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FOI 1-31-98 U.S. Patent & TMO/c/TM Mail Rcpt Dt. #10



U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office Attorney Docket No: APXP214375

100937665

To the Honorable Assistant Commissioner for Trademarks, please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Apex PC Solutions, Inc.

- Individuals Association
General Partnership Limited Partnership
[X] Corporation-State
Other

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

2. Name and address of receiving party(ies):

Name: U.S. Bank of Washington, National Association

Address: 10800 N.E. Eighth Street, Suite 1000

City: Bellevue State: WA ZIP: 98004

- Individual(s) citizenship
[X] Association National
General Partnership State of
Limited Partnership State of
Corporation-State State of
Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: [ ] Yes [X] No

(Designation must be a separate document from Assignment) Additional name(s) & address(es) attached? [ ] Yes [X] No

3. Nature of conveyance:

- Assignment Merger
[X] Security Agreement Change of Name
Other

Execution date: December 28, 1995

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

A. Trademark Application No(s). 75/018,077 which is now Registration No. 2,098,659.

B. Trademark Registration No(s).

Additional numbers attached? [ ] Yes [X] No

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

Daiva K. Tautvydas, Esq. CHRISTENSEN O'CONNOR JOHNSON & KINDNESS PLLC 1420 Fifth Avenue Suite 2800 Seattle, WA 98101-2347 (206) 682-8100

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$ 40.00

Check No. 101655 in the amount of \$40.00 is enclosed.

8. The Commissioner is authorized to charge any fees that may be required or credit any overpayment to Deposit Account Number 03-1740.

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.

Daiva K. Tautvydas Name of Attorney or Agent Registration No. 36,077 Direct Dial (206) 695-1727

Signature

12/17/98 Date

Total number of pages including cover sheet, attachments and document: 21

OMB No. 0651-0011 (exp. 4/94)

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed to: U.S. Patent and Trademark Office, Office of Public Records, Crystal Gateway 4, Room 335, Washington, D.C. 20231, on 12-17-98

Date: 12-17-98

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12/17/98 12:57 PM

## SECURITY AGREEMENT

This security agreement ("Agreement") is made and entered into as of December 28, 1995, by APEX PC SOLUTIONS, INC., a Washington corporation ("Borrower"), for the benefit of U. S. BANK OF WASHINGTON, NATIONAL ASSOCIATION, a national banking association ("U. S. Bank").

### RECITALS:

A. Concurrently with the execution hereof, U. S. Bank and Borrower entered into a credit agreement (together with all supplements, exhibits, and amendments thereto, referred to as the "Credit Agreement"), pursuant to which U. S. Bank agreed to extend to Borrower credit facilities as more fully described therein (the "Loans").

B. Borrower wishes to grant to U. S. Bank a security interest in all its assets as security for all the Secured Obligations.

NOW, THEREFORE, in order for U. S. Bank to make the Loans, Borrower agrees as follows:

### ARTICLE I. DEFINITIONS

Unless otherwise defined herein, terms defined in the Credit Agreement shall have the same meanings when used herein. For the purposes of this Agreement, the following terms shall have the following meanings:

"Account" means any right to payment for goods sold or leased or for services rendered that is not evidenced by an Instrument or Chattel Paper, whether or not it has been earned by performance.

"Account Debtor" means the party who is obligated on or under any Account, Chattel Paper, or General Intangible.

"Assignee Deposit Account" shall have the meaning set forth in Section 5.7 hereof.

"Chattel Paper" means all interest of Borrower in writings that evidence both a monetary obligation and a security interest in or a lease of specific goods, including any group of writings consisting of both a security agreement or a lease and an Instrument or series of Instruments.

"Collateral" means all property, real, personal, and mixed, tangible and intangible, wherever located, now owned or hereafter acquired by Borrower, or in which

Borrower has or later obtains an interest, and all products, profits, rents, and proceeds of such property, including but not limited to Accounts, Chattel Paper, Deposit Accounts, Documents, Equipment, Financial Assets, General Intangibles, Goods, Instruments, Inventory, Investment Property, Trademarks, Software, and Vehicles.

**"Deposit Account"** means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

**"Document"** means all of Borrower's right, title, and interest in or to any document of title as defined in RCW 62A.1-201 and any receipt of the kind described in RCW 62A.7-201(2).

