APPLE INC

FORM 10-K
(Annual Report)

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Address	ONE INFINITE LOOP CUPERTINO, CA 95014
Telephone	(408) 996-1010
CIK	0000320193
Symbol	AAPL
SIC Code	3571 - Electronic Computers
Industry	Computer Hardware
Sector	Technology
Fiscal Year	09/30

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(MARK ONE)

/X/ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED SEPTEMBER 26, 1997 OR

/ / TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM TO

COMMISSION FILE NUMBER 0-10030

APPLE COMPUTER, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

CALIFORNIA	942404110
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(I.R.S. EMPLOYER IDENTIFICATION NO.)
1 Infinite Loop Cupertino, California	95014
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	(ZIP CODE)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: (408) 996-1010

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, no par value
Common Share Purchase Rights
(Titles of classes)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes _X_ No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference to Part III of this Form 10-K or any amendment to this Form 10-K. [X]

The aggregate market value of voting stock held by nonaffiliates of the Registrant was approximately $2,271,883,063 as of November 28,

1997, based upon the closing price on the Nasdaq National Market reported for such date. Shares of Common Stock held by each executive officer and director and by each person who beneficially owns more than 5% of the outstanding Common Stock have been excluded in that such persons may under certain circumstances be deemed to be affiliates. This determination of executive officer or affiliate status is not necessarily a conclusive determination for other purposes.

127,993,412 shares of Common Stock Issued and Outstanding as of November 28, 1997

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive Proxy Statement dated December 5, 1997 (the "Proxy Statement"), to be delivered to shareholders in connection with the Annual Meeting of Shareholders to be held February 3, 1998, are incorporated by reference into Parts I and III.

PART I

THE BUSINESS SECTION AND OTHER PARTS OF THIS FORM 10-K CONTAIN FORWARD-LOOKING STATEMENTS THAT INVOLVE RISKS AND UNCERTAINTIES. THE COMPANY'S ACTUAL RESULTS MAY DIFFER SIGNIFICANTLY FROM THE RESULTS DISCUSSED IN THE FORWARD-LOOKING STATEMENTS. FACTORS THAT MIGHT CAUSE SUCH DIFFERENCES INCLUDE, BUT ARE NOT LIMITED TO, THOSE DISCUSSED IN THE SUBSECTION ENTITLED "FACTORS THAT MAY AFFECT OPERATING RESULTS AND FINANCIAL CONDITION" UNDER PART II, ITEM 7 OF THIS ANNUAL REPORT ON FORM 10-K.

ITEM 1. BUSINESS

GENERAL

Apple Computer, Inc. ("Apple" or the "Company") was incorporated under the laws of the State of California on January 3, 1977. The Company's principal executive offices are located at 1 Infinite Loop, Cupertino, California, 95014 and its telephone number is (408) 996-1010.

The Company designs, manufactures and markets microprocessor-based personal computers and related personal computing and communicating solutions for sale primarily to education, creative, home, business and government customers. Substantially all of the Company's net sales to date have been derived from the sale of personal computers from its Apple Macintosh-Registered Trademark- line of computers and related software and peripherals. The Company operates in one principal industry segment across geographically diverse marketplaces.

During 1997, the Company continued to implement certain restructuring actions aimed at reducing its cost structure, improving its competitiveness, and restoring sustainable profitability. The Company's restructuring actions have included the termination of employees, closure of facilities and cancellation of contracts. Further information regarding these restructuring actions may be found in Part II, Item 7 of this Annual Report on Form 10-K (the "Form 10-K") under the subheading "Restructuring of Operations" included under the heading "Factors That May Affect Future Results and Financial Condition," and in Part II, Item 8 on this Form 10-K in the Notes to Consolidated Financial Statements under the heading "Restructuring of Operations," which information is hereby incorporated by reference.

PRINCIPAL PRODUCTS

Apple Macintosh personal computers were first introduced in 1984, and are characterized by their intuitive ease of use, innovative applications base, and built-in networking, graphics and multimedia capabilities.

The Company offers a wide range of personal computing products, including personal computers, related peripherals, software, and networking and connectivity products. All of the Company's Macintosh products employ PowerPC-TM- RISC-based microprocessors.

POWER MACINTOSH

The Power Macintosh "Flagship" line of high-performance personal computers is targeted at business and professional users and is designed to meet the speed, expansion and networking needs of the most demanding Macintosh user. These Power Macintosh products not only support virtually all existing Macintosh applications, but can also run MS-DOS and Windows applications when using SoftWindows-TM- software from Insignia Solutions or Virtual PC-TM- software from Connectix Corporation.

The Power Macintosh "Value" line of personal computers is designed to appeal primarily to academic, consumer and first-time personal computer users. Many of these products feature all-in-one box computing solutions, including software and hardware chosen specifically with home and education users in mind.

MACINTOSH POWERBOOK

The PowerBook family of portable computer products is specifically designed for mobile computing needs. All PowerBook personal computers include software designed to enhance mobile computing.

PERIPHERAL PRODUCTS

The Company sells certain associated computer peripherals including LaserWriter-Registered Trademark- printers and a range of color monitors.

MESSAGEPAD AND EMATE

The Apple MessagePad-Registered Trademark- 2100 communications assistant employs the Company's proprietary Newton-Registered Trademark-technology in a hand-held mobile computer that intelligently assists the user in capturing, organizing and communicating information using built-in business software programs, including word processing, Internet e-mail and spreadsheet applications. The Apple eMate 300 integrates Newton technology in a mobile computer designed for use primarily in education. The eMate 300 allows students to enter data by keyboard or stylus and share data and files with each other, and with Mac OS-Registered Trademark- and Windows-Registered Trademark- software-based computers, send and receive e-mail, and access the Internet. The eMate 300 includes built-in word processing, drawing and spreadsheet applications.

OPERATING SYSTEM SOFTWARE AND APPLICATION SOFTWARE

The Company's operating system software, its proprietary Macintosh system software called Mac OS, provides Macintosh computers with an easy, consistent user interface and built-in networking capability based on its AppleTalk networking standard, as well as other industry networking standards, and ensures integration of hardware and software. The Company also develops and distributes extensions to the Macintosh system software, such as utilities, languages, developer tools, and educational software. Claris Corporation, a wholly-owned subsidiary of the Company, develops, publishes, and distributes application software in a variety of established personal productivity categories, such as database management, for Mac OS and Windows-based systems. Claris-Registered Trademark- products are distributed primarily through independent software resellers. The Company plans to continue to introduce major upgrades to the current Mac OS and later introduce a new operating system (code named "Rhapsody") which is expected to offer advanced functionality based on software technologies of Apple and those of NeXT Software, Inc. ("NeXT") which the Company acquired in 1997.

The Company previously entered into agreements to license its Mac OS to other personal computer vendors (the "Clone Vendors") as part of an effort to increase the installed base for the Macintosh platform. The Company recently determined that the benefits of licensing the Mac OS to the Clone Vendors under these agreements were more than offset by the impact and costs of the licensing program. As a result, the Company agreed to acquire certain assets, including the license to distribute the Mac OS, of Power Computing Corporation ("PCC"), a Clone Vendor, and has no plans to renew its other Mac OS licensing agreements.

SERVERS

The Workgroup Server family of products provides file, print, Internet, and application services, to varying size workgroups. These products also provide Apple system connectivity to local area networks, and interoperability with other computers and computing environments.

INTERNET INTEGRATION

Apple's Internet strategy is focused on delivering seamless integration with and access to the Internet throughout the Company's product lines.

Further information regarding the Company's products may be found in Part II, Item 7 of this Form 10-K under the subheading "Competition" included under the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

MARKETS AND DISTRIBUTION

The Company's customers are primarily in the education, creative, home, business and government markets. Certain customers are attracted to Macintosh computers for a variety of reasons, including the availability of a wide variety of certain application software, the reduced amount of training resulting from the Macintosh computer's intuitive ease of use, and the ability of Macintosh computers to network and communicate with other computer systems and environments.

Apple personal computers were first introduced to education customers in the late 1970s. In the U.S., the Company is one of the major suppliers of personal computers for both elementary and secondary school customers, as well as for college and university customers. The Company is also a substantial supplier to institutions of higher education outside of the U.S.

The U.S. represents the Company's largest geographic marketplace. The U.S. is part of the Apple Americas organization which focuses on the Company's sales, marketing, and support efforts in North and South America. Products sold in the western hemisphere are primarily manufactured in the Company's facilities in California and Singapore, and under contract by SCI Systems, Inc. ("SCI") at a facility in Colorado, and are distributed from the Company's facility in California and from a third-party facility in Illinois.

Approximately 48% to 52% of the Company's revenues in recent years have come from its international operations. The Company's international sales and services divisions consist of: Apple Americas; Apple Europe, Middle East and Africa ("Apple EMEA"); Apple Japan; and Apple Asia Pacific (which does not include Japan). The marketing divisions focus on sales, marketing and distribution in their regions. Products sold by Apple EMEA are manufactured primarily in the Company's facility in Cork, Ireland. Products sold by Apple Americas, Apple Japan, and Apple Asia Pacific are manufactured primarily in the Company's facilities in California and Singapore, and in the SCI facility in Colorado.

The Company distributes its products through wholesalers, resellers, mass merchants, cataloguers, and direct to education institutions (collectively referred to as "resellers"). In addition, in November 1997 the Company began selling many of its products directly to end users in the U.S. through the Company's on-line store. The Company has recently revised its channel program, including decreasing the number of resellers and reducing returns, price protection and certain rebate programs, in an effort to reduce channel inventory, increase inventory turns, and increase product support within the channel.

A summary of the Company's geographic financial information may be found in

Part II, Item 8 of this Form 10-K under Notes to Consolidated Financial

Statements under the heading "Industry Segment and Geographic Information," which information is hereby incorporated by reference.

RAW MATERIALS

Although certain components essential to the Company's business are generally available from multiple sources, other key components (including microprocessors and application-specific integrated circuits ("ASICs")) are currently obtained by the Company from single sources. Any availability limitations, interruption in supplies, or price increases relative to these and other components could adversely affect the Company's business and financial results. In addition, new products introduced by the Company often initially utilize custom components obtained from only one source, until the Company has evaluated whether there is a need for additional suppliers. In situations where a component or product utilizes new technologies, there may be initial capacity constraints until such time as the suppliers' yields have matured. Components are normally acquired through purchase orders, as is common in the industry, typically

covering the Company's requirements for periods from 90 to 180 days. However, the Company continues to evaluate the need for a supply contract in each situation.

If the supply of a key single-sourced component to the Company were to be delayed or curtailed, the Company's ability to ship the related product utilizing that component in desired quantities and in a timely manner could be adversely affected. The Company's business and financial performance could also be adversely affected, depending on the time required to obtain sufficient quantities from the original source, or to identify and obtain sufficient quantities from an alternate source. The Company believes that the suppliers whose loss to the Company could have a material adverse effect upon the Company's business and financial position include, at this time: Canon, Inc., General Electric Co., IBM Corporation, Motorola, Inc., Sharp Corporation, Sony Corporation, Texas Instruments, Inc., VLSI Technology, Inc., Quanta Computer, Inc., Quantum Corporation, NatSteel Electronics Pte. Ltd., and SCI. The Company attempts to mitigate these potential risks by working closely with these and other key suppliers on product introduction plans, strategic inventories, coordinated product introductions, and manufacturing schedules and levels. The Company believes that many of its single-source suppliers, including most of the foregoing companies, are reliable multinational corporations. The Company also believes most of these suppliers manufacture the relevant components in multiple plants. The Company further believes that its long-standing business relationships with these and other key suppliers are strong and mutually beneficial in nature.

The Company has also from time to time experienced significant price increases and limited availability of certain components that are available from multiple sources. Any similar occurrences in the future could have an adverse affect on the Company's operating results.

The Company is obligated to purchase certain percentages of its total annual volumes of CPUs and logic boards from SCI over each of the next two years.

Further discussion relating to availability and supply of components and product may be found in Part II, Item 7 of this Form 10-K under the subheading "Inventory and Supply" included under the heading "Factors That May Affect Future Results and Financial Condition," and in Part II, Item 8 on this Form 10-K in the Notes to Consolidated Financial Statements under the subheading "Concentrations in the Available Sources of Supply of Materials and Product" included under the heading "Concentrations of Risk," and under the subheading "Purchase Commitments" included under the heading "Commitments and Contingencies," which information is hereby incorporated by reference.

PATENTS, TRADEMARKS, COPYRIGHTS AND LICENSES

The Company currently holds rights to patents and copyrights relating to certain aspects of its computer and peripheral systems. In addition, the Company has registered, and/or has applied to register, trademarks in the U.S. and a number of foreign countries for "Apple", the Apple silhouette logo, the Apple color logo, "Macintosh", "Newton", the Newton Lightbulb logo, "Claris" and numerous other product trademarks. In 1986, the Company acquired ownership of the trademark "Macintosh" for use in connection with computer products. Although the Company believes that the ownership of such patents, copyrights, and trademarks is an important factor in its business and that its success does depend in part on the ownership thereof, the Company relies primarily on the innovative skills, technical competence, and marketing abilities of its personnel.

Because of technological changes in the computer industry, current extensive patent coverage, and the rapid rate of issuance of new patents, it is possible that certain components of the Company's products may unknowingly infringe existing patents of others. The Company believes the resolution of any claim of infringements would not have a material adverse effect on its financial condition and results of operations as reported in the accompanying financial statements. However, depending on the amount and timing of an unfavorable resolution of any such claims of infringement, it is possible that the Company's future results of operations or cash flow could be materially affected in a particular period. The Company has from time to time entered into cross-licensing agreements with other companies.

SEASONAL BUSINESS

Although the Company does not consider its business to be highly seasonal, it has historically experienced increased sales in its first and fourth fiscal quarters, compared to other quarters in its fiscal year, due to seasonal demand related to the beginning of the school year and the holiday season. However, past performance should not be considered a reliable indicator of the Company's future revenue or financial performance.

WARRANTY

The Company offers a parts and labor limited warranty on its hardware products. The warranty period is typically one year from the date of purchase by the end user. The Company also offers a 90-day warranty for Apple service parts used to repair Apple hardware products. In addition, consumers may purchase extended service coverage on all Apple hardware products.

SIGNIFICANT CUSTOMERS

No customer accounted for more than 10% of the Company's net sales in 1997, 1996 or 1995.

BACKLOG

For information regarding the Company's backlog, refer to Part II, Item 7 of this Form 10-K, under the subheading "Backlog", which is included under the heading "Net Sales", which information is hereby incorporated by reference.

COMPETITION

The market for the design, manufacture and sale of personal computers, personal communications devices, and related software and peripheral products is highly competitive. It continues to be characterized by rapid technological advances in both hardware and software development that have substantially increased the capabilities and applications of these products, and has resulted in the frequent introduction of new products. The principal competitive factors in this market are relative price/performance, product quality and reliability, availability of software, product features, marketing and distribution capability, service and support, availability of hardware peripherals, and corporate reputation.

The Company is currently the primary maker of hardware that uses the Mac OS. The Mac OS has a minority market share in the personal computer market, which is dominated by makers of computers that run the Microsoft Windows 95 and Windows NT operating systems. The Company believes that the Mac OS, with its perceived advantages over Windows, and the general reluctance of the Macintosh installed base to incur the costs of switching platforms, have been driving forces behind sales of the Company's personal computer hardware for the past several years. Recent innovations in the Windows platform, including those included in Windows 95 and Windows NT, or those expected to be included in a new version of Windows to be introduced in 1998, have added features to the Windows platform that make the differences between the Mac OS and Microsoft's Windows operating systems less significant. The Company is currently taking and will continue to take steps to respond to the competitive pressures being placed on its personal computer sales as a result of the recent innovations in the Windows platform. The Company's future consolidated operating results and financial condition is substantially dependent on its ability to maintain continuing improvements on the Macintosh platform in order to maintain perceived functional advantages over competing platforms.

Further discussion relating to the competitive conditions of the personal computing industry and the Company's competitive position in the market place may be found in Part II, Item 7 of this Form 10-K under the subheading "Competition," included under the heading "Factors That May Affect Future Results and Financial Condition," and in Part II, Item 8 on this Form 10-K in the Notes to Consolidated

Financial Statements under the subheading "Provisions for Inventory Write-downs and Related Accruals" under the heading "Significant Accounting Estimates", which information is hereby incorporated by reference.

RESEARCH AND DEVELOPMENT

Because the personal computer industry is characterized by rapid technological advances, the Company's ability to compete successfully is heavily dependent upon its ability to ensure a continuing and timely flow of competitive products to the marketplace. The Company continues to develop new products and technologies and to enhance existing products in the areas of hardware and peripherals, system software, networking and communications, and the Internet. The Company's research and development expenditures, before a charge for in-process research and development in 1997, totaled $485 million, $604 million, and $614 million in 1997, 1996, and 1995, respectively.

Further information regarding the Company's R&D expenditures for 1997, 1996 and 1995 is set forth in Part II, Item 7 of this Form 10-K under the heading "Research and Development," which information is hereby incorporated by reference. For information regarding in-process research and development charges taken in 1997 refer to Part II, Item 7 of this Form 10-K under the subheading "In-Process Research and Development," under the heading "Special Charges."

ENVIRONMENTAL LAWS

Compliance with U.S. federal, state, and local laws and foreign laws enacted for the protection of the environment has to date had no material effect upon the Company's capital expenditures, earnings, or competitive position. Although the Company does not anticipate any material adverse effects in the future based on the nature of its operations and the thrust of such laws, no assurance can be given that such laws, or any future laws enacted for the protection of the environment, will not have a material adverse effect on the Company.

EMPLOYEES

As of September 26, 1997, Apple and its subsidiaries worldwide had 8,437 regular employees, and an additional 1,739 temporary or part-time contractors and employees.

FOREIGN AND DOMESTIC OPERATIONS AND GEOGRAPHIC DATA

Information regarding financial data by geographic area and the risks associated with international operations is set forth in Part II, Item 8 of this Form 10-K under the heading "Industry Segment and Geographic Information," and in Part II, Item 7 of this Form 10-K under the subheading "Global Market Risks," included under the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

Margins on sales of Apple products in foreign countries, and on domestic sales of products that include components obtained from foreign suppliers, can be adversely affected by foreign currency exchange rate fluctuations and by international trade regulations, including tariffs and anti-dumping penalties.

ITEM 2. PROPERTIES

The Company's headquarters are located in Cupertino, California. The Company has manufacturing facilities in Sacramento, California, Cork and Dublin, Ireland, and Singapore. As of September 26, 1997, the Company leased approximately 3.7 million square feet of space, primarily in the U.S., and to a lesser extent, in Europe and the Asia/Pacific region. Leases are generally for terms of five to ten years, and usually provide renewal options for terms of up to five additional years.

The Company owns its manufacturing facilities in Cork and Dublin, Ireland, and Singapore, which total approximately one million square feet. The Company also owns a 725,000 square-foot facility in Sacramento, California, which is used as a manufacturing, warehousing and distribution center. In addition, the Company owns 930,000 square feet of facilities located in Cupertino, California, used for research and development and corporate functions. Outside the U.S., the Company owns additional facilities totaling approximately 400,000 square feet.

Certain of the Company's office, manufacturing and distribution facilities owned by the Company in Sacramento, California, Singapore and the United Kingdom are currently being held for sale as part of the Company's restructuring plan, which includes increasing the proportion of the Company's products manufactured and distributed under outsourcing arrangements. Further information regarding the Company's restructuring plan may be found in Part II, Item 7 of this Form 10-K under the subheadings "Restructuring of Operations " included under the heading "Factors That May Affect Future Results and Financial Condition," and in

Part II, Item 8 on this Form 10-K in the Notes to Consolidated Financial

Statements under the heading "Restructuring of Operations," which information is hereby incorporated by reference.

The Company believes that its existing facilities and equipment are well maintained and in good operating condition. The Company has invested in internal capacity and external partnerships, and therefore believes it has adequate manufacturing capacity for the foreseeable future even after the sale of the foregoing facilities. The Company continues to make investments in capital equipment as needed to meet anticipated demand for its products.

Information regarding critical business operations that are located near major earthquake faults is set forth in Part II, Item 7 of this Form 10-K under the subheading "Other Factors" included under the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

ITEM 3. LEGAL PROCEEDINGS

Information regarding legal proceedings is set forth in Part II, Item 8 of this Form 10-K under the subheading "Litigation," included under the heading "Commitments and Contingencies," which information is hereby incorporated by reference.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of the Company's fiscal year ended September 26, 1997.

PART II

ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY AND RELATED SHAREHOLDER MATTERS

The Company's common stock is traded on the over-the-counter market and is quoted on the Nasdaq National Market under the symbol AAPL, on the Tokyo Stock Exchange under the symbol APPLE, and on the Frankfurt Stock Exchange under the symbol APCD. Options are traded on the Chicago Board Options Exchange and the American Stock Exchange. Information regarding the Company's high and low reported closing prices for its common stock and the number of shareholders of record is set forth in Part II, Item 8 of this Form 10-K under the heading "Selected Quarterly Financial Information (Unaudited)", which information is hereby incorporated by reference.

ITEM 6. SELECTED FINANCIAL DATA

The following selected financial information has been derived from the audited consolidated financial statements. The information set forth below is not necessarily indicative of results of future operations, and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and related notes thereto included elsewhere in this Form 10-K.

FIVE FISCAL YEARS ENDED SEPTEMBER 26, 1997	1997	1996	1995	1994	1993
	(IN MILLIONS, EXCEPT SHARE AND PER SHARE AMOUNTS)				
Net sales	$ 7,081	$ 9,833	$ 11,062	$ 9,189	$ 7,977
Net income (loss)	$ (1,045)	$ (816)	$ 424	$ 310	$ 87
Earnings (loss) per common and common equivalent share	$ (8.29)	$ (6.59)	$ 3.45	$ 2.61	$ 0.73
Cash dividends declared per common share	$ --	$ 0.12	$ 0.48	$ 0.48	$ 0.48
Common and common equivalent shares used in the calculations of earnings (loss) per share (in thousands)	126,062	123,734	123,047	118,735	119,125
Cash, cash equivalents, and short-term investments	$ 1,459	$ 1,745	$ 952	$ 1,258	$ 892
Total assets	$ 4,233	$ 5,364	$ 6,231	$ 5,303	$ 5,171
Long-term debt	$ 951	$ 949	$ 303	$ 305	$ 7
Shareholders' equity	$ 1,200	$ 2,058	$ 2,901	$ 2,383	$ 2,026

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

THIS SECTION AND OTHER PARTS OF THIS FORM 10-K CONTAIN FORWARD-LOOKING STATEMENTS THAT INVOLVE RISKS AND UNCERTAINTIES. THE COMPANY'S ACTUAL RESULTS MAY DIFFER SIGNIFICANTLY FROM THE RESULTS DISCUSSED IN THE FORWARD-LOOKING STATEMENTS. FACTORS THAT MIGHT CAUSE SUCH DIFFERENCES INCLUDE, BUT ARE NOT LIMITED TO, THOSE DISCUSSED IN THE SUBSECTION ENTITLED "FACTORS THAT MAY AFFECT OPERATING RESULTS AND FINANCIAL CONDITION" BELOW.

THE FOLLOWING DISCUSSION SHOULD BE READ IN CONJUNCTION WITH THE CONSOLIDATED FINANCIAL STATEMENTS AND NOTES THERETO INCLUDED ELSEWHERE IN THIS FORM 10-K. ALL INFORMATION IS BASED ON THE COMPANY'S FISCAL CALENDAR.

OVERVIEW

During 1997, the Company continued to experience declines in net sales, units shipped and share of the personal computer market compared to prior years. The decline in demand and the resulting losses, coupled with intense price competition throughout the industry, led to the Company's decision to continue to restructure its business during 1997 aimed at reducing its core structure, improving its competitiveness and restoring sustainable profitability. The Company's restructuring efforts have included significant headcount reductions, simplifications and modifications of the Company's product lines, increases in the proportion of products manufactured under outsourcing arrangements and the implementation of an on-line store in the U.S. In addition, the Company plans to increase the proportion of products manufactured on a made-to-order basis The Company believes that restructuring actions effected through the fourth quarter of 1997, as well as those currently planned to be effected during 1998, will decrease operating expenses in 1998 compared with 1997. There is no assurance that such decreases in operating expenses will be achieved or that, if achieved, such reductions will be sufficient to offset the decline in the Company's net sales.

In February 1997, the Company acquired NeXT. NeXT developed, marketed and supported software that enables customers to implement business applications on the Internet/World Wide Web, intranets and enterprise-wide client/server networks. The acquisition was accounted for as a purchase and, accordingly, the operating results pertaining to NeXT subsequent to the date of acquisition have been included in the Company's consolidated operating results. The total purchase price, including the fair value of the net liabilities assumed, was $427 million of which $375 million was allocated to purchased in-process research and development and $52 million was allocated to goodwill and other intangible assets. The purchased in-process research and development was charged to operations upon acquisition, and the goodwill and other tangible assets are being amortized on a straight-line basis over two years.

The Company had previously entered into agreements to license its Mac OS to other personal computer vendors (the "Clone Vendors") as part of an effort to increase the installed base for the Macintosh platform. The Company recently determined that the benefits of licensing the Mac OS to the Clone Vendors under these agreements were more than offset by the impact and costs of the licensing program. As a result, the Company agreed to acquire certain assets, including the license to distribute the Mac OS, of PCC, a clone vendor, and has no plans to renew its other Mac OS licensing agreements.

The Company's future operating results and financial condition are dependent upon the Company's ability to successfully develop, manufacture, and market technologically innovative products in order to meet dynamic customer demand patterns, and are also dependent upon its ability to effect a change in marketplace perception of the Company's prospects, including the viability of the Macintosh platform. Inherent in this process are a number of factors that the Company must successfully manage in order to achieve favorable future operating results and a favorable financial condition. Potential risks and uncertainties that could affect the Company's future operating results and financial condition include, among other things, continued competitive pressures in the marketplace and the effect of any reaction by the Company to such competitive pressures, including pricing actions by the Company; the availability of key components on terms acceptable to the Company; the Company's ability to supply products in certain categories; the Company's ability to supply products free of latent defects or other faults; the Company's

ability to make timely delivery to the marketplace of technological innovations, including its ability to continue to make timely delivery of planned enhancements to the current Mac OS and to make timely delivery of a new and substantially backward-compatible operating system; the Company's ability to successfully integrate NeXT technologies, processes and employees with those at Apple; the Company's ability to successfully implement its strategic direction and restructuring actions, including reducing its expenditures; the Company's ability to attract, motivate and retain employees, including a new Chief Executive Officer; the effects of significant adverse publicity; the availability of third-party software for particular applications; and the impact on the Company's sales, market share and gross margins as a result of the Company winding down its Mac OS licensing program.

RESULTS OF OPERATIONS

	1997	CHANGE	1996	CHANGE	1995
	(TABULAR INFORMATION: DOLLARS IN MILLIONS, EXCEPT PER SHARE AMOUNTS)				
Net sales	$ 7,081	(28%)	$ 9,833	(11%)	$ 11,062
Gross margin	$ 1,368	41%	$ 968	(66%)	$ 2,858
Percentage of net sales	19%		10%		26%
Research and development	$ 485	(20%)	$ 604	(2%)	$ 614
Percentage of net sales	7%		6%		6%
Selling, general and administrative	$ 1,286	(18%)	$ 1,568	(1%)	$ 1,583
Percentage of net sales	18%		16%		14%
Special Charges					
In-process research and development	$ 375	NM	$ --	NM	$ --
Percentage of net sales	5%		--%		--%
Restructuring costs	$ 217	21%	$ 179	NM	$ (23)
Percentage of net sales	3%		2%		--%
Termination of license agreement	$ 75	NM	$ --	NM	$ --
Percentage of net sales	1%		--%		--%
Interest and other income (expense), net	$ 25	(72%)	$ 88	NM	$ (10)
Net income (loss)	$ (1,045)	(28%)	$ (816)	(292%)	$ 424
Earnings (loss) per share	$ (8.29)	(26%)	$ (6.59)	(291%)	$ 3.45

NM: Not Meaningful

NET SALES

YEAR ENDED SEPTEMBER 26, 1997 COMPARED WITH YEAR ENDED SEPTEMBER 27, 1996

Net sales represent the Company's gross sales net of returns, rebates and discounts. Net sales decreased 28% in 1997 compared with 1996. Total Macintosh computer unit sales and peripheral unit sales decreased 27% and 33%, respectively, during 1997, compared with 1996, as a result of a decline in worldwide demand for most of the Company's product families, which the Company believes was due principally to continued customer concerns regarding the Company's strategic direction, financial condition and future prospects, and the viability of the Macintosh platform, and to competitive pressures in the marketplace. The average aggregate revenue per Macintosh unit decreased slightly in 1997 compared with 1996, primarily due to continued pricing actions, including increased rebates, across most product lines, substantially offset by a shift in product mix toward the Company's newer and higher priced PowerBook products. The average aggregate revenue per peripheral unit did not change in 1997 compared with 1996. For information regarding quarterly net sales, see "Selected Quarterly Financial Information (Unaudited)" in Part II, Item 8 of this Form 10-K.

International net sales represented 50% of total net sales in 1997 compared with 52% of net sales in 1996. International net sales declined 30% in 1997 compared with 1996. Net sales in European markets and Japan decreased during 1997 compared with 1996, as a result of decreases in Macintosh computer and peripheral unit sales and the average aggregate revenue per Macintosh unit in Japan, which were partially offset by an increase in the average aggregate revenue per peripheral unit. Further discussion relating to factors contributing to the decline in net sales in the Japanese market may be found in this Part II, Item 7 of Form 10-K under the subheading "Global Market Risks" included under the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

Domestic net sales declined 26% during 1997 compared with 1996, due to decreases in unit sales of Macintosh computers and peripheral products and in the average aggregate revenue per peripheral unit. The average aggregate revenue per Macintosh unit in the U.S. did not change in 1997 compared with 1996.

During 1997, as compared with 1996, the Company's estimated share of the worldwide and U.S. personal computer markets declined to 3.6% from 5.7%, and to 4.6% from 7.4%, respectively, based upon current market information provided by industry sources.

The Company believes that net sales will be below the level of the prior year's comparable periods through at least the second fiscal quarter of 1998, if not longer.

Q4 97 COMPARED WITH Q4 96

Net sales decreased 30% in the fourth quarter of 1997 compared with the same quarter of 1996. Total Macintosh computer unit sales and peripheral unit sales decreased 30% and 32%, respectively, in the fourth quarter of 1997, compared with the same period of 1996, which the Company believes was due principally to continued customer concerns regarding the Company's strategic direction, financial condition and future prospects, and the viability of the Macintosh platform, and to competitive pressures in the marketplace. The average aggregate revenue per Macintosh unit decreased slightly in the fourth quarter of 1997 compared with the same period of 1996, as a result of continued pricing actions, including increased rebates, across most product lines, partially offset by an increase in the average aggregate revenue per Powerbook unit. The average aggregate revenue per peripheral product also decreased slightly for the foregoing reasons. The average aggregate revenue per Macintosh computer unit and per peripheral unit will remain under significant downward pressure due to a variety of factors, including industrywide pricing pressures, increased competition, and the need to stimulate demand for the Company's products.

International net sales represented 42% of total net sales in the fourth quarter of 1997 compared with 47% of net sales in the same period of 1996. International net sales declined 38% in the fourth quarter of 1997 compared with the same period of 1996. Net sales decreased in the European markets and decreased significantly in Japan during the fourth quarter of 1997 compared with the same period of 1996, as a result of decreases in Macintosh and peripheral unit sales in Europe and Japan and in the average aggregate revenue per peripheral unit in the European markets and the average aggregate revenue per Macintosh unit in Japan. These decreases were partially offset by increases in the average aggregate revenue per Macintosh unit in Europe and the average aggregate revenue per peripheral unit in Japan. Further discussion relating to factors contributing to the decline in net sales in the Japanese market may be found in this Part II, Item 7 of Form 10-K under the subheading "Global Market Risks" included under the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

Domestic net sales declined 24% in the fourth quarter of 1997 over the comparable period of 1996, due to decreases in unit sales of Macintosh computers and peripheral products and in the average aggregate revenue per Macintosh unit, partially offset by an increase in the average aggregate revenue per peripheral unit.

During the fourth quarter of 1997 compared with the comparable period of 1996, the Company's estimated share of the worldwide and U.S. personal computer markets declined to 3.1% from 5.2%, and to 4.3% from 6.6%, respectively, based upon current market information provided by industry sources.

Q4 97 COMPARED WITH Q3 97

Net sales decreased 7% in the fourth quarter of 1997 compared with the third quarter of 1997. Total Macintosh computer unit sales decreased 8% in the fourth quarter of 1997 compared with the prior quarter which the Company believes was due principally to continued customer concerns regarding the Company's strategic direction, financial condition and future prospects, and the viability of the Macintosh platform, and to competitive pressures in the marketplace, as well as continued easing of pent-up demand for new PowerBook products which were introduced in the second quarter. In addition, unit sales in Japan decreased significantly in the fourth quarter of 1997 compared with the third quarter of 1997, primarily as a result of a weaker personal computer market. Unit sales of peripheral products decreased slightly in the fourth quarter of 1997 compared with the third quarter of 1997. The average aggregate revenue per Macintosh computer unit remained constant as higher average aggregate revenue per "Value" (entry level Power Macintosh) unit was offset by a lower average aggregate revenue per Powerbook unit and aggressive pricing on discontinued products. The average aggregate revenue per peripheral unit decreased 5% in the fourth quarter of 1997 compared with the third quarter of 1997. Furthermore, the average aggregate revenue per Macintosh computer and peripheral unit was unfavorably affected by pricing actions, including increased rebates, across most product lines.

International net sales represented 42% of total net sales in the fourth quarter of 1997, compared with 53% in the third quarter of 1997. International net sales decreased 27% in the fourth quarter compared with the third quarter of 1997, primarily as a result of a significant decrease in net sales of Macintosh computers and peripheral products in Japan and a decrease in the average aggregate revenue per Macintosh unit, slightly offset by an increase in the average aggregate revenue per peripheral unit. Further discussion relating to factors contributing to the decline in net sales in the Japanese market may be found in this Part II, Item 7 of Form 10-K under the subheading "Global Market Risks" included under the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

Domestic net sales increased 15% in the fourth quarter of 1997 compared with the prior quarter, due to increases in Macintosh and peripheral unit sales and the average aggregate revenue per Macintosh computer unit, which increases were slightly offset by a decrease in the average aggregate revenue per peripheral unit.

During the fourth quarter of 1997 compared with the third quarter of 1997, the Company's estimated share of the worldwide and U.S. personal computer markets decreased to 3.1% from 3.7%, and to 4.3% from 4.7%, respectively, based upon current market information provided by industry sources.

YEAR ENDED SEPTEMBER 27, 1996 COMPARED WITH YEAR ENDED SEPTEMBER 29, 1995

Net sales trended downward beginning in the second quarter of 1996, decreasing $1,229 million, or 11%; $1,545 million, or 19%; and $682 million, or 23%; during the twelve, nine, and three months ended September 27, 1996, respectively, compared with the same periods in 1995, due to a decrease in net sales of Macintosh computers and of peripheral products. Total Macintosh computer unit sales trended downward beginning in the second quarter of 1996, decreasing 11%, 19%, and 26% during the twelve, nine, and three months ended September 27, 1996, respectively, compared with the same periods in 1995. This decline in unit sales was a result of a decline or lack of growth in worldwide demand for all product families, which the Company believes was due principally to customer concerns regarding the Company's strategic direction, financial condition, and future prospects, and due to delays in the shipment of certain PowerBook products as a result of quality problems. In addition, unit sales of peripheral products trended

downward beginning in the second quarter of 1996, decreasing 20%, 24%, and 30% during the twelve, nine and three months ended September 27, 1996, respectively, compared with the same periods in 1995, for the reasons noted above. The average aggregate revenue per Macintosh unit increased slightly during the twelve and three months ended September 27, 1996, and decreased slightly during the nine months ended September 27, 1996, compared with the same periods in 1995, primarily due to a continued shift in product mix toward the Company's newer products and products with multimedia configurations, offset to varying degrees by pricing actions across all product lines. The average aggregate revenue per peripheral product was flat during the twelve, nine, and three months ended September 27, 1996 compared with the same periods in 1995.

International net sales represented 52% of net sales in 1996 compared with 48% of net sales in 1995. International net sales trended downward beginning in the second quarter of 1996, decreasing 3%, 11% and 13% during the twelve, nine, and three months ended September 27, 1996, respectively, compared with the same periods in 1995. Net sales in European markets trended downward beginning in the second quarter of 1996, decreasing during the twelve, nine, and three months ended September 27, 1996 compared with the same periods in 1995, as a result of a decrease in Macintosh and peripheral unit sales, partially offset by an increase in the average aggregate revenue per Macintosh and per peripheral unit, primarily during the first part of the year. Net sales in Japan trended downward beginning in the second quarter of 1996, decreasing during the twelve, nine, and three months ended September 27, 1996 compared with the same periods in 1995. An increase in Macintosh unit sales during these periods was more than offset by a decrease in the average aggregate revenue per Macintosh and per peripheral unit and a decrease in peripheral unit sales. Domestic net sales trended downward beginning in the second quarter of 1996, decreasing by 18%, 26%, and 30% for the twelve, nine, and three months ended September 27, 1996, respectively, compared with the corresponding periods in 1995, resulting from a decline or lack of growth in demand for all product families.

In the fourth quarter of 1996 compared with the fourth quarter of 1995, the Company's share of the worldwide and U.S. personal computer markets declined to 5.4% from 8.7%, and to 7.3% from 13.2%, respectively, based on current information provided by industry sources.

BACKLOG

In general, the Company's resellers purchase products on an as-needed basis. Resellers frequently change delivery schedules and order rates depending on changing market conditions. Unfilled orders (backlog) can be, and often are, canceled at will. The Company attempts to fill orders on the requested delivery schedules. However, products may be in relatively short supply from time to time until production volumes have reached a level sufficient to meet demand or if other production or fulfillment constraints exist. The Company's backlog of unfilled orders decreased to approximately $230 million at November 28, 1997 from approximately $563 million at November 29, 1996 and consisted primarily of the Company's "Flagship" line of higher-end Power Macintosh products. The Company's backlog at November 29, 1996 consisted primarily of the Company's PowerBook products, as well as the Company's "Flagship" line of higher-end Power Macintosh products. The Company expects that substantially all of its orders in backlog at November 28, 1997 will be either shipped or canceled during fiscal 1998.

In the Company's experience, the actual amount of product backlog at any particular time is not a meaningful indication of its future business prospects. In particular, backlog often increases in anticipation of or immediately following introduction of new products because of overordering by dealers anticipating shortages. Backlog often is reduced once dealers and customers believe they can obtain sufficient supply. Because of the foregoing, as well as other factors affecting the Company's backlog, backlog should not be considered a reliable indicator of the Company's ability to achieve any particular level of revenue or financial performance. Further information regarding the Company's backlog may be found in Part II, Item 7 of this Form 10-K under the subheading "Product Introductions and Transitions" included under

the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

GROSS MARGIN

Gross margin represents the difference between the Company's net sales and its cost of goods sold. The amount of revenue generated per unit sold is influenced by the price set by the Company for its products. The cost of goods sold is based primarily on the cost of components and, to a lesser extent, direct labor costs. The type and cost of components included in particular configurations of the Company's products (such as memory and disk drives) are often directly related to the need to market products in configurations competitive with other manufacturers. Competition in the personal computer industry is intense and, in the short term, frequent changes in pricing and product configuration are often necessary in order to remain competitive. Accordingly, gross margin as a percentage of net sales can be significantly influenced in the short term by actions undertaken by the Company in response to industrywide competitive pressures.

Gross margin increased from 10% to 19% of sales during 1997 compared to 1996, primarily as a result of a $616 million charge in the second quarter of 1996 that related principally to the write-down of certain inventory, as well as to the cost of cancelling excess component orders necessitated by significantly lower than expected demand for many of the Company's products, primarily its "Value" line of Power Macintosh products (formerly generally referred to as entry level and Performa-Registered Trademark- products). The Company separately incurred approximately $145 million in charges during 1996 to provide for the estimated costs of correcting certain quality problems in certain of its "Value" line of Power Macintosh products, as well as PowerBook and peripheral products, covering both goods held in inventory and shipped goods. In addition, gross margins in the second quarter of 1996, and to a lesser degree the first quarter of that year, were adversely affected by aggressive pricing actions in Japan in response to extreme competitive actions by other companies, as well as price reductions in the United States and Europe across all product lines in order to stimulate demand.

Gross margin decreased from 22% to 20% of sales during the fourth quarter of 1997 compared to the same period of 1996, and remained constant compared to the third quarter of 1997. This was primarily as a result of certain pricing actions effected by the Company as noted above, as well as the Company's inability to fulfill all purchase orders of certain high-margin Power Macintosh product due to the unavailability of sufficient quantities of certain components, which were offset to varying degrees by sales of the Company's new operating system, Mac OS 8, during the fourth quarter of 1997.

The gross margin levels in the fourth quarter of 1997 compared with the third quarter of 1997 and the fourth quarter of 1996, and in 1997 compared with 1996, were also adversely affected by a stronger U.S. dollar relative to certain foreign currencies. This negative impact was offset by currency hedging. The Company's operating strategy and pricing take into account changes in exchange rates over time; however, the Company's results of operations can be significantly affected in the short term by fluctuations in foreign currency exchange rates.

There can be no assurance that the Company will be able to sustain the gross margin levels achieved in 1997. Gross margins will remain under significant downward pressure due to a variety of factors, including continued industrywide global pricing pressures, increased competition, and compressed product life cycles. In response to these downward pressures, the Company expects it will continue to take pricing actions with respect to its products. The Company expects to experience additional pricing pressure through at least the first fiscal quarter of 1998 as a result of the Company winding down its Mac OS licensing program, including the acquisition of its Mac OS license and other assets of Power Computing Corporation ("PCC"), as the Company expects certain Mac OS licensees to sell aggressively their remaining inventory in early fiscal 1998. Gross margins could also be affected by the Company's ability to

effectively manage quality problems and warranty costs, and to stimulate demand for certain of its products.

Gross margin decreased to 10% in 1996 compared with 26% in 1995. This decrease is primarily the result of a $616 million charge in the second quarter of 1996 for the write-down of certain inventory, as well as the costs of cancelling excess component orders, necessitated by significantly lower than expected demand for many of the Company's products, primarily its entry-level products. The Company separately incurred approximately $145 million in charges during the last nine months of 1996 to provide for the estimated costs of correcting certain quality problems in certain of the "Value" line of Power Macintosh products as well as PowerBook and peripheral products, covering both goods held in inventory and shipped goods. The Company also incurred greater warranty expenses per unit sold during 1996 compared with 1995. The decrease in gross margin was also due to the Company's response to extreme competitive actions by other companies attempting to gain market share, including the Company's pricing actions in the U.S., Japan and Europe across most product lines, which were partially offset by a decrease in the cost of certain product components.

RESEARCH AND DEVELOPMENT

	1997	CHANGE	1996	CHANGE	1995
Research and development	$ 485	(20%)	$ 604	(2%)	$ 614
Percentage of net sales	7%		6%		6%

Research and development expenditures decreased in dollar amounts in 1997 when compared with 1996, primarily due to certain restructuring actions, including a reduction in headcount and the cancellation of certain research and development related contracts, taken during 1997. The increase in research and development expenses as a percentage of net sales resulted from a decrease in the level of net sales. There was a slight decrease in research and development expenditures during 1996 compared with 1995. The slight increase as a percentage of net sales in 1996 over 1995 was the result of a decrease in net sales during 1996.

