THE DEBTOR].

Very truly yours,

[NAME OF COLLATERAL AGENT],  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT D  
TO PLEDGE AND SECURITY AGREEMENT

**DEPOSIT ACCOUNT CONTROL AGREEMENT**

This Deposit Account Control Agreement dated as of \_\_\_\_\_, 20[ ] (this "Agreement") among \_\_\_\_\_ (the "Debtor"), \_\_\_\_\_, as collateral agent for the Secured Creditors (the "Collateral Agent") and \_\_\_\_\_, in its capacity as a "bank" as defined in Section 9-102 of the UCC (in such capacity, the "Financial Institution"). Capitalized terms used but not defined herein shall have the meaning assigned thereto in the Pledge and Security Agreement, dated [as of the date hereof], between the Debtor, the other Grantors party thereto and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"). All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of [New York].

**Section 1. Establishment of Deposit Account.** The Financial Institution hereby confirms and agrees that:

(a) The Financial Institution has established account number [IDENTIFY ACCOUNT NUMBER] in the name "[IDENTIFY EXACT TITLE OF ACCOUNT]" (such account and any successor account, the "Deposit Account") and the Financial Institution shall not change the name or account number of the Deposit Account without the prior written consent of the Collateral Agent; and

(b) The Deposit Account is a "deposit account" within the meaning of Section 9-102(a)(29) of the UCC.

**Section 2. Control of the Deposit Account.** If, upon the occurrence and continuation of an Event of Default, the Financial Institution shall receive any instructions originated by the Collateral Agent directing the disposition of funds in the Deposit Account, the Financial Institution shall comply with such instructions without further consent by the Debtor or any other person. The Financial Institution hereby acknowledges that it has received notice of the security interest of the Collateral Agent in the Deposit Account and hereby acknowledges and consents to such lien.

**Section 3. Subordination of Lien; Waiver of Set-Off.** In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Deposit Account or any funds credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Collateral Agent. Money and other items credited to the Deposit Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Collateral Agent (except that the Financial Institution may set off (i) all amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the Deposit Account and (ii) the face amount of any checks which have been credited to such Deposit Account but are subsequently returned unpaid because of uncollected or insufficient funds).

**Section 4. Choice of Law.** This Agreement and the Deposit Account shall each be governed by the laws of the State of [New York]. Regardless of any provision in any other

agreement, for purposes of the UCC, [New York] shall be deemed to be the Financial Institution's jurisdiction (within the meaning of Section 9-304 of the UCC) and the Deposit Account shall be governed by the laws of the State of [New York].

**Section 5. Conflict with Other Agreements.**

(a) In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail;

(b) No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto; and

(c) The Financial Institution hereby confirms and agrees that:

(i) There are no other agreements entered into between the Financial Institution and the Debtor with respect to the Deposit Account; and

(ii) It has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating the Deposit Account and/or any funds credited thereto pursuant to which it has agreed to comply with instructions originated by such persons as contemplated by Section 9-104 of the UCC.

**Section 6. Adverse Claims.** The Financial Institution does not know of any liens, claims or encumbrances relating to the Deposit Account. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Deposit Account, the Financial Institution will promptly notify the Collateral Agent and the Debtor thereof.

**Section 7. Maintenance of Deposit Account.** In addition to, and not in lieu of, the obligation of the Financial Institution to honor instructions as set forth in Section 2 hereof, the Financial Institution agrees to maintain the Deposit Account as follows:

(a) **Statements and Confirmations.** The Financial Institution will promptly send copies of all statements, confirmations and other correspondence concerning the Deposit Account simultaneously to each of the Debtor and the Collateral Agent at the address for each set forth in Section 11 of this Agreement; and

(b) **Tax Reporting.** All interest, if any, relating to the Deposit Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Debtor.

**Section 8. Representations, Warranties and Covenants of the Financial Institution.** The Financial Institution hereby makes the following representations, warranties and covenants:

(a) The Deposit Account has been established as set forth in Section 1 and such Deposit Account will be maintained in the manner set forth herein until termination of this Agreement; and

(b) This Agreement is the valid and legally binding obligation of the Financial Institution.