**"Equipment"** means all of Borrower's right, title, and interest in and to Goods that are used or bought for use primarily in business and that are not included within the definition of Inventory, including but not limited to all machinery, equipment, furnishings, fixtures, vehicles, tools, supplies, and other equipment of any kind and nature and all additions, substitutions, and replacements of any of the foregoing, together with all attachments, components, parts, accessories, improvements, upgrades, and accessories installed thereon or affixed thereto.

**"Event of Default"** means an occurrence of an Event of Default as defined in the Credit Agreement.

**"Financial Assets"** means all of Borrower's right, title, and interest in and to any financial asset as defined in RCW 62A.8-102.

**"General Intangibles"** means all personal property (including things in action) other than Goods, Accounts, Chattel Paper, Documents, Financial Assets, Instruments, Investment Property, and money, including but not limited to all Trademarks, Software, insurance proceeds, patents, copyrights, trade names, trade secrets, goodwill, registration, license rights, licenses, permits, corporate and other business records, rights to refunds or indemnification, and all other intangible personal property of Borrower of every kind and nature.

**"Goods"** means all things that are movable or that are fixtures, not including money, Documents, Financial Assets, Instruments, Accounts, Chattel Paper, Investment Property, or General Intangibles.

**"Instrument"** means any negotiable instrument or other writing that evidences a right to the payment of money and is not itself a security agreement or lease and is of a type that is in the ordinary course of business transferred by delivery with any necessary endorsement or assignment.

"Inventory" means all Goods held by Borrower for sale or lease, furnished or to be furnished by Borrower under any contract of service, or held by Borrower as raw materials, work in progress, or materials used or consumed in Borrower's business.

"Investment Property" means all of Borrower's right, title, and interest in and to any investment property as defined in RCW 62A.9-115.

"Secured Obligations" means (a) any present or future Indebtedness of Borrower to U. S. Bank, now existing or hereafter created, under the Credit Agreement, the Notes, or the other Loan Documents, including any refinancing, renewal, replacement, extension, amendment, or substitution of such indebtedness, (b) any liability or obligation of Borrower hereunder, and (c) any cost, expense, or liability, including but not limited to reasonable attorney fees, that may be incurred and advances that may be made by U. S. Bank in any way in connection with any of the foregoing or any security therefor.

"Software" means all of Borrower's computer software in all of its forms and manifestations, including without limitation, all source materials, source codes, object codes, binary forms, source language statements, specifications, disks, tapes, programs, program layouts, formulae, technical information, designs, diagrams, models, flow charts, manufacturing processes, engineering data and techniques, instructions, manuals, patents, copyrights, mask works, trademarks, trade secrets, and other general intangibles and contract rights arising out of or relating thereto.

"Trademark" means (a) any trademark, trade name, corporate name, company name, business name, fictitious business name, trade style, service mark, logo or other source or business identifier, and the goodwill associated therewith, now existing or hereafter adopted or acquired, any registration or recording thereof, and any application in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States or of any state thereof, or any other country or any political subdivision thereof, or otherwise, including but not limited to any thereof referred to in Schedule I hereto, and (b) all renewals thereof.

"Vehicle" means any car, truck, trailer, construction or earth-moving equipment, or other vehicle covered by a certificate of title of any state, including but not limited to any tires or other appurtenances to any of the foregoing.

## ARTICLE II. GRANT OF SECURITY INTEREST

As security for the payment and satisfaction of the Secured Obligations, Borrower hereby grants to U. S. Bank a continuing security interest in and assigns to U. S. Bank all of Borrower's right, title, and interest in the Collateral and all products, profits, rents, and proceeds thereof.

### ARTICLE III. COVENANTS OF BORROWER

Borrower shall fully perform each of the covenants set forth below.

#### 3.1 Obligations to Pay.

(a) Borrower shall pay to U. S. Bank, in timely fashion and in full, all amounts payable by Borrower to U. S. Bank, pursuant to the Credit Agreement, the Notes, and the other Loan Documents; and

(b) Borrower shall pay and reimburse U. S. Bank for all reasonable expenditures including reasonable attorney fees and legal expenses in connection with the exercise by U. S. Bank of any of its rights or remedies under the Credit Agreement or the other Loan Documents.

3.2 Performance. Borrower shall fully perform in a timely fashion every covenant, agreement, and obligation set forth in the Credit Agreement and the other Loan Documents.

3.3 Further Documentation. At its own expense, Borrower shall execute and deliver any financing statement, any renewal, substitution, or correction thereof, or any other document; shall procure any document; and shall take such further action as U. S. Bank may reasonably require in obtaining the full benefits of this Agreement.