The Company believes that continued and focused investments in research and development are critical to its future growth and competitive position in the marketplace and are directly related to continued, timely development of new and enhanced products that are central to the Company's core business strategy. The Company believes that research and development expenditures will decrease in 1998 compared to 1997 as the Company completes and more fully realizes the cost reduction benefits of its restructuring plan.

Information relating to in-process research and development may be found in this Part II, Item 7 of Form 10-K under the subheading "In-process Research and Development" included under the heading "Special Charges," which information is hereby incorporated by reference.

SELLING, GENERAL AND ADMINISTRATIVE

	1997	CHANGE	1996	CHANGE	1995
Selling, general and administrative	$ 1,286	(18%)	$ 1,568	(1%)	$ 1,583
Percentage of net sales	18%		16%		14%

Selling, general and administrative expenditures decreased in dollar amounts in 1997 when compared to 1996, primarily due to certain restructuring actions, including a reduction in headcount, the closing of facilities, and the writedown of assets, taken during 1997, and to lower variable expenses. The increase in selling, general and administrative expenditures as a percentage of net sales resulted from a decrease in the level of net sales. In 1996, selling, general and administrative expenditures remained essentially flat when

compared to 1995. The increase as a percentage of net sales in 1996 over 1995 was the result of a decrease in net sales during 1996.

The Company believes that selling, general and administrative expenditures will decrease in 1998 compared to 1997 as the Company completes and more fully realizes the cost reduction benefits of its restructuring plan. The Company believes that selling, general and administrative expenditures will decrease only slightly in the first quarter of 1998 compared to the fourth quarter of 1997 as a result of continued cost reduction benefits from the restructuring plan, partially offset by planned advertising spending.

SPECIAL CHARGES

IN-PROCESS RESEARCH AND DEVELOPMENT

As a result of the NeXT acquisition, the Company took a substantial charge for in-process research and development during 1997. Further discussion relating to the Company's acquisition of NeXT, including the related in-process research and development charge, may be found in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements under the subheading "NeXT Acquisition" included under the heading "Special Charges", which information is hereby incorporated by reference. Information relating to the Company's research and development expenditures, may be found in Part I, Item 1 of this Form 10-K under the heading "Research and Development" and in Part II, Item 7 of this Form 10-K under the heading "Research and Development," which information is hereby incorporated by reference.

RESTRUCTURING COSTS

Information relating to the Company's restructuring costs may be found in this Part II, Item 7 of Form 10-K under the subheading "Restructuring of Operations" included under the heading "Factors That May Affect Future Results and Financial Condition," and in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements under the subheading "Restructuring of Operations" included under the heading "Special Charges," which information is hereby incorporated by reference.

TERMINATION OF LICENSE AGREEMENT

Information relating to the Company's termination of license agreement may be found in this Part II, Item 7 of Form 10-K under the subheading "Competition" included under the heading "Factors That May Affect Future Results and Financial Condition," and in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements under the subheading "Termination of License Agreement" included under the heading "Special Charges," which information is hereby incorporated by reference.

INTEREST AND OTHER INCOME (EXPENSE), NET

	1997	CHANGE	1996	CHANGE	1995
Interest and other income (expense), net	$ 25	(72%)	$ 88	NM	$ (10)

Interest and other income (expense), net, decreased to $25 million in 1997 from $88 million in 1996. The decrease is primarily due to gains realized in 1996 on sales of available-for-sale and other securities. Interest and other income (expense), net, also decreased compared to the prior year due to decreased foreign exchange gains, net of cost, in 1997 compared to 1996, partially offset by higher average cash balances during 1997. Over the last two years, the Company's debt ratings have been downgraded to non-investment grade. The Company's cost of funds may increase as a result of the downgrading in the second quarter of 1997 of its senior and subordinated long-term debt to B3 and Caa2, respectively, by Moody's Investor Services, and the downgrading in October 1997 of its senior and subordinated long-term debt to B- and CCC, respectively, by Standard and Poor's Rating Agency.

In 1996, interest and other income (expense), net, increased to $88 million in income from $10 million in expense in 1995. This $98 million favorable change was primarily composed of a favorable variance of $78 million related to net realized and unrealized foreign exchange hedging gains and lower foreign exchange hedging costs, primarily as a result of lower market and option volatility, higher U.S. interest rates compared with rates abroad, and reduced foreign currency cash flows; an increase of $73 million related to realized gains on the sale of most of the Company's available-for-sale and other equity securities during 1996, partially offset by a $52 million unfavorable variance, as a result of higher average debt balances and lower average cash balances during 1996, and an overall decline in average interest rate yields.

A summary of the Company's interest and other income (expense), net, hedge horizons and accounting for financial instruments, and notes payable to banks and long-term debt, may be found in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements.

PROVISION (BENEFIT) FOR INCOME TAXES

As of September 26, 1997, the Company had deferred tax assets arising from deductible temporary differences, tax losses, and tax credits of $695 million before being offset against certain deferred tax liabilities for presentation on the Company's balance sheet. A substantial portion of this asset is realizable based on the ability to offset existing deferred tax liabilities. In 1997, an increase in the valuation allowance of $208 million was recorded against the deferred tax asset for the benefits of tax losses which may not be realized. Realization of approximately $85 million of the asset representing tax loss and credit carryforwards is dependent on the Company's ability to generate approximately $245 million of future U.S. taxable income. Management believes that it is more likely than not that forecasted U.S. income, including income that may be generated as a result of certain tax-planning strategies, will be sufficient to utilize the tax carryforwards prior to their expiration in 2011 and 2012 to fully recover this asset. However, there can be no assurance that the Company will meet its expectations of future U.S. income. As a result, the amount of the deferred tax assets considered realizable could be reduced in the near and long term if estimates of future taxable U.S. income are reduced. Such an occurrence could materially adversely affect the Company's financial results. The Company will continue to evaluate the realizability of the deferred tax assets quarterly by assessing the need for and amount of the valuation allowance. Additional information relating to income taxes, may be found in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements.

FACTORS THAT MAY AFFECT FUTURE RESULTS AND FINANCIAL CONDITION

RESTRUCTURING OF OPERATIONS

During 1996, the Company began to implement certain restructuring actions aimed at reducing its cost structure, improving its competitiveness, and restoring sustainable profitability. During 1997, the Company announced and began to implement supplemental restructuring actions, including significant headcount reductions, to meet the foregoing objectives. There are several risks inherent in the Company's efforts to transition to a new cost structure. These include the risk that the Company will not be able to reduce expenditures quickly enough to restore sustainable profitability and the risk that cost-cutting initiatives will impair the Company's ability to innovate and remain competitive in the computer industry.

Implementation of this restructuring involves several risks, including the risk that by simplifying and modifying its product line the Company will increase its dependence on fewer products, potentially reduce overall sales, and increase its reliance on unproven products and technology. Another risk of the restructuring is that by increasing the proportion of the Company's products to be manufactured under outsourcing arrangements, the Company could lose control of the quality or quantity of the products manufactured and distributed, or lose the flexibility to make timely changes in production schedules in order to respond to changing market conditions. As part of its restructuring, the Company announced and

opened its on-line store, which makes available most of its products to end-users in the U.S., in November 1997. There can be no assurance the on-line store will result in greater sales. The Company also began manufacturing products on a build-to-order basis in November 1997. There can be no assurance this manufacturing process will result in decreased costs or increased gross margins. The Company is also reducing the number of wholesale and retail channel partners, particularly in the Americas, which places a greater volume of sales through fewer partners. There can be no assurance that this will not adversely impact the Company. In addition, the actions taken in connection with the restructuring could adversely affect employee morale, thereby damaging the Company's ability to retain and motivate employees. Also, because the Company contemplates relying to a greater extent on collaboration and licensing arrangements with third parties, the Company will have less direct control over certain of its research and development efforts, and its ability to create innovative new products may be reduced. In addition, there can be no assurance that the technologies acquired from NeXT will be successfully exploited, or that key NeXT employees and processes will be retained and successfully integrated with those at Apple. Also, the restructuring includes the winding down of the Company's Mac OS licensing program. There can be no assurance that the winding down of this program will result in greater sales, market share, and increased gross margins to the Company. In addition, there can be no assurance that this action will not result in the availability of fewer application software titles for the Mac OS, which may result in a decrease to the Company's sales, market share and gross margins. Finally, even if the restructuring is successfully implemented, there can be no assurance that it will effectively resolve the various issues currently facing the Company. Although the Company believes that the actions it is taking in connection with the restructuring, including its acquisition of NeXT and the winding down of its Mac OS licensing program, should help restore marketplace confidence in the Company, there can be no assurance that such actions will enable the Company to achieve its objectives of reducing its cost structure, improving its competitiveness, and restoring sustainable profitability. The Company's future consolidated operating results and financial condition could be adversely affected should it encounter difficulty in effectively managing the restructuring and new cost structure.

Additional information relating to the restructuring of operations may be found in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements under the subheading "Restructuring of Operations" included under the heading "Special Charges," which information is hereby incorporated by reference.

PRODUCT INTRODUCTIONS AND TRANSITIONS

Due to the highly volatile nature of the personal computer industry, which is characterized by dynamic customer demand patterns and rapid technological advances, the Company must continuously introduce new products and technologies and enhance existing products in order to remain competitive. Recent introductions include certain PowerBook and Power Macintosh products, and the introduction of Mac OS 8 in July 1997. The success of new product introductions is dependent on a number of factors, including market acceptance, the Company's ability to manage the risks associated with product transitions, the availability of application software for new products, the effective management of inventory levels in line with anticipated product demand, the availability of products in appropriate quantities to meet anticipated demand, and the risk that new products may have quality or other defects in the early stages of introduction. Accordingly, the Company cannot determine the ultimate effect that new products will have on its sales or results of operations. In addition, although the number of new product introductions may decrease as a result of the Company's restructuring actions, the risks and uncertainties associated with new product introductions may increase as the Company refocuses its product offerings on key growth segments and to the extent new product introductions are in markets that are new to the Company.

The rate of product shipments immediately following introduction of a new product is not necessarily an indication of the future rate of shipments for that product, which depends on many factors, some of which are not under the control of the Company. These factors may include initial large purchases by a

small segment of the user population that tends to purchase new technology prior to its acceptance by the majority of users ("early adopters"); purchases in satisfaction of pent-up demand by users who anticipated new technology and, as a result, deferred purchases of other products; and overordering by dealers who anticipate shortages due to the aforementioned factors. These factors may be offset by others, such as the deferral of purchases by many users until new technology is accepted as "proven" and for which commonly used software products are available; and the reduction of orders by dealers once they believe they can obtain sufficient supply of products previously in backlog.

Backlog is often volatile after new product introductions due to the aforementioned demand factors, often increasing coincident with introduction, and then decreasing once dealers and customers believe they can obtain sufficient supply of the new products. The Company has in the past experienced difficulty in anticipating demand for new products, resulting in product shortages which have adversely affected the Company's operating results.

The measurement of demand for newly introduced products is further complicated by the availability of different product configurations, which may include various types of built-in peripherals and software. Configurations may also require certain localization (such as language) for various markets and, as a result, demand in different geographic areas may be a function of the availability of third-party software in those localized versions. For example, the availability of European-language versions of software products manufactured by U.S. producers may lag behind the availability of U.S. versions by a quarter or more. This may result in lower initial demand for the Company's new products outside the U.S., even though localized versions of the Company's products may be available.

The increasing integration of new or enhanced functions and complexity of operations of the Company's products also increase the risk that latent defects or other faults could be discovered by customers or end-users after volumes of products have been produced or shipped. If such defects were significant, the Company could incur material recall and replacement costs under product warranties.

The Company has announced plans for two operating systems. The Company plans to continue to introduce major upgrades to the current Mac OS and later introduce a new operating system (code named "Rhapsody") which is expected to offer advanced functionality based on Apple and NeXT software technologies. However, the NeXT software technologies that the Company plans to use in the development of Rhapsody were not originally designed to be compatible with the Mac OS. As a result, there can be no assurance that the development of Rhapsody can be completed at reasonable cost or at all. In addition, Rhapsody may not be fully backward-compatible with all existing applications, which could result in a loss of existing customers. Finally, it is uncertain whether Rhapsody or the planned enhancements to the current Mac OS will gain developer support and market acceptance. Inability to successfully develop and make timely delivery of a substantially backward-compatible Rhapsody or of planned enhancements to the current Mac OS, or to gain developer support and market acceptance for those operating systems, may have an adverse impact on the Company's consolidated operating results and financial condition.

COMPETITION

The personal computer industry is highly competitive and is characterized by aggressive pricing practices, downward pressure on gross margins, frequent introduction of new products, short product life cycles, continual improvement in product price/performance characteristics, price sensitivity on the part of consumers, and a large number of competitors. The Company's consolidated results of operations and financial condition have been, and in the future may continue to be, adversely affected by industrywide pricing pressures and downward pressures on gross margins. The industry has also been characterized by rapid technological advances in software functionality and hardware performance and features based on existing or emerging industry standards. Many of the Company's competitors have greater financial, marketing, manufacturing, and technological resources, as well as broader product lines and larger installed customer bases than those of the Company.

The Company's future consolidated operating results and financial condition may be affected by overall demand for personal computers and general customer preferences for one platform over another or one set of product features over another.

The Company is currently the primary maker of hardware that uses the Mac OS. The Mac OS has a minority market share in the personal computer market, which is dominated by makers of computers that run the Microsoft Windows 95 and Windows NT operating systems. The Company believes that the Mac OS, with its perceived advantages over Windows, and the general reluctance of the Macintosh installed base to incur the costs of switching platforms, have been driving forces behind sales of the Company's personal computer hardware for the past several years. Recent innovations in the Windows platform, including those included in Windows 95 and Windows NT, or those expected to be included in a new version of Windows to be introduced in 1998, have added features to the Windows platform that make the differences between the Mac OS and Microsoft's Windows operating systems less significant. The Company is currently taking and will continue to take steps to respond to the competitive pressures being placed on its personal computer sales as a result of the recent innovations in the Windows platform. The Company's future operating results and financial condition will be substantially dependent on its ability to maintain continuing improvements of the Macintosh platform in order to maintain perceived functional advantages over competing platforms.

The Company had previously entered into agreements to license its Mac OS to other personal computer vendors (the "Clone Vendors") as part of an effort to increase the installed base for the Macintosh platform. The Company recently determined that the benefits of licensing the Mac OS to the Clone Vendors under these agreements were more than offset by the impact and costs of the licensing program. As a result, the Company agreed to acquire certain assets, including the license to distribute the Mac OS, of PCC, a Clone Vendor, and has no plans to renew its other Mac OS licensing agreements. Although the Company believes that this winding down of its licensing program will help reduce the adverse impact of the licensing program on the Company's sales, market share and gross margins, there can be no assurance that this will occur. In addition, there can be no assurance that this winding down of the licensing program will not result in the availability of fewer application software titles for the Mac OS, which may result in a decrease to the Company's sales, market share and gross margins.

As a supplemental means of addressing the competition from Windows and other platforms, the Company had previously devoted substantial resources toward developing personal computer products capable of running application software designed for the Windows operating systems. These products include an add-on card containing a Pentium or 586-class microprocessor that enables users to run applications concurrently that require the Mac OS, Windows 3.1 or Windows 95 operating systems. The Company plans to transition the cross-platform business to third-parties during 1998. There can be no assurance that this transition will be successful.

The Company, International Business Machines Corporation and Motorola, Inc. had agreed upon and announced the availability of specifications for a PowerPC microprocessor-based hardware platform (the "Platform"). These specifications defined a "unified" personal computer architecture that would have given the Clone Vendors broad access to the Power Macintosh platform and would have utilized standard industry components. The Company had intended to license the Mac OS to manufacturers of the Platform. However, the Company has decided it will no longer support the Platform based upon its decision to wind down its Mac OS licensing program, and because of little industry support for the Platform. The decision not to further develop this Platform may affect the Company's ability to increase the installed base for the Macintosh platform.

Several competitors of the Company have either targeted or announced their intention to target certain of the Company's key market segments, including education and publishing. Many of these companies have greater financial, marketing, manufacturing, and technological resources than the Company.

In August 1997, the Company and Microsoft entered into patent cross licensing and technology agreements. Under these agreements, the companies provided patent cross licenses to each other. In addition, for a period of five years from August 1997, Microsoft will make future versions of its Microsoft Office and Internet Explorer products for the Mac OS, and the Company will bundle the Internet Explorer product with Mac OS system software releases and make that product the default Internet browser for such releases. In addition, Microsoft purchased 150,000 shares of Apple Series 'A' non-voting convertible preferred stock for $150 million. While the Company believes that its relationship with Microsoft will be beneficial to the Company and to its efforts to increase the installed base for the Mac OS, the Microsoft relationship is for a limited term and does not cover many of the areas in which the Company competes with Microsoft, including the Windows platform. In addition, the Microsoft relationship may have an adverse effect on, among other things, the Company's relationship with other partners. There can be no assurance that the benefits to the Company of the Microsoft relationship will not be offset by the disadvantages.

SUPPORT FROM THIRD-PARTY SOFTWARE DEVELOPERS

Decisions by customers to purchase the Company's personal computers, as opposed to Windows-based systems, are often based on the availability of third-party software for particular applications. The Company believes that the availability of third-party application software for the Company's hardware products depends in part on third-party developers' perception and analysis of the relative benefits of developing, maintaining, and upgrading such software for the Company's products versus software for the larger Windows market. This analysis is based on factors such as the perceived strength of the Company and its products, the anticipated potential revenue that may be generated, and the costs of developing such software products. To the extent the Company's recent financial losses and declining demand for the Company's products, as well as the Company's decision to wind down its Mac OS licensing program, have caused software developers to question the Company's prospects in the personal computer market, developers could be less inclined to develop new application software or upgrade existing software for the Company's products and more inclined to devote their resources to developing and upgrading software for the larger Windows market. Moreover, the Company's current plan to introduce a new operating system (code named "Rhapsody") could cause software developers to stop developing software for the current Mac OS. In addition, there can be no assurance that software developers will decide to develop software for the new operating system on a timely basis or at all.

Microsoft is an important developer of application software for the Company's products. Although the Company has entered into a relationship with Microsoft, which includes Microsoft's agreement to develop and ship future versions of its Microsoft Office and Internet Explorer products and certain other Microsoft tools for the Mac OS, such relationship is for a limited term and does not cover many areas in which the Company competes with Microsoft. Accordingly, Microsoft's interest in producing application software for the Mac OS not covered by the relationship or upon expiration of the relationship may be influenced by Microsoft's perception of its interests as the vendor of the Windows operating system.

GLOBAL MARKET RISKS

A large portion of the Company's revenue is derived from its international operations. As a result, the Company's consolidated operations and financial results could be significantly affected by risks associated with international activities, including economic and labor conditions, political instability, tax laws (including U.S. taxes on foreign subsidiaries), and changes in the value of the U.S. dollar versus the local currency in which the products are sold.

Countries in the Asia Pacific region, including Japan, have recently experienced weaknesses in their currency, banking and equity markets. These weaknesses could adversely affect consumer demand for the Company's product, the U.S. dollar value of the Company's foreign currency denominated sales, the

availability and supply of product components to the Company, and ultimately the Company's consolidated results of operations.

When the U.S. dollar strengthens against other currencies, the U.S. dollar value of non-U.S. dollar-based sales decreases. When the U.S. dollar weakens, the U.S. dollar value of non-U.S. dollar-based sales increases. Correspondingly, the U.S. dollar value of non-U.S. dollar-based costs increases when the U.S. dollar weakens and decreases when the U.S. dollar strengthens. Overall, the Company is a net receiver of currencies other than the U.S. dollar and, as such, benefits from a weaker dollar and is adversely affected by a stronger dollar relative to major currencies worldwide. Accordingly, changes in exchange rates, and in particular a strengthening of the U.S. dollar, may negatively affect the Company's consolidated sales and gross margins (as expressed in U.S. dollars).

While the Company is exposed with respect to fluctuations in the interest rates of many of the world's leading industrialized countries, the Company's interest income and expense is most sensitive to fluctuations in the general level of U.S. interest rates. In this regard, changes in U.S. interest rates affect the interest earned on the Company's cash, cash equivalents, and short-term investments as well as costs associated with foreign currency hedges. To mitigate the impact of fluctuations in U.S. interest rates, the Company has entered into interest rate swap, collar, and floor transactions.

To ensure the adequacy and effectiveness of the Company's foreign exchange and interest rate hedge positions, as well as to monitor the risks and opportunities of the nonhedge portfolios, the Company continually monitors its foreign exchange forward and option positions, and its interest rate swap, option and floor positions both on a stand-alone basis and in conjunction with its underlying foreign currency- and interest rate-related exposures, respectively, from both an accounting and an economic perspective. However, given the effective horizons of the Company's risk management activities, there can be no assurance that the aforementioned programs will offset more than a portion of the adverse financial impact resulting from unfavorable movements in either foreign exchange or interest rates. In addition, the timing of the accounting for recognition of gains and losses related to mark-to-market instruments for any given period may not coincide with the timing of gains and losses related to the underlying economic exposures and, therefore, may adversely affect the Company's consolidated operating results and financial position. The Company does not engage in leveraged hedging.

The Company's current financial condition may increase the costs of its hedging transactions, as well as affect the nature of the hedging transactions into which the Company's counterparties are willing to enter.

Additional information regarding the Company's foreign exchange and interest rate risk management programs and the accounting thereon, may be found in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements.

INVENTORY AND SUPPLY

The Company makes a provision for inventories of products that have become obsolete or are in excess of anticipated demand, accrues for any cancellation fees of orders for inventories that have been canceled, and accrues for the estimated costs to correct any product quality problems. Although the Company believes its inventory and related provisions are adequate given the rapid and unpredictable pace of product obsolescence in the computer industry, no assurance can be given that the Company will not incur additional inventory and related charges. In addition, such charges have had, and may again have, a material effect on the Company's consolidated financial position and results of operations.

The Company must order components for its products and build inventory well in advance of product shipments. Because the Company's markets are volatile and subject to rapid technology and price changes, there is a risk that the Company will forecast incorrectly and produce excess or insufficient inventories of particular products. The Company's consolidated operating results and financial condition have been in

the past and may in the future be materially adversely affected by the Company's ability to manage its inventory levels and respond to short-term shifts in customer demand patterns.

Certain of the Company's products are manufactured in whole or in part by third-party manufacturers, either pursuant to design specifications of the Company or otherwise. As part of its restructuring actions, the Company sold its Fountain, Colorado, manufacturing facility to SCI and entered into a related manufacturing outsourcing agreement with SCI; sold its Singapore printed circuit board manufacturing assets to NatSteel Electronics Pte., Ltd., which is expected to supply main logic boards to the Company under a manufacturing outsourcing agreement; entered into an agreement with Ryder Integrated Logistics, Inc. to outsource the Company's domestic operations transportation and logistics management; and has entered into other similar agreements to outsource the Company's European operations transportation and logistics management. As a result of the foregoing actions, the proportion of the Company's products produced and distributed under outsourcing arrangements will continue to increase. While outsourcing arrangements may lower the fixed cost of operations, they will also reduce the direct control the Company has over production and distribution. It is uncertain what effect such diminished control will have on the quality or quantity of the products manufactured, or the flexibility of the Company to respond to changing market conditions. Furthermore, any efforts by the Company to manage its inventory under outsourcing arrangements could subject the Company to liquidated damages or cancellation of the arrangement. Moreover, although arrangements with such manufacturers may contain provisions for warranty expense reimbursement, the Company remains at least initially responsible to the ultimate consumer for warranty service. Accordingly, in the event of product defects or warranty liability, the Company may remain primarily liable. Any unanticipated product defect or warranty liability, whether pursuant to arrangements with contract manufacturers or otherwise, could adversely affect the Company's future consolidated operating results and financial condition.

Although certain components essential to the Company's business are generally available from multiple sources, other key components (including microprocessors and application specific integrated circuits ("ASICs")) are currently obtained by the Company from single sources. If the supply of a key single-sourced component were to be delayed or curtailed, the Company's business and financial performance could be adversely affected, depending on the time required to obtain sufficient quantities from the original source, or to identify and obtain sufficient quantities from an alternate source. The Company believes that the availability from suppliers to the personal computer industry of microprocessors and ASICs presents the most significant potential for constraining the Company's ability to manufacture products. Some advanced microprocessors are currently in the early stages of ramp-up for production and thus have limited availability. The Company and other producers in the personal computer industry also compete for other semiconductor products with other industries that have experienced increased demand for such products, due to either increased consumer demand or increased use of semiconductors in their products (such as the cellular phone and automotive industries). Finally, the Company uses some components that are not common to the rest of the personal computer industry (including certain microprocessors and ASICs). Continued availability of these components may be affected if producers were to decide to concentrate on the production of common components instead of components customized to meet the Company's requirements. Such product supply constraints and corresponding increased costs could decrease the Company's net sales and adversely affect the Company's consolidated operating results and financial condition.

The Company's ability to produce and market competitive products is also dependent on the ability and desire of IBM and Motorola, the sole suppliers of the PowerPC RISC microprocessor for the Company's Macintosh computers, to supply to Company in adequate numbers microprocessors that produce superior price/performance results compared with those supplied to the Company's competitors by Intel Corporation, and other developers and producers of the microprocessors used by most personal computers using the Windows operating systems. The desire of IBM and Motorola to continue producing these microprocessors may be influenced by Microsoft's decision not to adapt its Windows NT operating

system software to run on the PowerPC microprocessor. IBM produces personal computers based on Intel microprocessors as well as workstations based on the PowerPC microprocessor, and is also the developer of OS/2, a competing operating system to the Company's Mac OS. Accordingly, IBM's interest in supplying the Company with microprocessors for the Company's products may be influenced by IBM's perception of its interests as a competing manufacturer of personal computers and as a competing operating system vendor. In addition, Motorola has recently announced its intention to stop producing Mac clones. As a result, Motorola may be less inclined to continue to produce PowerPC microprocessors.

The Company's current financial condition and uncertainties related to recent events could affect the terms on which suppliers are willing to supply the Company with their products. There can be no assurance that the Company's current suppliers will continue to supply the Company on terms acceptable to the Company or that the Company will be able to obtain comparable products from alternate sources on such terms. The Company's future operating results and financial condition could be adversely affected if the Company is unable to continue to obtain key components on terms substantially similar to those currently available to the Company.

Further discussion relating to availability and supply of components and product may be found in Part I, Item 1 of this Form 10-K under the heading "Raw Materials," and in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements under the subheading "Concentrations in the Available Sources of Supply and Material Product" included under the heading "Concentrations of Risk" and under the subheading "Purchase Commitments" included under the heading "Commitments and Contingencies," which information is hereby incorporated by reference.

MARKETING AND DISTRIBUTION

A number of uncertainties may affect the marketing and distribution of the Company's products. Currently, the Company distributes its products through wholesalers, resellers, mass merchants, cataloguers and direct to education institutions (collectively referred to as "resellers"). In addition, in November 1997 the Company began selling many of its products directly to end users in the U.S. through the Company's on-line store. Many of the Company's significant resellers operate on narrow product margins. Most such resellers also distribute products from competing manufacturers. The Company's business and financial results could be adversely affected if the financial condition of these resellers weakened or if resellers within consumer channels were to decide not to continue to distribute the Company's products.

Uncertainty over demand for the Company's products may continue to cause resellers to reduce their ordering and marketing of the Company's products. In addition, the Company has in the past and may in the future experience delays in ordering by resellers in light of uncertain demand for the Company's products. Under the Company's arrangements with its resellers, resellers have the option to reduce or eliminate unfilled orders previously placed, in most instances without financial penalty. Resellers also have the option to return products to the Company without penalty within certain limits, beyond which they may be assessed fees. The Company has recently revised its channel program, including decreasing the number of resellers and reducing returns, price protection and certain rebate programs, in an effort to reduce channel inventory, increase inventory turns, increase product support within the channel and improve gross margins. In addition, in November 1997 the Company opened its on-line store in the U.S. which makes many of the Company's products available directly to the end-user. Although the Company believes the foregoing changes will improve its consolidated operating results and financial condition, there can be no assurance that this will occur.

Further discussion relating to Marketing and Distribution may be found in Part I, Item 1 of this Form 10-K under the heading "Markets and Distribution," which information is hereby incorporated by reference.

CHANGE IN SENIOR MANAGEMENT

On July 9, 1997, the Company announced that Dr. Gilbert F. Amelio had resigned his positions as Chairman of the Board and Chief Executive Officer and that the Company was initiating a search for a new Chief Executive Officer. While the Company intends to name a new Chief Executive Officer as soon as practicable, there can be no assurance that the change in senior management and related uncertainties will not adversely affect the Company's consolidated operating results and financial condition during the period until a new Chief Executive Officer is hired and afterward. In addition, certain members of the Company's senior management have been with the Company for less than six months. There can be no assurance that new members of the management team can be successfully assimilated, that the Company will be able to satisfactorily allocate responsibilities or that such new members of its management will succeed in their roles in a timely and efficient manner. The Company's failure to recruit, retain and assimilate new executives, or the failure of any such executive to perform effectively, or the loss of any such executive, could have a material adverse impact on the Company's business, financial condition and results of operations.

CHANGES TO BOARD OF DIRECTORS

The Company announced on August 6, 1997 significant changes to its Board of Directors, replacing all but two former directors. The continuing directors are Gareth C.C. Chang, Corporate Senior Vice President, Marketing, Hughes Electronics and President, Hughes International, and Edgar S. Woolard, Jr., retired Chairman of E.I. DuPont de Nemours & Company. The new directors are William V. Campbell, President and CEO of Intuit Corp.; Lawrence J. Ellison, Chairman and Chief Executive Officer of Oracle Corp.; Steven P. Jobs, Chairman and Chief Executive Officer of Pixar Animation Studios; and Jerome B. York, Vice Chairman of Tracinda Corporation and former Chief Financial Officer of IBM and Chrysler Corporation.

DEPENDENCE ON KEY EMPLOYEES

During the past several years, the Company has experienced significant voluntary employee turnover as a result of employees' concerns over the Company's prospects, as well as the abundance of career opportunities available elsewhere. The Company is dependent on its key employees in order to achieve its business plan. There can be no assurance the Company will be able to attract, motivate and retain key employees. Failure to do so may have a significant effect on the Company's consolidated operating results and financial condition.

OTHER FACTORS

The Company is in the process of identifying operating and application software challenges related to the year 2000. While the Company expects to resolve year 2000 compliance issues substantially through normal replacement and upgrades of software, there can be no assurance that there will not be interruption of operations or other limitations of system functionality or that the Company will not incur substantial costs to avoid such limitations. Any failure to effectively monitor, implement or improve the Company's operational, financial, management and technical support systems could have a material adverse effect on the Company's business and consolidated results of operations.

The majority of the Company's research and development activities, its corporate headquarters, and other critical business operations, including certain major vendors, are located near major seismic faults. The Company's operating results and financial condition could be materially adversely affected in the event of a major earthquake.

Production and marketing of products in certain states and countries may subject the Company to environmental and other regulations which include, in some instances, the requirement that the Company provide consumers with the ability to return to the Company product at the end of its useful life, and leave

responsibility for environmentally safe disposal or recycling with the Company. It is unclear what effect such regulations will have on the Company's future consolidated operating results and financial condition.

The Company recently decided to replace its existing transaction systems in the U.S. (which include order management, product procurement, distribution, and finance) with a single integrated system as part of its ongoing effort to increase operational efficiency. Substantially all of the transaction systems in the European operations were replaced with the same integrated system in 1997. The Company's future consolidated operating results and financial condition could be adversely affected if the Company is unable to implement and effectively manage the transition to this new integrated system.

Because of the foregoing factors, as well as other factors affecting the Company's consolidated operating results and financial condition, past financial performance should not be considered to be a reliable indicator of future performance, and investors should not use historical trends to anticipate results or trends in future periods. In addition, the Company's participation in a highly dynamic industry often results in significant volatility of the Company's common stock price.

LIQUIDITY AND CAPITAL RESOURCES

The Company's consolidated financial position with respect to cash, cash equivalents, and short-term investments, net of notes payable to banks, decreased to $1,434 million as of September 26, 1997, from $1,559 million as of September 27, 1996. The Company's consolidated financial position with respect to cash, cash equivalents, and short-term investments decreased to $1,459 million as of September 26, 1997, from $1,745 million as of September 27, 1996. The Company's cash and cash equivalent balances as of September 26, 1997 and September 27, 1996 include $165 million and $177 million, respectively, pledged as collateral to support letters of credit primarily associated with the Company's purchase commitments under the terms of the sale of the Company's Fountain, Colorado, manufacturing facility to SCI.

Cash generated by operations during 1997 totaled $188 million. Cash generated by operations was primarily the result of decreases in accounts receivable and inventories, partially offset by the Company's net loss, adjusted for non-cash expenditures such as in-process research and development, as well as decreases in accounts payable.

Cash used to acquire NeXT totaled $384 million in 1997. The Company expects no additional cash expenditures related to the NeXT acquisition. Net cash used for the purchase of property, plant, and equipment totaled $53 million in 1997, and consisted primarily of increases in manufacturing machinery and equipment. The Company expects that the level of capital expenditures in 1998 will be comparable to 1997.

Cash generated by financing activities in 1997 included the sale of $150 million of Apple Series A non-voting convertible preferred stock to Microsoft Corporation. Cash used by financing activities in 1997 included $161 million to retire notes payable to banks.

Over the last two years, the Company's debt ratings have been downgraded to non-investment grade. In October 1997, the Company's senior and subordinated long-term debt were downgraded to B- and CCC, respectively, by Standard and Poor's Rating Agency. In the second quarter of 1997, the Company's debt ratings were downgraded to B3 and Caa2, respectively, by Moody's Investor Services. Both Standard and Poor's Rating Agency and Moody's Investor Services have the Company on negative outlook. These actions may increase the Company's cost of funds in future periods. In addition, the Company may be required to pledge additional collateral with respect to certain of its borrowings and letters of credit and to agree to more stringent covenants than in the past.

The Company believes that its balances of cash and cash equivalents and short-term investments, and continued short-term borrowings from banks, will be sufficient to meet its cash requirements over the next twelve months. Expected cash requirements over the next twelve months include an estimated $130 million to effect actions under the restructuring plan, most of which will be effected during the first half of fiscal

1998. No assurance can be given that the $25 million in short-term borrowings from banks can be continued, or that any additional required financing could be obtained should the restructuring plan take longer to implement than anticipated or be unsuccessful. If the Company is unable to obtain such financing, its liquidity, results of operations, and financial condition would be materially adversely affected.

The Internal Revenue Service ("IRS") has proposed federal income tax deficiencies for the years 1984 through 1991, and the Company has made certain prepayments thereon. The Company contested the proposed deficiencies by filing petitions with the U.S. Tax Court, and most of the issues in dispute have now been resolved. On June 30, 1997, the IRS proposed income tax adjustments for the years 1992 through 1994. Although a substantial number of the issues for these years have been resolved, certain issues still remain in dispute and are being contested by the Company. Management believes that adequate provision has been made for any adjustments that may result from tax examinations.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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All other schedules have been omitted, since the required information is not present or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the Consolidated Financial Statements and Notes thereto.

REPORT OF KPMG PEAT MARWICK LLP, INDEPENDENT AUDITORS

The Board of Directors
Apple Computer, Inc.:

We have audited the accompanying consolidated balance sheet of Apple Computer, Inc. and subsidiaries as of September 26, 1997, and the related consolidated statements of operations, shareholders' equity and cash flows for the year then ended. In connection with our audits of the consolidated financial statements, we have also audited the accompanying financial statement schedule. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Apple Computer, Inc. and subsidiaries as of September 26, 1997, and the results of their operations and their cash flows for the year then ended in conformity with generally accepted accounting principles. Also in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ KPMG PEAT MARWICK LLP

KPMG Peat Marwick LLP

San Jose, California
October 15, 1997

REPORT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

The Shareholders and Board of Directors of Apple Computer, Inc.

We have audited the accompanying consolidated balance sheet of Apple Computer, Inc. as of September 27, 1996, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the two years in the period ended September 27, 1996. Our audits also include the financial statement schedule for each of the two years in the period ended September 27, 1996 listed in the Index to the Consolidated Financial Statements. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Apple Computer, Inc. as of September 27, 1996, and the consolidated results of its operations and its cash flows for each of the two years in the period ended September 27, 1996, in conformity with generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ ERNST & YOUNG LLP

Ernst & Young LLP

San Jose, California
October 14, 1996

CONSOLIDATED BALANCE SHEETS

(DOLLARS IN MILLIONS)

ASSETS:

SEPTEMBER 26, 1997 AND SEPTEMBER 27, 1996	1997	1996
Current assets:		
Cash and cash equivalents	$ 1,230	$ 1,552
Short-term investments	229	193
Accounts receivable, net of allowance for doubtful accounts of $99 ($91 in 1996)	1,035	1,496
Inventories:		
Purchased parts	141	213
Work in process	15	43
Finished goods	281	406
	437	662
Deferred tax assets	259	342
Other current assets	234	270
Total current assets	3,424	4,515
Property, plant, and equipment:		
Land and buildings	453	480
Machinery and equipment	460	544
Office furniture and equipment	110	136
Leasehold improvements	172	188
	1,195	1,348
Accumulated depreciation and amortization	(709)	(750)
Net property, plant, and equipment	486	598
Other assets	323	251
	$ 4,233	$ 5,364

LIABILITIES AND SHAREHOLDERS' EQUITY:

Current liabilities:		
Notes payable to banks	$ 25	$ 186
Accounts payable	685	791
Accrued compensation and employee benefits	99	120
Accrued marketing and distribution	278	257
Accrued warranty and related	128	181
Accrued restructuring costs	180	117
Other current liabilities	423	351
Total current liabilities	1,818	2,003
Long-term debt	951	949
Deferred tax liabilities	264	354
Commitments and contingencies		
Shareholders' equity:		
Series A non-voting convertible preferred stock, no par value; 150,000 shares authorized, issued and outstanding	150	--
Common stock, no par value; 320,000,000 shares authorized; 127,949,220 shares issued and outstanding in 1997 (124,496,972 shares in 1996)	498	439
Retained earnings	589	1,634
Other	(37)	(15)
Total shareholders' equity	1,200	2,058
	$ 4,233	$ 5,364

See accompanying notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF OPERATIONS

(DOLLARS IN MILLIONS, EXCEPT PER SHARE AMOUNTS)

THREE FISCAL YEARS ENDED SEPTEMBER 26, 1997	1997	1996	1995
Net sales	$ 7,081	$ 9,833	$ 11,062
Costs and expenses:			
Cost of sales	5,713	8,865	8,204
Research and development	485	604	614
Selling, general and administrative	1,286	1,568	1,583
Special charges:			
In-process research and development	375	--	--
Restructuring costs	217	179	(23)
Termination of license agreement	75	--	--
	8,151	11,216	10,378
Operating income (loss)	(1,070)	(1,383)	684
Interest and other income (expense), net	25	88	(10)
Income (loss) before provision (benefit) for income taxes	(1,045)	(1,295)	674
Provision (benefit) for income taxes	--	(479)	250
Net income (loss)	$ (1,045)	$ (816)	$ 424
Earnings (loss) per common and common equivalent share	$ (8.29)	$ (6.59)	$ 3.45
Common and common equivalent shares used in the calculations of earnings (loss) per share (in thousands)	126,062	123,734	123,047

See accompanying notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

(DOLLARS IN MILLIONS, EXCEPT PER SHARE AMOUNTS)

	PREFERRED STOCK		COMMON STOCK				TOTAL
	SHARES	AMOUNT	SHARES	AMOUNT	RETAINED EARNINGS	OTHER	SHAREHOLDERS' EQUITY
	(IN THOUSANDS)		(IN THOUSANDS)				
Balance as of September 30, 1994	--	$ --	119,543	$ 298	$ 2,096	$(11)	$ 2,383
Common stock issued under stock option and purchase plans, including related tax benefits	--	--	3,379	100	--	--	100
Cash dividends of $0.48 per common share	--	--	--	--	(58)	--	(58)
Accumulated translation adjustment	--	--	--	--	--	6	6
Change in unrealized gains on available-for-sale securities	--	--	--	--	--	44	44
Net income	--	--	--	--	424	--	424
Other	--	--	--	--	2	--	2
Balance as of September 29, 1995	--	--	122,922	398	2,464	39	2,901
Common stock issued under stock option and purchase plans, including related tax benefits	--	--	1,575	41	--	--	41
Cash dividends of $0.12 per common share	--	--	--	--	(14)	--	(14)
Accumulated translation adjustment	--	--	--	--	--	(12)	(12)
Change in unrealized gains (losses) on available-for-sale securities	--	--	--	--	--	(42)	(42)
Net loss	--	--	--	--	(816)	--	(816)
Balance as of September 27, 1996	--	--	124,497	439	1,634	(15)	2,058
Common stock issued under stock option and purchase plans and other, and in connection with the acquisition of NeXT	--	--	3,452	59	--	--	59
Series A non-voting convertible preferred stock issued	150	150	--	--	--	--	150
Accumulated translation adjustment	--	--	--	--	--	(22)	(22)
Net loss	--	--	--	--	(1,045)	--	(1,045)
Balance as of September 26, 1997	150	$ 150	127,949	$ 498	$ 589	$(37)	$ 1,200

See accompanying notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(DOLLARS IN MILLIONS)

THREE FISCAL YEARS ENDED SEPTEMBER 26, 1997	1997	1996	1995
Cash and cash equivalents, beginning of the period	$ 1,552	$ 756	$ 1,203
Operating:			
Net income (loss)	(1,045)	(816)	424
Adjustments to reconcile net income (loss) to cash generated by (used for) operating activities:			
Depreciation and amortization	118	156	127
Net book value of property, plant, and equipment retirements	70	70	6
In-process research and development	375	--	--
Changes in operating assets and liabilities, net of effects of the acquisition of NeXT:			
Accounts receivable	469	435	(350)
Inventories	225	1,113	(687)
Deferred tax assets	83	(91)	42
Other current assets	36	45	(59)
Accounts payable	(107)	(374)	283
Accrued restructuring costs	63	117	(47)
Other current liabilities	(9)	212	(10)
Deferred tax liabilities	(90)	(348)	31
Cash generated by (used for) operating activities	188	519	(240)
Investing:			
Purchase of short-term investments	(999)	(437)	(1,672)
Proceeds from sales and maturities of short-term investments	963	440	1,531
Purchase of property, plant, and equipment	(53)	(67)	(159)
Cash used to acquire NeXT	(384)	--	--
Other	(60)	(55)	(102)
Cash used for investing activities	(533)	(119)	(402)
Financing:			
Increase (decrease) in notes payable to banks	(161)	(275)	169
Increase (decrease) in long-term borrowings	--	646	(2)
Proceeds from issuance of preferred stock	150	--	--
Increases in common stock, net of acquisition of NeXT	34	39	86
Cash dividends	--	(14)	(58)
Cash generated by financing activities	23	396	195
Total cash generated (used)	(322)	796	(447)
Cash and cash equivalents, end of the period	$ 1,230	$1,552	$ 756
Supplemental cash flow disclosures:			
Cash paid during the year for interest	$ 61	$ 49	$ 49
Cash paid (received) for income taxes, net	$ (11)	$ 33	$ 188
Noncash transactions:			
Tax benefit from stock options	$ --	$ 2	$ 15
Issuance of common stock for acquisition of NeXT	$ 25	$ --	$ --

See accompanying notes to consolidated financial statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NATURE OF OPERATIONS

Apple Computer (the "Company") designs, manufactures, and markets microprocessor-based personal computers and related personal computing products for sale primarily to education, creative, home, business, and government customers.

