EXHIBIT 10.78  
  
  
 PLEDGE AGREEMENT  
  
  
  
 THIS PLEDGE AGREEMENT is made and entered into as of December 20, 1995  
by Xxxxxxx X. Lovely (the "Pledgor") in favor of Xxxxxxx X.  
Xxxxxx ("Xxxxxx").  
  
1.01 Pledge and Delivery of Property.  
  
 (a) In consideration of a loan of $57,268 (the "Indebtedness")  
from Xxxxxx to the Pledgor in connection with the Pledgor's purchase of 200,000  
shares of the Common Stock of ("Computone"), which  
Indebtedness is evidenced by the Pledgor's promissory note due on demand after  
June 30, 1996 (the "Note"), the Pledgor hereby grants and pledges to Xxxxxx, for  
the benefit of Xxxxxx as security for the Pledgor's Indebtedness to Xxxxxx (the  
"Obligations"), a purchase money security interest in and a lien upon the  
200,000 shares of the Common Stock, $.01 par value, of Computone, including any  
securities into which such property is converted by merger, consolidation,  
acquisition, reorganization, recapitalization, stock split or reverse stock  
split, or otherwise, and all rights, titles, interests, privileges and  
preferences appertaining or incidental to any of the foregoing and all proceeds  
thereof upon sale or otherwise (all of which are herein collectively referred to  
as the "Collateral"). The securities referred to above shall be held by  
Xxxxxxxxx X. Xxxxxx, Esq. ("Xxxxxx"), of Duane, Morris & Heckscher, 4200 Xxx  
Xxxxxxx Xxxxx, Xxxxxxxxxxxx, Xxxxxxxxxxxx 00000, as agent for the Pledgor and  
Xxxxxx as their respective interests may appear under this   
until satisfaction of the Obligations, and the purchase money security interest  
granted hereby in such securities shall be subject to Section 3.01 hereof.  
  
 (b) The Pledgor agrees that the Collateral shall be delivered  
to Xxxxxx, as agent for the Pledgor and Xxxxxx for Xxxxxx'x benefit,  
contemporaneously herewith. All securities and instruments delivered to Xxxxxx  
under this will be in negotiable form suitable for transfer by  
delivery except as otherwise provided in any restrictive legend stamped or  
imprinted on each certificate of shares. In this regard, the Pledgor is  
delivering to Xxxxxx stock xxxxxx duly executed in blank with respect to such  
securities.  
  
2.01 Liability to Xxxxxx and Xxxxxx, Liability of Xxxxxx and Xxxxxx. Neither  
Xxxxxx nor Xxxxxx shall have any duty to the Pledgor relative to any of the  
Collateral; provided, however, that Xxxxxx and Xxxxxx shall take the same degree  
of care in relation to the Collateral in their respective possession as each  
takes with respect to his own securities of a similar type. Xxxxxx and Xxxxxx  
shall not be liable for any action or omission to act on the part of any agent  
appointed and selected by Xxxxxx in good faith to act with respect to the  
Collateral, or any part thereof.  
  
  
  
  
  
  
  
3.01 Preservation of Security Interest. The Pledgor will faithfully preserve and  
protect Xxxxxx'x purchase money security interest for the benefit of Xxxxxx in  
the Collateral and the proceeds thereof and will do all such acts and things and  
execute and deliver all such documents and instruments as Xxxxxx may from time  
to time reasonably request to assist in the preservation and perfection of such  
security interest. The Pledgor will not otherwise encumber any of the  
Collateral. Notwithstanding anything herein to the contrary, the Pledgor shall  
be free to offer the Collateral for sale as contemplated by paragraphs 6 and 11  
of the December 20, 1995 agreement among Computone, Jaguar Inc., Xxxxxx, the  
Pledgor, Xxxxxx X. Xxxxxxxx and Xxxx X. Xxxxxxx provided that any such sale is  
made at not less than the then prevailing market price of the Collateral as  
reported by Nasdaq and further provided that the entire net proceeds of the sale  
is applied to the payment of the Obligations.  
  