3.4 Filing Fees. Borrower shall pay all costs of filing any financing, continuation, or termination statement with respect to the security interests granted herein.

3.5 Pledges. Borrower shall deliver and pledge to U. S. Bank, endorsed or accompanied by instruments of assignment or transfer satisfactory to U. S. Bank, any Instruments, Investment Property, Documents, General Intangibles, or Chattel Paper that U. S. Bank may specify from time to time.

3.6 Maintenance of Records. Borrower shall keep and maintain at its own cost and expense satisfactory and complete records of the Collateral including but not limited to a record of all payments received and all credits granted with respect to the Collateral and all other dealings with the Collateral. Borrower shall mark its books and records pertaining to the Collateral to evidence this Agreement and the security interests granted herein. Borrower shall deliver and turn over to U. S. Bank all books and records pertaining to the Collateral at any time after the occurrence and during the continuation of an Event of Default, if so demanded by U. S. Bank.

3.7 Disposition of Collateral. Except as allowed in the Credit Agreement and except in the ordinary course of Borrower's business, Borrower shall not sell or transfer

any of the Collateral or release, compromise, or settle any obligation or receivable due to Borrower.

**3.8 Indemnification.** Borrower agrees to pay, and to indemnify U. S. Bank and hold U. S. Bank harmless from, all liabilities, costs, and expenses including but not limited to reasonable legal fees and expenses with respect to or resulting from (a) any delay in paying any excise, sales, or other taxes that may be payable or determined to be payable with respect to any of the Collateral, (b) any delay by Borrower in complying with any requirement of law applicable to any of the Collateral, or (c) any of the transactions contemplated by this Agreement. In any suit, proceeding, or action brought by U. S. Bank under any Account to enforce payment of any sum owing thereunder or to enforce any provisions of any Account, Borrower will indemnify U. S. Bank and hold U. S. Bank harmless from all expense, loss, or damage suffered by reason of any defense, setoff, counterclaim, recoupment, reduction, or liability whatsoever of the Account Debtor thereunder arising out of a breach by Borrower of any obligation thereunder or arising out of any other agreement, indebtedness, or liability at any time owing to or in favor of such Account Debtor or its successors from Borrower.

**3.9 Limitations on Amendments, Modifications, Terminations, Waivers, and Extensions of Contracts and Agreements Giving Rise to Accounts.** Except as allowed in the Credit Agreement, and except in the ordinary course of Borrower's business, Borrower will not (a) amend, modify, terminate, waive, or extend any provision of any agreement giving rise to an Account in any manner that could reasonably be expected to have a material adverse effect on the value of such Account as Collateral or (b) fail to exercise promptly and diligently every material right that it may have under each agreement giving rise to an Account, other than any right of termination.

**3.10 Limitations on Discounts, Compromises, and Extensions of Accounts.** Except as allowed in the Credit Agreement, and except in the ordinary course of Borrower's business, Borrower will not grant any extension of the time of payment of any of the Accounts; compromise, compound, or settle the same for less than the full amount thereof; release, wholly or partially, any Person liable for the payment thereof; or allow any credit or discount whatsoever thereon.

**3.11 Further Identification of Collateral.** Borrower will furnish to U. S. Bank from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as U. S. Bank may request, all in reasonable detail.

**3.12 Notices.** Borrower will advise U. S. Bank promptly in reasonable detail at its address set forth in Section 7.9 (a) of any lien (other than liens created hereby or permitted under the Credit Agreement) on or claim asserted against any of the Collateral and (b) of the occurrence of any other event that could reasonably be expected to have a material adverse effect on the Collateral or on the liens created hereunder.

**3.13 Changes in Locations, Name, Etc.** Borrower will not (a) change the location of its chief executive office/chief place of business from that specified in Section 4.10 or remove its books and records from the location specified in Section 4.7, (b) permit any of the Inventory or Equipment (excluding Vehicles) to be kept at locations other than those listed on Schedule II hereto, or (c) change its name, identity, or structure to such an extent that any financing statement filed by U. S. Bank in connection with this Agreement would become seriously misleading, unless it shall have given U. S. Bank at least ten days' prior written notice thereof.