BASIS OF PRESENTATION

The consolidated financial statements include the accounts of Apple Computer, Inc. and its subsidiaries (the Company). Intercompany accounts and transactions have been eliminated. The Company's fiscal year-end is the last Friday in September.

ACCOUNTING ESTIMATES

GENERAL

The preparation of these consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in these consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates.

SIGNIFICANT ACCOUNTING ESTIMATES

PROVISIONS FOR INVENTORY WRITE-DOWNS AND RELATED ACCRUALS

The Company's provisions for inventory write-downs, as well as accruals for the cost to cancel excess component orders, are based on the Company's best estimates of product sales prices and customer demand patterns, and/or its plans to transition its products. However, the Company participates in a highly competitive industry that is characterized by aggressive pricing practices, downward pressures on gross margins, frequent introductions of new products, short product life cycles, rapid technological advances, continual improvement in product price/performance characteristics, and price sensitivity and changing demand patterns on the part of consumers. As a result of the industry's ever-changing and dynamic nature, it is at least reasonably possible that the estimates used by the Company to determine its provisions for inventory write-downs, as well as its accruals for the cost to cancel excess component orders, will be materially different from the actual amounts or results. These differences could result in materially higher than expected inventory provisions and related costs, which could have a materially adverse effect on the Company's consolidated results of operations and financial condition in the near term.

WARRANTY AND RELATED ACCRUALS

The Company's warranty and related accruals are based on the Company's best estimates of product failure rates and unit costs to repair. However, the Company is continually releasing new and ever-more complex and technologically advanced products. As a result, it is at least reasonably possible that product could be released with certain unknown quality and/or design problems. Such an occurrence could result in materially higher than expected warranty and related costs, which could have a materially adverse effect on the Company's consolidated results of operations and financial condition in the near term.

DEFERRED TAX ASSETS

Realization of approximately $85 million of the total deferred tax assets representing tax loss and credit carryforwards is dependent on the Company's ability to generate approximately $245 million of future U.S. taxable income. Management believes that it is more likely than not that forecasted U.S. taxable income, including income that may be generated as a result of certain tax planning strategies, will

be sufficient to utilize the tax carryforwards prior to their expiration in 2011 and 2012 to fully recover the asset. However, there can be no assurance that the Company will meet its expectations of future U.S. income. As a result, the amount of the deferred tax assets considered realizable could be reduced in the near and long term if estimates of future taxable U.S. income are reduced. Such an occurrence could materially adversely affect the Company's consolidated results of operations and financial condition. The Company will continue to evaluate the realizability of the deferred tax assets quarterly by assessing the need for and amount of a valuation allowance.

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

FINANCIAL INSTRUMENTS

INVESTMENTS

All highly liquid investments with a maturity of three months or less at the date of purchase are considered to be cash equivalents; investments with maturities between three and twelve months are considered to be short-term investments. As of September 26, 1997 there are no investments with maturities greater than twelve months. The Company's U.S. corporate securities include commercial paper and corporate debt securities. Foreign securities include foreign commercial paper, loan participation and certificates of deposit with foreign institutions, most of which are denominated in U.S. dollars. The Company's cash equivalents and short-term investments are generally held until maturity.

Management determines the appropriate classification of its investments in debt and marketable equity securities at the time of purchase and reevaluates such designation as of each balance sheet date. The Company's debt and marketable equity securities have been classified and accounted for as available-for-sale. These securities are carried at fair value, with the unrealized gains and losses reported as a component of shareholders' equity. These unrealized gains or losses include any unrealized losses and gains on interest rate contracts accounted for as hedges against the available-for-sale securities. The cost of securities sold is based upon the specific identification method.

FINANCIAL INSTRUMENTS WITH OFF-BALANCE-SHEET RISK

In the ordinary course of business and as part of the Company's asset and liability management, the Company enters into various types of transactions that involve contracts and financial instruments with off-balance-sheet risk. These instruments are entered into in order to manage financial market risk, primarily interest rate and foreign exchange risk. The Company enters into these financial instruments with major international financial institutions utilizing over-the-counter as opposed to exchange traded instruments. The Company does not hold or transact in financial instruments for purposes other than risk management.

INTEREST RATE DERIVATIVES

The Company enters into interest rate derivative transactions, including interest rate swaps, collars, and floors, with financial institutions in order to better match the Company's floating-rate interest income on its cash equivalents and short-term investments with its fixed-rate interest expense on its long-term debt, and/or to diversify a portion of the Company's exposure away from fluctuations in short-term U.S. interest rates. The Company may also enter into interest rate contracts that are intended to reduce the cost of the interest rate risk management program.

In addition, the Company has entered into foreign exchange forward contracts to hedge certain intercompany loan transactions. These forward contracts effectively change certain foreign currency denominated debt into U.S. dollar denominated debt, which better matches against the Company's U.S. dollar denominated cash equivalents and short-term investments. No such contracts existed as of September 26, 1997.

FOREIGN CURRENCY INSTRUMENTS

The Company enters into foreign exchange forward and option contracts with financial institutions primarily to protect against currency exchange risks associated with existing assets and liabilities, and certain firmly committed and probable but not firmly committed transactions. The Company's foreign exchange risk management policy requires it to hedge a majority of its existing material foreign exchange transaction exposures. However, the Company may not hedge certain foreign exchange transaction exposures that are immaterial either in terms of their minimal U.S. dollar value or in terms of their historically high correlation with the U.S. dollar.

Probable but not firmly committed transactions comprise sales of the Company's products in currencies other than the U.S. dollar. A majority of these non-U.S. dollar-based sales are made through the Company's subsidiaries in Europe, Asia (particularly Japan), Canada, and Australia. The Company purchases foreign exchange option contracts to hedge the currency exchange risks associated with these and other transactions. The Company also sells foreign exchange option contracts, in order to partially finance the purchase of these foreign exchange option contracts. In addition, the Company enters into other foreign exchange transactions, which are intended to reduce the costs associated with its foreign exchange risk management programs. The duration of foreign exchange hedging instruments, whether for firmly committed transactions or for probable but not firmly committed transactions, currently does not exceed one year.

Interest rate and foreign exchange instruments generally qualify as accounting hedges if their maturity dates are the same as the hedged transactions and if the hedged transactions meet certain requirements. Sold interest rate and foreign exchange instruments do not qualify as accounting hedges. Gains and losses on accounting hedges of existing assets or liabilities are generally recorded currently in income or shareholders' equity against the losses and gains on the hedged transactions. Gains and losses related to qualifying accounting hedges of firmly committed or probable but not firmly committed transactions are deferred and recognized in income in the same period as the hedged transactions. Gains and losses on interest rate and foreign exchange contracts that do not qualify as accounting hedges are recorded currently in income. Gains and losses on accounting hedges realized before the settlement date of the related hedged transaction are also generally deferred and recognized in income in the same period as the hedged transactions.

The Company monitors its interest rate and foreign exchange positions daily based on applicable and commonly used pricing models. The correlation between the changes in the fair value of hedging instruments and the changes in the underlying hedged items is assessed periodically over the life of the hedged instrument. In the event that it is determined that a hedge is ineffective, including if and when the hedged transactions no longer exists, the Company recognizes in income the change in market value of the instrument beginning on the date it was no longer an effective hedge.

Further information regarding the Company's accounting treatment of its financial instruments may be found under the heading "Interest Rate Derivatives and Foreign Currency Instruments" included in these Notes to Consolidated Financial Statements.

INVENTORIES

Inventories are stated at the lower of cost (first-in, first-out) or market. If the cost of the inventories exceeds their market value, provisions are made currently for the difference between the cost and the market value.

PROPERTY, PLANT, AND EQUIPMENT

Property, plant, and equipment is stated at cost. Depreciation and amortization is computed by use of the declining balance and straight-line methods over the estimated useful lives of the assets, which are 30 years for buildings and from two to ten years for all other assets.

LONG-LIVED ASSETS

In accordance with the provisions of Statement of Financial Accounting Standards No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of" ("FAS 121"), the Company reviews for the impairment of long-lived assets and certain identifiable intangibles whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Under FAS 121, an impairment loss would be recognized when estimated future cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount. The only such impairment losses identified by the Company as of September 26, 1997 and September 27, 1996 were those recorded in connection with the restructuring of its operations. Information regarding the Company's restructuring of operations may be found under the heading "Restructuring of Operations" included in these Notes to Consolidated Financial Statements.

STOCK-BASED COMPENSATION

In accordance with the provisions of Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("FAS 123"), which the Company adopted in 1997, the Company has elected to follow Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related interpretations in accounting for its employee stock option plans. Under APB 25, if the exercise price of the Company's employee stock options equals or exceeds the fair value of the underlying stock on the date of grant, no compensation expense is recognized.

Information regarding the Company's pro forma disclosure of stock-based compensation pursuant to FAS 123 may be found under the heading "Shareholders' Equity" in these Notes to Consolidated Financial Statements.

FOREIGN CURRENCY TRANSLATION

The Company translates the assets and liabilities of its foreign sales subsidiaries at year-end exchange rates. Gains and losses from these translations are credited or charged to "accumulated translation adjustment" included in "other" in shareholders' equity. The foreign manufacturing, distribution and certain other entities use the U.S. dollar as the functional currency and translate monetary assets and liabilities at year-end exchange rates, and inventories, property, and non-monetary assets and liabilities at historical rates. Gains and losses from these translations are included in the consolidated results of operations and are immaterial.

REVENUE RECOGNITION

The Company recognizes revenue at the time products are shipped. Provisions are made currently for estimated product returns and price protection that may occur under Company programs. Historically, actual amounts recorded for product returns and price protection have not varied significantly from estimated amounts.

WARRANTY EXPENSE

The Company provides currently for the estimated cost that may be incurred under product warranties when products are shipped.

ADVERTISING COSTS

Advertising costs are charged to expense the first time the advertising takes place.

EARNINGS (LOSS) PER SHARE

Earnings (loss) per share is computed using the weighted average number of common shares outstanding and (in 1995 only) the dilutive effect of common stock options using the treasury stock method. Common stock options, the convertible subordinated notes, the preferred stock, and certain common shares issued pending shareholder approval were not included in the computations of loss per share in 1997 and/or 1996 as their effect was antidilutive.

In February 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 128, "Earnings Per Share" ("FAS 128"). Under the provisions of FAS 128, primary earnings per share will be replaced with basic earnings per share, and fully diluted earnings per share will be replaced with diluted earnings per share for companies with potentially dilutive securities such as outstanding options, convertible debt and preferred stock. FAS 128 is effective for annual and interim periods ending after December 15, 1997 and will require restatement of all comparative per share amounts. The basic loss per share will be no different than the primary loss per share as presented in the accompanying consolidated statements of operations as neither consider outstanding options, convertible debt or preferred stock. If and when the Company becomes profitable, it will be required to present both basic and diluted earnings per share. Basic earnings per share, which does not consider potentially dilutive securities, will be greater than the replaced primary earnings per share which did consider those securities. Diluted earnings per share will not differ materially from the replaced fully diluted earnings per share.

RECLASSIFICATIONS

Certain prior year amounts in the Industry Segment and Geographic Information footnote have been reclassified to conform to the current year's presentation.

FINANCIAL INSTRUMENTS

INVESTMENTS

The following table summarizes the Company's available-for-sale securities at amortized cost, which approximates fair value, as of September 26, 1997 and September 27, 1996:

	1997 AMORTIZED COST	1996 AMORTIZED COST
	(IN MILLIONS)	
U.S. Treasury securities	$ 100	$ 86
U.S. corporate securities	327	330
Foreign securities	705	1,098
Total included in cash and cash equivalents	1,132	1,514
U.S. corporate securities	29	--
Foreign securities	200	193
Total included in short-term investments	229	193
Total	$ 1,361	$ 1,707

Gross unrealized gains and losses were negligible as of September 26, 1997 and September 27, 1996.

The Company's cash and cash equivalent balances as of September 26, 1997 and September 27, 1996, include $165 million and $177 million, respectively, pledged primarily as collateral to support letters of credit.

INTEREST RATE DERIVATIVES AND FOREIGN CURRENCY INSTRUMENTS

The table below shows the notional principal, fair value, and credit risk amounts of the Company's interest rate derivative and foreign currency instruments as of September 26, 1997, and September 27, 1996. The notional principal amounts for off-balance-sheet instruments provide one measure of the transaction volume outstanding as of year end, and do not represent the amount of the Company's exposure to credit or market loss. The credit risk amount shown in the table below represents the Company's gross exposure to potential accounting loss on these transactions if all counterparties failed to perform according to the terms of the contract, based on then-current currency exchange and interest rates at each respective date. The Company's exposure to credit loss and market risk will vary over time as a function of interest rates and currency exchange rates.

The estimates of fair value are based on applicable and commonly used pricing models using prevailing financial market information as of September 26, 1997, and September 27, 1996. In certain instances where judgment is required in estimating fair value, price quotes were obtained from several of the Company's counterparty financial institutions. Although the table below reflects the notional principal, fair value, and credit risk amounts of the Company's interest rate and sforeign exchange instruments, it does not reflect the gains or losses associated with the exposures and transactions that the interest rate and foreign exchange instruments are intended to hedge. The amounts ultimately realized upon settlement of these financial instruments, together with the gains and losses on the underlying exposures, will depend on actual market conditions during the remaining life of the instruments.

	1997			1996	
	NOTIONAL PRINCIPAL	FAIR VALUE	CREDIT RISK AMOUNT	NOTIONAL PRINCIPAL	FAIR VALUE
			(IN MILLIONS)		
Transactions Qualifying as Accounting Hedges					
Interest rate instruments					
Swaps	$ 340	$ (4)	$ --	$ 315	$ (13)
Interest rate collars	$ 105	$ --	$ --	$ 80	$ --
Purchased floors	$ 455	$ (1)	$ --	$ 475	$ 1
Foreign exchange instruments					
Spot/Forward contracts	$ 741	$ 1	$ 7	$ 2,035	$ 9
Purchased options	$ 890	$ 11	$ 11	$ 1,475	$ 9
Transactions Other Than Accounting Hedges					
Interest rate instruments					
Swaps	$ 100	$ --	$ --	$ --	$ --
Foreign exchange instruments					
Spot/Forward contracts	$ 89	$ --	$ 1	$ 182	$ --
Purchased options	$ 1,075	$ 8	$ 8	$ 606	$ 8
Sold options	$ 840	$ (11)	$ --	$ 506	$ (6)

	CREDIT RISK AMOUNT
Transactions Qualifying as Accounting Hedges	
Interest rate instruments	
Swaps	$ --
Interest rate collars	$ --
Purchased floors	$ 1
Foreign exchange instruments	
Spot/Forward contracts	$ 16
Purchased options	$ 9
Transactions Other Than Accounting Hedges	
Interest rate instruments	
Swaps	$ --
Foreign exchange instruments	
Spot/Forward contracts	$ --
Purchased options	$ 8
Sold options	$ --

The interest rate swaps which qualify as accounting hedges generally require the Company to pay a floating interest rate based on the three- or six-month U.S. dollar LIBOR and receive a fixed rate of interest without exchanges of the underlying notional amounts. As a result, these swaps effectively convert the Company's fixed-rate ten-year debt to floating-rate debt and generally qualify for hedge accounting

treatment. The maturity date for these swaps is in February 2004. As of September 26, 1997, and September 27, 1996, interest rate swaps classified as receive-fixed swaps had a weighted average receive rate of 6.04%. Weighted average pay rates on these swaps were 5.66% and 5.82% as of September 26, 1997, and September 27, 1996, respectively. The unrealized gains and losses on these swaps are deferred and recognized in income as a component of interest and other income (expense), net in the same period as the hedged transaction. Deferred losses on such contracts totaled approximately $4 million and $13 million as of September 26, 1997, and September 27, 1996, respectively.

The $100 million interest rate swap not qualifying as an accounting hedge requires the Company to pay Japanese yen at a fixed 0.6% interest rate and receive Japanese yen at a floating rate based on 3 month LIBOR. This swap was intended to hedge against the interest rate risk related to the Company's yen- denominated notes payable to banks. As most of the notes payable to banks were not renewed, the swap is no longer effective as a hedge and therefore no longer qualifies as an accounting hedge.

Interest rate collars limit the Company's exposure to fluctuations in short-term interest rates by locking in a range of interest rates. An interest rate collar is a no-cost structure that consists of a purchased option and a sold option. The Company receives a payment when the three-month LIBOR falls below predetermined levels, and makes a payment when the three-month LIBOR rises above predetermined levels. Purchased floors limit the Company's exposure to falling interest rates on its cash equivalents and short-term investments by locking in a minimum interest rate. The Company receives a payment when interest rates fall below a predetermined level. A purchased floor generally qualifies for hedge accounting treatment and is reported on the balance sheet at its premium cost, which is amortized over the life of the floor. The interest rate collars and purchased floors are generally designated and effective as hedges against interest rate risk on the Company's securities classified as available-for-sale and are carried at fair value in other current liabilities with the unrealized gains and losses recorded as a component of shareholders' equity. Gains and losses are recognized in income as a component of interest and other income (expense), net in the same period as the hedged transaction. Unrealized gains and losses on such contracts were immaterial as of September 26, 1997, and September 27, 1996.

Sold interest rate option contracts require the Company to make payments should certain interest rates either fall below or rise above predetermined levels. These contracts are generally not accounted for as hedges and are carried at fair value in other current liabilities with the gains and losses recorded currently in income as a component of interest and other income (expense), net.

The foreign exchange forward contracts not accounted for as hedges are carried at fair value in other current liabilities with the gains and losses recorded currently in income as a component of interest and other income (expense), net. The foreign exchange forward contracts that are designated and effective as hedges are also carried at fair value in other current liabilities with gains and losses recorded currently in income as a component of interest and other income (expense), net, against the losses and gains on the hedged transactions. All foreign exchange forward contracts expire within one year.

The premium costs of purchased foreign exchange option contracts that are designated and effective as hedges are recorded in other current assets and amortized over the life of the option. If the option contract is designated and effective as a hedge of a firmly committed transaction, or a probable but not firmly committed transaction, then any gain or loss is deferred until the occurrence of the hedged transaction. Deferred gains and losses on such contracts were immaterial as of September 26, 1997, and September 27, 1996. If the option contract is used to hedge an asset or liability, then the option is carried at fair value in other current liabilities with the gains and losses recorded currently in income as a component of interest and other income (expense), net, against the losses and gains on the hedged transaction. As of September 26, 1997, maturity dates for purchased foreign exchange option contracts ranged from one to twelve months.

The net premium costs of purchased and sold foreign exchange option contracts not accounted for as hedges are recorded in other current assets and amortized over the life of the option. The options are

carried at fair value in other current liabilities with gains and losses recorded currently in income. As of September 26, 1997, maturity dates for sold option contracts ranged from one to six months.

The Company monitors its interest rate and foreign exchange positions daily based on applicable and commonly used pricing models. The correlation between the changes in the fair value of hedging instruments and the changes in the underlying hedged items is assessed periodically over the life of the hedged instrument. In the event that it is determined that a hedge is ineffective, the Company recognizes in income the change in market value of the instrument beginning on the date it was no longer an effective hedge.

NOTES PAYABLE TO BANKS

The weighted average interest rate for Japanese yen-denominated notes payable to banks as of September 26, 1997, and September 27, 1996, was approximately 1.3%. The Company had no U.S. dollar-denominated notes payable to banks as of September 26, 1997 or September 27, 1996. The carrying amount of notes payable to banks approximates their fair value due to their less than 90-day maturities.

LONG-TERM DEBT

During 1996, the Company issued $661 million aggregate principal amount of 6% unsecured convertible subordinated notes (the "Notes") to certain qualified parties in a private placement. The Notes were sold at 100% of par. The Notes pay interest semi-annually and mature on June 1, 2001. The Notes are convertible by their holders at any time after September 5, 1996 at a conversion price of $29.205 per share subject to adjustments as defined in the Note agreement. No Notes had been converted as of September 26, 1997. The Notes are redeemable by the Company at 102.4% of the principal amount, plus accrued interest, for the twelve-month period beginning June 1, 1999, and at 101.2% of the principal amount, plus accrued interest, for the twelve-month period beginning June 1, 2000. The Notes are subordinated to all present and future senior indebtedness of the Company as defined in the Note agreement. In addition, the Company incurred approximately $15 million of costs associated with the issuance of the Notes. These costs are accounted for as a deduction from the face amount of the Notes and are being amortized over the life of the Notes. In October 1996, the Company registered with the Securities and Exchange Commission ("SEC") $569 million of the aggregate principal amount of the Notes, including the related common shares issuable upon conversion of these Notes.

During 1994, the Company issued $300 million aggregate principal amount of 6.5% unsecured notes in a public offering registered with the SEC. The notes were sold at 99.925% of par, for an effective yield to maturity of 6.51%. The notes pay interest semi-annually and mature on February 15, 2004.

The carrying amounts and estimated fair values of the Company's long-term debt are as follows:

	1997		1996	
	CARRYING AMOUNT	FAIR VALUE	CARRYING AMOUNT	FAIR VALUE
	(IN MILLIONS)			
Ten-year unsecured notes	$ 300	$ 269	$ 300	$ 259
Convertible subordinated notes (1)	$ 661	$ 656	$ 661	$ 656
Other	$ 3	$ 3	$ 3	$ 3

(1) The carrying amount of the convertible subordinated notes is prior to consideration of the related issuance costs.

The fair value of the ten-year unsecured notes is based on their listed market values as of September 26, 1997 and September 27, 1996. The fair value of the convertible subordinated notes is based on an estimate from a financial institution.

INTEREST AND OTHER INCOME (EXPENSE), NET

Interest and other income (expense), net, consisted of the following:

	1997	1996	1995
	(IN MILLIONS)		
Interest income	$ 82	$ 60	$ 100
Interest expense	(71)	(60)	(48)
Foreign currency gain (loss)	13	30	(15)
Net premiums and discounts on foreign exchange instruments	(4)	(13)	(46)
Realized gains on the sale of available-for-sale and other securities	2	74	1
Other income (expense), net	3	(3)	(2)
	$ 25	$ 88	$ (10)

CONCENTRATIONS OF RISK

CONCENTRATIONS OF CREDIT RISK

The Company distributes its products principally through third-party computer resellers and various education and consumer channels. Concentrations of credit risk with respect to trade receivables are limited because of flooring arrangements for selected customers with third-party financing companies and because the Company's customer base consists of large numbers of geographically diverse customers dispersed across several industries. As such, the Company generally does not require collateral from its customers.

The counterparties to the agreements relating to the Company's investments and foreign exchange and interest rate instruments consist of a number of major international financial institutions. To date, no such counterparty has failed to meet its financial obligations to the Company. The Company does not believe that there is significant risk of nonperformance by these counterparties because the Company continually monitors its positions and the credit ratings of such counterparties, and limits the financial exposure and the number of agreements and contracts it enters into with any one party. The Company generally does not require collateral from counterparties, except for margin agreements associated with the ten-year interest rate swaps on the Company's ten-year unsecured notes. To mitigate the credit risk associated with these ten-year swap transactions which mature in 2004, the Company entered into margining agreements with its third-party bank counterparties. These agreements require the Company or the counterparty to post margin only if certain credit risk thresholds are exceeded. The amounts held in margin accounts were not material as of September 26, 1997.

CONCENTRATIONS IN THE AVAILABLE SOURCES OF SUPPLY OF MATERIALS AND PRODUCT

Although certain components essential to the Company's business are generally available from multiple sources, other key components (including microprocessors and application-specific integrated circuits, or "ASICs") are currently obtained by the Company from single sources. If the supply of a key single-sourced component to the Company were to be delayed or curtailed, the Company's ability to ship the related product utilizing such component in desired quantities and in a timely manner could be adversely affected, depending on the time required to obtain sufficient quantities from the original source, or to identify and obtain sufficient quantities from an alternate source. In addition, the Company uses some components that are not common to the rest of the personal computer industry. Continued availability of these components may be affected if producers were to decide to concentrate on the production of common components instead of components customized to meet the Company's requirements. Finally, a significant portion of the Company's CPUs and logic boards are now manufactured by outsourcing partners. Although the Company works closely with its outsourcing partners on manufacturing

schedules and levels, the Company's operating results could be adversely affected if its outsourcing partners were unable to meet their production obligations.

SIGNIFICANT CUSTOMERS

No customer accounted for more than 10% of the Company's net sales in 1997, 1996, or 1995.

ADVERTISING COSTS

Advertising expense was $143 million, $183 million, and $205 million for 1997, 1996, and 1995, respectively.

SPECIAL CHARGES

NEXT ACQUISITION

On February 4, 1997, the Company acquired all of the outstanding shares of NeXT Software, Inc. ("NeXT"). NeXT, headquartered in Redwood City, California, had developed, marketed and supported software that enables customers to implement business applications on the Internet/World Wide Web, intranets and enterprise-wide client/server networks. The total purchase price was $427 million and was comprised of cash payments of $319 million and the issuance of 1.5 million shares of the Company's common stock to the NeXT shareholders valued at approximately $25 million according to the terms of the purchase agreement; the issuance of approximately 1.9 million options to purchase the Company's common stock to the NeXT optionholders valued at approximately $16 million; cash payments of $56 million to the NeXT debtholders; cash payments of $9 million for closing and related costs, and $2 million of net liabilities assumed. The acquisition was accounted for as a purchase and, accordingly, the operating results pertaining to NeXT subsequent to the date of acquisition have been included in the Company's consolidated operating results. The total purchase price was allocated to purchased in-process research and development ($375 million) and to goodwill and other intangible assets ($52 million). The purchased in-process research and development was charged to operations upon acquisition, and the goodwill and other intangible assets are being amortized on a straight-line basis over 2 to 3 years.

The following unaudited proforma summary combines the consolidated results of operations of the Company and NeXT as if the acquisition had occurred at the beginning of the years ended September 26, 1997 and September 27, 1996, after giving effect to certain adjustments, including in-process research and development, amortization of intangible assets, lower interest income as a result of lower cash investment balances, and lower interest expense as a result of the settlement of the NeXT debt, as well as related income tax effects in 1996 only. The proforma summary does not necessarily reflect the results of operations as they would have been had the Company and NeXT been combined as of the beginning of those years.

PROFORMA RESULTS OF OPERATIONS

	FOR THE YEARS ENDED	
	SEPTEMBER 26, 1997	SEPTEMBER 27, 1996
	(IN MILLIONS, EXCEPT PER SHARE AMOUNTS)	
Net sales	$ 7,098	$ 9,879
Net loss	$ (1,061)	$ (1,234)
Loss per common share	$ (8.38)	$ (9.85)

RESTRUCTURING OF OPERATIONS

In the second quarter of 1996, the Company announced and began to implement a restructuring plan aimed at reducing costs and restoring profitability to the Company's operations. The restructuring plan was necessitated by decreased demand for the Company's products and the Company's adoption of a new strategic direction. These actions resulted in a net charge of $179 million after subsequent adjustments recorded in the fourth quarter of 1996. During 1997, the Company announced and began to implement supplemental restructuring actions to meet the foregoing objectives of the plan. The Company recognized a $217 million charge during 1997 for the estimated incremental costs of those actions, including approximately $8 million of costs related to the termination of the Company's former Chief Executive Officer. The combined restructuring actions consist of terminating approximately 3,600 full-time employees, approximately 2,600 of whom have been terminated from the second quarter of 1996 through September 26, 1997, excluding employees who were not paid severance bonuses and who were hired by SCI Systems, Inc. or MCI Systemhouse, the purchasers of the Company's Fountain, Colorado manufacturing facility and the Napa, California data center facility, respectively; canceling or vacating certain facility leases as a result of those employee terminations; writing down certain land, buildings and equipment to be sold as a result of downsizing operations and outsourcing various operational functions; and canceling contracts for projects and technologies that are not central to the Company's core business strategy. The restructuring actions under the plan have resulted in cash expenditures of $163 million and noncash asset write-downs of $53 million from the second quarter of 1996 through September 26, 1997. The Company expects that the remaining $180 million accrued balance as of September 26, 1997 will result in cash expenditures of approximately $130 million over the next twelve months and $11 million thereafter. The Company expects that most of the contemplated restructuring actions related to the plan will be completed during the first half of fiscal 1998 and will be financed through current working capital and, if necessary, continued short-term borrowings.

The following table depicts the restructuring activity through September 26, 1997:

RESTRUCTURING ACTIVITY

CATEGORY	NET ADDITIONS DURING 1996	SPENDING DURING 1996	BALANCE AS OF SEPTEMBER 27, 1996	NET ADDITIONS DURING 1997	SPENDING DURING 1997	BALANCE AS OF SEPTEMBER 26, 1997
			(IN MILLIONS)			
Payments to employees involuntarily terminated (C)	$ 81	$ 48	$ 33	$ 131	$ 88	$ 76
Payments on canceled or vacated facility leases (C)	19	4	15	19	9	25
Write-down of operating assets to be sold (N)	54	7	47	38	46	39
Payments on canceled contracts (C)	25	3	22	29	11	40
	$ 179	$ 62	$ 117	$ 217	$ 154	$ 180

(C): Cash; (N): Noncash.

TERMINATION OF LICENSE AGREEMENT

In August 1997, the Company agreed to acquire certain assets of Power Computing Corporation (PCC), a company which Apple had licensed to distribute Macintosh operating systems. In addition to the acquisition of certain assets such as PCC's customer database and the license to distribute Macintosh operating systems, the Company also has the right to retain certain key employees of PCC. The agreement with PCC also includes a release of claims between the parties.

The Company anticipates it will complete its acquisition of the assets of PCC in the first quarter of 1998 once all regulatory approvals are received. The total purchase price, which is comprised of shares of the Company's common stock valued at $100 million; the Company's forgiveness of receivables from PCC; the assumption of certain PCC obligations; and closing and related costs, is expected to be approximately $110 million. The total purchase price is expected to require total cash expenditures of approximately $5 million over the next 12 months. The acquisition will be treated as a purchase for accounting purposes. The difference between the total purchase price and the amount expensed as "Termination of License Agreement" on the accompanying consolidated statement of operations will be capitalized in the first quarter of 1998, and then amortized over a period of two years.

INCOME TAXES

The provision (benefit) for income taxes consists of the following:

	1997	1996	1995
	(IN MILLIONS)		
Federal:			
Current	$ --	$ (125)	$ 26
Deferred	--	(279)	113
	--	(404)	139
State:			
Current	--	(2)	1
Deferred	--	(71)	15
	--	(73)	16
Foreign:			
Current	--	(1)	89
Deferred	--	(1)	6
	--	(2)	95
Provision (benefit) for income taxes	$ --	$ (479)	$ 250

The foreign provision (benefit) for income taxes is based on foreign pretax earnings (loss) of approximately $(265) million, $(141) million, and $572 million in 1997, 1996, and 1995, respectively. A substantial portion of the Company's cash, cash equivalents, and short-term investments is held by foreign subsidiaries and is generally based in U.S. dollar-denominated holdings. Amounts held by foreign subsidiaries would be subject to U.S. income taxation on repatriation to the United States. The Company's consolidated financial statements fully provide for any related tax liability on amounts that may be repatriated, aside from undistributed earnings of certain of the Company's foreign subsidiaries that are intended to be indefinitely reinvested in operations outside the United States. U.S. income taxes have not been provided on a cumulative total of $395 million of such earnings. It is not practicable to determine the income tax liability that might be incurred if these earnings were to be distributed. Except for such

indefinitely reinvested earnings, the Company provides for federal and state income taxes currently on undistributed earnings of foreign subsidiaries.

Deferred tax assets and liabilities reflect the future income tax effects of temporary differences between the consolidated financial statement carrying amounts of existing assets and liabilities and their respective tax bases and are measured using enacted tax rates that apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

As of September 26, 1997, and September 27, 1996, the significant components of the Company's deferred tax assets and liabilities were:

	SEPTEMBER 26, 1997	SEPTEMBER 27, 1996
	(IN MILLIONS)	
Deferred tax assets:		
Accounts receivable and inventory reserves	$ 151	$ 105
Accrued liabilities and other reserves	126	139
Basis of capital assets and investments	103	82
Tax losses and credits	315	175
Total deferred tax assets	695	501
Less: Valuation allowance	218	14
Net deferred tax assets	477	487
Deferred tax liabilities:		
Unremitted earnings of subsidiaries	410	467
Other	7	11
Total deferred tax liabilities	417	478
Net deferred tax asset	$ 60	$ 9

The increase in net deferred tax assets of $51 million in 1997 is primarily the result of reclassifying certain benefits of tax losses and credits from other current assets to deferred tax assets in the consolidated balance sheet.

As of September 26, 1997, the Company had operating loss carryforwards for tax purposes of approximately $451 million, which expire principally in 2011 and 2012. Most of the remaining benefits from tax losses and credits do not expire.

The net change in the total valuation allowance in 1997 was an increase of $204 million, which is net of a $4 million adjustment related to the acquisition of NeXT.

A reconciliation of the provision (benefit) for income taxes, with the amount computed by applying the statutory federal income tax rate (35% in 1997, 1996, and 1995) to income (loss) before provision (benefit) for income taxes, is as follows:

	1997	1996	1995
	(IN MILLIONS)		
Computed expected tax (benefit)	$ (366)	$ (453)	$ 236
State taxes, net of federal effect	(3)	(48)	10
Research and development tax credit	--	--	(1)
Indefinitely invested earnings of foreign subsidiaries	--	--	(21)
Purchase accounting and asset acquisitions	158	--	--
Valuation allowance	208	--	3
Other individually immaterial items	3	22	23
Provision (benefit) for income taxes	$ --	$ (479)	$ 250
Effective tax rate	0%	37%	37%

The Internal Revenue Service ("IRS") has proposed federal income tax deficiencies for the years 1984 through 1991, and the Company has made certain prepayments thereon. The Company contested the proposed deficiencies by filing petitions with the United States Tax Court, and most of the issues in dispute have now been resolved. On June 30, 1997, the IRS proposed income tax adjustments for the years 1992 through 1994. Although a substantial number of issues for these years have been resolved, certain issues still remain in dispute and are being contested by the Company. Management believes that adequate provision has been made for any adjustments that may result from tax examinations.

SHAREHOLDERS' EQUITY

PREFERRED STOCK

In August 1997, the Company and Microsoft Corporation ("Microsoft") entered into patent cross licensing and technology agreements. In addition, Microsoft purchased 150,000 shares of Apple Series 'A' non-voting convertible preferred stock ("preferred stock") for $150 million. Except under limited circumstances, the shares of preferred stock may not be sold by Microsoft prior to August 5, 2000. Upon any sale of the preferred stock by Microsoft, the shares will automatically be converted into shares of Apple common stock at a conversion price of $16.50 per share and the shares can be converted at Microsoft's option at such price after August 5, 2000. Each share of preferred stock is entitled to receive, if and when declared by the Company's Board of Directors, a dividend of $30.00 per share per annum, payable in preference to any dividend on the Company's common stock, plus, if the dividends per share paid on the common stock are greater than the dividends per share paid on the preferred stock on an "as if converted" basis, then the Board of Directors shall declare an additional dividend such that the dividends per share paid on the preferred stock on an "as if converted" basis, shall equal the dividends per share paid on the common stock.

STOCK OPTION PLANS

1990 STOCK OPTION PLAN

The Company has in effect a 1990 Stock Option Plan (the "1990 Plan"), which replaced the 1981 Stock Option Plan terminated in October 1990 and the 1987 Executive Long Term Stock Option Plan (the "1987 Plan") terminated in July 1995. Options granted before these plans' termination dates remain outstanding in accordance with their terms. Options may be granted under the 1990 Plan to employees, including officers and directors who are employees, at not less than the fair market value on the date of grant. These options generally become exercisable over a period of three years, based on continued

employment, and generally expire ten years after the grant date. In November 1997, the Company's Board of Directors passed a resolution requiring all future option grants be vested over a period of four years. The 1990 Plan permits the granting of incentive stock options, nonstatutory stock options, and stock appreciation rights.

In July 1997, the Board of Directors adopted a resolution allowing employees to exchange all (but not less than all) of their existing options (vested and unvested) to purchase Apple common stock (other than options granted and assumed from NeXT) for options having an exercise price of $13.25 and a new three year vesting period beginning in July of 1997. Approximately 7.9 million options were repriced under this program.

On May 14, 1996, the Board of Directors adopted a resolution allowing employees up to and including the level of Vice President to exchange 1.25 options at their existing option price for 1.0 new options having an exercise price of $26.375 per share, the fair market value of the Company's common stock at May 29, 1996. Options received under this program are subject to one year of additional vesting such that the new vesting date for each vesting portion will be the later of May 29, 1997 or the original vesting date plus one year. Approximately 2.9 million options were exchanged and repriced under this program.

In December 1996, the Board of Directors adopted an amendment to the 1990 Plan to increase the number of shares reserved for issuance by 1 million. The amendment was approved by the Company's shareholders in February 1997.

1997 EMPLOYEE STOCK OPTION PLAN

In August 1997, the Company's Board of Directors approved the 1997 Employee Stock Option Plan ("the 1997 Plan"), for grants of stock options to employees who are not officers of the Company. Terms and conditions of the 1997 Plan are substantially the same as the 1990 Plan. Options may be granted under the 1997 Plan to employees at not less than the fair market value on the date of grant. These options generally become exercisable over a period of three years, based on continued employment, and generally expire ten years after the grant date. In November 1997, the Company's Board of Directors passed a resolution requiring all future option grants be vested over a period of four years. The Company's Board of Directors has reserved 5 million shares for issuance under the provisions of the 1997 Plan.

1990 STOCK OPTION PLAN OF NEXT

On February 4, 1997, the Company acquired all of the outstanding shares of NeXT. Under the terms of the acquisition agreement, approximately 1.9 million options to purchase the Company's common stock were issued to the existing NeXT optionholders. The options have the same terms and conditions as the options issued by NeXT. The NeXT options were granted under the NeXT Plan to employees, including officers and directors who were employees, at not less than the fair market value on the date of grant. The options become exercisable over various periods, as previously determined by the Board of Directors of NeXT at the time of issuance.

DIRECTOR STOCK OPTION PLAN

In August 1997, the Company's Board of Directors approved a Director Stock Plan ("DSOP") for which directors of the Company are eligible. Options granted under the DSOP vest in three equal installments, on each of the first through third anniversaries of the date of grant. The Company's Board of Directors has reserved 400,000 shares for issuance under the provisions of the DSOP. As of September 26, 1997, 150,000 options had been granted and were outstanding under the DSOP, subject to shareholder approval at the Annual Meeting of Shareholders scheduled for February 1998. Supplementally and separate from the DSOP (the "Prior Plan"), 30,000 options had been granted in total to two members of the Company's Board of Directors, and were outstanding as of September 26, 1997. These options are also subject to shareholder approval at the Annual Meeting of Shareholders scheduled for February 1998. The

options granted and available for future grant under the DSOP and Prior Plan are not included as outstanding or available for future grant in the tables and narrative below as they are subject to shareholder approval.

STOCK OPTION ACCOUNTING

The Company has elected to follow APB 25 and related interpretations in accounting for its employee stock options and employee stock purchase plan shares because, as discussed below, the alternative fair value accounting provided for under FAS 123 requires use of option valuation models that were not developed for use in valuing employee stock options and employee stock purchase plan shares. Under APB 25, when the exercise price of the Company's employee stock options equals the market price of the underlying stock on the date of the grant, no compensation expense is recognized.

Pro forma information regarding net loss and loss per share is required by FAS 123 and has been determined as if the Company had accounted for its employee stock options granted and employee stock purchase plan purchases subsequent to September 29, 1995, under the fair value method of that Statement. The fair values for these options and stock purchases were estimated at the date of grant and beginning of the period, respectively, using a Black-Scholes option pricing model for the single option approach with the following weighted-average assumptions for 1997 and 1996: risk-free interest rate of 6.3% and 5.3% for the options and stock purchases, respectively; an average volatility factor of the expected market price of the Company's common stock of 74% and 52% for the options and stock purchases, respectively; and weighted-average expected lives of three years from the grant date and six months from the beginning of the plan period for the options and stock purchases, respectively. No dividend payments are expected.

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because the Company's employee stock options and employee stock purchase plan shares have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of the Company's employee stock options and employee stock purchase plan shares.

For purposes of pro forma disclosures, the estimated fair value of the options and shares are amortized to pro forma net loss over the options' vesting period and the shares' plan period. The Company's pro forma information follows:

	FOR THE YEARS ENDED	
	SEPTEMBER 26, 1997	SEPTEMBER 27, 1996
	(IN MILLIONS, EXCEPT LOSS PER SHARE INFORMATION)	
Net loss	$ (1,082)	$ (840)
Loss per common share	$ (8.58)	$ (6.79)

The value of the options granted to NeXT optionholders have been included in the total purchase price paid for NeXT and, therefore, are not included in the adjustment to arrive at the pro forma net loss.

As FAS 123 is applicable only to options granted or shares issued subsequent to September 29, 1995, its pro forma effect will not be fully reflected until 1999.

A summary of the Company's stock option activity and related information for the years ended September 26, 1997 and September 27, 1996 follows:

	YEAR ENDED SEPTEMBER 26, 1997		YEAR ENDED SEPTEMBER 27, 1996	
	OPTIONS (IN 000'S)	WEIGHTED-AVERAGE EXERCISE PRICE	OPTIONS (IN 000'S)	WEIGHTED-AVERAGE EXERCISE PRICE
Outstanding--beginning of period	14,112	$ 27.23	13,877	$ 34.79
Granted (Price equals fair market value, the "FMV")	20,629	$ 16.91	8,873	$ 24.29
Granted (Price less than FMV)	1,853	$ 6.54	--	$ --
Exercised	(1,049)	$ 13.71	(450)	$ 22.91
Forfeited	(16,896)	$ 24.19	(8,188)	$ 36.89
Outstanding--end of period	18,649	$ 17.24	14,112	$ 27.23
Exercisable at end of period	1,996		4,284	
Weighted-average fair value per share of options granted during the period	$ 7.49		$ 12.66	

The options granted at a price less than fair market value were to existing NeXT optionholders as part of the total purchase price paid for NeXT.

The weighted-average fair value per share of options granted during the period includes the value of the repriced options granted during the period less the value of the related forfeited options on the date the repriced options were granted.

The options outstanding as of September 26, 1997 have been segregated into six ranges for additional disclosure as follows (option amounts are recorded in thousands):

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
	OPTIONS OUTSTANDING AS OF SEPTEMBER 26, 1997	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE IN YEARS	WEIGHTED AVERAGE EXERCISE PRICE	OPTIONS EXERCISABLE AS OF SEPTEMBER 26, 1997	WEIGHTED AVERAGE EXERCISE PRICE
$1.66 - $9.97	937	8.0	$ 6.32	526	$ 5.14
$9.98 - $13.25	7,848	9.8	$ 13.25	3	$ 13.25
$13.26 - $18.38	922	9.4	$ 16.78	--	$ --
$18.39 - $19.87	6,088	9.9	$ 19.75	--	$ --
$19.88 - $26.38	2,180	7.9	$ 24.29	871	$ 24.27
$26.39 - $64.75	674	4.5	$ 34.04	596	$ 33.67
$1.66 - $64.75	18,649	9.3	$ 17.24	1,996	$ 22.02

As of September 26, 1997, approximately 2.5 million options were reserved for future grant under the Company's stock option plans.