4.01 Voting; Dividends; Proceeds.  
  
 (a) Unless and until an Event of Default (as described in  
Section 5.01 hereof) shall have occurred and notice has been given pursuant to  
Section 4.01(b) hereof, the Pledgor shall be entitled to exercise all voting and  
consensual powers pertaining to any part of the Collateral.  
  
 (b) Upon the occurrence and during the continuance of an Event  
of Default (as described in Section 5.01 hereof), Xxxxxx may at his option at  
any time provide notice to the Pledgor that all rights of the Pledgor to  
exercise the voting or consensual rights and powers which the Pledgor is  
entitled to exercise pursuant to Section 4.01(a) hereof shall cease, and all  
such rights shall thereupon become vested in Xxxxxx (for the benefit of Xxxxxx)  
who shall have the sole and exclusive right and authority to exercise the voting  
or consensual rights and powers relating or pertaining to the Collateral or any  
part thereof.  
  
 (c) Upon the giving of notice by the Pledgor as contemplated  
by Section 4.01(b) hereof following the occurrence and during the continuance of  
an Event of Default, the Pledgor hereby appoints Xxxxxx as his true and lawful  
attorney and proxy with full power to exercise on the Pledgor's behalf the  
voting or consensual rights and powers specified in Section 4.01(b) hereof, it  
being understood that this appointment is coupled with an interest and is  
irrevocable during the continuance of the Event of Default. Any proxy granted by  
virtue of the preceding sentence shall terminate as specified therein but in no  
event later than the termination of this pursuant to Section  
8.01 hereof or the release of the Collateral pursuant to Section 9.01 hereof.  
Notwithstanding the foregoing, Xxxxxx shall not have any responsibility to the  
Pledgor or any other person for his exercise or failure to exercise such voting  
or consensual rights and powers. Upon such Event of Default being cured to the  
satisfaction of Xxxxxx, the Pledgor shall be entitled to exercise the voting  
rights pursuant to Section 4.01(a) hereof.  
  
 (d) Unless and until an Event of Default (as described in  
Section 5.01 hereof) shall have occurred and be continuing and notice  
  
  
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has been given pursuant to Section 4.01(b) hereof, the Pledgor shall be entitled  
to any and all dividends on the Collateral or any part thereof, provided,  
however, that all dividends in stock or property, and all liquidating dividends  
or distributions or returns of capital upon or in respect of the Collateral or  
any part thereof or resulting from any split, reverse split, revision or  
reclassification of the Collateral or any part thereof or received in exchange  
for the Collateral or any part thereof as a result of a merger, consolidation or  
otherwise, shall be deemed to be Collateral under and subject to the terms of  
this and shall be paid, transferred or delivered directly to  
Xxxxxx, and shall be held by Xxxxxx for the benefit of Xxxxxx as additional  
Collateral pledged under and subject to the terms of this .  
  
5.01 Events of Default. The occurrence of any of the following  
shall constitute an Event of Default hereunder:  
  
 (a) Failure of the Pledgor to pay any Obligation when due;  
  
 (b) The occurrence of any other default under the Promis-  
sory Note of the Pledgor to Xxxxxx the payment of which is secured by  
this ; and  
  
 (c) The insolvency of the Pledgor; the admission by the  
Pledgor of his inability to pay his debts as they become due; the commencement  
of any case by or against the Pledgor under any bankruptcy or insolvency law  
which remains undismissed for a period of 30 days or more; the making by the  
Pledgor of any assignment for the benefit of creditors; or the entering of any  
order for relief which remains undismissed for a period of 30 days or more.  
  