**3.14 Trademarks.**

(a) Borrower (either itself or through licensees) will (i) continue to use each Trademark on each and every trademark class of goods applicable to its current line as reflected in its current catalogs, brochures, and price lists in order to maintain such Trademark in full force free from any claim of abandonment for nonuse, unless Borrower obtains the prior written consent of U. S. Bank which consent shall not be withheld unreasonably, (ii) maintain as in the past the quality of products and services offered under such Trademark, (iii) employ such Trademark with the appropriate notice of registration, (iv) not adopt or use any mark that is confusingly similar to or a colorable imitation of such Trademark unless U. S. Bank shall obtain a perfected security interest in such mark pursuant to this Agreement, and (v) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become invalidated.

(b) Borrower will notify U. S. Bank immediately if it knows, or has reason to know, of (i) any application or registration relating to any Trademark material to its business that may become abandoned or dedicated, or (ii) any adverse determination or development (including but not limited to the institution of, or any adverse determination or development in, any proceeding in the United States Patent and Trademark Office or any court or tribunal in any country) regarding Borrower's ownership of any material Trademark or its right to register, keep, or maintain the same.

(c) Whenever Borrower, either by itself or through any agent, employee, licensee, or designee, shall file an application for the registration of any material Trademark with the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, Borrower shall report such filing to U. S. Bank within five Business Days after the last day of the calendar month in which such filing occurs. Borrower shall execute and deliver to U. S. Bank all agreements, instruments, powers of attorney, documents, and papers that U. S. Bank may request to evidence U. S. Bank's security interest in any Trademark and in the goodwill and general intangibles of Borrower relating to or represented by the Trademark. Borrower hereby constitutes U. S. Bank its attorney-in-fact, such appointment to take effect upon the occurrence and to remain in effect during the continuation of an Event of Default, to execute and file all such writings for the foregoing purposes, with all acts of such attorney being hereby ratified and

confirmed; and such power, being coupled with an interest, is irrevocable until all Secured Obligations are paid in full.

(d) Borrower will take all reasonable and necessary steps, including but not limited to all reasonable and necessary steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application, to obtain the relevant registration, and to maintain each registration of material Trademarks, including but not limited to filing applications for renewal, affidavits of use, and affidavits of incontestability.

(e) If any Trademark that is included in the Collateral is infringed, misappropriated, or diluted by a third party, Borrower shall promptly notify U. S. Bank after it learns thereof and shall take such action as Borrower reasonably deems appropriate under the circumstances to protect such Trademark.

**3.15 Vehicles.** Within 30 days after the date of acquisition of any Vehicle constituting Collateral, the application for certificate of title thereto indicating U. S. Bank's first priority lien on such Vehicle, and any other necessary documentation, shall be filed in each office in each jurisdiction that U. S. Bank deems advisable to perfect its lien on any Vehicle constituting Collateral.

**3.16 Software.** Borrower agrees to execute and deliver to U. S. Bank from time to time upon U. S. Bank's reasonable request, any and all instruments, documents, financing statements, registration statements, applications for registration, and other documents reasonably deemed necessary by U. S. Bank to perfect or otherwise give constructive notice of its security interest in the Software or any portion thereof, including Software hereafter created or acquired by Borrower. Any such action shall give due recognition to Borrower's interest in preserving the confidentiality of the Software.

(a) **Access to Software.** U. S. Bank shall have no access to the Software unless and until there shall occur and be continuing an Event of Default. If there shall occur and be continuing an Event of Default, Borrower shall, at the request of U. S. Bank, assemble and deliver to U. S. Bank the Software, and shall cooperate with U. S. Bank in disposing of the same, in realization of its security interest therein. Borrower hereby acknowledges and agrees that any disposition of the Software by U. S. Bank in realization of its security interest therein shall not be subject to any licenses or restrictions, other than those licenses or other rights of third parties to use, modify, and distribute the Software heretofore granted by Borrower, and those licenses and other rights that Borrower may grant in the future in the ordinary course of business or pursuant to the Credit Agreement. U. S. Bank and any other third party claiming through U. S. Bank shall take the Software subject to the rights of parties other than Borrower arising out of such licenses and other rights.



(b) Negative Covenant. Borrower covenants and agrees that so long as it is indebted to U. S. Bank, Borrower shall not, without the prior written consent of U. S. Bank, sell, license, assign, or otherwise convey or encumber the Software to any person or entity provided that Borrower may license the use, modification, and distribution of the Software in the ordinary course of Borrower's business.