**Section 9. Indemnification of Financial Institution.** The Debtor and the Collateral Agent hereby agree that (a) the Financial Institution is released from any and all liabilities to the Debtor and the Collateral Agent arising from the terms of this Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's negligence and (b) the Debtor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's negligence, and from and against any and all liabilities, losses, damages, reasonable costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

**Section 10. Successors; Assignment.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law. The Collateral Agent may assign its rights hereunder only with the express written consent of the Financial Institution and by sending written notice of such assignment to the Debtor.

**Section 11 Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received.

Debtor:                    **[INSERT ADDRESS]**  
                               Attention:  
                               Telecopier:

Collateral Agent:       **[INSERT ADDRESS]**  
                               Attention:  
                               Telecopier:

Financial Institution:   **[INSERT ADDRESS]**  
                               Attention:  
                               Telecopier:

Any party may change its address for notices in the manner set forth above.

**Section 12. Termination.** The obligations of the Financial Institution to the Collateral Agent pursuant to this Agreement shall continue in effect until the security interest of the Collateral Agent in the Deposit Account has been terminated pursuant to the terms of the Security Agreement and the Collateral Agent has notified the Financial Institution of such termination in writing. The Collateral Agent agrees to provide Notice of Termination in substantially the form of Exhibit A hereto to the Financial Institution, with a copy to the Debtor, upon the request of the Debtor on or after the termination of the Collateral Agent's security interest in the Deposit Account pursuant to the terms of the Security Agreement. The termination of this Agreement shall not terminate the Deposit Account or alter the obligations of the Financial Institution to the Debtor pursuant to any other agreement with respect to the Deposit Account.

**Section 13. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this Deposit Account Control Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

**[DEBTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF COLLATERAL AGENT],**  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF FINANCIAL INSTITUTION],**  
as Financial Institution

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A  
TO DEPOSIT ACCOUNT CONTROL AGREEMENT

[Letterhead of the Collateral Agent]

[Date]

[Name and Address of Financial Institution]

Attention:

Re: Termination of Deposit Account Control Agreement

You are hereby notified that the Deposit Account Control Agreement dated as of \_\_\_\_\_, 20[ ] among [NAME OF THE DEBTOR], you and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) \_\_\_\_\_ from [NAME OF THE DEBTOR]. This notice terminates any obligations you may have to the undersigned with respect to such account, however nothing contained in this notice shall alter any obligations which you may otherwise owe to [NAME OF THE DEBTOR] pursuant to any other agreement.

Very truly yours,

FRONTENAC VIII LIMITED PARTNERSHIP,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

FOUR TIMES SQUARE  
NEW YORK 10036-6522

TELEPHONE NO.: (212) 735-3000  
FACSIMILE NO.: (212) 735-2000

DIRECT FACSIMILE NO: (917) 777-5103  
EMAIL: f.robins@skadden.com

#6

**FACSIMILE TRANSMITTAL SHEET**

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Assignment Division

FIRM: U.S. Patent and Trademark Office

CITY: Arlington DATE: April 15, 2003

TELEPHONE NO.: (703) 308-9723

FACSIMILE NO.: (703) 306-5995

FROM: Faith C. Robinson FLR/RM: 26-304

REFERENCE NO.: 290710/34 DIRECT DIAL: (212) 735-5103

TOTAL NUMBER OF PAGES INCLUDING COVER(S): 88

THIS FACSIMILE IS INTENDED ONLY FOR USE OF THE ADDRESSEE(S) NAMED HEREIN AND MAY CONTAIN LEGALLY PRIVILEGED AND/OR CONFIDENTIAL INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS FACSIMILE, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS FACSIMILE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE TO US AT THE ADDRESS ABOVE VIA THE LOCAL POSTAL SERVICE. WE WILL REIMBURSE ANY COSTS YOU INCUR IN NOTIFYING US AND RETURNING THE FACSIMILE TO US.

MESSAGE: **Trademarks**

The Commissioner is hereby authorized to charge any fees in connection with the attached recordation request to **Skadden, Arps Deposit Account No. 19-2385 (Our Ref: 290710/34)**

Faith C. Robinson  
Trademark Legal Assisant