EMPLOYEE STOCK PURCHASE PLAN

The Company has an employee stock purchase plan (the "Purchase Plan") under which substantially all employees may purchase common stock through payroll deductions at a price equal to 85% of the lower of the fair market values as of the beginning and end of the six-month offering period. Stock purchases under the Purchase Plan are limited to 10% of an employee's compensation, up to a maximum of $25,000 in any calendar year. In December 1996, the Board of Directors adopted an amendment to the Purchase

Plan to increase the number of shares reserved for issuance by 3.5 million, which was approved at the Company's Annual Meeting of Shareholders in February 1997. As of September 26, 1997, approximately 3.1 million shares were reserved for future issuance under the Purchase Plan.

SENIOR OFFICERS RESTRICTED PERFORMANCE SHARE PLAN

In November 1997, the Company's Board of Directors issued approximately 24,000 fully vested shares and cash in settlement of shares to certain officers of the Company under the Senior Officers Restricted Performance Share Plan (the "PSP") based upon the achievement of certain performance goals established in advance by the Compensation Committee of the Board. Immediately after these shares were issued, the Company's Board of Directors terminated the PSP. No shares had been previously issued under the PSP. Supplementally and separate from the PSP, during the year ended September 26, 1997 the Company's Board of Directors issued approximately 131,000 fully vested shares to the Company's former Chief Executive Officer based upon the achievement of certain performance goals established in advance by the Compensation Committee of the Board.

SHAREHOLDER RIGHTS PLAN

In May 1989, the Company adopted a shareholder rights plan and distributed a dividend of one right to purchase one share of common stock (a "Right") for each outstanding share of common stock of the Company. The Rights become exercisable in certain limited circumstances involving a potential business combination transaction of the Company and are initially exercisable at a price of $200 per share. Following certain other events after the Rights have become exercisable, each Right entitles its holder to purchase for $200 an amount of common stock of the Company, or, in certain circumstances, securities of the acquiror, having a then-current market value of two times the exercise price of the Right. The Rights are redeemable and may be amended at the Company's option before they become exercisable. Until a Right is exercised, the holder of a Right, as such, has no rights as a shareholder of the Company. The Rights expire on April 19, 1999.

STOCK REPURCHASE PROGRAMS

In November 1992, the Board of Directors authorized the purchase of up to 10 million shares of the Company's common stock in the open market. Approximately 4.9 million shares remain authorized for repurchase. No shares were repurchased under this authorization in 1997, 1996, or 1995.

EMPLOYEE SAVINGS PLAN

The Company has an employee savings plan (the "Savings Plan") that qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the Savings Plan, participating U.S. employees may defer a portion of their pretax earnings, up to the Internal Revenue Service annual contribution limit ($9,500 for calendar year 1997). Effective October 1, 1995, the Company matches 50% to 100% of each employee's contributions, depending on length of service, up to a maximum 6% of the employee's earnings. Prior to October 1, 1995, the Company matched 30% to 70% of each employee's contributions, depending on length of service, up to a maximum 6% of the employee's earnings. The Company's matching contributions to the Savings Plan were approximately $19 million, $22 million, and $15 million in 1997, 1996, and 1995, respectively.

COMMITMENTS AND CONTINGENCIES

LEASE COMMITMENTS

The Company leases various facilities and equipment under noncancelable operating lease arrangements. The major facilities leases are for terms of five to ten years and generally provide renewal options for terms of up to five additional years. Rent expense under all operating leases was approximately $106

million, $129 million, and $127 million in 1997, 1996, and 1995, respectively. Future minimum lease payments under noncancelable operating leases having remaining terms in excess of one year as of September 26, 1997, are as follows:

	(IN MILLIONS)
1998	$ 58
1999	49
2000	37
2001	26
2002	17
Later years	20
Total minimum lease payments	$ 207

PURCHASE COMMITMENTS

In connection with the sale of its Fountain, Colorado, manufacturing facility to SCI Systems, Inc. ("SCI"), the Company is obligated to purchase certain percentages of its total annual volumes of CPUs and logic boards from SCI over each of the next two years. The Company has met these obligations through September 26, 1997, and believes it will meet them in the future. In addition, in the ordinary course of business, the Company has entered into agreements with vendors which obligate it to purchase product components which may not be common to the rest of the personal computer industry. For discussion regarding the accruals included in the consolidated balance sheets for the cost to cancel excess purchase orders, refer to the subheading "Significant Accounting Estimates", under the heading "Accounting Estimates" in these Notes to Consolidated Financial Statements.

LITIGATION

ABRAHAM AND EVELYN KOSTICK TRUST V. PETER CRISP ET AL.

In January 1996, a purported shareholder class action styled Abraham and Evelyn Kostick Trust v. Peter Crisp et. al was filed in the California Superior Court for Santa Clara County naming the Company and its then directors as defendants. The complaint sought injunctive relief and damages and alleged that acts of mismanagement resulted in a depressed price for the Company. In February 1996, the complaint was amended to add a former director as a defendant and to add purported class and derivative claims based on theories such as breach of fiduciary duty, misrepresentation, and insider trading. In July 1996, the Court sustained defendants' demurrer and dismissed the amended complaint on a variety of grounds and granted plaintiffs leave to amend the complaint. In October 1996, the plaintiffs filed a second amended complaint naming the Company's then directors and certain former directors as defendants and again alleging purported class and derivative claims, seeking injunctive relief and damages (compensatory and punitive) based on theories such as breach of fiduciary duty, misrepresentation, and insider trading. In July 1997, the Court granted in part and denied in part the Company's motion to strike most of the substantive allegations of the second amended complaint. The Court sustained the demurrer to plaintiffs' class claims but overruled the demurrer to the shareholder derivative claims. In September 1997, the Company brought a motion to reconsider portions of the court's order. The Third Amended Complaint was filed in October 1997, and eliminated the class action claims and restated claims against certain directors and former directors. In November 1997, the Company's Board of Directors appointed a special investigation committee and engaged independent counsel to assist in the investigation of the claims made in the Third Amended Complaint. Also in November 1997, the Company filed a demurrer to the Third Amended Complaint.

DEREK PRITCHARD V. MICHAEL SPINDLER ET AL.

In March 1996, a purported shareholder class action was filed in the California Superior Court for Santa Clara County naming certain current and former directors of the Company as defendants. The complaint sought damages and alleged that the defendants breached their fiduciary duty by allegedly rejecting an offer from a computer company (not named in the complaint) to acquire the Company at a price in excess of $50 per share. In August 1996, the Court sustained defendants' demurrer and dismissed the complaint on a variety of grounds, and granted plaintiff leave to amend the complaint. In October 1996, the plaintiff filed his first amended complaint in which he asserted the same purported cause of action as the original complaint, alleged additional facts purportedly in support thereof, and added the Company as a defendant. In March 1997, the Court sustained defendants' demurrer without leave to amend.

LS MEN'S CLOTHING DEFINED BENEFIT PENSION FUND V. MICHAEL SPINDLER ET AL.

In May 1996, an action was filed in the California Superior Court for Alameda County naming as defendants the Company and certain of its current and former officers and directors. The complaint seeks compensatory and punitive damages and generally alleges that the defendants misrepresented or omitted material facts about the Company's operations and financial results, which plaintiff contends artificially inflated the price of the Company's stock. The case was transferred to the California Superior Court for Santa Clara County. In July 1997, the Court sustained the Company's demurrer dismissing the amended complaint with leave to amend, after which plaintiff served a second amended complaint. In September 1997, the Company and the two remaining individual defendants (former directors Markkula and Spindler) brought a motion to dismiss the second amended complaint. In October 1997, the Court granted the motion to dismiss in its entirety with leave to amend as to certain defendants and claims. In November 1997, the plaintiff filed a third amended complaint, adding a former director as a defendant and alleging further misrepresentations by the defendants about the Company's operations and financial results.

"REPETITIVE STRESS INJURY" LITIGATION

The Company is named in approximately 60 lawsuits, alleging that plaintiffs incurred so-called "repetitive stress" injuries to their upper extremities as a result of using keyboards and/or mouse input devices sold by the Company. These actions are similar to those filed against other major suppliers of personal computers. In October 1996, the Company prevailed in the first full trial to go to verdict against the Company. Since then, approximately ten lawsuits have been dismissed with prejudice by the plaintiffs, and two others have been dismissed by court order. The remaining actions are in various stages of pretrial activity. Ultimate resolution of these cases may depend on industry-wide progress in resolving similar litigation, as well as on resolution of major questions of law currently before the state appellate court in New York, where a majority of the cases were filed.

MONITOR-SIZE LITIGATION

In August 1995, the Company was named, along with 41 other entities, including computer manufacturers and computer monitor vendors, in a putative nationwide class action filed in the California Superior Court for Orange County, styled Keith Long et al. v. AAmazing Technologies Corp. et al. The complaint alleges that each of the defendants engaged in false or misleading advertising with respect to the size of computer monitor screens. Also in August 1995, the Company was named as the sole defendant in a purported class action alleging similar claims filed in the New Jersey Superior Court for Camden County, entitled Mahendri Shah v. Apple Computer, Inc. Subsequently, in November 1995, the Company, along with 26 other entities, was named in a purported class action alleging similar claims filed in the New Jersey Superior Court for Essex County, entitled Maizes & Maizes v. Apple Computer, Inc. et al. Similar putative class actions have been filed in other California counties in which the Company was not named as a

defendant. The complaints in all of these cases seek restitution in the form of refunds or product exchange, damages, punitive damages, and attorneys fees. In December 1995, the California Judicial Council ordered all of the California actions, including Long, coordinated for purposes of pretrial proceedings and trial before a single judge, the Honorable William Cahill, sitting in the County of San Francisco. All of the California actions were subsequently coordinated under the name In re Computer Monitor Litigation and a master consolidated complaint filed superseding all of the individual complaints in those actions. In July 1996, Judge Cahill ordered all of the California cases dismissed without leave to amend as to plaintiffs residing in California on the ground that a stipulated judgment entered in September 1995 in a prior action brought by the California Attorney General alleging the same cause of action was res judicata as to the plaintiffs in the consolidated California class action suits. This order may be subject to appellate review at a later stage of the proceedings. Both the New Jersey cases and the consolidated California cases are at a preliminary stage, with no discovery having taken place. In March 1997, the Court in the case styled In re Computer Monitor Litigation preliminarily approved a proposed settlement to which the Company and all but three of the other defendants in the action would be parties and provisionally certified a nationwide settlement class with respect thereto. A hearing regarding final approval of the proposed settlement was held on June 30, 1997 and the Court's decision is pending. If approved, the Company does not anticipate its obligations pursuant to the proposed settlement will have a material adverse effect on its consolidated results of operations or financial condition as reported in the accompanying financial statements.

EXPONENTIAL TECHNOLOGY V. APPLE

Plaintiff alleges in a lawsuit styled Exponential Technology, Inc. v. Apple Computer, Inc. that the Company, which was an investor in Exponential, breached its fiduciary duty to Exponential Technology by misusing confidential information about its financial situation to cause Exponential to fail, and that the Company fraudulently misrepresented the facts about allowing Exponential to sell its processors to the Company's Mac OS licensees. The lawsuit is filed in California State Court in Santa Clara County. In November 1997, the Company filed a demurrer to portions of the complaint.

OTHER

On August 21, 1997, the Federal Trade Commission issued a consent decree against the Company, regarding the Company's past processor upgrade practices, specifically certain advertisements which the Commission deemed to have misrepresented the Company's marketing of certain microprocessor upgrade products. Pursuant to the order, the Company is ordered to cease and desist from any such allegedly misleading advertising, to give notice to consumers, and to implement certain programs enabling consumers who are within the order's scope to obtain upgrade kits or rebates, in connection with any purchases within the scope of the order. The Company has complied with all provisions of the order currently effective, and has filed its 60-day compliance with the Commission on October 17, 1997.

The Company has various other claims, lawsuits, disputes with third parties, investigations and pending actions involving allegations of false or misleading advertising, product defects, discrimination, infringement of intellectual property rights, and breach of contract and other matters against the Company and its subsidiaries incident to the operation of its business. The liability, if any, associated with these matters is not determinable.

The Company believes the resolution of the matters cited above will not have a material adverse effect on its financial condition as reported in the accompanying financial statements. However, depending on the amount and timing of any unfavorable resolution of these lawsuits, it is possible that the Company's future results of operations or cash flows could be materially affected in a particular period.

The Company operates in one principal industry segment: the design, manufacture, and sale of personal computing products. The Company's products are sold primarily to the business, education, home, and government markets.

INDUSTRY SEGMENT AND GEOGRAPHIC INFORMATION

Geographic financial information is as follows:

	1997	1996	1995
	(IN MILLIONS)		
Net sales to unaffiliated customers:			
United States	$ 3,507	$ 4,735	$ 5,791
EMEA	1,667	2,222	2,365
Japan	1,070	1,792	1,822
Asia Pacific	490	563	519
Other	347	521	565
Total net sales	$ 7,081	$ 9,833	$ 11,062
Transfers between geographic areas (eliminated in consolidation):			
United States	$ 206	$ 517	$ 511
EMEA	207	121	178
Japan	5	--	--
Asia Pacific	1,270	3,035	3,619
Other	--	--	--
Total transfers	$ 1,688	$ 3,673	$ 4,308
Operating income (loss):			
United States	$ (913)	$ (1,198)	$ (74)
EMEA	(129)	(186)	245
Japan	(86)	(4)	47
Asia Pacific	104	3	388
Other	(29)	--	48
Eliminations	(17)	2	30
Corporate income (expense), net	25	88	(10)
Income (loss) before provision (benefit) for income taxes	$ (1,045)	$ (1,295)	$ 674
Identifiable assets:			
United States	$ 1,543	$ 1,935	$ 2,955
EMEA	557	648	927
Japan	383	559	686
Asia Pacific	286	312	581
Other	119	171	157
Eliminations	(135)	(26)	(34)
Corporate assets	1,480	1,765	959
Total assets	$ 4,233	$ 5,364	$ 6,231

"EMEA" is an abbreviation for Europe, the Middle East, and Africa. "Asia Pacific" does not include Japan. "Other" is comprised of all North and South America sites excluding the United States. Prior year amounts have been restated to conform to the current year's presentation. "Net sales to unaffiliated customers" is based on the location of the customers.

Transfers between geographic areas are recorded at amounts generally above cost and in accordance with the rules and regulations of the respective governing tax authorities. Operating income (loss) by geographic area consists of total net sales less operating expenses, and does not include an allocation of

general corporate expenses. The restructuring charges recorded in 1997 and 1996, and the adjustments recorded in 1995 to the restructuring charges recorded in 1993, are included in the calculation of operating income (loss) for each geographic area. Identifiable assets of geographic areas are those assets used in the Company's operations in each area. Corporate assets include cash and cash equivalents, short-term investments and equity securities.

A large portion of the Company's revenue is derived from its international operations, and a majority of the products sold internationally are manufactured in the Company's facilities in Cork, Ireland and Singapore. As a result, the Company is subject to risks associated with foreign operations, such as obtaining governmental permits and approvals, currency exchange fluctuations, currency restrictions, political instability, labor problems, trade restrictions, and changes in tariff and freight charges.

SELECTED QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

	FOURTH QUARTER	THIRD QUARTER	SECOND QUARTER	FIRST QUARTER
	(TABULAR AMOUNTS IN MILLIONS, EXCEPT PER SHARE AMOUNTS)			
1997				
Net sales	$ 1,614	$ 1,737	$ 1,601	$ 2,129
Gross margin	$ 320	$ 348	$ 303	$ 397
Net loss	$ (161)	$ (56)	$ (708)	$ (120)
Loss per common share	$ (1.26)	$ (0.44)	$ (5.64)	$ (0.96)
Price range per common share	$ 29.75-$12.75	$ 19.88-$14.63	$ 23.25-$15.12	$ 27.75-$21.38
1996				
Net sales	$ 2,321	$ 2,179	$ 2,185	$ 3,148
Gross margin	$ 511	$ 403	$ (421)	$ 475
Net income (loss)	$ 25	$ (32)	$ (740)	$ (69)
Earnings (loss) per common and common equivalent share	$ 0.20	$ (0.26)	$ (5.99)	$ (0.56)
Cash dividends declared per common share	$ --	$ --	$ --	$ 0.12
Price range per common share	$ 25.00-$16.00	$ 28.88-$19.63	$ 35.50-$23.00	$ 42.50-$31.44

As of September 26, 1997, there were 31,724 shareholders of record.

The Company began declaring quarterly cash dividends on its common stock in April 1987. The dividend policy is determined by the Board of Directors and is dependent on the Company's earnings, capital requirements, financial condition and other factors. The Company suspended paying dividends on its common stock beginning in the second quarter of 1996. The Company anticipates that, for the foreseeable future, it will retain any earnings for use in the operation of its business.

The price range per common share represents the highest and lowest prices for the Company's common stock on the Nasdaq National Market during each quarter.

Net loss for the fourth quarter of 1997 includes a $62 million charge to increase the Company's restructuring reserves, as well as a $75 million charge related to the termination of the license agreement with PCC. Net loss for the second quarter of 1997 includes a $155 million restructuring charge, as well as a $375 million write-off of purchased in-process research and development related to the Company's acquisition of NeXT Software, Inc.

Net income for the fourth quarter of 1996 includes an adjustment to the 1996 restructuring charge that increased income by $28 million. Net loss for the second quarter of 1996 includes a $616 million charge for the write-down of certain inventory and related actions, as well as a $207 million restructuring charge.

SCHEDULE II
APPLE COMPUTER, INC.
VALUATION AND QUALIFYING ACCOUNTS AND RESERVES
(IN MILLIONS)

ALLOWANCE FOR DOUBTFUL ACCOUNTS:	BEGINNING BALANCE	CHARGED TO COSTS AND EXPENSES	DEDUCTIONS(1)	ENDING BALANCE
Year Ended September 26, 1997	$ 91	$ 35	$ 27	$ 99
Year Ended September 27, 1996	$ 87	$ 28	$ 24	$ 91
Year Ended September 29, 1995	$ 91	$ 17	$ 21	$ 87

(1) Represents amounts written off against the allowance, net of recoveries.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Information regarding directors of the Registrant will be set forth in a Proxy Statement under Regulation 14A to be filed by the Company within 120 days of the end of the fiscal year covered by this report (the "Proxy Statement") under the heading "Information About Apple Computer, Inc.--Directors" and under the heading "Election of Directors", which information is hereby incorporated by reference. Information regarding executive officers of the Registrant will be set forth in the Proxy Statement under the caption "Executive Officers," which information is hereby incorporated by reference.

ITEM 11. EXECUTIVE COMPENSATION

Information regarding executive compensation will be set forth in the Proxy Statement under the heading "Report of the Compensation Committee of the Board of Directors on Executive Compensation," and "Information Regarding Executive Compensation", and is hereby incorporated by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Information regarding security ownership of certain beneficial owners and management will be set forth in the Proxy Statement under the heading "Information About Apple Computer, Inc.--Security Ownership of Certain Beneficial Owners and Management", and is hereby incorporated by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information regarding certain relationships and related transactions will be set forth in the Proxy Statement under the heading "Report of the Compensation Committee of the Board of Directors on Executive Compensation--Compensation Committee Interlocks and Insider Participation", and is hereby incorporated by reference.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K

(a) ITEMS FILED AS PART OF REPORT:

1. FINANCIAL STATEMENTS

The financial statements of the Company as set forth in the Index to Consolidated Financial Statements under Part II, Item 8 of this Form 10-K are hereby incorporated by reference.

2. FINANCIAL STATEMENT SCHEDULE

The financial statement schedule of the Company as set forth in the Index to Consolidated Financial Statements under Part II, Item 8 of this Form 10-K is hereby incorporated by reference.

3. EXHIBITS

The exhibits listed under Item 14(c) are filed as part of this Form 10-K.

(b) REPORTS ON FORM 8-K

A Current Report on Form 8-K dated July 28, 1997 was filed by the Registrant with the Securities and Exchange Commission to report under Item 5 thereof the press releases issued to the public on July 9, 1997 regarding the resignation of Chairman and Chief Executive Officer Dr. Gilbert F. Amelio.

A Current Report on Form 8-K dated September 5, 1997 was filed by the Registrant with the Securities and Exchange Commission to report under Item 5 thereof the press releases issued to the public on September 2, 1997 regarding the agreement to acquire certain assets of Power Computing Corporation.

A Current Report on Form 8-K dated September 25, 1997 was filed by the Registrant with the Securities and Exchange Commission to report under Item 5 thereof the press releases issued to the public on September 16, 1997 regarding the Registrant's naming of Steve Jobs as Interim Chief Executive Officer.

(c) EXHIBITS

EXHIBIT NUMBER	NOTES*	DESCRIPTION
2	97/1Q	Agreement and Plan of Merger Among Apple Computer, Inc., Blackbird Acquisition Corporation and NeXT Software, Inc., dated as of December 20, 1996
3.1	88-S3	Restated Articles of Incorporation, filed with the Secretary of State of the State of California on January 27, 1988.
3.2	90/2Q	Amendment to Restated Articles of Incorporation, filed with the Secretary of State of the State of California on February 5, 1990.
3.3		By-Laws of the Company, as amended through December 1, 1997.

*Notes appear on pages 65-66.

EXHIBIT NUMBER	NOTES*	DESCRIPTION
4.1	89-8A	Common Shares Rights Agreement dated as of May 15, 1989 between the Company and the First National Bank of Boston, as Rights Agent.
4.1.1	96-S3/A	Indenture, dated as of June 1, 1996, between the Company and Marine Midland Bank, as Trustee, relating to the 6% Convertible Subordinated Notes due June 1, 2001.
4.2	94/2Q	Indenture dated as of February 1, 1994, between the Company and Morgan Guaranty Trust Company of New York (the Indenture).
4.2.1	96-S3/A	Form of the 6% Convertible Subordinated Notes due June 1, 2001 included in Exhibit 4.1.1.
4.3	94/2Q	Supplemental Indenture dated as of February 1, 1994, among the Company, Morgan Guaranty Trust Company of New York, as resigning trustee, and Citibank, N.A., as successor trustee.
4.3.1	96-S3/A	Specimen Certificate of Common Stock of Apple Computer, Inc.
4.4	94/2Q	Officers' Certificate, without exhibits, pursuant to Section 301 of the Indenture, establishing the terms of the Company's 6 1/2% Notes due 2004.
4.5	94/2Q	Form of the Company's 6 1/2% Notes due 2004.
4.8	96-S3/A	Registration Rights Agreement, dated June 7, 1996 among the Company and Goldman, Sachs & Co. and Morgan Stanley & Co. Incorporated.
4.9		Certificate of Determination of Preferences of Series A Non-Voting Convertible Preferred Stock of Apple Computer, Inc.
4.10		Registration Rights Agreement, dated as of August 11, 1997, between Apple Computer, Inc. and Microsoft Corporation.
10.A.1	93/3Q**	1981 Stock Option Plan, as amended.
10.A.2	91K**	1987 Executive Long Term Stock Option Plan.
10.A.3	91K**	Apple Computer, Inc. Savings and Investment Plan, as amended and restated effective as of October 1, 1990.
10.A.3-1	92K**	Amendment of Apple Computer, Inc. Savings and Investment Plan dated March 1, 1992.
10.A.3-2	97/2Q**	Amendment No. 2 to the Apple Computer, Inc. Savings and Investment Plan.
10.A.5	97/2Q**	1990 Stock Option Plan, as amended through December 4, 1996.
10.A.6	97/2Q**	Apple Computer, Inc. Employee Stock Purchase Plan, as amended through December 4, 1996.
10.A.7	96/1Q**	1996 Senior / Executive Incentive Bonus Plan.

*Notes appear on pages 65-66.

**Represents a management contract or compensatory plan or arrangement.

EXHIBIT NUMBER	NOTES*	DESCRIPTION
10.A.8	**	Form of Indemnification Agreement between the Registrant and each officer of the Registrant.
10.A.15-1	93K-10.A.15**	1993 Executive Restricted Stock Plan
10.A.25	96/1Q**	Summary of Principal Terms of Employment between Registrant and Gilbert F. Amelio.
10.A.26	96/2Q**	Employment Agreement dated February 28, 1996, between Registrant and Gilbert F. Amelio.
10.A.26-1	97/3Q**	Amendment to Employment Agreement, dated May 1, 1997, between Apple Computer, Inc. and Gilbert F. Amelio.
10.A.27	96/2Q**	Employment Agreement dated February 26, 1996, between Registrant and George M. Scalise.
10.A.28	96/2Q**	Employment Agreement dated March 4, 1996, between Registrant and Fred D. Anderson, Jr.
10.A.29	96/2Q**	Retention Agreement dated March 4, 1996, between Registrant and Fred D. Anderson, Jr.
10.A.30	96/2Q**	Employment Agreement dated April 2, 1996, between Registrant and John Floisand.
10.A.31	96/2Q**	Employment Agreement dated April 3, 1996, between Apple Japan, Inc. and John Floisand.
10.A.32	96/3Q**	Employment Agreement dated June 13, 1996, between Registrant and Robert M. Calderoni.
10.A.33	96/3Q**	Employment Agreement dated June 25, 1996, between Registrant and Ellen M. Hancock.
10.A.34	96/3Q**	Retention Agreement dated June 25, 1996, between Registrant and Ellen M. Hancock.
10.A.35	96/3Q**	Retention Agreement dated June 27, 1996, between Registrant and George M. Scalise.
10.A.36	96/3Q**	Airplane Use Agreement dated June 27, 1996, among Registrant, Gilbert F. Amelio and Aero Ventures.
10.A.40	96K**	Employment Agreement effective June 3, 1996, between Registrant and G. Frederick Forsyth.
10.A.41	97/1Q**	Employment Agreement effective December 2, 1996, between Registrant and John B. Douglas III.
10.A.42	97/2Q**	Senior Officers Restricted Performance Share Plan, as amended through March 25, 1997.
10.A.43	97/2Q**	NeXT Computer, Inc. 1990 Stock Option Plan, as amended.
10.A.44	97/2Q**	Non-Employee Director Stock Plan.

*Notes appear on pages 65-66.

**Represents a management contract or compensatory plan or arrangement.

EXHIBIT NUMBER	NOTES*	DESCRIPTION
10.A.45	97/3Q**	Retention Agreement dated May 1, 1997 between Apple Computer, Inc. and Fred D. Anderson.
10.A.46	**	Resignation Agreement dated September 22, 1997 between Registrant and Gilbert F. Amelio.
10.A.47	**	Retention Agreement dated May 1, 1997 between Registrant and Jon Rubinstein.
10.A.48	**	Retention Agreement dated May 1, 1997 between Registrant and Avie Tevanian.
10.A.49	**	1997 Employee Stock Option Plan, as amended through November 5, 1997.
10.B.1	88K-10.1	Master OEM Agreement dated as of January 26, 1988 between the Company and Tokyo Electric Co. Ltd.
10.B.7	91-8K-7	Know-how and Copyright License Agreement (Power PC Architecture) dated as of September 30, 1991 between IBM and the Registrant.
10.B.8	91-8K-8	Participation in the Customer Design Center by the Registrant dated as of September 30, 1991 between IBM and the Registrant.
10.B.9	91-8K-9	Agreement for Purchase of IBM Products (Original Equipment Manufacturer) dated as of September 30, 1991 between IBM and the Registrant.
10.B.11	91K	Agreement dated October 9, 1991 between Apple Corps Limited and the Registrant.
10.B.12	92K	Microprocessor Requirements Agreement dated January 31, 1992 between the Registrant and Motorola, Inc.
10.B.13	96/2Q	Restructuring Agreement dated December 14, 1995, among Registrant, Taligent, Inc. and International Business Machines Corporation.
10.B.14	96/2Q	Stock Purchase Agreement dated April 4, 1996 between Registrant and SCI Systems, Inc.
10.B.16	96/3Q	Fountain Manufacturing Agreement dated May 31, 1996 between Registrant and SCI Systems, Inc.
10.B.17		Preferred Stock Purchase Agreement, dated as of August 5, 1997, between Apple Computer, Inc. and Microsoft Corporation.
11		Computation of earnings (loss) per common share.
21		Subsidiaries of the Company.
23.1		Consent of KPMG Peat Marwick LLP, Independent Auditors.
23.2		Consent of Ernst & Young LLP, Independent Auditors.

*Notes appear on pages 65-66.

**Represents a management contract or compensatory plan or arrangement.

EXHIBIT NUMBER	NOTES*	DESCRIPTION
24		Power of Attorney (included on page 66).
27		Financial Data Schedule.

NOTES

88K	Incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1988 (the "1988 Form 10-K").
88-S3	Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 (file no. 33-23317) filed July 27, 1988.
88K-10.1	Incorporated by reference to Exhibit 10.1 to the 1988 Form 10-K. Confidential treatment as to certain portions of these agreements has been granted.
89-8A	Incorporated by reference to Exhibit 1 to the Company's Registration Statement on Form 8-A filed with the Securities and Exchange Commission on May 26, 1989.
90/2Q	Incorporated by reference to Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 30, 1990.
91K	Incorporated by reference to the exhibit of that number in the Company's Annual Report on Form 10-K for the fiscal year ended September 27, 1991 (the "1991 Form 10-K").
91-8K-7	Incorporated by reference to Exhibit 7 to the October 1991 Form 8-K.
91-8K-8	Incorporated by reference to Exhibit 8 to the October 1991 Form 8-K.
91-8K-9	Incorporated by reference to Exhibit 9 to the October 1991 Form 8-K.
92K	Incorporated by reference to the exhibit of that number in the Company's Annual Report on Form 10-K for the fiscal year ended September 25, 1992 (the "1992 Form 10-K").
93K-10.A.15	Incorporated by reference to Exhibit 10.A.15 to the 1993 Form 10-K.
93/3Q	Incorporated by reference to Exhibit 10.A.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 25, 1993.
94/2Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended April 1, 1994.

*Notes appear on pages 65-66.

NOTES	

96/1Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended December 29, 1995.
96/2Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended March 29, 1996.
96/3Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended June 28, 1996.
96-S3/A-4.1.1, -4.2.1, -4.3.1, -4.8	Incorporated by reference to the exhibit 4.1, 4.2, 4.3, and 4.8, respectively, in the Company's Registration Statement on Form S-3/A (file no. 333-10961) filed October 30, 1996.
96K	Incorporated by reference to the exhibit of that number in the Company's Annual Report on Form 10-K for the fiscal year ended September 27, 1996 (the "1996 Form 10-K").
97/1Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended December 27, 1996.
97/2Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended March 28, 1997.
97/3Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended June 27, 1997.

(d) FINANCIAL STATEMENT SCHEDULE

See Item 14(a)(2) of this Form 10-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, this 4th day of December 1997.

APPLE COMPUTER, INC.

By: /s/ FRED D. ANDERSON
Fred D. Anderson
EXECUTIVE VICE PRESIDENT AND
CHIEF FINANCIAL OFFICER

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Steven P. Jobs and Fred D. Anderson, jointly and severally, his attorneys-in-fact, each with the power of substitution, for him in any and all capacities, to sign any amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

NAME	*TITLE*	*DATE*
/s/ STEVEN P. JOBS *STEVEN P. JOBS*	*Interim Chief Executive Officer and Director (Principal Executive Officer)*	*December 4, 1997*
/s/ FRED D. ANDERSON *FRED D. ANDERSON*	*Executive Vice President and Chief Financial Officer (Principal Financial Officer)*	*December 4, 1997*
/s/ WILLIAM V. CAMPBELL *WILLIAM V. CAMPBELL*	*Director*	*December 4, 1997*
/s/ GARETH C.C. CHANG *GARETH C.C. CHANG*	*Director*	*December 4, 1997*
/s/ LAWRENCE J. ELLISON *LAWRENCE J. ELLISON*	*Director*	*December 4, 1997*
/s/ EDGAR S. WOOLARD, JR. *EDGAR S. WOOLARD, JR.*	*Director*	*December 4, 1997*
/s/ JEROME B. YORK *JEROME B. YORK*	*Director*	*December 4, 1997*

BY-LAWS

OF

APPLE COMPUTER, INC.

(a California corporation)

(as amended through December 1, 1997)

Article I

OFFICES

SECTION 1.1: PRINCIPAL OFFICE. The principal executive office for the transaction of the business of this corporation shall be 1 Infinite Loop, Cupertino, California 95014. The Board of Directors is hereby granted full power and authority to change the location of the principal executive office from one location to another.

SECTION 1.2: OTHER OFFICES. One or more branch or other subordinate offices may at any time be fixed and located by the Board of Directors at such place or places within or without the State of California as it deems appropriate.

Article II

DIRECTORS

SECTION 2.1: EXERCISE OF CORPORATE POWERS. Except as otherwise provided by these By-Laws, by the Articles of Incorporation of this corporation or by the laws of the State of California now or hereafter in force, the business and affairs of this corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

SECTION 2.2: NUMBER. The number of directors of the corporation shall be not less than five (5) nor more than nine (9). The exact number of directors shall be six (6) until changed within the limits specified above, by a by-law amending this section, duly adopted by the Board of Directors or by the shareholders. The indefinite number of directors may be changed, or a definite number fixed without provision for an indefinite number, by a duly adopted amendment to the Articles of Incorporation or by an amendment to this by-law duly adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote; provided, however, that an amendment reducing the fixed number or the minimum number of directors to a number less than five (5) cannot be adopted if the votes cast against its adoption at a meeting of the shareholders, or the shares not consenting in the case of action by written consent, are equal to more than 16-2/3% of the outstanding shares entitled to vote. No amendment may change the stated maximum number of authorized directors to a number greater than two times the stated minimum number of directors minus one.

SECTION 2.3: NEED NOT BE SHAREHOLDERS. The directors of this corporation need not be shareholders of this corporation.

SECTION 2.4: COMPENSATION. Directors and members of committees may receive such compensation, if any, for their services as may be fixed or determined by resolution of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving this corporation in any other capacity and receiving compensation therefor.

SECTION 2.5: ELECTION AND TERM OF OFFICE. The directors shall be divided into two classes, designated Class I and Class II. Each class shall consist of one-half of the directors or as close an approximation as possible. The initial term of office of the directors of Class I shall expire at the annual meeting to be held during fiscal year 1991 and the initial term of office of the directors of Class II shall expire at the annual meeting to be held during fiscal year 1992. At each annual meeting, commencing with the annual meeting to be held during fiscal year 1991, each of the successors to the directors of the class whose term shall have expired at such annual meeting shall be elected for a term running until the second annual meeting next succeeding his or her election and until his or her successor shall have been duly elected and qualified.

SECTION 2.6: VACANCIES. A vacancy or vacancies on the Board of Directors shall exist in case of the death, resignation or removal of any director, or if the authorized number of directors is increased, or if the shareholders fail, at any annual meeting of shareholders at which any director is elected, to elect the full authorized number of directors to be voted for at that meeting. The Board of Directors may declare vacant the office of a director if he or she is declared of unsound mind by an order of court or convicted of a felony or if, within 60 days after notice of his or her election, he or she does not accept the office. Any vacancy, except for a vacancy created by removal of a director as provided in Section 2.7 hereof, may be filled by a person selected by a majority of the remaining directors then in office, whether or not less than a quorum, or by a sole remaining director. Vacancies occurring in the Board of Directors by reason of removal of directors shall be filled only by approval of shareholders. The shareholders may elect a director at any time to fill any vacancy not filled by the directors. Any such election by written consent requires the consent of a majority of the outstanding shares entitled to vote. If, after the filling of any vacancy by the directors, the directors then in office who have been elected by the shareholders shall constitute less than a majority of the directors then in office, any holder or holders of an aggregate of 5% or more of the total number of shares at the time outstanding having the right to vote for such directors may call a special meeting of shareholders to be held to elect the entire Board of Directors. The term of office of any director shall terminate upon such election of a successor. Any director may resign effective upon giving written notice to the Chairman of the Board, if any, the Chief Executive Officer, the President, the Secretary or the Board of Directors of this corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective. A reduction of the authorized number of directors shall not remove any director prior to the expiration of such director's term of office.

SECTION 2.7: REMOVAL. The entire Board of Directors or any individual director may be removed without cause from office by an affirmative vote of a majority of the outstanding shares entitled to vote; provided that, unless the entire Board of Directors is removed, no director shall be removed when the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively (without regard to whether such shares may be voted cumulatively) at an election at which the same total number of votes were cast, or, if such action is taken by written consent, all shares entitled to vote were voted, and either the number of directors elected at the most recent annual meeting of shareholders, or if greater, the number of directors for whom removal is being sought, were then being elected. If any or all directors are so removed, new directors may be elected at the same meeting or at a subsequent meeting. If at any time a class or series of shares is entitled to elect one or more directors under authority granted by the Articles of Incorporation of this corporation, the

provisions of this Section 2.7 shall apply to the vote of that class or series and not to the vote of the outstanding shares as a whole.

SECTION 2.8: POWERS AND DUTIES. Without limiting the generality or extent of the general corporate powers to be exercised by the Board of Directors pursuant to Section 2.1 of these By-Laws, it is hereby provided that the Board of Directors shall have full power with respect to the following matters:

(a) To purchase, lease, and acquire any and all kinds of property, real, personal or mixed, and at its discretion to pay therefor in money, in property and/or in stocks, bonds, debentures or other securities of this corporation.

(b) To enter into any and all contracts and agreements which in its judgment may be beneficial to the interests and purposes of this corporation.

(c) To fix and determine and to vary from time to time the amount or amounts to be set aside or retained as reserve funds or as working capital of this corporation or for maintenance, repairs, replacements or enlargements of its properties.

(d) To declare and pay dividends in cash, shares and/or property out of any funds of this corporation at the time legally available for the declaration and payment of dividends on its shares.

(e) To adopt such rules and regulations for the conduct of its meetings and the management of the affairs of this corporation as it may deem proper.

(f) To prescribe the manner in which and the person or persons by whom any or all of the checks, drafts, notes, bills of exchange, contracts and other corporate instruments shall be executed.

(g) To accept resignations of directors; to declare vacant the office of a director as provided in Section 2.6 hereof; and, in case of vacancy in the office of directors, to fill the same to the extent provided in Section 2.6 hereof.

(h) To create offices in addition to those for which provision is made by law or these By-Laws; to elect and remove at pleasure all officers of this corporation, fix their terms of office, prescribe their powers and duties, limit their authority and fix their salaries in any way it may deem advisable which is not contrary to law or these By-Laws; and, if it sees fit, to require from the officers or any of them security for faithful service.

(i) To designate some person to perform the duties and exercise the powers of any officer of this corporation during the temporary absence or disability of such officer.

(j) To appoint or employ and to remove at pleasure such agents and employees as it may see fit, to prescribe their titles, powers and duties, limit their authority, and fix their salaries in any way it may deem advisable which is not contrary to law or these By-Laws; and, if it sees fit, to require from them or any of them security for faithful performance.

(k) To fix a time in the future, which shall not be more than 60 days nor less than 10 days prior to the date of the meeting nor more than sixty (60) days prior to any other action for which it is fixed, as a record date for the determination of the shareholders entitled to notice of and to vote at any meeting, or entitled to receive any payment of any dividend or other

distribution, or allotment of any rights, or entitled to exercise any rights in respect of any other lawful action; and in such case only shareholders of record on the date so fixed shall be entitled to notice of and to vote at the meeting or to receive the dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of this corporation after any record date fixed as aforesaid. The Board of Directors may close the books of this corporation against transfers of shares during the whole or any part of such period.

(l) To fix and locate from time to time the principal office for the transaction of the business of this corporation and one or more branch or other subordinate office or offices of this corporation within or without the State of California; to designate any place within or without the State of California for the holding of any meeting or meetings of the shareholders or the Board of Directors, as provided in Sections 10.1 and 11.1 hereof; to adopt, make and use a corporate seal, and to prescribe the forms of certificates for shares and to alter the form of such seal and of such certificates from time to time as in its judgment it may deem best, provided such seal and such certificates shall at all times comply with the provisions of law now or hereafter in effect.

(m) To authorize the issuance of shares of stock of this corporation in accordance with the laws of the State of California and the Articles of Incorporation of this corporation.

(n) Subject to the limitation provided in Section 14.2 hereof, to adopt, amend or repeal from time to time and at any time these By-Laws and any and all amendments thereof.

(o) To borrow money and incur indebtedness on behalf of this corporation, including the power and authority to borrow money from any of the shareholders, directors or officers of this corporation, and to cause to be executed and delivered therefor in the corporate name promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities therefor, and the note or other obligation given for any indebtedness of this corporation, signed officially by any officer or officers thereunto duly authorized by the Board of Directors shall be binding on this corporation.

(p) To designate and appoint committees of the Board of Directors as it may see fit, to prescribe their names, powers and duties and limit their authority in any way it may deem advisable which is not contrary to law or these By-Laws.

(q) Generally to do and perform every act and thing whatsoever that may pertain to the office of a director or to a board of directors.

Article III

OFFICERS

SECTION 3.1: ELECTION AND QUALIFICATIONS. The officers of this corporation shall consist of a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary, a Chief Financial Officer and such other officers, including, but not limited to, a Chairman of the Board of Directors, a Treasurer, and Assistant Secretaries and Assistant Treasurers as the Board of Directors shall deem expedient, who shall be chosen in such manner and hold their offices for such terms as the Board of Directors may prescribe. Any two or more of such offices may be held by the same person. Any Vice President, Assistant Treasurer or Assistant Secretary, respectively,

may exercise any of the powers of the Chief Executive Officer, the President, the Chief Financial Officer, or the Secretary, respectively, as directed by the Board of Directors, and shall perform such other duties as are imposed upon him or her by the By-Laws or the Board of Directors.

SECTION 3.2: TERM OF OFFICE AND COMPENSATION. The term of office and salary of each of said officers and the manner and time of the payment of such salaries shall be fixed and determined by the Board of Directors and may be altered by said Board from time to time at its pleasure, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to this corporation, without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party. If any vacancy occurs in any office of this corporation, the Board of Directors may elect a successor to fill such vacancy.

Article IV

CHAIRMAN OF THE BOARD

SECTION 4.1: POWERS AND DUTIES. The Chairman of the Board of Directors, if there be one, shall have the power to preside at all meetings of the Board of Directors and shall have such other powers and shall be subject to such other duties as the Board of Directors may from time to time prescribe.

Article V

CHIEF EXECUTIVE OFFICER

SECTION 5.1: POWERS AND DUTIES. The powers and duties of the Chief Executive Officer are:
(a) To act as the general manager and chief executive officer of this corporation and, subject to the control of the Board of Directors, to have general supervision, direction and control of the business and affairs of this corporation.

(b) To preside at all meetings of the shareholders and, in the absence of the Chairman of the Board or if there be no Chairman, at all meetings of the Board of Directors.

(c) To call meetings of the shareholders and meetings of the Board of Directors to be held at such times and, subject to the limitations prescribed by law or by these By-Laws, at such places as he or she shall deem proper.

(d) To affix the signature of this corporation to all deeds, conveyances, mortgages, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board of Directors or which, in the judgment of the Chief Executive Officer, should be executed on behalf of this corporation; to sign certificates for shares of stock of this corporation; and, subject to the direction of the Board of Directors, to have general charge of the property of this corporation and to supervise and control all officers, agents and employees of this corporation.