6.01 Rights upon Default, etc.  
  
 (a) Rights of Xxxxxx; Sale of Collateral. Upon the occurrence  
and during the continuance of an Event of Default (as defined in Section 5.01  
hereof), Xxxxxx may at his option declare all of the Obligations to be  
immediately due in full, and Xxxxxx, for his benefit, shall thereupon have all  
of the rights and remedies provided to him as a secured party under the Uniform  
Commercial Code in effect in or in such other jurisdictions in which  
any Collateral is located, and the Pledgor further agrees that (i) in the event  
that Xxxxxx determines in his sole discretion to give notice of disposition of  
the Collateral, written notice mailed to the Pledgor at the address described in  
Section 13.01 hereof ten days prior to the date of public sale of the Collateral  
or prior to the date after which private sale or other disposition of said  
property will be made, shall constitute reasonable notice, but notice given in  
any other reasonable manner or at any other time shall be sufficient and (ii)  
without precluding any other method of sale, the sale of the Collateral shall  
have been made in a commercially reasonable manner if conducted in conformity  
with reasonable commercial practices of banks disposing of similar property.  
  
 (b) Private Sale. The Pledgor recognizes that Xxxxxx,  
after an Event of Default, may be unable to effect public sale of all  
  
  
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or a portion of the Collateral by reason of certain prohibitions contained in  
the Securities Act of 1933, as amended (or any successor federal statute), and  
applicable state securities laws, but may be compelled to resort to one or more  
private sales to a restricted group of purchasers who will be obliged to  
represent, among other things, that they are acquiring such Collateral for their  
own account for investment and not with a view to distribution. The Pledgor  
agrees that private sales so made may be made at prices and on other terms less  
favorable to the Pledgor (as seller) than if such Collateral were sold at public  
sale and that Xxxxxx has no obligation to delay sale of any such Collateral for  
the period of time necessary to permit the issuers of such Collateral, even if  
such issuers would agree, to register or qualify such Collateral for public sale  
under the Securities Act of 1933, as amended, and applicable state securities  
laws. The Pledgor agrees that private sales made under the foregoing  
circumstances and in compliance with applicable federal and state securities  
laws shall be deemed to have been made in a commercially reasonable manner under  
the Uniform Commercial Code as in effect in or in such other  
jurisdiction in which Collateral may be located.  
  
 (c) In effecting any sale of Collateral pursuant to the  
provisions hereof, Xxxxxx agrees to sell only that number of shares of the  
Collateral as is necessary to pay to Xxxxxx the full amount of the Obligations  
secured hereby.  
  
 (d) Xxxxxx agrees that, notwithstanding anything to the  
contrary herein, in the Note or in any other document, instrument or agreement  
executed and delivered in connection herewith or therewith, the Pledgor shall  
not be personally liable for the payment of any of the Obligations, and Xxxxxx  
further agrees that the liability of the Pledgor in respect of the Obligations,  
and the recourse of Xxxxxx hereunder and under the Note, shall be limited solely  
to the Collateral in accordance with the terms and conditions hereof.  
  
7.01 Xxxxxx as Attorney-in-Fact. Upon the occurrence and during the continuance  
of an Event of Default and after notice pursuant to Section 4.01(b) hereof, the  
Pledgor hereby appoints Xxxxxx as his agent and attorney-in-fact for the purpose  
of carrying out the provisions of this and taking any action  
and executing any instruments which Xxxxxx may xxxx necessary or advisable to  
accomplish the purposes hereof, which appointment as agent and attorney-in-fact  
is irrevocable and coupled with an interest. Without limiting the generality of  
the foregoing, after the occurrence of an Event of Default, Xxxxxx shall have  
the right to receive, collect and endorse all checks made payable to the Pledgor  
or his order representing any dividend, payment of interest or other  
distribution in respect of the Collateral or any part thereof and to give full  
discharge for the same.  
  
8.01 Continuing Agreement. This is a continuing agreement and shall remain in  
full force and effect and be binding upon the Pledgor, and his personal  
representatives, successors and assigns, until all Obligations of the Pledgor to  
Xxxxxx, whether now existing or hereafter arising, shall have been fully  
satisfied and discharged.  
  
  
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9.01 Release of Lien; Delivery of Collateral. Upon full and final satisfaction  
of the Obligations and in connection with the sale of any Collateral permitted  
pursuant to Section 3.01 hereof, Xxxxxx shall, at the Pledgor's expense,  
immediately deliver to the Pledgor the Collateral together with such documents  
or instruments as the Pledgor may reasonably request to evidence discharge and  
satisfaction of the purchase money security interest and lien created hereby.  
  