3.17 Insurance. Borrower agrees to insure the Collateral against all hazards in form and amount reasonably satisfactory to U. S. Bank. If Borrower fails to obtain such insurance, U. S. Bank shall have the right, but not the obligation, to obtain either insurance covering both Borrower's and U. S. Bank's interest in the Collateral, or insurance covering only U. S. Bank's interest in the Collateral. Borrower agrees to pay any premium charged for such insurance. This amount may be added to the outstanding balance of the Loans, and interest thereon shall be charged at the rate specified in any applicable loan document, or U. S. Bank may demand immediate payment. Any unpaid insurance premium advanced by U. S. Bank shall be secured under the terms of this Agreement. U. S. Bank will have no liability whatsoever for any loss which may occur by reason of the omission or lack of coverage of any such insurance. Borrower hereby assigns to U. S. Bank the right to receive proceeds of such insurance to the full amount of the Secured Obligations and hereby directs any insurer to pay all proceeds directly to U. S. Bank, and authorizes U. S. Bank to endorse any draft. In U. S. Bank's sole discretion, U. S. Bank may apply any insurance proceeds either toward repair of the property or reduction of the balance of the Secured Obligations.

3.18 Copy of Financing Statement. Borrower agrees that a carbon, photographic, or other reproduction of a financing statement or this Agreement is sufficient as a financing statement.

#### ARTICLE IV. REPRESENTATIONS AND WARRANTIES

Borrower hereby makes the following representations and warranties:

4.1 Title to Collateral. Except as set forth in the Credit Agreement, Borrower has good and marketable title to all the Collateral, free and clear of all liens excepting only the security interests created pursuant to this Agreement or permitted pursuant to the Credit Agreement.

4.2 No Impairment of Collateral. None of the Collateral shall be impaired or jeopardized because of the security interest herein granted, except to the extent the granting of a security interest is prohibited, or consent to or notice regarding the granting of a security interest is required, as set forth in the Credit Agreement.

4.3 Other Agreements. The execution and delivery of this Agreement, the consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in the material breach of any of the terms, conditions, or provisions of, or

constitute a material default under, or conflict with, or cause any acceleration of any obligation under any (a) Applicable Law or (b) agreement or other instrument to which Borrower is a party or by which Borrower is bound, except to the extent the granting of a security interest is prohibited, or consent to or notice regarding the granting of a security interest is required, as set forth in the Credit Agreement.

4.4 No Approvals. No Governmental Approvals of any nature are required in connection with the security interests herein granted.

4.5 Authority. Borrower has full power and authority to assign to U. S. Bank and to grant to U. S. Bank a security interest in the Collateral.

4.6 Location of Records. The address of the office where the books and records of Borrower are kept concerning the Collateral is set forth on Schedule II.

4.7 Location of Collateral. The locations of all Inventory and Equipment of Borrower are described on Schedule II.

4.8 Name. Borrower conducts its business only under the names "Apex PC Solutions, Inc." and "Apex Computer Company."

4.9 Accounts. The amount represented by Borrower to U. S. Bank from time to time as owing by each Account Debtor or by all Account Debtors in respect of the Accounts will at such time be the correct amount actually owing by such Account Debtor or Debtors thereunder. No material amount payable to Borrower under or in connection with any Account is evidenced by any Instrument or Chattel Paper that has not been delivered to U. S. Bank.

4.10 Chief Executive Office. Borrower's chief executive office and chief place of business is located at the address set forth on Schedule II.

4.11 Trademarks. Schedule I hereto includes all Trademarks owned by Borrower in its own name as of the date hereof. To the best of Borrower's knowledge, each such Trademark is valid, subsisting, unexpired, and enforceable and has not been abandoned. Except as set forth in Schedule I or the Credit Agreement, none of such Trademarks is the subject of any licensing or franchise agreement. No holding, decision, or judgment that would limit, cancel, or question the validity of any such Trademark has been rendered by any Governmental Body. No action or proceeding is pending that (a) seeks to limit, cancel, or question the validity of any such Trademark or (b) would, if adversely determined, have a material adverse effect on the value of any Trademark.

4.12 Vehicles. Schedule III is a complete and correct list of all Vehicles owned by Borrower on the date hereof that constitute Collateral hereunder. Borrower shall deliver to U. S. Bank the original certificate of title for each Vehicle on the date hereof.

Each certificate of title shall thereafter indicate U. S. Bank's first priority lien on the Vehicle covered by such certificate. Borrower shall execute and deliver to U. S. Bank any and all agreements, instruments, documents, powers of attorney, and papers that U. S. Bank may request to evidence and perfect U. S. Bank's security interest in any Vehicle. Borrower hereby constitutes U. S. Bank its attorney-in-fact, such appointment to take effect upon the occurrence and to remain in effect during the continuation of an Event of Default, to execute and file all such writings for the foregoing purposes, with all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, is irrevocable until all Secured Obligations are paid in full.