Article VA

PRESIDENT

SECTION 5A.1: POWERS AND DUTIES. The powers and duties of the President are:

(a) To act as the general manager of this corporation and, subject to the control of the Board of Directors, to have general supervision, direction and control of the business and affairs of this corporation.

(b) To preside at all meetings of the shareholders and, in the absence of the Chairman of the Board and the Chief Executive Officer or if there be no Chairman or Chief Executive Officer, at all meetings of the Board of Directors.

(c) To affix the signature of this corporation to all deeds, conveyances, mortgages, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board of Directors or which, in the judgment of the President, should be executed on behalf of this corporation; to sign certificates for shares of stock of this corporation; and, subject to the direction of the Board of Directors, to have general charge of the property of this corporation and to supervise and control all officers, agents and employees of this corporation.

SECTION 5A.2: PRESIDENT PRO TEM. If neither the Chairman of the Board, the Chief Executive Officer, the President, nor any Vice President is present at any meeting of the Board of Directors, a President pro tem may be chosen to preside and act at such meeting. If neither the Chief Executive Officer, the President nor any Vice President is present at any meeting of the shareholders, a President pro tem may be chosen to preside at such meeting.

Article VI
VICE PRESIDENT

SECTION. 6.1: POWERS AND DUTIES. The titles, powers and duties of the Vice President or Vice Presidents shall be prescribed by the Board of Directors. In case of the absence, disability or death of the Chief Executive Officer, the President, the Vice President, or one of the Vice Presidents, shall exercise all his or her powers and perform all his or her duties. If there is more than one Vice President, the order in which the Vice Presidents shall succeed to the powers and duties of the Chief Executive Officer or President shall be as fixed by the Board of Directors.

Article VII

SECRETARY

SECTION 7.1: POWERS AND DUTIES. The powers and duties of the Secretary are:

(a) To keep a book of minutes at the principal executive office of this corporation, or such other place as the Board of Directors may order, of all meetings of its directors and shareholders with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at shareholders' meetings and the proceedings thereof.

(b) To keep the seal of this corporation and to affix the same to all instruments which may require it.

(c) To keep or cause to be kept at the principal executive office of this corporation, or at the office of the transfer agent or agents, a record of the shareholders of this corporation, giving the names and addresses of all shareholders and the number and class of

shares held by each, the number and date of certificates issued for shares and the number and date of cancellation of every certificate surrendered for cancellation.

(d) To keep a supply of certificates for shares of this corporation, to fill in all certificates issued, and to make a proper record of each such issuance; provided that so long as this corporation shall have one or more duly appointed and acting transfer agents of the shares, or any class or series of shares, of this corporation, such duties with respect to such shares shall be performed by such transfer agent or transfer agents.

(e) To transfer upon the share books of this corporation any and all shares of this corporation; provided that so long as this corporation shall have one or more duly appointed and acting transfer agents of the shares, or any class or series of shares, of this corporation, such duties with respect to such shares shall be performed by such transfer agent or transfer agents, and the method of transfer of each certificate shall be subject to the reasonable regulations of the transfer agent to which the certificate is presented for transfer and, also, if this corporation then has one or more duly appointed and acting registrars, subject to the reasonable regulations of the registrar to which a new certificate is presented for registration; and provided, further, that no certificate for shares of stock shall be issued or delivered or, if issued or delivered, shall have any validity whatsoever until and unless it has been signed or authenticated in the manner provided in Section 12.3 hereof.

(f) To make service and publication of all notices that may be necessary or proper and without command or direction from anyone. In case of the absence, disability, refusal or neglect of the Secretary to make service or publication of any notices, then such notices may be served and/or published by the Chief Executive Officer, the President or a Vice President, or by any person thereunto authorized by either of them or by the Board of Directors or by the holders of a majority of the outstanding shares of this corporation.

(g) Generally to do and perform all such duties as pertain to such office and as may be required by the Board of Directors.

Article VIII

CHIEF FINANCIAL OFFICER

SECTION 8.1: POWERS AND DUTIES. The powers and duties of the Chief Financial Officer are:

(a) To supervise and control the keeping and maintaining of adequate and correct accounts of this corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. The books of account shall at all reasonable times be open to inspection by any director.

(b) To have the custody of all funds, securities, evidences of indebtedness and other valuable documents of this corporation and, at his or her discretion, to cause any or all thereof to be deposited for the account of this corporation with such depository as may be designated from time to time by the Board of Directors.

(c) To receive or cause to be received, and to give or cause to be given, receipts and acquittances for moneys paid in for the account of this corporation.

(d) To disburse, or cause to be disbursed, all funds of this corporation as may be directed by the Chief Executive Officer, the President or the Board of Directors, taking proper vouchers for such disbursements.

(e) To render to the Chief Executive Officer, the President or to the Board of Directors, whenever either may require, accounts of all transactions as Chief Financial Officer and of the financial condition of this corporation.

(f) Generally to do and perform all such duties as pertain to such office and as may be required by the Board of Directors.

Article VIIIA

APPOINTED VICE PRESIDENTS, ETC.

SECTION 8A.1: APPOINTED VICE PRESIDENTS, ETC.; APPOINTMENT, DUTIES, ETC. The Chief Executive Officer of the corporation shall have the power, in the exercise of his or her discretion, to appoint additional persons to hold positions and titles such as vice president of the corporation or a division of the corporation or president of a division of the corporation, or similar such titles, as the business of the corporation may require, subject to such limits in appointment power as the Board may determine. The Board shall be advised of any such appointment at a meeting of the Board, and the appointment shall be noted in the minutes of the meeting. The minutes shall clearly state that such persons are non-corporate officers appointed pursuant to this Section 8A.1 of these By-laws.

Each such appointee shall have such title, shall serve in such capacity and shall have such authority and perform such duties as the Chief Executive Officer of the corporation shall determine.

Appointees may hold titles such as "president" of a division or other group within the corporation, or "vice president" of the corporation or of a division or other group within the corporation. However, any such appointee, absent specific election by the Board as an elected corporate officer, (i) shall not be considered an officer elected by the Board of Directors pursuant to Article III of these By-Laws and shall not have the executive powers or authority of corporate officers elected pursuant to such Article III, (ii) shall not be considered (a) an "officer" of the corporation for the purposes of Rule 3b-2 promulgated under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "Act") or an "executive officer" of the corporation for the purposes of Rule 3b-7 promulgated under the Act, and similarly shall not be considered an "officer" of the corporation for the purposes of Section 16 of the Act (as such persons shall not be given the access to inside information of the corporation enjoyed by officers of the corporation) or an "executive officer" of the corporation for the purposes of Section 14 of the Act or (b) a "corporate officer" for the purposes of Section 312 of the California Corporation Code (the "Code"), except in any such case as otherwise required by law, and (iii) shall be empowered to represent himself or herself to third parties as an appointed vice president, etc., only, and shall be empowered to execute documents, bind the corporation or otherwise act on behalf of the corporation only as authorized by the Chief Executive Officer or the President of the Corporation or by resolution of the Board of Directors.

An elected officer of the corporation may also serve in an appointed capacity hereunder.

Article IX

EXECUTIVE COMMITTEE

SECTION 9.1: APPOINTMENT AND PROCEDURE. The Board of Directors may, by resolution adopted by a majority of the authorized number of directors, appoint from among its members an Executive Committee of two or more members. The Executive Committee may make its own rules of procedure subject to Section 11.9 hereof, and shall meet as provided by such rules or by a resolution adopted by the Board of Directors (which resolution shall take precedence). A majority of the members of the Executive Committee shall constitute a quorum, and in every case the affirmative vote of a majority of all members of the Committee shall be necessary to the adoption of any resolution by such Committee.

SECTION 9.2: POWERS. During the intervals between the meetings of the Board of Directors, the Executive Committee, in all cases in which specific directions shall not have been given by the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of this corporation in such manner as the Committee may deem best for the interests of this corporation, except with respect to:

(a) any action for which California law also requires shareholder approval,

(b) the filling of vacancies on the Board of Directors or in the committee,

(c) the fixing of compensation of the directors for serving on the Board of Directors or on any committee,

(d) the amendment or repeal of By-Laws or the adoption of new By-Laws,

(e) the amendment or repeal of any resolution of the Board of Directors which by its express terms is not so amendable or repealable,

(f) a distribution to the shareholders of this corporation, except at a rate or in a periodic amount or within a price range determined by the Board of Directors,

(g) the appointment of other committees of the Board of Directors or the members thereof.

Article X

MEETINGS OF SHAREHOLDERS

SECTION 10.1: PLACE OF MEETINGS. Meetings (whether regular, special or adjourned) of the shareholders of this corporation shall be held at the principal executive office for the transaction of business of this corporation, or at any place within or without the State which may be designated by written consent of all the shareholders entitled to vote thereat, or which may be designated by resolution of the Board of Directors. Any meeting shall be valid wherever held if held by the written consent of all the shareholders entitled to vote thereat, given either before or after the meeting and filed with the Secretary of this corporation.

SECTION 10.2: ANNUAL MEETINGS. The annual meeting of the shareholders shall be held at the hour of 10:00 a.m. on the last Wednesday in January in each year , if not a legal holiday, and if a legal holiday, then on the next succeeding business day not a legal holiday or at

such other time in a particular year as may be designated by written consent of all the shareholders entitled to vote thereat or which may be designated by resolution of the Board of Directors. Such annual meetings shall be held at the place provided pursuant to Section 10.1 hereof. Said annual meetings shall be held for the purpose of the election of directors, for the making of reports of the affairs of this corporation and for the transaction of such other business as may come before the meeting.

SECTION 10.3: SPECIAL MEETINGS. Special meetings of the shareholders for any purpose or purposes whatsoever may be called at any time by the President or by the Board of Directors, or by two or more members thereof, or by one or more holders of shares entitled to cast not less than ten percent (10%) of the votes on the record date established pursuant to Section 10.8. Upon request in writing sent by registered mail to the Chief Executive Officer, President, Vice President or Secretary, or delivered to any such officer in person, by any person or persons entitled to call a special meeting of shareholders (such request, if sent by a shareholder or shareholders, to include the information required by Section 10.13), it shall be the duty of such officer, subject to the immediately succeeding sentence, to cause notice to be given to the shareholders entitled to vote that a meeting will be requested by the person or persons calling the meeting, the date of which meeting, which shall be set by such officer, to be not less than 35 days nor more than 60 days after such request or, if applicable, determination of the validity of such request pursuant to the immediately succeeding sentence. Within seven days after receiving such a written request from a shareholder or shareholders of the corporation, the Board of Directors shall determine whether shareholders owning not less than ten percent (10%) of the shares as of the record date established pursuant to
Section 10.8 for such request support the call of a special meeting and notify the requesting party or parties of its finding.

SECTION 10.4: NOTICE OF MEETINGS. Notice of any meeting of shareholders shall be given in writing not less than 10 nor more than 60 days before the date of the meeting to each shareholder entitled to vote thereat by the Secretary or an Assistant Secretary, or other person charged with that duty, or if there be no such officer or person, or in case of his or her neglect or refusal, by any director or shareholder. The notice shall state the place, date and hour of the meeting and (i) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (ii) in the case of the annual meeting, those matters which the Board of Directors, at the time of the mailing of the notice, intends to present for action by the shareholders, but any proper matter may be presented at the meeting for such action except that notice must be given or waived in writing of any proposal relating to approval of contracts between the corporation and any director of this corporation, amendment of the Articles of Incorporation, reorganization of this corporation or winding up of this corporation. The notice of any meeting at which directors are to be elected shall include the names of nominees intended at the time of the notice to be presented by management for election. Written notice shall be given by this corporation to any shareholder, either (i) personally or (ii) by mail or other means of written communication, charges prepaid, addressed to such shareholder at such shareholder's address appearing on the books of this corporation or given by such shareholder to this corporation for the purpose of notice. If a shareholder gives no address or no such address appears on the books of this corporation, notice shall be deemed to have been given if sent by mail or other means of written communication addressed to the place where the principal executive office of this corporation is located, or if published at least once in a newspaper of general circulation in the county in which such office is located. The notice shall be deemed to have been given at the time when delivered personally or deposited in the United States mail, postage prepaid, or sent by other means of written communication and addressed as hereinbefore provided. An affidavit of delivery or mailing of any notice in accordance with the provisions of this Section 10.4, executed by the Secretary, Assistant Secretary or any transfer agent, shall be prima facie evidence of the giving of the notice. If any notice addressed to the shareholder at the address of such shareholder appearing on the books of the corporation is returned to this

corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the shareholder at such address, all future notices shall be deemed to have been duly given without further mailing if the same shall be available for the shareholder upon written demand of the shareholder at the principal executive office of this corporation for a period of one year from the date of the giving of the notice to all other shareholders.

SECTION 10.5: CONSENT TO SHAREHOLDERS' MEETINGS. The transactions of any meeting of shareholders, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the shareholders entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law to be included in the notice but not so included, if such objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of shareholders need be specified in any written waiver of notice, except as to approval of contracts between this corporation and any of its directors, amendment of the Articles of Incorporation, reorganization of this corporation or winding up the affairs of this corporation.

SECTION 10.6: QUORUM. The presence in person or by proxy of the holders of a majority of the shares entitled to vote at any meeting of shareholders shall constitute a quorum for the transaction of business. Shares shall not be counted to make up a quorum for a meeting if voting of such shares at the meeting has been enjoined or for any reason they cannot be lawfully voted at the meeting. The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

SECTION 10.7: ADJOURNED MEETINGS. Any shareholders' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the shares, the holders of which are either present in person or represented by proxy thereat, but, except as provided in Section 10.6 hereof, in the absence of a quorum, no other business may be transacted at such meeting. When a meeting is adjourned for more than 45 days or if after adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at a meeting. Except as aforesaid, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which such adjournment is taken. At any adjourned meeting the shareholders may transact any business which might have been transacted at the original meeting.

SECTION 10.8: VOTING RIGHTS. Only persons in whose names shares entitled to vote stand on the stock records of this corporation at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held or, if some other day be fixed for the determination of shareholders of record pursuant to Section 2.8(k) hereof, then on such other day, shall be entitled to vote at such meeting. In the absence of any contrary provision in the Articles of Incorporation or in any applicable statute relating to the election of directors or to other particular matters, each such person shall be entitled to one vote for each share.

In order that the corporation may determine the shareholders entitled to consent to corporate action in writing without a meeting or request a special meeting of the shareholders pursuant to Section 10.3, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than fourteen (14) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any shareholder of record seeking to have the shareholders authorize or take corporate action by written consent or request a special meeting of the shareholders pursuant to Section 10.3 shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in no event later than twenty eight (28) days after the date on which such request is received, adopt a resolution fixing the record date.

SECTION 10.9: ACTION BY WRITTEN CONSENTS. Any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Within fourteen (14) days after receiving such written consent or consents from shareholders of the corporation, the Board of Directors shall determine whether holders of outstanding shares as of the record date established pursuant to Section 10.8 having not less than the minimum number of votes which would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted have properly consented thereto in writing and notify the requesting party of its finding. Unless the consents of all shareholders entitled to vote have been solicited in writing, notice of any shareholder approval of (i) contracts between this corporation and any of its directors, (ii) indemnification of any person, (iii) reorganization of this corporation or (iv) distributions to shareholders upon winding up of this corporation in certain circumstances without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by such approval, and prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent, to those shareholders entitled to vote who have not consented in writing. All notices given hereunder shall conform to the requirements of Section 10.4 hereto and applicable law. When written consents are given with respect to any shares, they shall be given by and accepted from the persons in whose names such shares stand on the books of this corporation at the time such respective consents are given, or any shareholder's proxy holder, or a transferee of the shares or a personal representative of the shareholder or their respective proxy holders, may revoke the consent by a writing received by this corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the Secretary of this corporation, but may not do so thereafter. Such revocation is effective upon its receipt by the Secretary of this corporation. Notwithstanding anything to the contrary, directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.

SECTION 10.10: ELECTIONS OF DIRECTORS. In any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by such shares are elected; votes against the directors and votes withheld with respect to the election of the directors shall have no legal effect. Elections of directors need not be by ballot except upon demand made by a shareholder at the meeting and before the voting begins.

SECTION 10.11: PROXIES. Every person entitled to vote or execute consents shall have the right to do so either in person or by one or more agents authorized by a written proxy executed by such person or such person's duly authorized agent and filed with the Secretary of this

corporation. No proxy shall be valid (l) after revocation thereof, unless the proxy is specifically made irrevocable and otherwise conforms to this Section 10.11 and applicable law, or (2) after the expiration of eleven months from the date thereof, unless the person executing it specifies therein the length of time for which such proxy is to continue in force. Revocation may be effected by a writing delivered to the Secretary of this corporation stating that the proxy is revoked or by a subsequent proxy executed by, or by attendance at the meeting and voting in person by, the person executing the proxy. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, a written notice of such death or incapacity is received by this corporation. A proxy which states that it is irrevocable is irrevocable for the period specified therein when it is held by any of the following or a nominee of any of the following: (l) a pledgee, (2) a person who has purchased or agreed to purchase or holds an option to purchase the shares or a person who has sold a portion of such person's shares in this corporation to the maker of the proxy,
(3) a creditor or creditors of this corporation or the shareholder who extended or continued credit to this corporation or the shareholder in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit and the name of the person extending or continuing the credit, (4) a person who has contracted to perform services as an employee of this corporation, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for, (5) a person designated by or under a close corporation shareholder agreement or a voting trust agreement. In addition, a proxy may be made irrevocable if it is given to secure the performance of a duty or to protect a title, either legal or equitable, until the happening of events which, by its terms, discharge the obligation secured by it. Notwithstanding the period of irrevocability specified, the proxy becomes revocable when the pledge is redeemed, the option or agreement to purchase is terminated or the seller no longer owns any shares of this corporation or dies, the debt of this corporation or the shareholder is paid, the period of employment provided for in the contract of employment has terminated or the close corporation shareholder agreement or the voting trust agreement has terminated. In addition, a proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability appears on the certificate representing such shares. Every form of proxy or written consent, which provides an opportunity to specify approval or disapproval with respect to any proposal, shall also contain an appropriate space marked "abstain", whereby a shareholder may indicate a desire to abstain from voting his or her shares on the proposal. A proxy marked "abstain" by the shareholder with respect to a particular proposal shall not be voted either for or against such proposal. In any election of directors, any form of proxy in which the directors to be voted upon are named therein as candidates and which is marked by a shareholder "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld shall not be voted either for or against the election of a director.

SECTION 10.12: INSPECTORS OF ELECTION. Before any meeting of shareholders, the Board of Directors may appoint any persons other than nominees for office to act as inspectors of election at the meeting or its adjournment. If no inspectors of election are so appointed, the Chairman of the meeting may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election at the meeting. The number of inspectors shall be either one (l) or three (3). If inspectors are appointed at a meeting on the request of one or more shareholders or proxies, the holders of a majority of shares or their proxies present at the meeting shall determine whether one (l) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the Chairman of the meeting may, and upon the request of any shareholder or a shareholder's proxy shall, appoint a person to fill that vacancy.

These inspectors shall:

(a) Determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;

(b) Receive votes, ballots, or consents;

(c) Hear and determine all challenges and questions in any way arising in connection with the right to vote;

(d) Count and tabulate all votes or consents;

(e) Determine when the polls shall close;

(f) Determine the result; and

(g) Do any other acts that may be proper to conduct the election or vote with fairness to all shareholders.

SECTION 10.13: ADVANCE NOTICE OF SHAREHOLDER PROPOSALS AND DIRECTOR NOMINATIONS. Shareholders may nominate one or more persons for election as directors at a meeting of shareholders or propose business to be brought before a meeting of shareholders, or both, only if such shareholder has given timely notice in proper written form of such shareholder's intent to make such nomination or nominations or to propose such business. To be timely, a shareholder's notice must be received by the Secretary of the Corporation not later than 60 days prior to such meeting; provided, however, that in the event less than 70 days' notice or prior public disclosure of the date of the meeting is given or made to shareholders, notice by the shareholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. To be in proper written form a shareholder's notice to the Secretary shall set forth (i) the name and address of the shareholder who intends to make the nominations or propose the business and, as the case may be, of the person or persons to be nominated or of the business to be proposed, (ii) a representation that the shareholder is a holder of record of stock of the Corporation that intends to vote such stock at such meeting and, if applicable, intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice, (iii) if applicable, a description of all arrangements or understandings between the shareholder and each nominee or any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder, (iv) such other information regarding each nominee or each matter of business to be proposed by such shareholder as would be required to be included in a proxy statement filed pursuant to Regulation 14A promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 had the nominee been nominated, or intended to be nominated, or the matter been proposed, or intended to be proposed, by the Board of Directors of the Corporation and (v) if applicable, the consent of each nominee as director of the Corporation if so elected. The chairman of a meeting of shareholders may refuse to acknowledge the nomination of any person or the proposal of any business not made in compliance with the foregoing procedure.

Article XI

MEETINGS OF DIRECTORS

SECTION 11.1: PLACE OF MEETINGS. Meetings (whether regular, special or adjourned) of the Board of Directors of this corporation shall be held at the principal office of this corporation for the transaction of business, as specified in accordance with Section 1.1 hereof, or at any other

place within or without the State which has been designated from time to time by resolution of the Board or which is designated in the notice of the meeting.

SECTION 11.2: REGULAR MEETINGS. Regular meetings of the Board of Directors shall be held after the adjournment of each annual meeting of the shareholders (which regular directors' meeting shall be designated the "Regular Annual Meeting") and at such other times as may be designated from time to time by resolution of the Board of Directors. Notice of the time and place of all regular meetings shall be given in the same manner as for special meetings, except that no such notice need be given if (l) the time and place of such meetings are fixed by the Board of Directors or (2) the Regular Annual Meeting is held at the principal place of business provided at Section 1.1 hereof and on the date specified in Section 10.2 hereof.

SECTION 11.3: SPECIAL MEETINGS. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board, if any, or the President, or any Vice President, or the Secretary or by any two or more directors.

SECTION 11.4: NOTICE OF SPECIAL MEETINGS. Special meetings of the Board of Directors shall be held upon no less than four days' notice by mail or 48 hours' notice delivered personally or by telephone or telegraph to each director. Notice need not be given to any director who signs a waiver of notice or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the home or office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. A notice or waiver of notice need not specify the purpose of any meeting of the Board. If the address of a director is not shown on the records and is not readily ascertainable, notice shall be addressed to him at the city or place in which the meetings of the directors are regularly held. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to all directors not present at the time of adjournment.

SECTION 11.5: QUORUM. A majority of all directors elected by the shareholders and appointed to fill vacancies as provided in Section 2.6 hereof shall constitute a quorum of the Board of Directors for the transaction of business. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors subject to provisions of law relating to interested directors and indemnification of agents of this corporation. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

SECTION 11.6: CONFERENCE TELEPHONE. Members of the Board of Directors may participate in a meeting through use of conference telephone or similar communications equipment, so long as all directors participating in such meeting can hear one another. Participation in a meeting pursuant to this Section 11.6 constitutes presence in person at such meeting.

SECTION 11.7: WAIVER OF NOTICE AND CONSENT. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum is present, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

SECTION 11.8: ACTION WITHOUT A MEETING. Any action required or permitted by law to be taken by the Board of Directors may be taken without a meeting, if all members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same force and effect as the unanimous vote of such directors.

SECTION 11.9: COMMITTEES. The provisions of this Article XI apply also to committees of the Board of Directors and action by such committees, mutatis mutandis.

Article XII

SUNDRY PROVISIONS

SECTION 12.1: INSTRUMENTS IN WRITING. All checks, drafts, demands for money and notes of this corporation, and all written contracts of this corporation, shall be signed by such officer or officers, agent or agents, as the Board of Directors may from time to time designate. No officer, agent, or employee of this corporation shall have the power to bind this corporation by contract or otherwise unless authorized to do so by these By-Laws or by the Board of Directors.

SECTION 12.2: SHARES HELD BY THE CORPORATION. Shares in other corporations standing in the name of this corporation may be voted or represented and all rights incident thereto may be exercised on behalf of the corporation by any officer of this corporation authorized so to do by resolution of the Board of Directors.

SECTION 12.3: CERTIFICATES OF STOCK. There shall be issued to every holder of shares in this corporation a certificate or certificates signed in the name of this corporation by the Chairman of the Board of Directors, if any, or the Chief Executive Officer or the President or a Vice President and by the Chief Financial Officer or an Assistant Chief Financial Officer or the Secretary or any Assistant Secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by this corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

SECTION 12.4: LOST CERTIFICATES. Where the owner of any certificate for shares of this corporation claims that the certificate has been lost, stolen or destroyed, a new certificate shall be issued in place of the original certificate if the owner (l) so requests before this corporation has notice that the original certificate has been acquired by a bona fide purchaser, (2) files with this corporation an indemnity bond in such form and in such amount as shall be approved by the Chief Executive Officer, the President or a Vice President of this corporation, and (3) satisfies any other reasonable requirements imposed by this corporation. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

SECTION 12.5: CERTIFICATION AND INSPECTION OF BY-LAWS. This corporation shall keep at its principal executive or business office the original or a copy of these By-Laws as amended or otherwise altered to date, which shall be open to inspection by the shareholders at all reasonable times during office hours.

SECTION 12.6: ANNUAL REPORTS. The making of annual reports to the shareholders is dispensed with and the requirement that such annual reports be made to shareholders is expressly waived, except as may be directed from time to time by the Board of Directors or the President.

SECTION 12.7: FISCAL QUARTERS. Each fiscal quarter of the Corporation shall be comprised of 13 weeks each of which shall end at midnight on Friday of such week, and the fiscal months in any one calendar quarter shall be comprised of at least four consecutive calendar weeks with one week to be added, at management's discretion, to any one month during such fiscal year.

SECTION 12.8: OFFICER LOANS AND GUARANTIES. If the corporation has outstanding shares held of record by 100 or more persons on the date of approval by the Board of Directors, the corporation may make loans of money or property to, or guarantee the obligations of, any officer of the corporation or its parent or subsidiaries, whether or not the officer is a director, upon the approval of the Board of Directors alone. Such approval by the Board of Directors must be determined by a vote of a majority of the disinterested directors, if it is determined that such a loan or guaranty may reasonably be expected to benefit the corporation. In no event may an officer owning 2% or more of the outstanding common shares of the corporation be extended a loan under this provision.

Article XIII

CONSTRUCTION OF BY-LAWS WITH REFERENCE TO PROVISIONS OF LAW

SECTION 13.1: BY-LAW PROVISIONS ADDITIONAL AND SUPPLEMENTAL TO PROVISIONS OF LAW. All restrictions, limitations, requirements and other provisions of these By-Laws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to the said provisions of law unless such compliance shall be illegal.

SECTION 13.2: BY-LAW PROVISIONS CONTRARY TO OR INCONSISTENT WITH PROVISIONS OF LAW. Any article, section, subsection, subdivision, sentence, clause or phrase of these By-Laws which, upon being construed in the manner provided in Section 13.1 hereof, shall be contrary to or inconsistent with any applicable provision of law, shall not apply so long as said provisions of law shall remain in effect, but such result shall not affect the validity or applicability of any other portions of these By-Laws, it being hereby declared that these By-Laws, and each article, section, subsection, subdivision, sentence, clause, or phrase thereof, would have been adopted irrespective of the fact that any one or more articles, sections, subsections, subdivisions, sentences, clauses or phrases is or are illegal.

Article XIV

ADOPTION, AMENDMENT OR REPEAL OF BY-LAWS

SECTION 14.1: BY SHAREHOLDERS. By-Laws may be adopted, amended or repealed by the vote or written consent of holders of a majority of the outstanding shares entitled to vote. By-Laws specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by the shareholders; provided, however, that a By-Law or amendment of the Articles of Incorporation reducing the number or the minimum number of directors to a number less than five cannot be adopted if the

votes cast against its adoption at a meeting or the shares not consenting in the case of action by written consent are equal to more than 16-2/3% of the outstanding shares entitled to vote.

SECTION 14.2: BY THE BOARD OF DIRECTORS. Subject to the right of shareholders to adopt, amend or repeal By-Laws, By-Laws, other than a By-Law or amendment thereof specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa, may be adopted, amended or repealed by the Board of Directors. A By-Law adopted by the shareholders may restrict or eliminate the power of the Board of Directors to adopt, amend or repeal By-Laws.

Article XV

RESTRICTIONS ON TRANSFER OF STOCK

SECTION 15.1: SUBSEQUENT AGREEMENT OR BY-LAW. If (a) any two or more shareholders of this corporation shall enter into any agreement abridging, limiting or restricting the rights of any one or more of them to sell, assign, transfer, mortgage, pledge, hypothecate or transfer on the books of this corporation any or all of the shares of this corporation held by them, and if a copy of said agreement shall be filed with this corporation, or if (b) shareholders entitled to vote shall adopt any By-Law provision abridging, limiting or restricting the aforesaid rights of any shareholders, then, and in either of such events, all certificates of shares of stock subject to such abridgments, limitations or restrictions shall have a reference thereto endorsed thereon by an officer of this corporation and such certificates shall not thereafter be transferred on the books of this corporation except in accordance with the terms and provisions of such agreement or ByLaw, as the case may be; provided, that no restriction shall be binding with respect to shares issued prior to adoption of the restriction unless the holders of such shares voted in favor of or consented in writing to the restriction.

Article XVI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

SECTION 16.1: INDEMNIFICATION OF DIRECTORS AND OFFICERS. The corporation shall, to the maximum extent and in the manner permitted by the Code, indemnify each of its directors and officers against expenses (as defined in Section 317(a) of the Code), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding (as defined in Section 317(a) of the Code), arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Article XVI, a "director" or "officer" of the corporation includes any person (i) who is or was a director or officer of the corporation, (ii) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

SECTION 16.2: INDEMNIFICATION OF OTHERS. The corporation shall have the power, to the extent and in the manner permitted by the Code, to indemnify each of its employees and agents (other than directors and officers) against expenses (as defined in Section 317(a) of the Code), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding (as defined in Section 317(a) of the Code), arising by reason of

the fact that such person is or was an agent of the corporation. For purposes of this Article XVI, an "employee" or "agent" of the corporation (other than a director or officer) includes any person (i) who is or was an employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

SECTION 16.3: PAYMENT OF EXPENSES IN ADVANCE. Expenses incurred in defending any civil or criminal action or proceeding for which indemnification is required pursuant to Section 16.1 or for which indemnification is permitted pursuant to Section 16.2 following authorization thereof by the Board of Directors, shall be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Article XVI.

SECTION 16.4: INDEMNITY NOT EXCLUSIVE. The indemnification provided by this Article XVI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the Articles of Incorporation.

SECTION 16.5: INSURANCE INDEMNIFICATION. The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was an Agent of the corporation against any liability asserted against or incurred by such person in such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article XVI.

SECTION 16.6: CONFLICTS. No indemnification or advance shall be made under this Article XVI, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the Articles of Incorporation, these bylaws, a resolution of the shareholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

CERTIFICATE OF DETERMINATION OF

PREFERENCES OF SERIES A NON-VOTING CONVERTIBLE PREFERRED STOCK

OF APPLE COMPUTER, INC.

The undersigned, John B. Douglas, III, and Paul D. Carmichael, hereby certify that:

1. They are a duly elected Senior Vice President and Assistant Secretary, respectively, of Apple Computer, Inc., a California corporation (the "Corporation").

2. The Corporation hereby designates one hundred and fifty thousand (150,000) shares of Series A Non-Voting Convertible Preferred Stock.

3. None of the shares of the Series A Non-Voting Convertible Preferred Stock have been issued.

4. Pursuant to authority given by the Corporation's Restated Articles of Incorporation, the Board of Directors of the Corporation has duly adopted the following recitals and resolutions:

WHEREAS, the Restated Articles of Incorporation of the Corporation provide for a class of shares known as Preferred Stock, issuable from time to time in one or more series; and

WHEREAS, the Board of Directors of the Corporation is authorized within the limitations and restrictions stated in the Restated Articles of Incorporation to determine or alter the rights, preferences, privileges and restrictions granted to or imposed on any wholly unissued series of Preferred Stock, to fix the number of shares constituting any such series, and to determine the designation thereof; and

WHEREAS, the Corporation has not issued any shares of Preferred Stock, and the Board of Directors of this Corporation desires to determine the rights, preferences, privileges and restrictions relating to this initial series of Preferred Stock, and the number of shares constituting said series, and the designation of said series;

NOW, THEREFORE, BE IT

RESOLVED: That the President and the Secretary of this Corporation are each authorized to execute, verify and file a certificate of determination of preferences with respect to the Series A Non-Voting Convertible Preferred Stock in accordance with the laws of the State of California.

RESOLVED FURTHER: That the Board of Directors hereby determines the rights, preferences, privileges and restrictions relating to said series of Series A Non-Voting Convertible Preferred Stock shall be as set forth below:

"A. One hundred and fifty thousand (150,000) of the authorized shares of Preferred Stock of the Corporation, none of which have been issued or are outstanding, are hereby designated "Series A Non-Voting Convertible Preferred Stock" (the "Series A Preferred Stock").

B. The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred Stock are as follows:

1. DIVIDEND RIGHTS. The holders of outstanding shares of Series A Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets at the time legally available therefor, a dividend at the rate of 3% of the Original Issue Price per share per annum, payable in preference and priority to any payment of any dividend on Common Stock of the Corporation. If, in any twelve month period, the Board of Directors declares dividends on the Common Stock that would exceed the dividends declared on the Series A Preferred Stock in such period determined on a Common Share Equivalent Basis (as defined below), the Board shall declare and pay an equivalent additional dividend on the Series A Preferred Stock so that the total dividends on the Common Stock and the Series A Preferred Stock are on a parity determined on a Common Share Equivalent Basis. Common Share Equivalent Basis shall be determined by comparing the dividend that would have been or will be declared or paid on the number of shares of Common Stock into which the shares of Series A Preferred Stock would have been or will be convertible as of the record date(s) to the dividends which were paid or will be paid on the Common Stock during such twelve month period. The right to receive dividends on shares of Series A Preferred Stock shall not be cumulative, and no right to such dividends shall accrue to holders of Series A Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any year. The Original Issue Price of the Series A Preferred Stock (as adjusted for any combination, consolidation, share distributions or share dividends with respect to such shares) shall be equal to $1,000 per share.

2. VOTING RIGHTS. Except as otherwise provided by law, the holders of Series A Preferred Stock shall have no voting rights and their consent shall not be required for taking any corporate action.

3. LIQUIDATION, DISSOLUTION OR WINDING UP. Subject to any preferential liquidation rights of any series of Preferred Stock as may then be outstanding, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock and the Series A Preferred Stock in proportion to, in the case of holders of Common Stock, the number of shares of Common Stock held and, in the case of holders of Series A Preferred Stock, the number of shares of Common Stock into which the shares of Series A Preferred Stock are then convertible.

4. CONSOLIDATION, MERGER, EXCHANGE, ETC. In case the Corporation shall enter into any consolidation, merger, combination, statutory share exchange or other transaction in which the Common Stock is exchanged for or changed into other shares or securities, money and/or any other property, then in any such case the Series A Preferred Stock shall at the same time be either, at the option of the Corporation, (a) similarly exchanged or changed into preferred shares of the surviving entity providing the holders of the Series A Preferred Stock with (to the extent possible) the same relative rights and preferences as the Series A Preferred Stock or (b) converted into the shares of stock and other securities, money and/or any other property receivable upon or deemed to be held by holders of Common Stock immediately following such consolidation, merger, combination, statutory share exchange or other transaction, and the holders of the Series A Preferred Stock shall be entitled upon such event to receive such amount of securities, money and/or any other property as the shares of the Common Stock of the Corporation into which such shares of Series A Preferred Stock could have been converted immediately prior to such consolidation, merger, combination, statutory share exchange or other transaction would have been entitled.

5. CONVERSION.

(a) Each share of Series A Preferred Stock shall automatically be converted into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price by the Conversion Price in effect at the time of the conversion upon any sale, pledge, conveyance, hypothecation, assignment or other transfer of such share, whether or not for value, or attempt thereof, by the initial registered holder thereof, other than any such transfer by such holder to a nominee of such holder (without any change in beneficial ownership, as such term is defined under Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")); provided that any transfer by the initial registered holder to any majority-owned subsidiary of the initial registered holder shall not give rise to automatic conversion hereunder unless and until such transferee ceases to be a majority-owned subsidiary of the initial registered holder; and further provided that in the event any pledge, conveyance, hypothecation, assignment or other transfer shall not give rise to automatic conversion hereunder, then any subsequent transfer or attempt thereof by the holder (other than any such transfer by such holder to a nominee of such holder (without any change in beneficial ownership, as such term is defined under Section 13(d) of the Exchange Act) shall be subject to automatic conversion upon the terms and conditions set forth herein. The price at which shares of Common Stock shall be deliverable upon conversion shall initially $16.50 with respect to shares of Series A Preferred Stock (the "Conversion Price"). The initial Conversion Price shall be subject to adjustment as provided below.

(b) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its

shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock.

6. ADJUSTMENT OF CONVERSION FOR DIVIDEND AND DISTRIBUTIONS.

(a) In the event the Corporation shall at any time after issuance of the Series A Preferred Stock declare or pay any dividend or other distribution on Common Stock, payable in Common Stock or other securities or rights convertible into, or exchangeable for, Common Stock, or effect a subdivision or combination or consolidation of the outstanding Common Stock (by reclassification or otherwise) into a greater or lesser number of Common Stock, then in each such case the number of Common Stock issuable upon the conversion of the Series A Preferred Stock shall be adjusted (the "Adjustment") by multiplying the number of Common Stock to which the holder was entitled before such event by a fraction, the numerator of which will be the number of shares of Common Stock outstanding immediately after such event, and the denominator of which will be the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) In the event the Corporation shall at any time after issuance of the Series A Preferred Stock, distribute to holders of its Common Stock, other than as part of a dissolution or liquidation or the winding up of its affairs, any shares of its capital stock, any evidence of indebtedness, or other securities or any of its assets (other than Common Stock or securities convertible into or exchangeable for Common Stock), then, in any such case, the Series A Preferred Stock holder shall be entitled to receive, at the same time as such distribution is made to the holders of Common Stock, with respect to each share of Common Stock issuable upon such conversion, the amount of cash or evidence of indebtedness or other securities or assets which such Series A Preferred Stock holder would have been entitled to receive with respect to each such share of Common Stock as a result of the happening of such event had the Series A Preferred Stock holder converted to Common Stock immediately prior to the record date or other date determining the shareholders entitled to participate in such distribution (the "Determination Date").

7. MINIMAL ADJUSTMENTS. No adjustment in the Original Issue Price need be made if such adjustment would result in a change in the Conversion Price of less than $0.01. Any adjustment of less than $0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of $0.01 or more in the Conversion Price.

8. FRACTIONAL SHARES. In lieu of any fractional shares to which the holder of the Series A Preferred Stock would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the closing price of one share of the Corporation's Common Stock on the trading day prior to conversion, if such price is available. If such price is not available, this Corporation shall pay cash for fractional shares equal to such fraction multiplied by the fair market value of one share of Series A Preferred Stock as

determined by the Board of Directors of the Corporation. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

9. VOTE TO CHANGE THE TERMS OF SERIES A PREFERRED STOCK. The approval of the Board of Directors and the affirmative vote at a meeting duly called by the Board of Directors for such purpose (or the written consent without a meeting) of the holders of not less than fifty percent (50%) of the then outstanding shares of Series A Preferred Stock shall be required to amend, alter, change or repeal any of the powers, designations, preferences and rights of the Series A Preferred Stock.

10. NO OTHER RIGHTS, PRIVILEGES, ETC. Except as specifically set forth herein, the holders of the Series A Preferred Stock shall have no other rights, privileges or preferences with respect to the Series A Preferred Stock.

IN WITNESS WHEREOF, the undersigned each declares under penalty of perjury that the matters set out in the foregoing certificate are true of his own knowledge, and the undersigned have executed this certificate at Cupertino, California as of the 5th day of August, 1997.

/s/ John B. Douglas, III

John B. Douglas, III
Senior Vice President

/s/ Paul D. Carmichael

Paul D. Carmichael
Assistant Secretary

EXHIBIT 4.10

REGISTRATION RIGHTS AGREEMENT

DATED AS OF AUGUST 11, 1997

BETWEEN

APPLE COMPUTER, INC.

AND

MICROSOFT CORPORATION

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "AGREEMENT") is entered into as of this 11th day of August, 1997, between Apple Computer, Inc., a California corporation (the "COMPANY"), and Microsoft Corporation, a Washington corporation (the "PURCHASER").

WHEREAS, the Purchaser intends to purchase shares of Preferred Stock, no par value, of the Company pursuant to the terms and conditions of a Preferred Stock Purchase Agreement dated as of August 5, 1997 (the "PURCHASE AGREEMENT"); and

WHEREAS, the Purchase Agreement requires that the Company enter into this Agreement with the Purchaser;

NOW, THEREFORE, in consideration of the foregoing, the parties to this Agreement hereby agree as follows:

1. DEMAND REGISTRATION. If, (i) at any time after August 11, 2000, or (ii) prior to August 11, 2000 in the event of a CHANGE OF CONTROL or INSOLVENCY PROCEEDINGS as those terms are defined in the Purchase Agreement, the Purchaser shall request the Company in writing to register under the Securities Act of 1933, as amended (the "SECURITIES ACT"), any shares of the Common Stock, no par value, of the Company (the "COMMON STOCK") issuable upon conversion of the Series A Non-Voting Convertible Preferred Stock, no par value (the "PREFERRED STOCK") and, if required by the Securities and Exchange Commission (the "SEC"), the shares of Preferred Stock owned by the Purchaser (the shares of Common Stock and, if applicable, Preferred Stock subject to such request being herein referred to as the "SUBJECT STOCK"), the Company shall use its reasonable best efforts to cause the shares of Subject Stock specified in such request to be registered as soon as reasonably practicable so as to permit the sale thereof, and in connection therewith shall prepare and file a Form S-3 registration statement or such other form as is then available (or any successor form of registration statement to such Form S-3 or other available registration statement) with the SEC under the Securities Act to effect such registration; PROVIDED, HOWEVER, that each such request shall (i) specify the number of shares of Subject Stock intended to be offered and sold, (ii) express the present intention of the Purchaser to offer or cause the offering of such shares of Subject Stock for distribution, (iii) describe the nature or method of the proposed offer and sale thereof, and (iv) contain the undertaking of the Purchaser to provide all such information and materials and take all such action as may be required in order to permit the Company to comply with all applicable requirements of the SEC and to obtain any desired acceleration of the effective date of such registration statement. The Purchaser shall not be entitled to request more than one demand registration statement under this Agreement in any 12-month period, and the Purchaser shall not be entitled to more than a total of two requests for demand registration statements pursuant to this Agreement. The Company agrees not to grant to any other person registration rights pursuant to which such person would have the right to register shares of Common Stock on a registration statement filed by the Company pursuant to the exercise of Purchaser's rights under this Agreement.