10.01 Costs and Expenses. In the event that an Event of Default shall occur and  
be continuing, the Pledgor will pay, immediately upon demand, to Xxxxxx all  
reasonable costs and expenses, including reasonable attorneys' fees, related or  
incidental to the care, holding, retaking, preparing for sale, selling or  
collection of, or realization upon, any of the Collateral or relating or  
incidental to establishing, reserving or enforcing the rights of Xxxxxx  
hereunder or in respect of any of the Collateral and obtaining legal advice with  
regard to any of the foregoing, whether or not suit be brought. Further, the net  
proceeds of the Collateral resulting from sale, collection or otherwise and  
other available monies coming into the hands of Xxxxxx may be applied by him,  
before or after default, to the satisfaction or reduction of any of the  
Obligations as he may see fit, whether or not matured.  
  
11.01 No Waiver; Cumulative Rights. No failure on the part of Xxxxxx to  
exercise, and no delay in exercising, any right, remedy or power hereunder shall  
operate as a waiver thereof, nor shall any single or partial exercise by Xxxxxx  
of any right, remedy or power hereunder preclude any other or future exercise of  
any other right, remedy or power. Each and every right, remedy and power hereby  
granted to Xxxxxx or allowed him by any other agreement shall be cumulative and  
not exclusive the one of any other, and may be exercised by Xxxxxx from time to  
time. No modification or waiver of any provision of this and no  
consent to any departure by the Pledgor therefrom shall in any event be  
effective unless the same shall be in writing and signed by Xxxxxx, and then  
such waiver or consent shall be effective only in the specific instance and for  
the purpose for which given. No executory agreement, in whole or in part, shall  
be effective to change, modify or discharge, in whole or in part, this Pledge  
Agreement unless such agreement shall be in writing and signed by Xxxxxx. No  
notice to or demand on the Pledgor in any case shall, of itself, entitle the  
Pledgor to any other or further notice or demand in similar or other  
circumstances.  
  
12.01 Choice of Law. Except as expressly otherwise herein provided, this Pledge  
Agreement shall be governed by, and construed in accordance with, the laws of  
 (except for the choice of law provisions thereof).  
  
13.01 Addresses for Notices. All notices or other communications required or  
permitted hereunder shall be in writing and shall be given by confirmed telex or  
telecopy or registered mail addressed, if to the Pledgor to: Xxxxxxx X. Lovely,  
00000 Xxxx Xxxxxx Xxxxx, Xxxxxxxx, Xxxxxxxx 00000; if to Xxxxxx to: Xxxxxxx X.  
Xxxxxx, Pennsylvania Merchant Group Ltd, Xxxxx 000, 000 Xxxxxx-Xxxxxxx Xxxx,  
Xxxxxx, Xxxxxxxxxxxx 00000; and in either case, with a copy to  
  
  
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Xxxxxxxxx X. Xxxxxx, Xxxxx, Xxxxxx & Heckscher, 0000 Xxx Xxxxxxx  
Xxxxx, Xxxxxxxxxxxx, Xxxxxxxxxxxx 00000.  
  
14.01 Severability. The provisions of this Pledge Agreement are severable, and  
if any clause or provision shall be held invalid or unenforceable in whole or in  
part in any jurisdiction, then such invalidity or unenforceability shall affect  
only such clause or provision or part thereof in such jurisdiction and shall not  
in any manner affect such clause or provision in any other jurisdiction or any  
other clause or provision in this Pledge Agreement in any jurisdiction.  
  
15.01 Miscellaneous. The terms, provisions, covenants and agreements,  
representations and warranties contained herein shall be binding upon and shall  
inure to the benefit of the Pledgor, Xxxxxx, and their respective successors and  
assigns.  
  
 IN WITNESS WHEREOF, the undersigned has executed this instrument as of  
the date first above written.  
  
  
Witness:  
  
  
/s/ X. Xxxxx /s/ Xxxxxxx X. Lovely  
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 Xxxxxxx X. Lovely  
  
  
  
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