#### **ARTICLE V. U. S. BANK'S RIGHTS WITH RESPECT TO THE COLLATERAL**

**5.1 No Duty on U. S. Bank's Part.** U. S. Bank shall not be required (except at its option upon the occurrence and during the continuation of any Event of Default) to realize upon any Accounts, Financial Assets, Instruments, Investment Property, Chattel Paper, or General Intangibles; collect the principal, interest, or payment due thereon, exercise any rights or options of Borrower pertaining thereto; make presentment, demand, or protest; give notice of protest, nonacceptance, or nonpayment; or do any other thing for the protection, enforcement, or collection of such Collateral. The powers conferred on U. S. Bank hereunder are solely to protect U. S. Bank's interests in the Collateral and shall not impose any duty upon U. S. Bank to exercise any such powers. U. S. Bank shall be accountable only for amounts that U. S. Bank actually receives as a result of the exercise of such powers; and neither U. S. Bank nor any of its officers, directors, employees, or agents shall be responsible to Borrower for any act or failure to act hereunder, except for willful misconduct or gross negligence.

**5.2 Negotiations with Account Debtors.** Upon the occurrence and during the continuation of any Event of Default, U. S. Bank may, in its sole discretion, extend or consent to the extension of the time of payment or maturity of any Instruments, Accounts, Chattel Paper, or General Intangibles.

**5.3 Right to Assign.** Except as otherwise provided in the Credit Agreement, U. S. Bank may assign or transfer the whole or any part of the Secured Obligations and may transfer therewith as collateral security the whole or any part of the Collateral; and all obligations, rights, powers, and privileges herein provided shall inure to the benefit of the assignee and shall bind the successors and assigns of the parties hereto.

**5.4 Duties Regarding Collateral.** Except as otherwise set forth in Section 5.1, beyond the safe custody of the Collateral, U. S. Bank shall not have any duty as to any Collateral in its possession or control, or as to any preservation of any rights of or against other parties.

5.5 Collection From Account Debtors. Upon the occurrence and during the continuation of any Event of Default, Borrower shall, upon demand by U. S. Bank (and without any grace or cure period), notify all Account Debtors to make payment to U. S. Bank of any amounts due or to become due. Upon the occurrence and during the continuation of an Event of Default, Borrower authorizes U. S. Bank to contact the Account Debtors for the purpose of having all or any of them pay their obligations directly to U. S. Bank. Upon the occurrence and during the continuation of an Event of Default, Borrower shall enforce collection of any indebtedness owed to it by Account Debtors.

5.6 Inspection. U. S. Bank and its designees, from time to time at reasonable times and intervals, may inspect the Equipment and Inventory and inspect, audit, and make copies of and extracts from all records and all other papers in the possession of Borrower.

5.7 Assignee Deposit Account. Upon demand by U. S. Bank after the occurrence and during the continuation of an Event of Default, Borrower will transmit and deliver to U. S. Bank, in the form received, immediately after receipt, all cash, checks, drafts, Chattel Paper, Instruments, or other writings for the payment of money including Investment Property (properly endorsed, where required, so that the items may be collected by U. S. Bank) that may be received by Borrower at any time. All items or amounts that are delivered by Borrower to U. S. Bank, or collected by U. S. Bank from the Account Debtors, shall be deposited to the credit of a Deposit Account ("Assignee Deposit Account") of Borrower with U. S. Bank, as security for the payment of the Secured Obligations. Borrower shall have no right to withdraw any funds deposited in the Assignee Deposit Account. U. S. Bank may, from time to time in its discretion, and shall, upon the request of Borrower made not more than twice in any week, apply all or any of the balance, representing collected funds, in the Assignee Deposit Account, to payment of the Secured Obligations, whether or not then due, in such order of application, not inconsistent with the terms of the Credit Agreement and this Agreement, as U. S. Bank may determine; and U. S. Bank may, from time to time in its discretion, release all or any of such balance to Borrower.

## ARTICLE VI. U. S. BANK'S RIGHTS AND REMEDIES

6.1 General. Upon the occurrence of any Event of Default, U. S. Bank may exercise its rights and remedies in the Credit Agreement and in any other Loan Documents and any other rights and remedies at law and in equity, simultaneously or consecutively, all of which rights and remedies shall be cumulative. The choice of one or more rights or remedies shall not be construed as a waiver or election barring other rights and remedies. Borrower hereby acknowledges and agrees that U. S. Bank is not required to exercise all rights and remedies available to it equally with respect to all the Collateral and that U. S. Bank may select less than all the Collateral with respect to which the rights and remedies as determined by U. S. Bank may be exercised.