2. OBLIGATIONS OF THE COMPANY.

(a) Whenever the Company is required by the provisions of this Agreement to use its reasonable best efforts to effect the registration of any Common Stock under the Securities Act, the Company shall (i) prepare and, as soon as reasonably possible, file with the SEC a registration statement with respect to the shares of Subject Stock, and shall use its reasonable best efforts to cause such registration statement to become effective and to remain effective until the earlier of the sale of the shares of Subject Stock so registered or 90 days subsequent to the effective date of such registration; (ii) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be reasonably necessary to make and to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all securities proposed to be registered pursuant to such registration statement until the earlier of the sale of the shares of Subject Stock so registered or 90 days subsequent to the effective date of such registration statement; and
(iii) take all such other action either necessary or desirable to permit the shares of Subject Stock held by the Purchaser to be registered and disposed of in accordance with the method of disposition described herein.

(b) Notwithstanding the foregoing, if the Company shall furnish to the Purchaser a certificate signed by its Chairman, Chief Executive Officer or Chief Financial Officer stating that (i) filing a registration statement or maintaining effectiveness of a current registration statement would have a material adverse effect on the Company or its stockholders in relation to any material financing, acquisition or other corporate transaction, and the Company has determined in good faith that such disclosure is not in the best interests of the Company and its shareholders, or (ii) the Company has determined in good faith that the filing or maintaining effectiveness of a current registration statement would require disclosure of material information the Company has a valid business purpose of retaining as confidential, the Company shall be entitled to postpone filing or suspend the use by the Purchaser of the registration statement, as the case may be, for a reasonable period of time, but not in excess of an aggregate of 90 calendar days in any 360 day period. If the Company furnishes a notice under this paragraph, the Company shall extend the period during which such registration statement shall be maintained effective as provided in Section 2(a) hereof by the number of days during the period from and including the date of the giving of notice under this paragraph to the date when sales under the registration statement may recommence.

(c) In connection with any registration statement, the following provisions shall apply:

(1) The Company shall furnish to the Purchaser, prior to the filing thereof with the SEC, a copy of any registration statement, and each amendment thereof and each amendment or supplement, if any, to the prospectus included therein and shall use its reasonable best efforts to reflect in each such document, when so filed with the SEC, such comments as the Purchaser and its counsel reasonably may propose.

(2) The Company shall take such action as may be necessary so that (i) any registration statement and any amendment thereto and any prospectus forming part thereof and any amendment or supplement thereto (and each report or other document incorporated therein by reference) complies in all material respects with the Securities Act and the Securities Exchange Act of 1934, as amended (the "EXCHANGE ACT") and the respective rules and regulations thereunder, (ii) any registration statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) any prospectus forming part of any registration statement, and any amendment or supplement to such prospectus, does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(3) (A) The Company shall advise the Purchaser and, if requested by the Purchaser, confirm such advice in writing:

(i) when a registration statement and any amendment thereto has been filed with the SEC and when the registration statement or any post-effective amendment thereto has become effective; and

(ii) of any request by the SEC for amendments or supplements to the registration statement or the prospectus included therein or for additional information.

(B) The Company shall advise the Purchaser and, if requested by Purchaser, confirm such advice in writing of:

(i) the issuance by the SEC of any stop order suspending effectiveness of the registration statement or the initiation of any proceedings for that purpose;

(ii) the receipt by the Company of any notification with respect to the suspension of the qualification of the securities included therein for sale in any jurisdiction or the initiation of any proceeding for such purpose; and

(iii) the happening of any event that requires the making of any changes in the registration statement or the prospectus so that, as of such date, the registration statement and the prospectus do not contain an untrue statement of a material fact and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in the light of the circumstances under which they were made) not misleading (which advice shall be accompanied by an instruction to suspend the use of the prospectus relating to the Subject Stock until the requisite changes have been made).

(4) The Company shall use its reasonable best efforts to prevent the issuance, and if issued to obtain the withdrawal, of any order suspending the effectiveness of the registration statement relating to the Subject Stock at the earliest possible time.

(5) The Company shall furnish to Purchaser with respect to the registration statement relating to the Subject Stock, without charge, at least one copy of such registration statement and any post-effective amendment thereto, including financial statements and schedules, and all reports, other documents and exhibits (including those incorporated by reference).

(6) The Company shall furnish to the Purchaser such number of copies of any prospectus (including any preliminary prospectus and any amended or supplemented prospectus) relating to the Subject Stock, in conformity with the requirements of the Securities Act, as the Purchaser may reasonably request in order to effect the offering and sale of the shares of Subject Stock to be offered and sold, but only while the Company shall be required under the provisions hereof to cause the registration statement to remain current, and the Company consents (except during the continuance of any event described in Sections 2(b) or 2(c)(3)(B)(iii)) to the use of the Prospectus or any amendment or supplement thereto by the Purchaser in connection with the offering and sale of the Subject Stock covered by the Prospectus or any amendment or supplement thereto.

(7) Prior to any offering of Subject Stock pursuant to any registration statement, the Company shall use its reasonable best efforts to register or qualify the shares of Subject Stock covered by such registration statement under the securities or blue sky laws of such states as the Purchaser shall reasonably request, maintain any such registration or qualification current until the earlier of the sale of the shares of Subject Stock so registered or 90 days subsequent to the effective date of the registration statement, and do any and all other acts and things either reasonably necessary or advisable to enable the Purchaser to consummate the public sale or other disposition of the shares of Subject Stock in jurisdictions where the Purchaser desires to effect such sales or other disposition; provided, however, that the Company shall not be required to take any action that would subject it to the general jurisdiction of the courts of any jurisdiction in which it is not so subject or to qualify as a foreign corporation in any jurisdiction where the Company is not so qualified.

(8) In connection with any offering of shares of Subject Stock registered pursuant to this Agreement, the Company shall (x) furnish the Purchaser, at the Company's expense, on a timely basis with certificates free of any restrictive legends representing ownership of the shares of Subject Stock being sold in such denominations and registered in such names as the Purchaser shall request and (y) instruct the transfer agent and registrar of the Subject Stock to release any stop transfer orders with respect to the shares of Subject Stock being sold.

(9) Upon the occurrence of any event contemplated by paragraph 2(c)(3)(B)(iii) above, the Company shall promptly prepare a post-effective amendment to any registration statement or an amendment or supplement to the related prospectus or file any other required document so that, as thereafter delivered to purchasers of the Subject Stock included therein, the prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which

they were made, not misleading. If the Company notifies Purchaser of the occurrence of any event contemplated by Sections 2(b) or 2(c)(3)(B)(iii) above, Purchaser shall suspend the use of the prospectus until the requisite changes to the prospectus have been made.

(10) The Company shall make generally available to its security holders or otherwise provide in accordance with Section 11(a) of the Securities Act as soon as practicable after the effective date of the applicable registration statement an earnings statement satisfying the provisions of Section 11(a) of the Securities Act.

(11) The Company shall, if requested, promptly include or incorporate in a prospectus supplement or post-effective amendment to a registration statement, such information as the managing underwriters administering an underwritten offering of the Subject Stock registered thereunder reasonably request to be included therein and to which the Company does not reasonably object and shall make all required filings of such prospectus supplement or post-effective amendment as soon as practicable after they are notified of the matters to be included or incorporated in such prospectus supplement or post-effective amendment.

(12) If requested, the Company shall enter into an underwriting agreement with a nationally recognized investment banking firm or firms containing representations, warranties, indemnities and agreements then customarily included by an issuer in underwriting agreements with respect to secondary underwritten distributions, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain indemnification provisions and procedures substantially identical to those set forth in Section 4 (or such other provisions and procedures acceptable to the managing underwriters, if any) with respect to all parties to be indemnified pursuant to Section 4.

(13) In the event Purchaser proposes to conduct an underwritten public offering, then the Company shall: (i) make reasonably available for inspection by Purchaser and its counsel, any underwriter participating in the distribution pursuant to such registration statement, and any attorney, accountant or other agent retained by Purchaser or any such underwriter, all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, as is customary for similar due diligence examinations; PROVIDED, HOWEVER, that any information so provided that is designated in writing by the Company, in good faith, as confidential at the time of delivery of such information shall be kept confidential by Purchaser, such underwriter, or any such, attorney, accountant or agent, unless such disclosure is made in connection with a court proceeding or required by law, or such information becomes available to the public generally or through a third party without an accompanying obligation of confidentiality; (ii) obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the managing underwriters) addressed to Purchaser and the underwriters, if any, covering such matters as are customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by Purchaser and underwriters (it being agreed that the matters to be covered by such opinion or written statement by such counsel delivered in connection with such opinions shall include in customary form, without limitation, as of the date of the opinion and as of the effective date of the registration statement or

most recent post-effective amendment thereto, as the case may be, the absence from such registration statement and the prospectus included therein, as then amended or supplemented, including the documents incorporated by reference therein, of an untrue statement of a material fact or the omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; (iii) obtain "cold comfort" letters and updates thereof from the independent public accountants of the Company (and, if necessary, any other independent public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the registration statement), addressed to the underwriters in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with primary underwritten offerings; (iv) deliver such documents and certificates as may be reasonably requested by Purchaser and the managing underwriters, and with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company. The foregoing actions set forth in clauses (ii), (iii) and (iv) of this Section 2(c)(13) shall be performed at each closing under any underwritten offering to the extent required thereunder, but, in any event, need not be performed by the Company more than twice.

(14) The Company will use its best efforts to cause the Subject Stock to be admitted for quotation on the Nasdaq National Market or other stock exchange or trading system on which the Common Stock primarily trades on or prior to the effective date of any registration statement hereunder.

(d) With a view to making available the benefits of certain rules and regulations of the SEC which may at any time permit the sale of the Subject Stock to the public without registration, the Company agrees to:

(e) Make and keep public information available, as those terms are understood and defined in Rule 144 (or any successor provision) under the Securities Act, at all times;

(f) During the term of this Agreement, to furnish to the Purchaser upon request (i) a written statement by the Company as to its compliance with the reporting requirements of Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company, and (iii) such other reports and documents of the Company as the Purchaser may reasonably request in availing itself of any rule or regulation of the SEC allowing the Purchaser to sell any such securities without registration.

3. EXPENSES. The Company shall pay all fees and expenses incurred in connection with the performance of its obligations under Sections 1 and 2 hereof, including, without limitation, all SEC and blue sky registration and filing fees, printing expenses, transfer agents' and registrars' fees, and the reasonable fees and disbursements of the Company's outside counsel and independent accountants incurred in connection with the preparation, filing and amendment of any registration statement authorized by this Agreement (but excluding underwriters' and brokers' discounts and commissions).

4. INDEMNIFICATION AND CONTRIBUTION.

(a) INDEMNIFICATION BY THE COMPANY. In the case of any offering registered pursuant to this Agreement, the Company agrees to indemnify and hold the Purchaser, each underwriter (if any) of shares of Subject Stock under such registration statements and each person who controls any of the foregoing within the meaning of Section 15 of the Securities Act harmless against any and all losses, claims, damages or liabilities to which they or any of them may become subject under the Securities Act or any other statute or common law or otherwise, and to reimburse them, from time to time upon request, for any legal or other expenses incurred by them in connection with investigating any claims and defending any actions, insofar as any such losses, claims, damages, liabilities or actions shall arise out of or shall be based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the registration statement (or any amendment thereto) relating to the sale of such shares of Subject Stock, including all documents incorporated therein by reference, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus (as amended or supplemented if the Company shall have filed with the SEC any amendment thereof or supplement thereto), if used prior to the effective date of such registration statement or contained in the prospectus (as amended or supplemented if the Company shall have filed with the SEC any amendment thereof or supplement thereto), if used within the period during which the Company shall be required to keep the registration statement to which such prospectus relates current pursuant to the terms of this Agreement, or the omission or alleged omission to state therein (if so used) a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; PROVIDED, HOWEVER, that the indemnification agreement contained in this
Section 4(a) shall not apply to such losses, claims, damages, liabilities or actions which shall arise from the sale of shares of Subject Stock to any person if such losses, claims, damages, liabilities or actions shall arise out of or shall be based upon any such untrue statement or alleged untrue statement, or any such omission or alleged omission, if such statement or omission shall have been (x) made in reliance upon and in conformity with information furnished in writing to the Company by the Purchaser or any such underwriter specifically for use in connection with the preparation of the registration statement or any preliminary prospectus or prospectus contained in the registration statement or any such amendment thereof or supplement thereto, or (y) made in any preliminary prospectus, and the prospectus contained in the registration statement as declared effective or in the form filed by the Company with the SEC pursuant to Rule 424 under the Securities Act shall have corrected such statement or omission and a copy of such prospectus shall not have been sent or given to such person at or prior to the confirmation of such sale to him.

(b) INDEMNIFICATION BY THE PURCHASER. In the case of each offering registered pursuant to this Agreement, the Purchaser agrees, in the same manner and to the same extent as set forth in Section 4(a) of this Agreement to indemnify and hold harmless the Company and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, its directors and those officers of the Company who shall have signed any such registration statement

with respect to any statement in or omission from such registration statement or any preliminary prospectus (as amended or as supplemented, if amended or supplemented as aforesaid) or prospectus contained in such registration statement (as amended or as supplemented, if amended or supplemented as aforesaid), if such statement or omission shall have been made in reliance upon and in conformity with information furnished in writing to the Company by the Purchaser specifically for use in connection with the preparation of such registration statement or any preliminary prospectus or prospectus contained in such registration statement or any such amendment thereof or supplement thereto.

(c) NOTICE OF CLAIMS. Each party indemnified under Section 4(a) or Section 4(b) of this Agreement shall, promptly after receipt of notice of the commencement of any action against such indemnified party in respect of which indemnity may be sought, notify the indemnifying party in writing of the commencement thereof, enclosing a copy of all papers served on such indemnified party. The omission of any indemnified party so to notify an indemnifying party of any such action shall not relieve the indemnifying party from any liability in respect of such action which it may have to such indemnified party on account of the indemnity agreement contained in Section 4(a) or Section 4(b) of this Agreement, unless the indemnifying party was prejudiced by such omission, and in no event shall relieve the indemnifying party from any other liability which it may have to such indemnified party. In case any such action shall be brought against any indemnified party and it shall notify an indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party; PROVIDED, that if any indemnified party or parties reasonably determine that there may be legal defenses available to such indemnified party that are different from or in addition to those available to such indemnifying party or that representation of such indemnifying party and any indemnified party by the same counsel would present a conflict of interest, then such indemnifying party shall not be entitled to assume such defense. If an indemnifying party is not entitled to assume the defense of such action as a result of the proviso to the preceding sentence, counsel for such indemnifying party shall be entitled to conduct the defense of such indemnifying party and counsel for the indemnified party shall be entitled to conduct the defense of such indemnified party or parties. If an indemnifying party assumes the defense of an action in accordance with and as permitted by the provisions of this paragraph, such indemnifying party shall not be liable to such indemnified party under Section 4(a) or Section 4(b) of this Agreement for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. In no event shall the indemnifying party be liable for the fees and expenses of more than one counsel (in addition to local counsel) separate from its own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances.

(d) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Section 4 is for any reason held to be unavailable to the indemnified parties although applicable in accordance with its terms, the Company and Purchaser shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature

contemplated by said indemnity incurred by the Company and Purchaser, as incurred; PROVIDED that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person that was not guilty of such fraudulent misrepresentation. As between the Company, on the one hand, and Purchaser, on the other hand, such parties shall contribute to such aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by such indemnity agreement in such proportion as shall be appropriate to reflect the relative fault of the Company, on the one hand, and the Purchaser, on the other hand, with respect to the statements or omissions which resulted in such loss, liability, claim, damage or expense, or action in respect thereof, as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and of the Purchaser, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or by or on behalf of the Purchaser, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Purchaser agree, that it would not be just and equitable if contribution pursuant to this Section 4 were to be determined by pro rata allocation or by any other method of allocation that does not take into account the relevant equitable considerations. For purposes of this Section
4(d), each person who controls the Company or the Purchaser within the meaning of Section 15 of the Securities Act shall have the same rights to contribution as Purchaser or the Company, as the case may be. No party shall be liable for contribution with respect to any action, suit, proceeding or claim settled without its written consent.

(e) The Company may require, as a condition to entering into any underwriting agreement with respect to the registration of Subject Stock, that the Company shall have received an undertaking reasonably satisfactory to it from each underwriter named in any such underwriting agreement, severally and not jointly, to comply with the provisions of paragraphs (a) through (d) of this Section 4.

(f) The obligations of the Company and Purchaser under this
Section 4 shall survive the completion of any offering of Subject Stock in a registration statement.

5. NOTICES. Any notice or other communication given under this Agreement shall be sufficient if in writing and sent by registered or certified mail, return receipt requested, postage prepaid, to a party at its address set forth below (or at such other address as shall be designated for such purpose by such party in a written notice to the other party hereto):

(a) if to the Company, to it at:

One Infinite Loop
Cupertino, CA 95014
Attention: Chief Financial Officer

with a copy addressed as set forth above but to the attention of the General Counsel;

with a copy to:

Larry W. Sonsini
Wilson Sonsini Goodrich & Rosati Professional Corporation 650 Page Mill Road
Palo Alto, CA 94306

(b) if to the Purchaser, to it at:

Microsoft Corporation One Microsoft Way
Building 8
North Office 2211
Redmond, WA 98052
Attn: Attention: Chief Financial Officer

with a copy addressed as set forth above but to the attention of Senior Vice President, Law and Corporate Affairs, with a copy to:.

Richard B. Dodd
Preston Gates & Ellis LLP 5000 Columbia Center 701 Fifth Avenue
Seattle, WA 98104-7078

All such notices and communications shall be effective when received by the addressee.

6. GOVERNING LAW. This Agreement shall be governed in all respects by the internal laws of the State of California as applied to contracts entered into solely between residents of, and to be performed entirely within, such state, and without reference to principles of conflicts of laws or choice of laws.

7. ENTIRE AGREEMENT; AMENDMENTS. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements and understandings among the parties relating to the subject matter hereof. Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought.

8. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9. SEVERABILITY. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restriction of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10. TERMINATION OF COMPANY OBLIGATION. All registration rights provided hereunder shall terminate upon the earlier to occur of (a) the fifth anniversary of the date of this Agreement or (b) such time as, in the written opinion of counsel to the Company, the Purchaser is able to sell all of its Common Stock without registration under the Securities Act or any successor provision thereto during any single three-month period.

11. NO TRANSFER OR ASSIGNMENT OF REGISTRATION RIGHTS. The registration rights set forth in this Agreement shall not be transferable or assignable by the Purchaser, except to (i) any person or group approved in writing by the Company or (ii) to a corporation of which the Purchaser owns not less than 50% of the voting power entitled to be cast in the election of directors; or (iii) any person to whom Purchaser has satisfied the requirements of Section 8.1 (Right of First Refusal) of the Purchase Agreement and the Company has waived or failed to exercise its purchase rights; provided, however, that each transferee agrees in writing to be subject to all the terms and conditions of this Agreement and the Purchase Agreement.

[The balance of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized officers as of the date set forth above.

APPLE COMPUTER, INC.

By: /s/ John B. Douglas, III

Name: John B. Douglas, III

Title: Senior Vice President

MICROSOFT CORPORATION

By: /s/ Greg Maffei

Name: Greg Maffei

Title: Chief Financial Officer

EXHIBIT 10.A.8

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made as of this ____ day of ____, 1997 by and between Apple Computer, Inc., a California corporation (the "Company"), and _____ ("Indemnitee").

WHEREAS, the Company and Indemnitee recognize the difficulty in obtaining directors' and officers' liability insurance that fully and adequately covers directors and officers for their acts and omissions on behalf of the Company and its subsidiaries;

WHEREAS, the Company and Indemnitee further recognize the substantial increase in corporate litigation in general, subjecting officers and directors to expensive litigation risks at the same time as the availability and coverage of liability insurance has been severely limited;

WHEREAS, Indemnitee does not regard the current protection available as adequate under the present circumstances, and Indemnitee and other officers and directors of the Company may not be willing to continue to serve as officers and directors without additional protection; and

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve as officers and directors of the Company and to indemnify its officers and directors so as to provide them with the maximum protection permitted by law.

NOW, THEREFORE, the Company and Indemnitee hereby agree as follows:

1. INDEMNIFICATION.

(a) THIRD PARTY PROCEEDINGS. The Company shall indemnify Indemnitee if Indemnitee is or was a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company or a Subsidiary (as hereinafter defined), by reason of any action or inaction on the part of Indemnitee while a director, officer, employee or agent or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by Indemnitee in connection with such action or proceeding unless the Company shall establish, in accordance with the procedures described in subsection 2(c) of this Agreement, that Indemnitee did not act in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement, conviction, or upon a plea of NOLO CONTENDERE or its equivalent, shall not, of itself, create a presumption (i) that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in the best interests of the Company, or
(ii) with respect to any criminal action or proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(b) PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY. The Company shall indemnify Indemnitee if Indemnitee was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding by or in the right of the Company or any Subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any Subsidiary of the Company, by reason of

any action or inaction on the part of Indemnitee while a director, officer, employee or agent or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including reasonable attorneys' fees) and, to the fullest extent permitted by law, amounts paid in settlement, in each case to the extent actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such action or proceeding unless the Company shall establish, in accordance with the procedures described in subsection 2(c) of this Agreement, that Indemnitee did not act in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the Company and its shareholders, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Company in the performance of Indemnitee's duty to the Company or any Subsidiary of the Company unless and only to the extent that the court in which such action or proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for expenses or amounts paid in settlement and then only to the extent that the court shall determine.

2. EXPENSES; INDEMNIFICATION PROCEDURE.

(a) ADVANCEMENT OF EXPENSES. The Company shall advance all reasonable expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or criminal action or proceeding referenced in subsection 1(a) or 1(b) of this Agreement (but not amounts actually paid in settlement of any such action or proceeding). Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Company as authorized hereby. The advances to be made hereunder shall be paid by the Company to Indemnitee within twenty (20) days following delivery of a written request therefor by Indemnitee to the Company.

(b) NOTICE/COOPERATION BY INDEMNITEE. Indemnitee shall, as a condition precedent to his right to be indemnified or be advanced expenses under this Agreement, give the Company notice in writing as soon as practicable of any claim made against Indemnitee for which indemnification will or could be sought under this Agreement. Notice to the Company shall be directed to the Chief Executive Officer of the Company at the address shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnitee). In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) PROCEDURE. Any indemnification provided for in Section 1 of this Agreement shall be made no later than forty-five (45) days after the resolution (by judgment, settlement, dismissal or otherwise) of the claim to which indemnification is sought. If a claim under this Agreement, under any statute, or under any provision of the Company's Articles of Incorporation or By-laws providing for indemnification, is not paid in full by the Company within such period, Indemnitee may, but need not, at any time thereafter bring an action against the Company to recover the unpaid amount of the claim and, subject to
Section 14 of this Agreement, Indemnitee shall also be entitled to be paid for the expenses (including reasonable attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action or proceeding in advance of its final disposition) that Indemnitee has not met the standards of conduct which make it permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed, but the burden of proving such defense shall be on the Company, and Indemnitee shall be entitled to receive interim payments of expenses pursuant to subsection 2(a) of this Agreement unless and until such defense may be finally adjudicated by court order or judgment from which no further right of appeal exists. It is the parties' intention that if the Company contests Indemnitee's right to indemnification, the question of Indemnitee's right to indemnification shall be for the court to decide, and neither the failure of the Company (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its shareholders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct required by applicable law, nor an actual determination by the Company (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its shareholders) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct.

(d) NOTICE TO INSURERS. If, at the time of the receipt of a notice of a claim pursuant to subsection 2(b) of this Agreement, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(e) RELATIONSHIP TO OTHER SOURCES. Indemnitee shall not be required to exercise any rights against any other parties (for example, under any insurance policy purchased by the Company, Indemnitee or any other person or entity) before Indemnitee enforces this Agreement. However, to the extent the Company actually indemnifies Indemnitee or advances expenses, the Company shall be entitled to enforce any such rights which Indemnitee may have against third parties. Indemnitee shall assist the Company in enforcing those rights if the Company pays Indemnitee's reasonable costs and expenses of doing so.

(f) SELECTION OF COUNSEL. In the event the Company shall be obligated under subsection 2(a) of this Agreement to pay the expenses of any proceeding against Indemnitee, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, with counsel approved by Indemnitee, which approval shall not be unreasonably withheld, upon the delivery to Indemnitee of written notice of its election so to do. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that (i) Indemnitee shall have the right to employ his counsel in any such proceeding at Indemnitee's expense; and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or (C) the Company shall not, in fact, have employed counsel to assume the defense of such proceeding, then the reasonable fees and expenses of Indemnitee's counsel shall be at the expense of the Company.

3. ADDITIONAL INDEMNIFICATION RIGHTS; NONEXCLUSIVITY.

(a) SCOPE. Notwithstanding any other provision of this Agreement, the Company hereby agrees to indemnify the Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Articles of Incorporation, the Company's By-Laws or by statute. In the event of any change, after the date of this Agreement, in any applicable law, statute or rule which expands the right of a California corporation to indemnify a member of its or a Subsidiary's board of directors or an officer, such changes shall be, IPSO FACTO, within the purview of Indemnitee's rights and the Company's obligations, under this Agreement. In the event of any change in any applicable law, statute or rule which narrows the right of a California corporation to indemnify a member of its or a Subsidiary's Board of Directors or an officer, such changes, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement shall have no effect on this Agreement or the parties' rights and obligations hereunder.

(b) NONEXCLUSIVITY. The indemnification provided by this Agreement shall not be deemed exclusive of any rights to which Indemnitee may be entitled under the Company's Articles of Incorporation, its By-Laws, any agreement, any vote of shareholders or disinterested directors, the General Corporation Law of the State of California, or otherwise, both as to action in Indemnitee's official capacity and as to action or inaction in another capacity while holding such office. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though he may have ceased to serve in such capacity at the time of any action or other covered proceeding is commenced.

4. PARTIAL INDEMNIFICATION. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expenses, judgments, fines or penalties actually or reasonably incurred by him in the investigation, defense, appeal or settlement of any civil or criminal action or proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such expenses, judgments, fines or penalties to which Indemnitee is entitled.

5. MUTUAL ACKNOWLEDGMENT. Both the Company and Indemnitee acknowledge that in certain instances, Federal law or applicable public policy may prohibit the Company from indemnifying its directors and officers under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

6. DIRECTORS' AND OFFICERS' LIABILITY INSURANCE. The Company shall, from time to time, make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the officers and directors of the Company with coverage for losses from wrongful acts, or to ensure the Company's performance of its indemnification obligations under this Agreement. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. In all policies of directors' and officers' liability insurance, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnitee is covered by similar insurance maintained by a Subsidiary or parent of the Company.

7. SEVERABILITY. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 7. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

8. EXCEPTIONS. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) EXCLUDED ACTS. To indemnify Indemnitee for any acts or omissions or transactions from which a director, officer, employee or agent may not be relieved of liability under applicable law.

(b) CLAIMS INITIATED BY INDEMNITEE. To indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or any other statute or law or otherwise as required under
Section 317 of the California General Corporation Law, but such indemnification or advancement of expenses may be provided by the Company in specific cases if the Board of Directors has approved the initiation or bringing of such suit; or

(c) LACK OF GOOD FAITH. To indemnify Indemnitee for any expenses incurred by the Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that the material assertions made by the Indemnitee in such proceeding was not made in good faith or was frivolous; or

(d) INSURED CLAIMS. To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) which have been paid directly to Indemnitee by an insurance carrier under a policy of directors' and officers' liability insurance maintained by the Company; or

(e) CLAIMS UNDER SECTION 16(b). To indemnify Indemnitee for expenses and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

9. EFFECTIVENESS OF AGREEMENT; TERM.

(a) This Agreement shall be effective as of the date set forth on the first page and shall apply to acts or omissions of Indemnitee which occurred prior to such date if Indemnitee was an officer, director, employee or other agent of the Company or any Subsidiary, or was serving at the request of the Company or any Subsidiary as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, at the time such act or omission occurred.

(b) The Company's obligations under this Agreement shall continuously, irrevocably and perpetually cover Indemnitee's covered acts and omissions which occur during the period ending two years after the date of this Agreement. Thereafter, such coverage shall extend to Indemnitee's acts and omissions which occur during succeeding 12-month periods, and shall continue until the end of the 12-month extension period during which the Company gives Indemnitee written notice of termination of the continuity of such coverage; provided, however that (a) such notice of termination shall only be effective if it is received by Indemnitee at least six months prior to the end of the 12-month extension period which is intended by the Company to be the final 12-month extension period, and (b) such coverage shall continue until the end of such final 12-month extension period. In any event, the Company's obligations under this Agreement shall continue perpetually with regard to covered acts and omissions occuring during the period covered by this Agreement (including all of the 12-month extension periods as set forth above), notwithstanding the giving of any such notice of termination or any other circumstance whatsoever.

10. CONSTRUCTION OF CERTAIN PHRASES.

(a) For purposes of this Agreement, the term "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(b) For purposes of this Agreement, the term "Subsidiary" shall include a corporation, company or other entity

(i) 50% or more of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

(ii) which does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but 50% or more of whose ownership interest representing the right to make decisions for such other entity is,

now or hereafter, owned or controlled, directly or indirectly, by the Company, or one or more Subsidiaries.

(c) For purposes of this Agreement, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries.

11. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

12. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the Company and its successors and assigns, and shall inure to the benefit of Indemnitee and Indemnitee's estate, heirs, legal representatives and assigns.

13. ATTORNEYS' FEES. In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that the material assertions made by Indemnitee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that Indemnitee's material defenses to such action were made in bad faith or were frivolous.

14. NOTICE. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and receipted for by the party addressee, on the date of such receipt, (ii) if mailed by domestic certified or registered mail with postage prepaid, on the fifth business day after the date postmarked, or (iii) if sent by confirmed telex or facsimile, on the date sent. Notices shall be addressed as follows:

(a) if to the Company:

Apple Computer, Inc.
1 Infinite Loop, Mail Stop 75-8A Cupertino, California 95014
Telephone: (408) 996-1010
Facsimile: (408) 974-8530
Attention: General Counsel;

(b) if to Indemnitee, to the address of Indemnitee set forth under Indemnitee's signature below;

or to such other address or attention of such other person as any party shall advise the other parties in writing.

15. CONSENT TO JURISDICTION; CHOICE OF VENUE. The Company and Indemnitee each hereby irrevocably consents to the jurisdiction of the courts of the State of California and the federal courts within the State for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the United States District Court for the Northern District of California and any California State court within that District.

16. CHOICE OF LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND ITS PROVISIONS CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AS APPLIED TO CONTRACTS BETWEEN CALIFORNIA RESIDENTS ENTERED INTO AND TO BE PERFORMED ENTIRELY WITHIN CALIFORNIA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

APPLE COMPUTER, INC.

By:

Nancy R. Heinen Sr. Vice President, General Counsel and Secretary

AGREED TO AND ACCEPTED:
INDEMNITEE:

(name)

Address:

September 22, 1997

Dr. Gilbert F. Amelio
Apple Computer, Inc.
1 Infinite Loop
Cupertino, California 95014

RESIGNATION AGREEMENT

Dear Dr. Amelio:

This will reflect our agreement concerning your resignation as a director, officer and employee of Apple Computer, Inc. (the "Company") and each of its direct and indirect subsidiaries (collectively with the Company, the "Companies"), in accordance with the terms and conditions set forth below.

1. RESIGNATION. By signing this Resignation Agreement, you (i) hereby confirm your resignation as a director and officer of each of the Companies, effective as of July 8, 1997 (the "Director and Officer Resignation Date") and
(ii) hereby agree that the date of your resignation as an employee of each of the Companies shall be September 27, 1997 (the "Employee Resignation Date").

2. TERMINATION OF PRIOR AGREEMENTS AND UNDERSTANDINGS. As of the date of this Resignation Agreement first set forth above (the "Effective Date"), this Resignation Agreement supersedes and replaces any written or oral agreements or understandings between you and any of the Companies, and any of their respective officers, directors, shareholders, employees, agents and affiliates, including, without limitation, the Employment Agreement between you and the Company dated February 28, 1996, as amended May 1, 1997 (the "Employment Agreement"), and each such agreement or understanding (including, without limitation, the Employment Agreement) is hereby void and of no further force and effect.

3. INTERIM PERIOD. During the period beginning on the Director and Officer Resignation Date and ending on the Employee Resignation Date (the "Interim Period"), you will continue to be eligible to receive your base salary (at the annual rate in effect immediately prior to the Effective Date) and to participate in the Company's Employee Stock Purchase Plan and all pension and welfare plans (including but not limited to the 401(k) Plan) in accordance with the terms and provisions applicable to you immediately prior to the Director and Officer Resignation Date, and you agree to take all accrued unused vacation. During the period through August 15, 1997, you were entitled to office space from the Company. You shall be entitled to secretarial support from the Company until the Employee Resignation Date. Except as otherwise expressly provided herein, you shall cease, as of the Director and Officer Resignation Date, to be eligible to receive any annual or long-term incentive compensation and benefits from any of the Companies with respect to periods prior to, on or following the Director and Officer Resignation Date.

4. PAYMENTS AND BENEFITS IN CONNECTION WITH YOUR RESIGNATION. Subject to Sections 6, 9 and 10 below, the Company agrees to pay or to provide you with the compensation and benefits described below in connection with your resignation of employment:

(a) As soon as reasonably practicable following the date which is the later of (i) the Expiration of the Revocation Period (as such phrase is defined in Section 10 below) (but in no event later than thirty (30) days following the expiration of such period) or (ii) the perfection of the security interest for the Loan as described in Section 4(g) (but in no event later than thirty (30) days following the expiration of such period), the Company will make a one-time lump sum cash payment to you of Six Million Seven Hundred Thirty-One Thousand Eight Hundred Seventy Dollars and Ninety-Six Cents ($6,731,870.96), less applicable withholding taxes. The Company will deduct from this payment the sum of One Million Five Hundred Thousand Dollars ($1,500,000) as a partial repayment of the

balance of the Loan (as defined in Section 4(g) below) as of the date on which such payment is made to you; the amount will be applied first to accrued interest on the Loan as of such date, and the balance of said amount shall be applied to the then remaining principal balance on the Loan.

(b) As soon as practicable following the date which is the later of
(i) the Expiration of the Revocation Period (but in no event later than thirty
(30) days following the expiration of such period) or (ii) the perfection of the security interest for the Loan as described in Section 4(g) (but in no event later than thirty (30) days following the expiration of such period), you shall receive an additional payment from the Company in the amount of One Million Dollars ($1,000,000), less applicable withholding taxes, representing the Component B Bonus (as defined in the Employment Agreement) for the fiscal year of the Company ending September 27, 1997 (the "1997 Fiscal Year").

(c) You acknowledge that, as of the Director and Officer Resignation Date, you were a participant in the Company's Senior Officers Restricted Share Plan (the "SORP"). You shall be eligible for an award of performance shares under the SORP for the 1997 Fiscal Year, subject to the Company achieving the applicable performance goals and targets established for that year. A copy of said goals and targets is attached hereto as EXHIBIT A. The actual number of performance shares and cash amount, if any, awarded to you for the 1997 Fiscal Year will be determined by the Compensation Committee based upon the goals and targets for that year, and the percentage of your target award paid to you will be the same percentage paid to other senior officers of the Company who were participants in the SORP for the entire 1997 Fiscal Year. The performance shares and cash amounts, if any, payable to you under the SORP for the 1997 Fiscal Year shall be payable to you at the same time as payments are made to other SORP participants. Except as provided in this Section 4(c), no other amounts shall be payable to you under the SORP.

(d) On the Employee Resignation Date, the Company will pay you any accrued but unpaid salary you have earned through such date.

(e) During the Benefit Continuation Period (as hereinafter defined), you and your eligible dependents shall continue to be eligible to participate in the medical, dental and health insurance plans applicable to you immediately prior to the Employee Resignation Date on the same terms and conditions in effect for you and your dependents immediately prior to the Employee Resignation Date, or equivalent coverage obtained by the Company. For purposes of the previous sentence, "Benefit Continuation Period" means the period beginning on the Employee Resignation Date and ending on the earliest to occur of (i) the date you revoke the Release (as defined in Section 9 below), (ii) the Employee Resignation Date (if you fail to execute the Release), or (iii) February 2, 2001; provided, however, that your coverage under such plans and arrangements shall end on the date that you are eligible for comparable coverage under the plan of a subsequent employer. Following the end of the Benefit Continuation Period, you shall be eligible to elect any applicable "continuation coverage" under Section 4980B(f) of the Internal Revenue Code of 1986, as amended, as if the last day of the Benefit Continuation Period were the date of your "qualifying event" for such continuation coverage.

(f) Following the Expiration of the Revocation Period, you shall be entitled to keep any of the Company computer and software products in your office or made available to you at your home for business use as listed in EXHIBIT B; provided, however, that you agree to delete from such products all confidential and propriety information of the Companies. During the Benefit Continuation Period, you shall continue to be eligible to purchase Company products for your personal use at the discounted price then offered to employees of the Company; provided, however, you shall be precluded from purchasing at a discounted price any more than ten (10) comparable items in any twelve- (12) month period. In addition, the Company will deliver one "Spartacus" unit to you within ninety (90) days of the date on which such product becomes available on the commercial market.

(g) In consideration of your execution and delivery of the Release, the Company hereby agrees to extend the maturity date of the loan made to you pursuant to Section 3(c) of the Employment Agreement (the "Loan") until September 15, 1998, whereupon the then entire outstanding principal amount thereof, together with all accrued and unpaid interest, shall be payable in full; provided,

however, that, if you fail to execute the Release or if you revoke the Release, then the Loan shall be immediately due and payable as of the Employee Resignation Date. The Loan shall be fully recourse to you and shall be secured by your residence in Lake Tahoe ("Stonewood"), which you have represented to the Company as having a current fair market value of approximately Six Million Dollars ($6,000,000) to Seven Million Dollars ($7,000,000). You hereby agree to execute such documents and to take such further actions as the Company may deem necessary or advisable to effect and to perfect such security interest. Notwithstanding the provisions of the promissory note representing the Loan, you expressly acknowledge and agree that, as of the Employee Termination Date, the Loan shall bear interest at the rate of seven percent (7%) per annum. You may prepay some or all of the principal amount of the Loan, and any portion of the accrued but unpaid interest on the Loan, at any time, without premium or penalty. The Company may reduce or set off against any amounts that the Company owes to you any amounts currently due and payable by you under the Loan.

(h) Any stock options granted to you pursuant to the Employment Agreement, the Apple Computer, Inc. 1990 Stock Option Plan, or other plan or program which are vested by their terms as of the Employee Resignation Date shall remain exercisable for ninety (90) days following the Employee Resignation Date. Upon expiration of such ninety- (90) day period, such vested options shall expire and be of no further force or effect, to the extent not previously exercised. Any unvested portion of the options so granted will be forfeited as of the Employee Resignation Date. As of the Director and Officer Resignation Date, you shall not be eligible to participate in any option repricing or exchange program announced by the Company and you hereby irrevocably waive any right to participate in any such program.

(i) The Company shall have no obligation to make any payments to you with respect to your airplane, whether pursuant to the airplane use arrangement referred to in Section 3(f) of the Employment Agreement or otherwise, for any period on and after the Director and Officer Resignation Date.

5. NO OTHER SEVERANCE, PAYMENTS OR BENEFITS. Except as otherwise expressly provided herein, you hereby acknowledge and agree that you are not entitled to any other compensation or benefits from any of the Companies or any of their respective officers, directors, shareholders, employees, agents or affiliates in connection with your resignation of employment or otherwise and that, except as expressly set forth herein, you are not entitled to any severance or similar benefits under any plan, program, policy or arrangement, whether formal or informal, written or unwritten, of any of the Companies or any of their respective officers, directors, shareholders, employees, agents or affiliates.

6. PROTECTION OF THE COMPANY'S INTERESTS.

(a) On the Employee Resignation Date, you shall return to the Company all property of the Companies then in your possession and all property made available to you in connection with your service to any of the Companies, other than property described in Section 4(f), including, without limitation, your Company credit cards, and all records, drawings, manuals, reports, papers and documents kept or made by you in connection with your employment as a director, officer or employee of any of the Companies, including any files, memoranda, correspondence, vendor and customer lists, financial data, keys and security access cards, and any other materials or documents described in Section 6(c) below.

(b) You shall keep the terms of this Resignation Agreement and all communications with any of the Companies and its counsel regarding the same confidential.

(c) You will not, at any time, directly or indirectly divulge or disclose to any person, firm, association or corporation, or use for your own benefit, gain or otherwise, any confidential or proprietary plans, products, customer lists, trade secrets, technical or business materials, or information of any of the Companies or in the possession of any of the Companies, including any or all information or instructions, technical or otherwise, issued or proclaimed for the sole use of the Companies, or any confidential information that was disclosed to you or in any way acquired by you during your employment with any of the Companies.

(d) During the period beginning on the Director and Officer Resignation Date and ending on the date which is twelve (12) months after the Employee Resignation Date, you shall not, whether for your own account or for the account of any other individual, partnership, firm, corporation or other business organization (other than the Company), intentionally solicit, endeavor to entice away from any of the Companies, or otherwise interfere with the relationship of any of the Companies with any person with a base salary of at least Seventy-Five Thousand Dollars ($75,000) per year who is employed by or otherwise engaged to perform services for any of the Companies.

(e) If you breach in any material respect the provisions of this
Section 6, you shall immediately forfeit any and all rights to future payments or benefits under Sections 3 and 4 above.

7. COOPERATION. You agree that you will make yourself available at reasonable times and intervals to participate in the conduct of and preparation for any pending or future litigation to which any of the Companies is a party and in which your experience or knowledge may be relevant. You shall be reimbursed for your reasonable travel and out-of-pocket expenses incurred by virtue of your cooperation as described in this Section 7. If such cooperation takes more than twenty (20) hours, the Company agrees to reimburse you, at the rate of Five Hundred Dollars ($500.00) per hour, for time spent in excess of twenty (20) hours. In no event shall this provision be deemed to pertain to or affect the nature or substance of employee testimony at deposition or trial or in any other truthful testimony at deposition or trial or in any other circumstances or your obligation to give such testimony.

8. ACKNOWLEDGMENT. By signing this Resignation Agreement, you hereby acknowledge and confirm the following:

(a) You were advised by the Company in connection with your resignation to consult with an attorney of your choice prior to signing this Resignation Agreement and the Release and to have such attorney explain to you the terms of this Resignation Agreement and the Release including, without limitation, the terms relating to your release of claims arising under the Age Discrimination in Employment Act of 1967.

(b) You were given not less than twenty-one (21) days to consider the terms of this Resignation Agreement and the Release and to consult with an attorney of your choosing with respect thereto and that, for a period of seven
(7) days following your execution of the Release, you have the right to revoke the Release in accordance with the terms set forth below.

9. RELEASE. You agree to execute and deliver to the Company a release in the form of EXHIBIT C attached hereto (the "Release") on the Employee Resignation Date. If you do not deliver the Release to the Company on the Employee Resignation Date, or if you subsequently revoke the Release in the manner contemplated by Section 10 below, the Company will have no obligation to pay or provide you with any of the payments or benefits contemplated by Sections 3 and 4 above.

10. REVOCATION. You shall have the right to revoke the Release during the seven- (7) day period (the "Revocation Period") commencing immediately following the date you sign and deliver the Release to the Company. The Revocation Period shall expire at 5:00 p.m. (Pacific time) on the seventh day immediately following the date that the Release is executed by you; provided, however, that if such seventh day is not a business day, then the Revocation Period shall extend to 5:00 p.m. (Pacific time) on the next succeeding business day. No such revocation by you shall be effective unless it is in writing and signed by you, and received by the Company prior to the Expiration of the Revocation Period. For purposes of this Agreement, the phrase "Expiration of the Revocation Period" shall mean the expiration of the Revocation Period without your having revoked the Release in accordance with this Section 10.

11. ACCEPTANCE. You may indicate your acceptance of this Agreement by signing and dating both counterparts of this Agreement and delivering one such copy to the Company by no later than 5:00 p.m. (Pacific time) on September 26, 1997. This offer shall expire without further action by the Company if a signed and dated counterpart of this Agreement is not returned to the Company by the time and date set forth above.

12. TAX CONSIDERATIONS. Any payments made to you under this Resignation Agreement shall be reduced by the full amount legally required to be withheld for federal, state or local tax purposes by the Company.

13. MODIFICATION OF EMPLOYEE BENEFIT PLANS. Nothing in this Resignation Agreement shall prohibit the Company from modifying, terminating or otherwise amending any or all of the Company's pension and welfare plans, if such termination, modification or amendment similarly affects other executives of the Company as well as you.

14. MODIFICATION. This Resignation Agreement may not be amended or modified except by a writing executed by you and the Company that specifically refers to this Resignation Agreement and expressly states that it is intended to amend one or more of the terms of this Resignation Agreement or to supersede this Resignation Agreement.

15. VALIDITY. The invalidity or unenforceability of any provision of this Resignation Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

16. REMEDIES IN THE EVENT OF FUTURE DISPUTE.

(a) Except as provided in Section 16(b) below, in the event of any future dispute, controversy or claim between the parties arising from or relating to this Resignation Agreement, its breach, or any matter addressed by this Resignation Agreement, the parties will first attempt to resolve the dispute through confidential mediation to be conducted in San Francisco by a member of the firm of Gregorio, Haldeman & Piazza, Mediated Negotiations, 625 Market Street, Suite 400, San Francisco, California 94105.

(b) In the event that a dispute arises concerning compliance with this Resignation Agreement, the parties agree to resolve any such dispute by confidential binding arbitration by the American Arbitration Association in San Francisco, pursuant to its California Employment Dispute Resolution Rules, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction of the matter. The prevailing party in such arbitration shall be entitled to recover costs and attorneys' fees incurred in arbitrating the dispute and in preparing for such arbitration.

17. INDEMNIFICATION. All rights of indemnification previously provided by the Company to you by the Company's bylaws and/or the Indemnification Agreement dated November 10, 1994, as well as such rights to indemnification that you have by law, shall continue in full force and effect in accordance with their terms, following the date of this Agreement.

18. GOVERNING LAW. This Resignation Agreement shall be governed by, and construed in accordance with, the laws of California applicable to contracts to be performed exclusively therein

Your signature on the line below constitutes your agreement with each provision contained herein.

Apple Computer, Inc.

By: /s/ John B. Douglas III
John B. Douglas III
Senior Vice President, General Counsel and Secretary

I UNDERSTAND AND AGREE WITH THE ABOVE:

/s/ Gilbert F. Amelio
Gilbert F. Amelio

Dated: September 23, 1997

APPLE COMPUTER, INC.
1 INFINITE LOOP
CUPERTINO, CA 95014

May 1, 1997

Jon Rubinstein
1 Infinite Loop
Cupertino, CA 95014

RETENTION AGREEMENT

Dear Jon:

Apple Computer, Inc., a California corporation (the "COMPANY"), considers it essential to the best interests of its stockholders to take reasonable steps to retain key management personnel. Further, the Board of Directors of the Company (the "BOARD") recognizes that the uncertainty and questions which might arise among management in the context of a change in control of the Company could result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

The Board has determined, therefore, that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the management of the Company and its subsidiaries, including yourself, to their assigned duties without distraction in the face of potentially disturbing circumstances arising from any possible change in control of the Company.

In order to induce you to remain in the employ of the Company, the Company has determined to enter into this letter agreement (this "AGREEMENT") which addresses the terms and conditions of your employment in the event of a change in control of the Company. Capitalized words which are not otherwise defined herein shall have the meanings assigned to such words in Section 8 of this Agreement.

1. TERM OF EMPLOYMENT UNDER THE AGREEMENT. The term of your employment under this Agreement shall commence on the Change in Control Date and shall continue until the second anniversary of the Change in Control Date (the "TERM").

2. EMPLOYMENT DURING THE TERM. During the Term, the following terms and conditions shall apply to your employment with the Company:

(a) TITLES; REPORTING AND DUTIES. Your position, titles, nature and status of responsibilities and reporting obligations shall be no less favorable to you than those that you enjoyed immediately prior to the Change in Control Date.

(b) SALARY AND BONUS. Your base salary and annual bonus opportunity may not be reduced, and your base salary shall be periodically reviewed and increased in the manner commensurate with increases awarded to other similarly situated executives of the Company.

(c) INCENTIVE COMPENSATION. You shall be eligible to participate in each long-term incentive plan or arrangement established by the Company for its executive employees, in accordance with the terms and provisions of such plan or arrangement and at a level consistent with the Company's practices applicable to you prior to the Change in Control Date.

(d) BENEFITS. You shall be eligible to participate in all pension, welfare and fringe benefit plans and arrangements that the Company provides to its executive employees in accordance with the terms of such plans and arrangements, which shall be no less favorable to you, in the aggregate, than the terms and provisions available to other executive employees of the Company.

(e) LOCATION. You will continue to be employed at the business location at which you were employed prior to the Change in Control Date and the amount of time that you are required to travel for business purposes will not be increased in any significant respect from the amount of business travel required of you prior to the Change in Control Date.

3. INVOLUNTARY TERMINATION DURING THE TERM.

(a) SEVERANCE PAYMENT. In the event of your Involuntary Termination during the Term, the Company shall pay you within 5 days of the date of such Involuntary Termination the full amount of any earned but unpaid base salary through the Date of Termination at the rate in effect at the time of the Notice of Termination, plus a cash payment (calculated on the basis of your Reference Salary) for all unused vacation time which you may have accrued as of the Date of Termination. The Company shall also pay you within 5 days of the Date of Termination a pro rata portion of the annual bonus for the year in which your Involuntary Termination occurs, calculated on the basis of your target bonus for that year and on the assumption that all performance targets have been or will be achieved. In addition, the Company shall pay you in a cash lump sum, within 8 days following the date of your execution of the release described in the last sentence of this Section 3(a) (or on the Date of Termination, if later), an amount (the "SEVERANCE PAYMENT") equal to the sum of (i) three times your Reference Salary and (ii) three times your Reference Bonus. The Severance Payment shall be in lieu of any other severance payments which you are entitled to receive under any other severance pay plan or arrangement sponsored by the Company and its subsidiaries. Your right to the Severance Payment shall be conditioned upon your execution of a release in favor of the Company in substantially the form of the release required for the receipt of severance payments under the Severance Plan (as in

effect on the date of this Agreement) which is not revoked by you within the seven-day revocation period specified therein.

(b) BENEFIT PAYMENT. In the event of your Involuntary Termination during the Term, you and your eligible dependents shall continue to be eligible to participate during the Benefit Continuation Period (as hereinafter defined) in the medical, dental, health, life and other fringe benefit plans and arrangements applicable to you immediately prior to your Involuntary Termination on the same terms and conditions in effect for you and your dependents immediately prior to such Involuntary Termination. For purposes of the previous sentence, "BENEFIT CONTINUATION PERIOD" means the period beginning on the Date of Termination and ending on the earlier to occur of (i) the second anniversary of the Date of Termination and (ii) the date that you and your dependents are eligible and elect coverage under the plans of a subsequent employer which provide substantially equivalent or greater benefits to you and your dependents.

(c) DATE AND NOTICE OF TERMINATION. Any termination of your employment by the Company or by you during the Term shall be communicated by a notice of termination to the other party hereto (the "NOTICE OF TERMINATION"). The Notice of Termination shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. The date of your termination of employment with the Company and its subsidiaries (the "DATE OF TERMINATION") shall be determined as follows: (i) if your employment is terminated for Disability, thirty (30) days after a Notice of Termination is given (provided that you shall not have returned to the full-time performance of your duties during such thirty
(30) day period), (ii) if your employment is terminated by the Company in an Involuntary Termination, five (5) days after the date the Notice of Termination is received by you and (iii) if your employment is terminated by the Company for Cause, the later of the date specified in the Notice of Termination or ten (10) days following the date such notice is received by you. If the basis for your Involuntary Termination is your resignation for Good Reason, the Date of Termination shall be ten (10) days after the date your Notice of Termination is received by the Company. The Date of Termination for a resignation of employment other than for Good Reason shall be the date set forth in the applicable notice, which shall be no earlier than ten (10) days after the date such notice is received by the Company.

(d) NO MITIGATION OR OFFSET. You shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Agreement be reduced by any compensation earned by you as the result of employment by another employer or by pension benefits paid by the Company or another employer after the Date of Termination or otherwise except as specifically provided in clause (ii) of the last sentence of Section 3(b).

4. ADDITIONAL PAYMENT.

(a) GROSS-UP PAYMENT. Notwithstanding anything herein to the contrary, if it is determined that any Payment would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties with respect to such excise tax (such excise tax, together

with any interest or penalties thereon, is herein referred to as an "EXCISE TAX"), then you shall be entitled to an additional payment (a "GROSS-UP PAYMENT") in an amount that will place you in the same after-tax economic position that you would have enjoyed if the Excise Tax had not applied to the Payment. The amount of the Gross-Up Payment shall be determined by the Accounting Firm in accordance with the formula {(E x (1 - M)/(1 - T)) -E} (or such other formula as the Accounting Firm deems appropriate which is intended to achieve the same result), where

E equals the Payments which are determined to be "excess parachute payments" within the meaning of Section 280G(b)(1) of the Code;

M equals the sum of the highest marginal rates(1) for Taxes applicable to you at the time of the Payment; and

T equals M plus the rate of Excise Tax applicable to the Payment.

No Gross-Up Payments shall be payable hereunder if the Accounting Firm determines that the Payments are not subject to an Excise Tax.

(b) DETERMINATION OF GROSS-UP PAYMENT. Subject to the provisions of
Section 4(c), all determinations required under this Section 4, including whether a Gross-Up Payment is required, the amount of the Payments constituting excess parachute payments, and the amount of the Gross-Up Payment, shall be made by the Accounting Firm, which shall provide detailed supporting calculations both to you and the Company within fifteen days of the Change in Control Date, your Date of Termination or any other date reasonably requested by you or the Company on which a determination under this Section 4 is necessary or advisable. The Company shall pay to you the initial Gross-Up Payment within 5 days of the receipt by you and the Company of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by you, the Company shall cause the Accounting Firm to provide you with an opinion that the Accounting Firm has substantial authority under the Code and Regulations not to report an Excise Tax on your federal income tax return. Any determination by the Accounting Firm shall be binding upon you and the Company. If the initial Gross-Up Payment is insufficient to cover the amount of the Excise Tax that is ultimately determined to be owing by you with respect to any Payment (hereinafter an "UNDERPAYMENT"), the Company, after exhausting its remedies under Section 4(c) below, shall promptly pay to you an additional Gross-Up Payment in respect of the Underpayment.

(c) PROCEDURES. You shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of a Gross-Up Payment. Such notice shall be given as soon as practicable after you know of such claim and shall apprise the Company of the nature of the claim and the date on which the claim is requested to be paid. You agree not to pay the claim until the expiration of the thirty-day period following the date on which you notify the Company, or such shorter period ending on the date

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(1) To be expressed in up to three decimal places. For example, a combined federal, state and local marginal rate of 56% would be expressed as .560

the Taxes with respect to such claim are due (the "NOTICE PERIOD"). If the Company notifies you in writing prior to the expiration of the Notice Period that it desires to contest the claim, you shall: (i) give the Company any information reasonably requested by the Company relating to the claim; (ii) take such action in connection with the claim as the Company may reasonably request, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company and reasonably acceptable to you; (iii) cooperate with the Company in good faith in contesting the claim; and (iv) permit the Company to participate in any proceedings relating to the claim. You shall permit the Company to control all proceedings related to the claim and, at its option, permit the Company to pursue or forgo any and all administrative appeals, proceedings, hearings, and conferences with the taxing authority in respect of such claim. If requested by the Company, you agree either to pay the tax claimed and sue for a refund or contest the claim in any permissible manner and to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts as the Company shall determine; PROVIDED, HOWEVER, that, if the Company directs you to pay such claim and pursue a refund, the Company shall advance the amount of such payment to you on an after-tax and interest-free basis (the "ADVANCE"). The Company's control of the contest related to the claim shall be limited to the issues related to the Gross-Up Payment and you shall be entitled to settle or contest, as the case may be, any other issues raised by the Internal Revenue Service or other taxing authority. If the Company does not notify you in writing prior to the end of the Notice Period of its desire to contest the claim, the Company shall pay to you an additional Gross-Up Payment in respect of the excess parachute payments that are the subject of the claim, and you agree to pay the amount of the Excise Tax that is the subject of the claim to the applicable taxing authority in accordance with applicable law.

(d) REPAYMENTS. If, after receipt by you of an Advance, you become entitled to a refund with respect to the claim to which such Advance relates, you shall pay the Company the amount of the refund (together with any interest paid or credited thereon after Taxes applicable thereto). If, after receipt by you of an Advance, a determination is made that you shall not be entitled to any refund with respect to the claim and the Company does not promptly notify you of its intent to contest the denial of refund, then the amount of the Advance shall not be required to be repaid by you and the amount thereof shall offset the amount of the additional Gross-Up Payment then owing to you.

(e) FURTHER ASSURANCES. The Company shall indemnify you and hold you harmless, on an after-tax basis, from any costs, expenses, penalties, fines, interest or other liabilities ("LOSSES") incurred by you with respect to the exercise by the Company of any of its rights under this Section 4, including, without limitation, any Losses related to the Company's decision to contest a claim or any imputed income to you resulting from any Advance or action taken on your behalf by the Company hereunder. The Company shall pay all legal fees and expenses incurred under this Section 4, and shall promptly reimburse you for the reasonable expenses incurred by you in connection with any actions taken by the Company or required to be taken by you hereunder. The Company shall also pay all of the fees and expenses of the Accounting Firm, including, without limitation, the fees and expenses related to the opinion referred to in Section 4(b).

(f) COMBINED PAYMENTS. Anything in this Section 4 to the contrary notwithstanding, the Company shall have no obligation to pay you a required Gross-Up Payment under this Section 4 if the aggregate amount of all Combined Payments has, at the time such payment is due, exceeded the Limit. If the amount of a Gross-Up Payment to you under this Section 4 would result in the Combined Payments exceeding the Limit, the Company shall pay you only the portion, if any, of the Gross-Up Payment which can be paid to you without causing the aggregate amount of all Combined Payments to exceed the Limit. In the event that you are entitled to a Gross-Up Payment under this Section 4 and other employees or former employees of the Company are also entitled to gross-up payments under the corresponding provisions of the applicable Combined Arrangements and the aggregate amount of all such payments would cause the Limit on Combined Payments to be exceeded, the Company shall allocate the amount of the reduction necessary to comply with the Limit among all such payments in the proportion that the amount of each such gross-up payment or Gross-Up Payment bears to the aggregate amount of all such payments. Nothing in this Section 4(f) shall require you to repay to the Company any amount that was previously paid to you under this Section 4.

5. OTHER PROVISIONS.

(a) VESTING AND EXERCISE. All Equity Awards granted to you under the Equity Plans shall vest and become exercisable in the event of your Involuntary Termination on or following the Change in Control Date. If you are employed by the Company on the date of the Equity Plan Change in Control, your Equity Awards will vest and become exercisable as of such date.

(b) EFFECT OF 30-DAY ALTERNATIVE. In accordance with the terms of the Equity Plans, upon an Equity Plan Change in Control, Equity Awards which are options or stock appreciation rights are "cashed out," unless the Administrator in its discretion determines not to do so. In the event that the Administrator elects not to cash out such Equity Awards, the Administrator has the discretion in the context of a merger or sale of all or substantially all of the assets of the Company either (i) to cause such Equity Awards to be assumed or an equivalent option or stock appreciation right granted by the successor corporation to the Company or a parent or subsidiary of such successor corporation, or (ii) to provide that your Equity Awards will remain outstanding for a thirty-day period beginning on the date that you are so notified of such action by the Administrator and that such Equity Awards will expire to the extent not exercised at the end of such thirty-day period (the "30-DAY ALTERNATIVE"). If the Administrator determines to utilize the 30-Day Alternative, the Company shall pay you with respect to each such Equity Award the excess, if any (the "ADDITIONAL AMOUNT"), of the Change in Control Price you would have received had the Equity Award been cashed out on the date of the Equity Plan Change in Control over the value of the consideration actually received by you in settlement of such awards (determined as of the date such consideration is received by you). Further, in the event of your Involuntary Termination on or after the Change in Control Date but on or prior to the date of the Equity Plan Change in Control, the Company shall pay you the Additional Amount as if your employment had continued through the date of the Equity Plan Change in

Control. In either case, the payment of the Additional Amount shall be made within 5 days following the determination by the Administrator of the Change in Control Price.

(c) GENERAL. Anything in this Agreement to the contrary notwithstanding, in no event shall the vesting and exercisability provisions applicable to you under the terms of your Equity Awards be less favorable to you than the terms and provisions of such awards in effect on the date hereof.

6. LEGAL FEES AND EXPENSES. The Company shall pay or reimburse you on an after-tax basis for all costs and expenses (including, without limitation, court costs and reasonable legal fees and expenses which reflect common practice with respect to the matters involved) incurred by you as a result of any claim, action or proceeding (i) arising out of your termination of employment during the Term, (ii) contesting, disputing or enforcing any right, benefits or obligations under this Agreement or (iii) arising out of or challenging the validity, advisability or enforceability of this Agreement or any provision thereof; PROVIDED, HOWEVER, that the amount of the payments and reimbursements under this Section 6 shall not exceed $2 million.

7. SUCCESSORS; BINDING AGREEMENT.

(a) ASSUMPTION BY SUCCESSOR. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and to agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place; PROVIDED, HOWEVER, that no such assumption shall relieve the Company of its obligations hereunder. As used in this Agreement, the "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law or otherwise.

(b) ENFORCEABILITY; BENEFICIARIES. This Agreement shall be binding upon and inure to the benefit of you (and your personal representatives and heirs) and the Company and any organization which succeeds to substantially all of the business or assets of the Company, whether by means of merger, consolidation, acquisition of all or substantially all of the assets of the Company or otherwise, including, without limitation, as a result of a Change in Control or by operation of law. This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If you should die while any amount would still be payable to you hereunder if you had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee or other designee or, if there is no such designee, to your estate.

8. DEFINITIONS. For purposes of this Agreement, the following capitalized words shall have the meanings set forth below:

"ACCOUNTING FIRM" shall mean KPMG Peat Marwick LLP or, if such firm is unable or unwilling to perform such calculations, such other national accounting firm as shall be designated by agreement between you and the Company. To the extent reasonably practicable, one such accounting firm shall be designated to perform the calculations in respect of the Combined Arrangements.

"ADMINISTRATOR" shall mean the "Administrator" as defined in the applicable Equity Plan or, if no such term is defined in the Equity Plan, the Board.

"CAUSE" shall mean a termination of your employment during the Term which is a result of (i) your felony conviction, (ii) your willful disclosure of material trade secrets or other material confidential information related to the business of the Company and its subsidiaries or (iii) your willful and continued failure substantially to perform your duties with the Company (other than any such failure resulting from your incapacity due to physical or mental illness or any such actual or anticipated failure resulting from a resignation by you for Good Reason) after a written demand for substantial performance is delivered to you by the Board, which demand specifically identifies the manner in which the Board believes that you have not substantially performed your duties, and which performance is not substantially corrected by you within 10 days of receipt of such demand. For purposes of the previous sentence, no act or failure to act on your part shall be deemed "willful" unless done, or omitted to be done, by you not in good faith and without reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, you shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to you a copy of a resolution duly adopted by the affirmative vote of not less than three-fourths (3/4ths) of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to you and an opportunity for you, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board you were guilty of conduct set forth above in clause (i),
(ii) or (iii) of the first sentence of this section and specifying the particulars thereof in detail.

"CHANGE IN CONTROL" shall mean a change in control of the Company of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement; PROVIDED, HOWEVER, that, anything in this Agreement to the contrary notwithstanding, a Change in Control shall be deemed to have occurred if:

(i) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group deemed to be a person under Section 14(d)(2) of the Exchange Act, is or becomes the "beneficial owner" (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities entitled to vote in the election of directors of the Company;

(ii) during any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constituted the Board and any new directors, whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least three-fourths (3/4ths) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved (the "INCUMBENT DIRECTORS"), cease for any reason to constitute a majority thereof;

(iii) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company (a "TRANSACTION"), in each case with respect to which the stockholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than 50% of the combined voting power of the Company or other corporation resulting from such Transaction;

(iv) all or substantially all of the assets of the Company are sold, liquidated or distributed; or

(v) there is a "change in control" or a "change in the effective control" of the Company within the meaning of Section 280G of the Code and the Regulations.

"CHANGE IN CONTROL DATE" shall mean the earliest of (i) the date on which the Change in Control occurs, (ii) the date on which the Company executes an agreement, the consummation of which would result in the occurrence of a Change in Control, (iii) the date the Board approves a transaction or series of transactions, the consummation of which would result in a Change in Control and (iv) the date the Company fails to satisfy its obligations to have this agreement assumed by any successor to the Company in accordance with Section 7(a) of this Agreement. If the Change in Control Date occurs as a result of an agreement described in clause (ii) of the previous sentence or as a result of the approval of the Board described in clause (iii) of the previous sentence and the Change in Control to which such agreement or approval relates (the "CONTEMPLATED CHANGE IN CONTROL") subsequently does not occur, then the Term shall expire on the sixtieth day (the "RESET DATE") following the date the Board certifies by resolution duly adopted by three-fourths (3/4ths) of the Incumbent Directors then in office that the Contemplated Change in Control is not reasonably likely to occur; PROVIDED, HOWEVER, that this sentence shall not apply if (A) an Involuntary Termination of your employment with the Company has occurred on and after the Change in Control Date and on or prior to the Reset Date or (B) the Contemplated Change in Control subsequently occurs within three months of the Reset Date. Following the Reset Date, the provisions of this Agreement shall remain in effect and a new Term shall commence upon the occurrence of a subsequent Change in Control Date. Notwithstanding the first sentence of this definition, if your employment with the Company terminates prior to the Change in Control Date and it is reasonably demonstrated that your termination of employment (i) was at the request of the third party who has taken steps reasonably calculated to effect the Change in Control or (ii) otherwise arose in connection with or in anticipation of the Change in Control, then "Change in Control Date" shall mean the date immediately prior to the date of your termination of employment.

"CHANGE IN CONTROL PRICE" shall mean the "Change in Control Price" as defined in the applicable Equity Plan and determined by the Administrator as of the date of the Equity Plan Change in Control, whether or not the Administrator is required under the terms of the applicable Equity Plan to determine such price as of such date.

"COMBINED ARRANGEMENTS" shall mean this Agreement, the Retention Agreements entered into as of the date first set forth above between the Company and certain of its executive officers, any Retention Agreement entered into after the date hereof which is specifically

designated by the terms thereof as one of the Combined Arrangements and the Supplement to the Severance Plan.

"COMBINED PAYMENTS" shall mean the aggregate cash amount of (i) severance payments made to you under Section 3(a) of this Agreement or to any other employee or former employee under the corresponding provisions of the applicable Combined Arrangement, (ii) severance payments made under Sections 2(e) and 2(f) of the Supplement or the corresponding provisions of the applicable Combined Arrangement, (iii) Gross-Up Payments made to you under Section 6 of this Agreement or to any other employee or former employee under the corresponding provisions of the applicable Combined Arrangement, (iv) fees and expenses which are paid or reimbursed to you under Section 6 of this Agreement or to any other employee or former employee under the corresponding provisions of the applicable Combined Arrangement, (v) payments made to you under Section 5 of this Agreement or to any other employee or former employee under the corresponding provisions of the applicable Combined Arrangement and

(vi) costs incurred by the Company in respect of any employee or former employee under Section 2(d) of the Supplement or the corresponding provisions of the applicable Combined Arrangement.

"CODE" shall mean the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

"COMMON STOCK" shall mean the common stock of the Company.

"DISABILITY" shall mean (i) your incapacity due to physical or mental illness which causes you to be absent from the full-time performance of your duties with the Company for six (6) consecutive months and (ii) your failure to return to full-time performance of your duties for the Company within thirty (30) days after written Notice of Termination due to Disability is given to you. Any question as to the existence of your Disability upon which you and the Company cannot agree shall be determined by a qualified independent physician selected by you (or, if you are unable to make such selection, such selection shall be made by any adult member of your immediate family), and approved by the Company. The determination of such physician made in writing to the Company and to you shall be final and conclusive for all purposes of this Agreement.

"ELTSOP" shall mean the Apple Computer, Inc. 1987 Executive Long Term Stock Option Plan, as amended, and any successor plan thereto.

"EQUITY AWARDS" shall mean options, restricted stock, bonus stock or other grants or awards which consist of, or relate to, equity securities of the Company and which have been granted to you under the Equity Plans. For purposes of this Agreement, Equity Awards shall also include any securities acquired upon the exercise of an option, warrant or similar right that constitutes an Equity Award.

"EQUITY PLAN CHANGE IN CONTROL" shall mean a change in control of the Company as defined in the applicable Equity Plan.

"EQUITY PLANS" shall mean the Stock Option Plan, the ELTSOP, and any other equity-based incentive plan or arrangement adopted by the Company.

"EXCHANGE ACT" shall mean the Securities Exchange Act of 1934, as amended, and any successor provisions thereto.

"GOOD REASON" shall mean a resignation of your employment during the Term as a result of any of the following:

(i) A meaningful and detrimental alteration in your position, your titles, or the nature or status of your responsibilities (including your reporting responsibilities) from those in effect immediately prior to the Change in Control Date. For purposes of this clause (i), a meaningful and detrimental alteration shall exist if, on or after the Change in Control Date, without limitation, any of the following occurs: (A) at any time you do not hold the position of senior vice president in charge of hardware engineering of the Company (or the surviving entity resulting from a merger or consolidation (through one or more related transactions) of the Company with another entity (the "SURVIVING ENTITY")); (B) at any time you do not report directly to the chief executive officer of the Company (or the Surviving Entity); (C) at any time you do not have regular direct access to the chief executive officer of the Company (or the Surviving Entity) or (D) any similar adverse change on or after the Change in Control Date in your title, position or reporting responsibilities;

(ii) A reduction by the Company in your annual base salary as in effect immediately prior to the Change in Control Date or as the same may be increased from time to time thereafter; a failure by the Company to increase your salary at a rate commensurate with that of other key executives of the Company; or a reduction in your target annual bonus (expressed as a percentage of base salary) below the target in effect for you prior to the Change in Control Date;

(iii) The relocation of the office of the Company where you are employed immediately prior to the Change in Control Date (the "CIC LOCATION") to a location which is more than fifty (50) miles away from the CIC Location or the Company's requiring you to be based more than fifty
(50) miles away from the CIC Location (except for required travel on the Company's business to an extent substantially consistent with your customary business travel obligations in the ordinary course of business prior to the Change in Control Date);

(iv) The failure by the Company to continue in effect any compensation plan in which you participated prior to the Change in Control Date or made available to you after the Change in Control Date, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan in connection with the Change in Control, or the failure by the Company to continue your participation therein on at least as favorable a basis, both in terms of the amount of

benefits provided and the level of your participation relative to other participants, as existed on the Change in Control Date;

(v) The failure by the Company to continue to provide you with benefits at least as favorable in the aggregate to those enjoyed by you under the Company's pension, savings, life insurance, medical, health and accident, disability, and fringe benefit plans and programs in which you were participating immediately prior to the Change in Control Date; or the failure by the Company to provide you with the number of paid vacation days to which you are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect immediately prior to the Change in Control;

(vi) The failure of the Company to obtain an agreement reasonably satisfactory to you from any successor to assume and agree to perform this Agreement, as contemplated in Section 7(a) hereof or, if the business for which your services are principally performed is sold at any time after a Change in Control, the failure of the Company to obtain such an agreement from the purchaser of such business;

(vii) Any termination of your employment which is not effected pursuant to the terms of this Agreement; or

(viii) A material breach by the Company of the provisions of this Agreement; PROVIDED, HOWEVER, that an event described above in clause (i), (ii),
(iv), (v) or (viii) shall not constitute Good Reason unless it is communicated by you to the Company in writing and is not corrected by the Company in a manner which is reasonably satisfactory to you (including full retroactive correction with respect to any monetary matter) within 10 days of the Company's receipt of such written notice from you.

"INVOLUNTARY TERMINATION" shall mean (i) your termination of employment by the Company and its subsidiaries during the Term other than for Cause or Disability or (ii) your resignation of employment with the Company and its subsidiaries during the Term for Good Reason.

"LIMIT" shall mean the dollar amount determined in accordance with the formula [A x B x C], where

A equals 0.02;

B equals the number of issued and outstanding shares of Common Stock of the Company immediately prior to the Change in Control Date; and

C equals the greater of (i) (A) if the Common Stock is listed on any established stock exchange or national market system (including, without limitation, the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation ("NASDAQ") System), the

highest closing sale price (or closing bid price, if no sales are reported) of a share of Common Stock, or (B) if the Common Stock is regularly quoted on the NASDAQ System (but not on a national market system) or quoted by a recognized securities dealer but selling prices are not reported, the highest mean between the high and low asked prices for the Common Stock, in each case, on any day during the ninety-day period ending on the Change in Control Date, and (ii) the highest price paid or offered, as determined by the Accounting Firm, in any bona fide transaction or bona fide offer related to the Change in Control.

"PAYMENT" means (i) any amount due or paid to you under this Agreement, (ii) any amount that is due or paid to you under any plan, program or arrangement of the Company and its subsidiaries (including, without limitation, the Equity Plans) and (iii) any amount or benefit that is due or payable to you under this Agreement or under any plan, program or arrangement of the Company and its subsidiaries not otherwise covered under clause (i) or (ii) hereof which must reasonably be taken into account under Section 280G of the Code and the Regulations in determining the amount the "parachute payments" received by you, including, without limitation, any amounts which must be taken into account under the Code and Regulations as a result of (A) the acceleration of the vesting of any option, restricted stock or other equity award granted under the Equity Plans or otherwise, (B) the acceleration of the time at which any payment or benefit is receivable by you or (C) any contingent severance or other amounts that are payable to you.

"REFERENCE BONUS" shall mean the greater of (i) the target annual bonus applicable to you for the year in which your Involuntary Termination occurs and (ii) the highest target annual bonus applicable to you in any of the three years ending prior to the Change in Control Date.

"REFERENCE SALARY" shall mean the greater of (i) the annual rate of your base salary from the Company and its subsidiaries in effect immediately prior to the date of your Involuntary Termination and (ii) the annual rate of your base salary from the Company in effect at any point during the three-year period ending on the Change in Control Date.

"REGULATIONS" shall mean the proposed, temporary and regulations under
Section 280G of the Code or any successor provision thereto.

"SEVERANCE PLAN" means the Apple Computer, Inc. Executive Severance Plan, as amended.

"STOCK OPTION PLAN" shall mean the Apple Computer, Inc. 1990 Stock Option Plan, as amended, and any successor plan thereto.

"SUPPLEMENT" means the amendment to the Severance Plan adopted as of the date of this Agreement and any future amendment thereto.

"TAXES" shall mean the federal, state and local income taxes to which you are subject at the time of determination, calculated on the basis of the highest marginal rates then in effect, plus any additional payroll or withholding taxes to which you are then subject.

"TRANSACTION DATE" shall mean the date described in clause (i) of the definition of Change in Control Date.

9. NOTICE. For the purpose of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the Board of Directors, Apple Computer, Inc., 1 Infinite Loop, M/S: 381, Cupertino, CA 95014, with a copy to the General Counsel of the Company, or to you at the address set forth on the first page of this Agreement or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

10. MISCELLANEOUS.

(a) AMENDMENTS, WAIVERS, ETC. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement and this Agreement shall supersede all prior agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, with respect to the subject matter hereof; PROVIDED, HOWEVER, that, except as expressly set forth herein, this Agreement shall not supersede the terms of Equity Awards previously granted to you.

(b) VALIDITY. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

(c) COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

(d) NO CONTRACT OF EMPLOYMENT. Nothing in this Agreement shall be construed as giving you any right to be retained in the employ of the Company or shall affect the terms and conditions of your employment with the Company prior to the commencement of the Term hereof.

(e) WITHHOLDING. Amounts paid to you hereunder shall be subject to all applicable federal, state and local withholding taxes.

(f) SOURCE OF PAYMENTS. All payments provided under this Agreement, other than payments made pursuant to a plan which provides otherwise, shall be paid in cash from the general funds of the Company, and no special or separate fund shall be established, and no other segregation of assets made, to assure payment. You will have no right, title or interest whatsoever in or to any investments which the Company may make to aid it in meeting its obligations hereunder. To the extent that any person acquires a right to receive payments from the Company hereunder, such right shall be no greater than the right of an unsecured creditor of the Company.

(g) HEADINGS. The headings contained in this Agreement are intended solely for convenience of reference and shall not affect the rights of the parties to this Agreement.

(h) GOVERNING LAW. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of California applicable to contracts entered into and performed in such State.

If this letter sets forth our agreement on the subject matter hereof, kindly sign and return to the Company the enclosed copy of this letter which will then constitute our agreement on this subject.

Sincerely,

APPLE COMPUTER, INC.

By: /s/ Gilbert F. Amelio

Name: Gilbert F. Amelio
Title: Chief Executive Officer

Agreed to as of this 3rd day of June, 1997

/s/ Jon Rubinstein

Jon Rubinstein

APPLE COMPUTER, INC.
1 INFINITE LOOP
CUPERTINO, CA 95014

May 1, 1997

Avie Tevanian
1 Infinite Loop
Cupertino, CA 95014

RETENTION AGREEMENT

Dear Avie:

Apple Computer, Inc., a California corporation (the "COMPANY"), considers it essential to the best interests of its stockholders to take reasonable steps to retain key management personnel. Further, the Board of Directors of the Company (the "BOARD") recognizes that the uncertainty and questions which might arise among management in the context of a change in control of the Company could result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

The Board has determined, therefore, that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the management of the Company and its subsidiaries, including yourself, to their assigned duties without distraction in the face of potentially disturbing circumstances arising from any possible change in control of the Company.

In order to induce you to remain in the employ of the Company, the Company has determined to enter into this letter agreement (this "AGREEMENT") which addresses the terms and conditions of your employment in the event of a change in control of the Company. Capitalized words which are not otherwise defined herein shall have the meanings assigned to such words in Section 8 of this Agreement.

1. TERM OF EMPLOYMENT UNDER THE AGREEMENT. The term of your employment under this Agreement shall commence on the Change in Control Date and shall continue until the second anniversary of the Change in Control Date (the "TERM").

2. EMPLOYMENT DURING THE TERM. During the Term, the following terms and conditions shall apply to your employment with the Company:

(a) TITLES; REPORTING AND DUTIES. Your position, titles, nature and status of responsibilities and reporting obligations shall be no less favorable to you than those that you enjoyed immediately prior to the Change in Control Date.

(b) SALARY AND BONUS. Your base salary and annual bonus opportunity may not be reduced, and your base salary shall be periodically reviewed and increased in the manner commensurate with increases awarded to other similarly situated executives of the Company.

(c) INCENTIVE COMPENSATION. You shall be eligible to participate in each long-term incentive plan or arrangement established by the Company for its executive employees, in accordance with the terms and provisions of such plan or arrangement and at a level consistent with the Company's practices applicable to you prior to the Change in Control Date.

(d) BENEFITS. You shall be eligible to participate in all pension, welfare and fringe benefit plans and arrangements that the Company provides to its executive employees in accordance with the terms of such plans and arrangements, which shall be no less favorable to you, in the aggregate, than the terms and provisions available to other executive employees of the Company.

(e) LOCATION. You will continue to be employed at the business location at which you were employed prior to the Change in Control Date and the amount of time that you are required to travel for business purposes will not be increased in any significant respect from the amount of business travel required of you prior to the Change in Control Date.

3. INVOLUNTARY TERMINATION DURING THE TERM.

(a) SEVERANCE PAYMENT. In the event of your Involuntary Termination during the Term, the Company shall pay you within 5 days of the date of such Involuntary Termination the full amount of any earned but unpaid base salary through the Date of Termination at the rate in effect at the time of the Notice of Termination, plus a cash payment (calculated on the basis of your Reference Salary) for all unused vacation time which you may have accrued as of the Date of Termination. The Company shall also pay you within 5 days of the Date of Termination a pro rata portion of the annual bonus for the year in which your Involuntary Termination occurs, calculated on the basis of your target bonus for that year and on the assumption that all performance targets have been or will be achieved. In addition, the Company shall pay you in a cash lump sum, within 8 days following the date of your execution of the release described in the last sentence of this Section 3(a) (or on the Date of Termination, if later), an amount (the "SEVERANCE PAYMENT") equal to the sum of (i) three times your Reference Salary and (ii) three times your Reference Bonus. The Severance Payment shall be in lieu of any other severance payments which you are entitled to receive under any other severance pay plan or arrangement sponsored by the Company and its subsidiaries. Your right to the Severance Payment shall be conditioned upon your execution of a release in favor of the Company in substantially the form of the release required for the receipt of severance payments under the Severance Plan (as in

effect on the date of this Agreement) which is not revoked by you within the seven-day revocation period specified therein.

(b) BENEFIT PAYMENT. In the event of your Involuntary Termination during the Term, you and your eligible dependents shall continue to be eligible to participate during the Benefit Continuation Period (as hereinafter defined) in the medical, dental, health, life and other fringe benefit plans and arrangements applicable to you immediately prior to your Involuntary Termination on the same terms and conditions in effect for you and your dependents immediately prior to such Involuntary Termination. For purposes of the previous sentence, "BENEFIT CONTINUATION PERIOD" means the period beginning on the Date of Termination and ending on the earlier to occur of (i) the second anniversary of the Date of Termination and (ii) the date that you and your dependents are eligible and elect coverage under the plans of a subsequent employer which provide substantially equivalent or greater benefits to you and your dependents.

(c) DATE AND NOTICE OF TERMINATION. Any termination of your employment by the Company or by you during the Term shall be communicated by a notice of termination to the other party hereto (the "NOTICE OF TERMINATION"). The Notice of Termination shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. The date of your termination of employment with the Company and its subsidiaries (the "DATE OF TERMINATION") shall be determined as follows: (i) if your employment is terminated for Disability, thirty (30) days after a Notice of Termination is given (provided that you shall not have returned to the full-time performance of your duties during such thirty
(30) day period), (ii) if your employment is terminated by the Company in an Involuntary Termination, five (5) days after the date the Notice of Termination is received by you and (iii) if your employment is terminated by the Company for Cause, the later of the date specified in the Notice of Termination or ten (10) days following the date such notice is received by you. If the basis for your Involuntary Termination is your resignation for Good Reason, the Date of Termination shall be ten (10) days after the date your Notice of Termination is received by the Company. The Date of Termination for a resignation of employment other than for Good Reason shall be the date set forth in the applicable notice, which shall be no earlier than ten (10) days after the date such notice is received by the Company.

(d) NO MITIGATION OR OFFSET. You shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Agreement be reduced by any compensation earned by you as the result of employment by another employer or by pension benefits paid by the Company or another employer after the Date of Termination or otherwise except as specifically provided in clause (ii) of the last sentence of Section 3(b).

4. ADDITIONAL PAYMENT.

(a) GROSS-UP PAYMENT. Notwithstanding anything herein to the contrary, if it is determined that any Payment would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties with respect to such excise tax (such excise tax, together

with any interest or penalties thereon, is herein referred to as an "EXCISE TAX"), then you shall be entitled to an additional payment (a "GROSS-UP PAYMENT") in an amount that will place you in the same after-tax economic position that you would have enjoyed if the Excise Tax had not applied to the Payment. The amount of the Gross-Up Payment shall be determined by the Accounting Firm in accordance with the formula {(E x (1 - M)/(1 - T)) -E} (or such other formula as the Accounting Firm deems appropriate which is intended to achieve the same result), where

E equals the Payments which are determined to be "excess parachute payments" within the meaning of Section 280G(b)(1) of the Code;

M equals the sum of the highest marginal rates(1) for Taxes applicable to you at the time of the Payment; and

T equals M plus the rate of Excise Tax applicable to the Payment.

No Gross-Up Payments shall be payable hereunder if the Accounting Firm determines that the Payments are not subject to an Excise Tax.

(b) DETERMINATION OF GROSS-UP PAYMENT. Subject to the provisions of Section 4(c), all determinations required under this Section 4, including whether a Gross-Up Payment is required, the amount of the Payments constituting excess parachute payments, and the amount of the Gross-Up Payment, shall be made by the Accounting Firm, which shall provide detailed supporting calculations both to you and the Company within fifteen days of the Change in Control Date, your Date of Termination or any other date reasonably requested by you or the Company on which a determination under this Section 4 is necessary or advisable. The Company shall pay to you the initial Gross-Up Payment within 5 days of the receipt by you and the Company of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by you, the Company shall cause the Accounting Firm to provide you with an opinion that the Accounting Firm has substantial authority under the Code and Regulations not to report an Excise Tax on your federal income tax return. Any determination by the Accounting Firm shall be binding upon you and the Company. If the initial Gross-Up Payment is insufficient to cover the amount of the Excise Tax that is ultimately determined to be owing by you with respect to any Payment (hereinafter an "UNDERPAYMENT"), the Company, after exhausting its remedies under Section 4(c) below, shall promptly pay to you an additional Gross-Up Payment in respect of the Underpayment.

(c) PROCEDURES. You shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of a Gross-Up Payment. Such notice shall be given as soon as practicable after you know of such claim and shall apprise the Company of the nature of the claim and the date on which the claim is requested to be paid. You agree not to pay the claim until the expiration of the thirty-day period following the date on which you notify the Company, or such shorter period ending on the date

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(1)To be expressed in up to three decimal places. For example, a combined federal, state and local marginal rate of 56% would be expressed as .560

the Taxes with respect to such claim are due (the "NOTICE PERIOD"). If the Company notifies you in writing prior to the expiration of the Notice Period that it desires to contest the claim, you shall: (i) give the Company any information reasonably requested by the Company relating to the claim; (ii) take such action in connection with the claim as the Company may reasonably request, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company and reasonably acceptable to you; (iii) cooperate with the Company in good faith in contesting the claim; and (iv) permit the Company to participate in any proceedings relating to the claim. You shall permit the Company to control all proceedings related to the claim and, at its option, permit the Company to pursue or forgo any and all administrative appeals, proceedings, hearings, and conferences with the taxing authority in respect of such claim. If requested by the Company, you agree either to pay the tax claimed and sue for a refund or contest the claim in any permissible manner and to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts as the Company shall determine; PROVIDED, HOWEVER, that, if the Company directs you to pay such claim and pursue a refund, the Company shall advance the amount of such payment to you on an after-tax and interest-free basis (the "ADVANCE"). The Company's control of the contest related to the claim shall be limited to the issues related to the Gross-Up Payment and you shall be entitled to settle or contest, as the case may be, any other issues raised by the Internal Revenue Service or other taxing authority. If the Company does not notify you in writing prior to the end of the Notice Period of its desire to contest the claim, the Company shall pay to you an additional Gross-Up Payment in respect of the excess parachute payments that are the subject of the claim, and you agree to pay the amount of the Excise Tax that is the subject of the claim to the applicable taxing authority in accordance with applicable law.