6.2 Notice of Sale; Duty to Assemble Collateral. In addition to or in conjunction with the rights and remedies referred to in Section 6.1 hereof:

(a) Written notice mailed to Borrower at the address designated herein ten days or more prior to the date of public or private sale of any of the Collateral shall constitute reasonable notice.

(b) If U. S. Bank requests, Borrower will assemble the Collateral and make it available to U. S. Bank at places that U. S. Bank shall reasonably select, whether on Borrower's premises or elsewhere.

## ARTICLE VII. GENERAL PROVISIONS

7.1 Entire Agreement. This Agreement, together with the Credit Agreement and the other Loan Documents, sets forth all the promises, covenants, agreements, conditions, and understandings between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, with respect thereto, except as contained or referred to herein. This Agreement may not be amended, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, discharge, or termination is sought.

7.2 Invalidity. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereunder, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

### 7.3 Nonwaiver and Nonexclusive Rights and Remedies.

(a) No right or remedy herein conferred upon or reserved to U. S. Bank is intended to be to the exclusion of any other right or remedy, but each and every such right or remedy shall be cumulative and shall be in addition to every other right or remedy given hereunder and now or hereafter existing at law or in equity.

(b) No delay or omission by U. S. Bank in exercising any right or remedy accruing upon an Event of Default shall impair any such right or remedy, or shall be construed to be a waiver of any such Event of Default, or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or of a different nature.

7.4 Termination of Security Interest. When all the Secured Obligations have been paid in full, the security interest provided herein shall terminate and U. S. Bank shall return to Borrower all Collateral then held by U. S. Bank, if any, and upon written request of Borrower, shall execute, in form for filing, termination statements of the security

interests herein granted. Thereafter, no party hereto shall have any further rights or obligations hereunder.

7.5 Successors and Assigns. All rights of U. S. Bank hereunder shall inure to the benefit of its successors and assigns, and all obligations of Borrower shall be binding upon its successors and assigns.

7.6 U. S. Bank's Appointment as Attorney-in-Fact.

(a) Borrower hereby irrevocably constitutes and appoints U. S. Bank and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Borrower and in the name of Borrower or in its own name, from time to time in U. S. Bank's discretion, for the purpose of carrying out the terms of this Agreement, upon the occurrence and during the continuation of an Event of Default, to take any and all appropriate action, and to execute any and all documents and instruments that may be reasonably necessary or desirable to accomplish the purposes of this Agreement; and without limiting the generality of the foregoing, Borrower hereby gives U. S. Bank the power and right, on behalf of Borrower, without consent by or notice to Borrower, to do the following:

(i) upon the occurrence and during the continuation of an Event of Default, to transfer to U. S. Bank or to any other person all or any of said Collateral, to endorse any Instruments pledged to U. S. Bank, and to fill in blanks in any transfers of Collateral, powers of attorney, or other documents delivered to U. S. Bank;

(ii) upon the occurrence and during the continuation of an Event of Default, to pay or discharge taxes and liens levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Agreement, and to pay all or any part of the premiums therefor and the costs thereof;

(iii) upon the occurrence and during the continuation of any Event of Default (A) to take possession of, endorse, and collect any checks, drafts, notes, acceptances, or other instruments for the payment of moneys due under any Account, Instrument, or General Intangible or with respect to any other Collateral and (B) to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by U. S. Bank for the purpose of collecting all such moneys due under any Account, Financial Assets, Instrument, Investment Property, or General Intangible or with respect to any other Collateral whenever payable; and

(iv) upon the occurrence and during the continuation of any Event of Default (A) to direct any party liable for any payment under any of the

Collateral to make payment of all moneys due or to become due thereunder directly to U. S. Bank or as U. S. Bank shall direct; (B) to ask for, demand, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices, and other documents in connection with any of the Collateral; (D) to commence and prosecute any suits, actions, or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any thereof and to enforce any other right in respect of any Collateral; (E) to defend any suit, action, or proceeding brought against Borrower with respect to any Collateral; (F) to settle, compromise, or adjust any suit, action, or proceeding described in clause (E) above and, in connection therewith, to give such discharge or releases as U. S. Bank may deem appropriate; (G) to assign any Trademark (along with the goodwill of the business to which any such Trademark pertains) throughout the world for such terms or terms, on such conditions, and in such manner as U. S. Bank shall in its sole discretion determine; and (H) generally, to sell, transfer, pledge, and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though U. S. Bank were the absolute owner thereof for all purposes; and to do, at U. S. Bank's option and Borrower's expense, at any time or from time to time, all acts and things that U. S. Bank deems necessary to protect, preserve or realize upon the Collateral and U. S. Bank's liens thereon and to effect the intent of this Agreement, all as fully and effectively as Borrower might do.

(b) Borrower hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

(c) Borrower also authorizes U. S. Bank, at any time and from time to time, to execute, in connection with the sale provided for in Article VI hereof, any endorsements, assignments, or other instruments of conveyance or transfer with respect to the Collateral.

(d) The powers conferred on U. S. Bank hereunder are solely to protect U. S. Bank's interests in the Collateral and shall not impose any duty upon U. S. Bank to exercise any such powers. U. S. Bank shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees, or agents shall be responsible to Borrower for any act or failure to act hereunder, except for willful misconduct or gross negligence.

7.7 Performance by U. S. Bank of Borrower's Obligations. If Borrower fails to perform or comply with any of its agreements contained herein and U. S. Bank, as

provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expense of U. S. Bank incurred in connection with such performance or compliance, together with interest thereon at the rate provided for in the Credit Agreement upon the occurrence of an Event of Default, shall be payable by Borrower to U. S. Bank on demand and shall constitute Secured Obligations.

7.8 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with and shall be governed by the laws of the state of Washington, without regard to the choice of law rules thereof.

7.9 Notices. All notices, requests, consents, demands, approvals, and other communications hereunder shall be deemed to have been duly given, made, or served if in writing and when delivered personally, or sent via facsimile, or mailed by first class mail, postage prepaid, to the respective parties to this Agreement as follows:

(a) If to U. S. Bank:

U. S. Bank of Washington,  
National Association  
10800 N.E. Eighth Street, Suite 1000  
Bellevue, Washington 98004  
Attn: Tony W. Chalfant, Vice President  
Facsimile number (206) 450-5989

(b) If to Borrower:

Apex PC Solutions, Inc.  
20031 142nd Avenue N.E.  
Woodinville, Washington 98072  
Attn: Kevin Hafer, President  
Facsimile number (206) 402-9494

with a copy to:

Davis Wright Tremaine  
1501 Fourth Avenue, Suite 2600  
Seattle, Washington 98101-1688  
Attn: Samuel F. Saracino  
Facsimile number (206) 628-7040

The designation of the person to be so notified or the address of such person for the purposes of such notice may be changed from time to time by similar notice in writing, except that



any communication with respect to a change of address shall be deemed to be given or made when received by the party to whom such communication was sent.

7.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

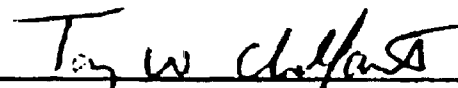
IN WITNESS WHEREOF, Borrower and U. S. Bank have caused these presents to be duly executed by their respective duly authorized signatories as of the day and year first above written.

APEX PC SOLUTIONS, INC.

By   
Kevin Hafer, President

ACCEPTED BY:

U. S. BANK OF WASHINGTON,  
NATIONAL ASSOCIATION

By   
Tony W. Chalfant, Vice President

**SCHEDULE I**  
**TRADEMARKS**

**Marks published:**

switchback sn: 74/621,260 pub date: 9/12/95

viewpoint sn: 74/621,261 pub date: 9/12/95

**Marks filed:**

vista 11/13/95 sn: 75/017990

outlook 11/13/95 sn: 75/018077

oscar 11/13/95 sn: 75/018078

**Patents applied for:**

Computer Inconnection System sn: 08/519,193 filed: 8/25/95 (includes oscar)

**SCHEDULE II**

**Address of  
chief executive office:**

**20031 142nd Avenue N.E.  
Woodinville, Washington 98072**

**Address of Office where  
books and records are kept:**

**20031 142nd Avenue N.E.  
Woodinville, Washington 98072**

**Addresses of locations of  
collateral:**

**20031 142nd Avenue N.E.  
Woodinville, Washington 98072**

**SCHEDULE III**

**VEHICLES**

**None, except forklift leased pursuant to Safeline lease described in the Credit Agreement.**