(d) REPAYMENTS. If, after receipt by you of an Advance, you become entitled to a refund with respect to the claim to which such Advance relates, you shall pay the Company the amount of the refund (together with any interest paid or credited thereon after Taxes applicable thereto). If, after receipt by you of an Advance, a determination is made that you shall not be entitled to any refund with respect to the claim and the Company does not promptly notify you of its intent to contest the denial of refund, then the amount of the Advance shall not be required to be repaid by you and the amount thereof shall offset the amount of the additional Gross-Up Payment then owing to you.

(e) FURTHER ASSURANCES. The Company shall indemnify you and hold you harmless, on an after-tax basis, from any costs, expenses, penalties, fines, interest or other liabilities ("LOSSES") incurred by you with respect to the exercise by the Company of any of its rights under this Section 4, including, without limitation, any Losses related to the Company's decision to contest a claim or any imputed income to you resulting from any Advance or action taken on your behalf by the Company hereunder. The Company shall pay all legal fees and expenses incurred under this Section 4, and shall promptly reimburse you for the reasonable expenses incurred by you in connection with any actions taken by the Company or required to be taken by you hereunder. The Company shall also pay all of the fees and expenses of the Accounting Firm, including, without limitation, the fees and expenses related to the opinion referred to in Section 4(b).

(f) COMBINED PAYMENTS. Anything in this Section 4 to the contrary notwithstanding, the Company shall have no obligation to pay you a required Gross-Up Payment under this Section 4 if the aggregate amount of all Combined Payments has, at the time such payment is due, exceeded the Limit. If the amount of a Gross-Up Payment to you under this Section 4 would result in the Combined Payments exceeding the Limit, the Company shall pay you only the portion, if any, of the Gross-Up Payment which can be paid to you without causing the aggregate amount of all Combined Payments to exceed the Limit. In the event that you are entitled to a Gross-Up Payment under this Section 4 and other employees or former employees of the Company are also entitled to gross-up payments under the corresponding provisions of the applicable Combined Arrangements and the aggregate amount of all such payments would cause the Limit on Combined Payments to be exceeded, the Company shall allocate the amount of the reduction necessary to comply with the Limit among all such payments in the proportion that the amount of each such gross-up payment or Gross-Up Payment bears to the aggregate amount of all such payments. Nothing in this Section 4(f) shall require you to repay to the Company any amount that was previously paid to you under this Section 4.

5. OTHER PROVISIONS.

(a) VESTING AND EXERCISE. All Equity Awards granted to you under the Equity Plans shall vest and become exercisable in the event of your Involuntary Termination on or following the Change in Control Date. If you are employed by the Company on the date of the Equity Plan Change in Control, your Equity Awards will vest and become exercisable as of such date.

(b) EFFECT OF 30-DAY ALTERNATIVE. In accordance with the terms of the Equity Plans, upon an Equity Plan Change in Control, Equity Awards which are options or stock appreciation rights are "cashed out," unless the Administrator in its discretion determines not to do so. In the event that the Administrator elects not to cash out such Equity Awards, the Administrator has the discretion in the context of a merger or sale of all or substantially all of the assets of the Company either (i) to cause such Equity Awards to be assumed or an equivalent option or stock appreciation right granted by the successor corporation to the Company or a parent or subsidiary of such successor corporation, or (ii) to provide that your Equity Awards will remain outstanding for a thirty-day period beginning on the date that you are so notified of such action by the Administrator and that such Equity Awards will expire to the extent not exercised at the end of such thirty-day period (the "30-DAY ALTERNATIVE"). If the Administrator determines to utilize the 30-Day Alternative, the Company shall pay you with respect to each such Equity Award the excess, if any (the "ADDITIONAL AMOUNT"), of the Change in Control Price you would have received had the Equity Award been cashed out on the date of the Equity Plan Change in Control over the value of the consideration actually received by you in settlement of such awards (determined as of the date such consideration is received by you). Further, in the event of your Involuntary Termination on or after the Change in Control Date but on or prior to the date of the Equity Plan Change in

Control, the Company shall pay you the Additional Amount as if your employment had continued through the date of the Equity Plan Change in Control. In either case, the payment of the Additional Amount shall be made within 5 days following the determination by the Administrator of the Change in Control Price.

(c) GENERAL. Anything in this Agreement to the contrary notwithstanding, in no event shall the vesting and exercisability provisions applicable to you under the terms of your Equity Awards be less favorable to you than the terms and provisions of such awards in effect on the date hereof.

6. LEGAL FEES AND EXPENSES. The Company shall pay or reimburse you on an after-tax basis for all costs and expenses (including, without limitation, court costs and reasonable legal fees and expenses which reflect common practice with respect to the matters involved) incurred by you as a result of any claim, action or proceeding (i) arising out of your termination of employment during the Term, (ii) contesting, disputing or enforcing any right, benefits or obligations under this Agreement or (iii) arising out of or challenging the validity, advisability or enforceability of this Agreement or any provision thereof; PROVIDED, HOWEVER, that the amount of the payments and reimbursements under this Section 6 shall not exceed $2 million.

7. SUCCESSORS; BINDING AGREEMENT.

(a) ASSUMPTION BY SUCCESSOR. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and to agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place; PROVIDED, HOWEVER, that no such assumption shall relieve the Company of its obligations hereunder. As used in this Agreement, the "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law or otherwise.

(b) ENFORCEABILITY; BENEFICIARIES. This Agreement shall be binding upon and inure to the benefit of you (and your personal representatives and heirs) and the Company and any organization which succeeds to substantially all of the business or assets of the Company, whether by means of merger, consolidation, acquisition of all or substantially all of the assets of the Company or otherwise, including, without limitation, as a result of a Change in Control or by operation of law. This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If you should die while any amount would still be payable to you hereunder if you had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee or other designee or, if there is no such designee, to your estate.

8. DEFINITIONS. For purposes of this Agreement, the following capitalized words shall have the meanings set forth below:

"ACCOUNTING FIRM" shall mean KPMG Peat Marwick LLP or, if such firm is unable or unwilling to perform such calculations, such other national accounting firm as shall be designated by agreement between you and the Company. To the extent reasonably practicable, one such accounting firm shall be designated to perform the calculations in respect of the Combined Arrangements.

"ADMINISTRATOR" shall mean the "Administrator" as defined in the applicable Equity Plan or, if no such term is defined in the Equity Plan, the Board.

"CAUSE" shall mean a termination of your employment during the Term which is a result of (i) your felony conviction, (ii) your willful disclosure of material trade secrets or other material confidential information related to the business of the Company and its subsidiaries or (iii) your willful and continued failure substantially to perform your duties with the Company (other than any such failure resulting from your incapacity due to physical or mental illness or any such actual or anticipated failure resulting from a resignation by you for Good Reason) after a written demand for substantial performance is delivered to you by the Board, which demand specifically identifies the manner in which the Board believes that you have not substantially performed your duties, and which performance is not substantially corrected by you within 10 days of receipt of such demand. For purposes of the previous sentence, no act or failure to act on your part shall be deemed "willful" unless done, or omitted to be done, by you not in good faith and without reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, you shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to you a copy of a resolution duly adopted by the affirmative vote of not less than three-fourths (3/4ths) of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to you and an opportunity for you, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board you were guilty of conduct set forth above in clause (i),
(ii) or (iii) of the first sentence of this section and specifying the particulars thereof in detail.

"CHANGE IN CONTROL" shall mean a change in control of the Company of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement; PROVIDED, HOWEVER, that, anything in this Agreement to the contrary notwithstanding, a Change in Control shall be deemed to have occurred if:

(i) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group deemed to be a person under Section 14(d)(2) of the Exchange Act, is or becomes the "beneficial owner" (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities entitled to vote in the election of directors of the Company;

(ii) during any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constituted the Board and any new directors, whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least three-fourths (3/4ths) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved (the "INCUMBENT DIRECTORS"), cease for any reason to constitute a majority thereof;

(iii) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company (a "TRANSACTION"), in each case with respect to which the stockholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than 50% of the combined voting power of the Company or other corporation resulting from such Transaction;

(iv) all or substantially all of the assets of the Company are sold, liquidated or distributed; or

(v) there is a "change in control" or a "change in the effective control" of the Company within the meaning of Section 280G of the Code and the Regulations.

"CHANGE IN CONTROL DATE" shall mean the earliest of (i) the date on which the Change in Control occurs, (ii) the date on which the Company executes an agreement, the consummation of which would result in the occurrence of a Change in Control, (iii) the date the Board approves a transaction or series of transactions, the consummation of which would result in a Change in Control and (iv) the date the Company fails to satisfy its obligations to have this agreement assumed by any successor to the Company in accordance with Section 7(a) of this Agreement. If the Change in Control Date occurs as a result of an agreement described in clause (ii) of the previous sentence or as a result of the approval of the Board described in clause (iii) of the previous sentence and the Change in Control to which such agreement or approval relates (the "CONTEMPLATED CHANGE IN CONTROL") subsequently does not occur, then the Term shall expire on the sixtieth day (the "RESET DATE") following the date the Board certifies by resolution duly adopted by three-fourths (3/4ths) of the Incumbent Directors then in office that the Contemplated Change in Control is not reasonably likely to occur; PROVIDED, HOWEVER, that this sentence shall not apply if (A) an Involuntary Termination of your employment with the Company has occurred on and after the Change in Control Date and on or prior to the Reset Date or (B) the Contemplated Change in Control subsequently occurs within three months of the Reset Date. Following the Reset Date, the provisions of this Agreement shall remain in effect and a new Term shall commence upon the occurrence of a subsequent Change in Control Date. Notwithstanding the first sentence of this definition, if your employment with the Company terminates prior to the Change in Control Date and it is reasonably demonstrated that your termination of employment (i) was at the request of the third party who has taken steps reasonably calculated to effect the Change in Control or (ii) otherwise arose in connection with or in anticipation of the Change in Control, then "Change in Control Date" shall mean the date immediately prior to the date of your termination of employment.

"CHANGE IN CONTROL PRICE" shall mean the "Change in Control Price" as defined in the applicable Equity Plan and determined by the Administrator as of the date of the Equity Plan Change in Control, whether or not the Administrator is required under the terms of the applicable Equity Plan to determine such price as of such date.

"COMBINED ARRANGEMENTS" shall mean this Agreement, the Retention Agreements entered into as of the date first set forth above between the Company and certain of its executive officers, any Retention Agreement entered into after the date hereof which is specifically

designated by the terms thereof as one of the Combined Arrangements and the Supplement to the Severance Plan.

"COMBINED PAYMENTS" shall mean the aggregate cash amount of
(i) severance payments made to you under Section 3(a) of this Agreement or to any other employee or former employee under the corresponding provisions of the applicable Combined Arrangement, (ii) severance payments made under Sections 2(e) and 2(f) of the Supplement or the corresponding provisions of the applicable Combined Arrangement, (iii) Gross-Up Payments made to you under Section 6 of this Agreement or to any other employee or former employee under the corresponding provisions of the applicable Combined Arrangement, (iv) fees and expenses which are paid or reimbursed to you under Section 6 of this Agreement or to any other employee or former employee under the corresponding provisions of the applicable Combined Arrangement, (v) payments made to you under Section 5 of this Agreement or to any other employee or former employee under the corresponding provisions of the applicable Combined Arrangement and

(vi) costs incurred by the Company in respect of any employee or former employee under Section 2(d) of the Supplement or the corresponding provisions of the applicable Combined Arrangement.

"CODE" shall mean the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

"COMMON STOCK" shall mean the common stock of the Company.

"DISABILITY" shall mean (i) your incapacity due to physical or mental illness which causes you to be absent from the full-time performance of your duties with the Company for six (6) consecutive months and (ii) your failure to return to full-time performance of your duties for the Company within thirty (30) days after written Notice of Termination due to Disability is given to you. Any question as to the existence of your Disability upon which you and the Company cannot agree shall be determined by a qualified independent physician selected by you (or, if you are unable to make such selection, such selection shall be made by any adult member of your immediate family), and approved by the Company. The determination of such physician made in writing to the Company and to you shall be final and conclusive for all purposes of this Agreement.

"ELTSOP" shall mean the Apple Computer, Inc. 1987 Executive Long Term Stock Option Plan, as amended, and any successor plan thereto.

"EQUITY AWARDS" shall mean options, restricted stock, bonus stock or other grants or awards which consist of, or relate to, equity securities of the Company and which have been granted to you under the Equity Plans. For purposes of this Agreement, Equity Awards shall also include any securities acquired upon the exercise of an option, warrant or similar right that constitutes an Equity Award.

"EQUITY PLAN CHANGE IN CONTROL" shall mean a change in control of the Company as defined in the applicable Equity Plan.

"EQUITY PLANS" shall mean the Stock Option Plan, the ELTSOP, and any other equity-based incentive plan or arrangement adopted by the Company.

"EXCHANGE ACT" shall mean the Securities Exchange Act of 1934, as amended, and any successor provisions thereto.

"GOOD REASON" shall mean a resignation of your employment during the Term as a result of any of the following:

(i) A meaningful and detrimental alteration in your position, your titles, or the nature or status of your responsibilities (including your reporting responsibilities) from those in effect immediately prior to the Change in Control Date. For purposes of this clause (i), a meaningful and detrimental alteration shall exist if, on or after the Change in Control Date, without limitation, any of the following occurs: (A) at any time you do not hold the position of senior vice president in charge of software engineering of the Company (or the surviving entity resulting from a merger or consolidation (through one or more related transactions) of the Company with another entity (the"SURVIVING ENTITY")); (B) at any time you do not report directly to the chief executive officer of the Company (or the Surviving Entity); (C) at any time you do not have regular direct access to the chief executive officer of the Company (or the Surviving Entity) or (D) any similar adverse change on or after the Change in Control Date in your title, position or reporting responsibilities;

(ii) A reduction by the Company in your annual base salary as in effect immediately prior to the Change in Control Date or as the same may be increased from time to time thereafter; a failure by the Company to increase your salary at a rate commensurate with that of other key executives of the Company; or a reduction in your target annual bonus (expressed as a percentage of base salary) below the target in effect for you prior to the Change in Control Date;

(iii) The relocation of the office of the Company where you are employed immediately prior to the Change in Control Date (the "CIC LOCATION") to a location which is more than fifty (50) miles away from the CIC Location or the Company's requiring you to be based more than fifty
(50) miles away from the CIC Location (except for required travel on the Company's business to an extent substantially consistent with your customary business travel obligations in the ordinary course of business prior to the Change in Control Date);

(iv) The failure by the Company to continue in effect any compensation plan in which you participated prior to the Change in Control Date or made available to you after the Change in Control Date, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan in connection with the Change in Control, or the failure by the Company to continue your participation therein on at least as favorable a basis, both in terms of the amount of

benefits provided and the level of your participation relative to other participants, as existed on the Change in Control Date;

(v) The failure by the Company to continue to provide you with benefits at least as favorable in the aggregate to those enjoyed by you under the Company's pension, savings, life insurance, medical, health and accident, disability, and fringe benefit plans and programs in which you were participating immediately prior to the Change in Control Date; or the failure by the Company to provide you with the number of paid vacation days to which you are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect immediately prior to the Change in Control;

(vi) The failure of the Company to obtain an agreement reasonably satisfactory to you from any successor to assume and agree to perform this Agreement, as contemplated in Section 7(a) hereof or, if the business for which your services are principally performed is sold at any time after a Change in Control, the failure of the Company to obtain such an agreement from the purchaser of such business;

(vii) Any termination of your employment which is not effected pursuant to the terms of this Agreement; or

(viii) A material breach by the Company of the provisions of this Agreement; PROVIDED, HOWEVER, that an event described above in clause (i), (ii),
(iv), (v) or (viii) shall not constitute Good Reason unless it is communicated by you to the Company in writing and is not corrected by the Company in a manner which is reasonably satisfactory to you (including full retroactive correction with respect to any monetary matter) within 10 days of the Company's receipt of such written notice from you.

"INVOLUNTARY TERMINATION" shall mean (i) your termination of employment by the Company and its subsidiaries during the Term other than for Cause or Disability or (ii) your resignation of employment with the Company and its subsidiaries during the Term for Good Reason.

"LIMIT" shall mean the dollar amount determined in accordance with the formula [A x B x C], where

A equals 0.02;

B equals the number of issued and outstanding shares of Common Stock of the Company immediately prior to the Change in Control Date; and

C equals the greater of (i) (A) if the Common Stock is listed on any established stock exchange or national market system (including, without limitation, the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation ("NASDAQ") System), the highest closing sale price (or closing bid price, if no sales are reported) of a share of Common Stock, or (B) if the Common Stock is regularly quoted on the NASDAQ System (but not on a national market system) or quoted by a recognized securities dealer but selling prices are not reported, the

highest mean between the high and low asked prices for the Common Stock, in each case, on any day during the ninety-day period ending on the Change in Control Date, and (ii) the highest price paid or offered, as determined by the Accounting Firm, in any bona fide transaction or bona fide offer related to the Change in Control.

"PAYMENT" means (i) any amount due or paid to you under this Agreement, (ii) any amount that is due or paid to you under any plan, program or arrangement of the Company and its subsidiaries (including, without limitation, the Equity Plans) and (iii) any amount or benefit that is due or payable to you under this Agreement or under any plan, program or arrangement of the Company and its subsidiaries not otherwise covered under clause (i) or (ii) hereof which must reasonably be taken into account under Section 280G of the Code and the Regulations in determining the amount the "parachute payments" received by you, including, without limitation, any amounts which must be taken into account under the Code and Regulations as a result of (A) the acceleration of the vesting of any option, restricted stock or other equity award granted under the Equity Plans or otherwise, (B) the acceleration of the time at which any payment or benefit is receivable by you or (C) any contingent severance or other amounts that are payable to you.

"REFERENCE BONUS" shall mean the greater of (i) the target annual bonus applicable to you for the year in which your Involuntary Termination occurs and (ii) the highest target annual bonus applicable to you in any of the three years ending prior to the Change in Control Date.

"REFERENCE SALARY" shall mean the greater of (i) the annual rate of your base salary from the Company and its subsidiaries in effect immediately prior to the date of your Involuntary Termination and (ii) the annual rate of your base salary from the Company in effect at any point during the three-year period ending on the Change in Control Date.

"REGULATIONS" shall mean the proposed, temporary and regulations under
Section 280G of the Code or any successor provision thereto.

"SEVERANCE PLAN" means the Apple Computer, Inc. Executive Severance Plan, as amended.

"STOCK OPTION PLAN" shall mean the Apple Computer, Inc. 1990 Stock Option Plan, as amended, and any successor plan thereto.

"SUPPLEMENT" means the amendment to the Severance Plan adopted as of the date of this Agreement and any future amendment thereto.

"TAXES" shall mean the federal, state and local income taxes to which you are subject at the time of determination, calculated on the basis of the highest marginal rates then in effect, plus any additional payroll or withholding taxes to which you are then subject.

"TRANSACTION DATE" shall mean the date described in clause (i) of the definition of Change in Control Date.

9. NOTICE. For the purpose of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the Board of Directors, Apple Computer, Inc., 1 Infinite Loop, M/S: 381, Cupertino, CA 95014, with a copy to the General Counsel of the Company, or to you at the address set forth on the first page of this Agreement or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

10. MISCELLANEOUS.

(a) AMENDMENTS, WAIVERS, ETC. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement and this Agreement shall supersede all prior agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, with respect to the subject matter hereof; PROVIDED, HOWEVER, that, except as expressly set forth herein, this Agreement shall not supersede the terms of Equity Awards previously granted to you.

(b) VALIDITY. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

(c) COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

(d) NO CONTRACT OF EMPLOYMENT. Nothing in this Agreement shall be construed as giving you any right to be retained in the employ of the Company or shall affect the terms and conditions of your employment with the Company prior to the commencement of the Term hereof.

(e) WITHHOLDING. Amounts paid to you hereunder shall be subject to all applicable federal, state and local withholding taxes.

(f) SOURCE OF PAYMENTS. All payments provided under this Agreement, other than payments made pursuant to a plan which provides otherwise, shall be paid in cash from the general funds of the Company, and no special or separate fund shall be established, and no other segregation of assets made, to assure payment. You will have no right, title or interest whatsoever in or to any investments which the Company may make to aid it in meeting its obligations hereunder. To the extent that any person acquires a right to receive payments from the Company hereunder, such right shall be no greater than the right of an unsecured creditor of the Company.

(g) HEADINGS. The headings contained in this Agreement are intended solely for convenience of reference and shall not affect the rights of the parties to this Agreement.

(h) GOVERNING LAW. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of California applicable to contracts entered into and performed in such State.

If this letter sets forth our agreement on the subject matter hereof, kindly sign and return to the Company the enclosed copy of this letter which will then constitute our agreement on this subject.

Sincerely,

APPLE COMPUTER, INC.

By: /s/ Gilbert F. Amelio
Name: Gilbert F. Amelio
Title: Chief Executive Officer

Agreed to as of this 30th day of May, 1997

/s/ Avie Tevanian
Avie Tevanian

APPLE COMPUTER, INC.
1997 EMPLOYEE STOCK OPTION PLAN
(AS AMENDED THROUGH 11/5/97)

1. PURPOSES OF THE PLAN. The purposes of this 1997 Employee Stock Option Plan are to assist the Company in attracting and retaining high quality personnel, to provide additional incentive to Employees who are not Directors or Officers of the Company and to promote the success of the Company's business. Options granted under the Plan shall be Nonstatutory Stock Options. SARs granted under the Plan may be granted in connection with Options or independently of Options.

2. DEFINITIONS. As used herein, the following definitions shall apply:

"ADMINISTRATOR" means the Board or any of its Committees, as shall be administering the Plan from time to time pursuant to Section 4 of the Plan.

"AFFILIATED COMPANY" means a corporation which is not a Subsidiary but with respect to which the Company owns, directly or indirectly through one or more Subsidiaries, at least twenty percent of the total voting power, unless the Administrator determines in its discretion that such corporation is not an Affiliated Company.

"APPLICABLE LAWS" shall have the meaning set forth in Section 4 of the Plan.

"BOARD" means the Board of Directors of the Company.

"CHANGE IN CONTROL" shall have the meaning set forth in Section 10 of the Plan.

"CHANGE IN CONTROL PRICE" shall have the meaning set forth in
Section 12 of the Plan.

"COMMON STOCK" means the common stock, no par value, of the Company.

"COMPANY" means Apple Computer, Inc., a California corporation, or its successor.

"COMMITTEE" means a Committee, if any, appointed by the Board in accordance with Section 4(a) of the Plan.

"CODE" means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

"CONTINUOUS STATUS AS AN EMPLOYEE" means the absence of any interruption or termination of the employment relationship with the Company or any Subsidiary or Affiliated Company. Continuous Status as an Employee shall not be considered interrupted in the case of (i) medical leave, military leave, family leave, or any other leave of absence approved by the Administrator, provided, in each case, that such leave does not result in termination of the employment relationship with the Company or any Subsidiary or Affiliated Company, as the case may be, under the terms of the respective Company policy for such leave; or (ii) in the case of transfers between locations of the Company or between the Company, its Subsidiaries, its successor or its Affiliated Companies.

"DIRECTOR" means a member of the Board.

"EMPLOYEE" means any person, employed by and on the payroll of the Company, any Subsidiary or any Affiliated

Company.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended.

"FAIR MARKET VALUE" means the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system (including without limitation the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation ("NASDAQ") System), its Fair Market Value shall be the closing sales price for such stock or the closing bid if no sales were reported, as quoted on such system or exchange (or the exchange with the greatest volume of trading in the Common Stock) for the date of determination or, if the date of determination is not a trading day, the immediately preceding trading day, as reported in THE WALL STREET JOURNAL or such other source as the Administrator deems reliable.

(ii) If the Common Stock is regularly quoted on the NASDAQ System (but not on the National Market System) or quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high and low asked prices for the Common Stock on the date of determination or, if there are no quoted prices on the date of determination, on the last day on which there are quoted prices prior to the date of determination.

(iii) In the absence of an established market for the Common Stock, the FairMarket Value thereof shall be determined in good faith by the Administrator.

"NONSTATUTORY STOCK OPTION" means an Option that is not intended to be an incentive stock option within the meaning of Section 422 of the Code.

"OFFICER" means any individual designated by the Board as an elected officer of the Company.

"OPTION" means an option granted pursuant to the Plan.

"OPTIONED STOCK" means the Common Stock subject to an Option or
SAR.

"OPTIONEE" means an Employee who receives an Option or SAR.

"PARENT" corporation shall have the meaning defined in Section 424(e) of the Code.

"PLAN" means this Apple Computer, Inc. 1997 Employee Stock Option Plan.

"SAR" means a stock appreciation right granted pursuant to Section 9 below.

"SECTION 3 LIMIT" shall have the meaning set forth in Section 3 of the Plan.

"SHARE" means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.

"SIXTY-DAY PERIOD " shall have the meaning set forth in Section 12(f) of the Plan.

"SUBSIDIARY" corporation has the meaning defined in Section 424(f) of the Code.

"TAX DATE" shall have the meaning set forth in Section 9 of the Plan.

3. STOCK SUBJECT TO THE PLAN.

(a) LIMIT. Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan or for which SARs may be granted and exercised is 5,000,000 Shares (the "SECTION 3 LIMIT"). The Shares may be authorized but unissued or reacquired Common Stock. In the discretion of the Administrator, any or all of the Shares authorized under the Plan may be subject to SARs issued pursuant to the Plan.

(b) RULES APPLICABLE TO THE CALCULATION OF THE SECTION 3 LIMIT. In calculating the number of Shares available for issuance under the Plan, the following rules shall apply:

(i) The Section 3 Limit shall be reduced by the number of Shares of Optioned Stock subject to each outstanding Option or freestanding SAR.

(ii) The Section 3 Limit shall be increased by the number of Shares of Optioned Stock subject to the portion of an Option or SAR that expires unexercised or is forfeited for any reason.

(iii) The Section 3 Limit shall be increased by the number of Shares tendered to pay the exercise price of an Option

or the number of Shares of Optioned Stock withheld to satisfy an Optionee's tax liability in connection with the exercise of an Option or SAR. (iv) Option Stock subject to both an outstanding Option and SAR granted in connection with the Option shall be counted only once in calculating the Section 3 Limit.

4. ADMINISTRATION OF THE PLAN.

(a) COMPOSITION OF ADMINISTRATOR. The Plan may be administered by (i) the Board or (ii) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the applicable securities laws, California corporate law and the Code (collectively, "APPLICABLE LAWS").

Once a Committee has been appointed pursuant to this Section
4(a), such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of the Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws.

(b) POWERS OF THE ADMINISTRATOR. Subject to the provisions of the Plan and, in the case of the Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion: (i) to determine the Fair Market Value of the Common Stock in accordance with the Plan; (ii) to determine, in accordance with
Section 8(a) of the Plan, the exercise price per Share of Options and SARs to be granted; (iii) to determine the Employees to whom, and the time or times at which, Options and SARs shall be granted and the number of Shares to be represented by each Option or SAR (including, without limitation, whether or not a corporation shall be excluded from the definition of Affiliated Company); (iv) to construe and interpret the provisions of the Plan and any agreements or certificates issued under or in connection with the Plan; (v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Option or SAR granted hereunder (including, but not limited to, any restriction or limitation, or any vesting acceleration or waiver of forfeiture restrictions regarding any Option or SAR or the Shares relating thereto, based in each case on such factors as the Administrator shall determine, in its sole discretion);
(vi) to approve forms of agreement for use under the Plan; (vii) to prescribe, amend and rescind rules and regulations relating to the Plan; (viii) to modify or amend each Option or SAR or accelerate the exercise date of any Option or SAR; (ix) to reduce the exercise price of any Option or SAR to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option or SAR shall have declined since the date the Option or SAR was granted;
(x) to authorize any person to execute on behalf of the Company any instrument required to effectuate the grant of an Option or SAR previously granted by the Administrator; and (xi) to make all other determinations deemed necessary or advisable for the administration of the Plan.

(c) EFFECT OF DECISIONS BY THE ADMINISTRATOR. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Optionees and any other holders of any Options.

5. ELIGIBILITY. The Administrator may grant Options and SARs only to individuals who are Employees or who are consultants to the Company, or a Subsidiary or Affiliated Company. In no event may an Option or SAR be granted to any individual who, at the time of grant, is an Officer or Director. An Employee who has been granted an Option or SAR may, if he or she is otherwise eligible, be granted an additional Option or Options, SAR or SARs. Each Option shall be evidenced by a written Option agreement, which shall be in such form and contain such provisions as the Administrator shall from time to time deem appropriate. Without limiting the foregoing, the Administrator may, at any time, or from time to time, authorize the Company, with the consent of the respective recipients, to issue new Options or Options in exchange for the surrender and cancellation of any or all outstanding Options, other options, SARs or other stock appreciation rights.

Neither the Plan nor any Option or SAR agreement shall confer upon any Optionee any right with respect to continuation of

employment by the Company (or any Parent, Subsidiary or Affiliated Company), nor shall it interfere in any way with the Optionee's right or the right of the Company (or any Parent, Subsidiary or Affiliated Company) to terminate the Optionee's employment at any time or for any reason.

If an Option or SAR is granted to an individual who is a consultant to the Company or any Subsidiary or Affiliate, all references in the Plan to "Employee" shall be deemed to include the term "consultant" and all references in the Plan to "employment," "Continuous Status as an Employee" and "termination of employment" shall be deemed to refer to the individual's consultancy or status as a consultant.

6. TERM OF PLAN. The Plan shall become effective upon its adoption by the Board. It shall continue in effect for a term of ten years unless sooner terminated under Section 14 of the Plan.

7. TERM OF OPTION. The term of each Option shall be ten (10) years from the date of grant thereof or such shorter term as may be provided in the Option agreement.

8. EXERCISE PRICE AND CONSIDERATION.

(a) EXERCISE PRICE. The per Share exercise price for the Shares issuable pursuant to an Option shall be such price as is determined by the Administrator, but shall in no event be less than 100% of the Fair Market Value of Common Stock, determined as of the date of grant of the Option. In the event that the Administrator shall reduce the exercise price, the exercise price shall be no less than 100% of the Fair Market Value as of the date of that reduction.

(b) METHOD OF PAYMENT. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator and may consist of (i) cash, (ii) check, (iii) promissory note, (iv) other Shares which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised, (v) delivery of a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company the amount of sale or loan proceeds required to pay the exercise price, or (vi) any combination of the foregoing methods of payment and/or any other consideration or method of payment as shall be permitted under applicable corporate law.

9. STOCK APPRECIATION RIGHTS.

(a) GRANTED IN CONNECTION WITH OPTIONS. At the sole discretion of the Administrator, SARs may be granted in connection with all or any part of an Option, either concurrently with the grant of the Option or at any time thereafter during the term of the Option. The following provisions apply to SARs that are granted in connection with Options:

(i) The SAR shall entitle the Optionee to exercise the SAR by surrendering to the Company unexercised a portion of the related Option. The Optionee shall receive in exchange from the Company an amount equal to the excess of (x) the Fair Market Value on the date of exercise of the SAR of the Common Stock covered by the surrendered portion of the related Option over (y) the exercise price of the Common Stock covered by the surrendered portion of the related Option. Notwithstanding the foregoing, the Administrator may place limits on the amount that may be paid upon exercise of an SAR; PROVIDED, HOWEVER, that such limit shall not restrict the exercisability of the related Option.

(ii) When an SAR is exercised, the related Option, to the extent surrendered, shall no longer be exercisable.

(iii) An SAR shall be exercisable only when and to the extent that the related Option is exercisable and shall expire no later than the date on which the related Option expires.

(iv) An SAR may only be exercised at a time when the Fair Market Value of the Common Stock covered by the related Option exceeds the exercise price of the Common Stock covered by the related Option.

(b) INDEPENDENT SARS. At the sole discretion of the Administrator, SARs may be granted without related Options. The following provisions apply to SARs that are not granted in connection with Options:

(i) The SAR shall entitle the Optionee, by exercising the SAR, to receive from the Company an amount equal to the excess of (x) the Fair Market Value of the Common Stock covered by exercised portion of the SAR, as of the date of such exercise, over (y) the Fair Market Value of the Common Stock covered by the exercised portion of the SAR, as of the date on which the SAR was granted; PROVIDED, HOWEVER, that the Administrator may place limits on the amount that may be paid upon exercise of an SAR.

(ii) SARs shall be exercisable, in whole or in part, at such times as the Administrator shall specify in the Optionee's SAR agreement.

(c) FORM OF PAYMENT. The Company's obligation arising upon the exercise of an SAR may be paid in Common Stock or in cash, or in any combination of Common Stock and cash, as the Administrator, in its sole discretion, may determine. Shares issued upon the exercise of an SAR shall be valued at their Fair Market Value as of the date of exercise.

10. METHOD OF EXERCISE.

(a) PROCEDURE FOR EXERCISE; RIGHTS AS A SHAREHOLDER. Any Option or SAR granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator and as shall be permissible under the terms of the Plan.

An Option or SAR shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option or SAR by the person entitled to exercise the Option or SAR and full payment for the Shares with respect to which the Option is exercised has been received by the Company. Full payment may, as authorized by the Administrator and permitted by the Option agreement, consist of any consideration and method of payment allowable under Section 8(b) of the Plan. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 12 of the Plan. An Option or SAR may not be exercised with respect to a fraction of a Share.

(b) TERMINATION OF CONTINUOUS EMPLOYMENT. Upon termination of an Optionee's Continuous Status as Employee (other than termination by reason of the Optionee's death), the Optionee may, but only within ninety days after the date of such termination, exercise his or her Option or SAR to the extent that it was exercisable at the date of such termination. Notwithstanding the foregoing, however, an Option or SAR may not be exercised after the date the Option or SAR would otherwise expire by its terms due to the passage of time from the date of grant.

(c) DEATH OF OPTIONEE. In the event of the death of an Optionee:

(i) Who is at the time of death an Employee and who shall have been in Continuous Status as an Employee since the date of grant of the Option, the Option or SAR may be exercised at any time within six (6) months (or such other period of time not exceeding twelve (12) months as determined by the Administrator) following the date of death by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent of the right to exercise that would have

accrued had the Optionee continued living and terminated his or her employment six (6) months (or such other period of time not exceeding twelve (12) months as determined by the Administrator) after the date of death; or

(ii) Within ninety days after the termination of Continuous Status as an Employee, the Option or SAR may be exercised, at any time within six (6) months (or such other period of time not exceeding twelve (12) months as determined by the Administrator) following the date of death by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent of the right to exercise that had accrued at the date of termination.

Notwithstanding the foregoing, however, an Option or SAR may not be exercised after the date the Option or SAR would otherwise expire by its terms due to the passage of time from the date of grant.

(d) STOCK WITHHOLDING TO SATISFY WITHHOLDING TAX OBLIGATIONS. When an Optionee incurs tax liability in connection with the exercise of an Option or SAR, which tax liability is subject to tax withholding under applicable tax laws, and the Optionee is obligated to pay the Company an amount required to be withheld under applicable tax laws, the Optionee may satisfy the withholding tax obligation (including, at the election of the Optionee, any additional amount which the Optionee desires to have withheld in order to satisfy in whole or in part the Optionee's full estimated tax in connection with the exercise) by electing to have the Company withhold from the Shares to be issued upon exercise of the Option, or the Shares to be issued upon exercise of the SAR, if any, that number of Shares having a Fair Market Value equal to the amount required to be withheld (and any additional amount desired to be withheld, as aforesaid). The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined (the "TAX DATE").

All elections by an Optionee to have Shares withheld for this purpose shall be made in writing in a form acceptable to the Administrator and shall be subject to the following restrictions:

(i) the election must be made on or prior to the applicable Tax Date; and

(ii) all elections shall be subject to the consent or disapproval of the Administrator.

11. NON-TRANSFERABILITY OF OPTIONS. Options and SARs may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution or pursuant to a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act, or the rules thereunder; PROVIDED, HOWEVER, that the Administrator may grant Nonstatutory Stock Options that are freely transferable. The designation of a beneficiary by an Optionee or holder of an SAR does not constitute a transfer. An Option or an SAR may be exercised, during the lifetime of the Optionee or SAR holder, only by the Optionee or SAR holder or by a transferee permitted by this Section 11.

12. ADJUSTMENTS UPON CHANGES IN CAPITALIZATION OR MERGER.

(a) CHANGES IN CAPITALIZATION. Subject to any required action by the shareholders of the Company, the number of Shares covered by each outstanding Option and SAR, and the number of Shares which have been authorized for issuance under the Plan but as to which no Options or SARs have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option or SAR, as well as the price per Share covered by each such outstanding Option or SAR, shall be proportionately adjusted for any increase or decrease in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the aggregate number of issued Shares effected without receipt of consideration by the Company; PROVIDED, HOWEVER, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares

subject to an Option or SAR.

(b) DISSOLUTION OR LIQUIDATION. In the event of the proposed dissolution or liquidation of the Company, all outstanding Options and SARs will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Administrator. The Administrator may, in the exercise of its sole discretion in such instances, declare that any Option or SAR shall terminate as of a date fixed by the Administrator and give each Optionee the right to exercise his or her Option or SAR as to all or any part of the Optioned Stock or SAR, including Shares as to which the Option or SAR would not otherwise be exercisable.

(c) SALE OF ASSETS OR MERGER. Subject to the provisions of
Section 12(d), in the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, each outstanding Option and SAR shall be assumed or an equivalent option or stock appreciation right shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation, unless the Administrator determines, in the exercise of its sole discretion and in lieu of such assumption or substitution, that the Optionee shall have the right to exercise the Option or SAR as to all of the Optioned Stock, including Shares as to which the Option or SAR would not otherwise be exercisable. If the Administrator makes an Option or SAR fully exercisable in lieu of assumption or substitution in the event of a merger or sale of assets, the Company shall notify the Optionee that the Option or SAR shall be fully exercisable for a period of thirty (30) days from the date of such notice, and the Option or SAR will terminate upon the expiration of such period. For purposes of this paragraph, an Option granted under the Plan shall be deemed to be assumed if, following the sale of assets or merger, the Option confers the right to purchase, for each Share of Optioned Stock subject to the Option immediately prior to the sale of assets or merger, the consideration (whether stock, cash or other securities or property) received in the sale of assets or merger by holders of Common Stock for each Share held on the effective date of the transaction (and if such holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the sale of assets or merger was not solely Common Stock of the successor corporation or its parent, the Administrator may, with the consent of the successor corporation and the participant, provide for the per share consideration to be received upon exercise of the Option to be solely Common Stock of the successor corporation or its parent equal in Fair Market Value to the per share consideration received by holders of Common Stock in the sale of assets or merger.

(d) CHANGE IN CONTROL. In the event of a "Change in Control" of the Company, as defined in Section 12(e), unless otherwise determined by the Administrator prior to the occurrence of such Change in Control, the following acceleration and valuation provisions shall apply:

(i) Any Options and SARs outstanding as of the date such Change in Control is determined to have occurred that are not yet exercisable and vested on such date shall become fully exercisable and vested; and

(ii) The value of all outstanding Options and SARs shall, unless otherwise determined by the Administrator at or after grant, be cashed-out. The amount at which such Options and SARs shall be cashed out shall be equal to the excess of (x) the Change in Control Price (as defined below) over (y) the exercise price of the Common Stock covered by the Option or SAR. The cash-out proceeds shall be paid to the Optionee or, in the event of death of an Optionee prior to payment, to the estate of the Optionee or to a person who acquired the right to exercise the Option or SAR by bequest or inheritance.

(e) "DEFINITION OF "CHANGE IN CONTROL". For purposes of this
Section 12, a "Change in Control" means the happening of any of the following:

(i) When any "person", as such term is used in Sections 13(d) and 14(d)
of the Exchange Act (other than the Company, a Subsidiary or a Company employee benefit plan, including any trustee of such plan acting as trustee) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities; or

(ii) The occurrence of a transaction requiring shareholder approval, and involving the sale of all or substantially all of the assets of the Company or the merger of the Company with or into another corporation.

(f) CHANGE IN CONTROL PRICE. For purposes of this Section 12, "Change in Control Price" shall be, as determined by the Administrator, (i) the highest Fair Market Value at any time within the sixty-day period immediately preceding the date of determination of the Change in Control Price by the Administrator (the "SIXTY-DAY PERIOD"), or (ii) the highest price paid or offered, as determined by the Administrator, in any bona fide transaction or bona fide offer related to the Change in Control of the Company, at any time within the Sixty-Day Period.

13. TIME OF GRANTING OPTIONS AND SARS. The date of grant of an Option or SAR shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or SAR. Notice of the determination shall be given to each Employee to whom an Option or SAR is so granted within a reasonable time after the date of such grant.

14. AMENDMENT AND TERMINATION OF THE PLAN.

(a) AMENDMENT AND TERMINATION. The Board may at any time amend, alter, suspend or terminate the Plan, as it may deem advisable.

(b) EFFECT OF AMENDMENT OR TERMINATION. Any such amendment, alteration, suspension or termination of the Plan shall not impair the rights of any Optionee or SAR holder under any grant theretofore made without his or her consent. Such Options and SARs shall remain in full force and effect as if this Plan had not been amended or terminated.

15. CONDITIONS UPON ISSUANCE OF SHARES. Shares shall not be issued with respect to an Option or SAR unless the exercise of such Option or SAR and the issuance and delivery of such Shares pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an Option or SAR or the issuance of Shares upon exercise of an Option or SAR, the Company may require the person exercising such Option or SAR to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned relevant provisions of law.

Inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the non-issuance or sale of such Shares as to which such requisite authority shall not have been obtained.

16. RESERVATION OF SHARES. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

EXHIBIT 10.B.17

PREFERRED STOCK PURCHASE AGREEMENT

DATED AS OF AUGUST 5, 1997

BETWEEN

APPLE COMPUTER, INC.

AND

MICROSOFT CORPORATION

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PREFERRED STOCK PURCHASE AGREEMENT

This PREFERRED STOCK PURCHASE AGREEMENT (this "Agreement") is made as of this 5th day of August, 1997 between Apple Computer, Inc., a California corporation (the "Company"), and Microsoft Corporation, a Washington corporation (the "Purchaser").

RECITALS

WHEREAS, concurrently with this Agreement the Company and the Purchaser are entering into a Patent Cross License Agreement in the form attached hereto as Exhibit A;

WHEREAS, concurrently with this Agreement the Company and the Purchaser are entering into a Technology Agreement in the form attached hereto as Exhibit B; and

WHEREAS, in connection with the Patent Cross License Agreement and the Technology Agreement, the Company desires to sell to the Purchaser, and the Purchaser desires to purchase from the Company, shares of the Company's Series A Non-Voting Convertible Preferred Stock, no par value (the "Preferred Stock") convertible into the Company's Common Stock, no par value (the "Common Stock"), on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1

AGREEMENT TO PURCHASE AND SELL PREFERRED STOCK

1.1 AGREEMENT TO PURCHASE AND SELL PREFERRED STOCK. Upon the terms and subject to the conditions of this Agreement, the Company hereby agrees to sell to the Purchaser at the Closing (as defined below), and the Purchaser agrees to purchase from the Company at the Closing, $150,000,000 aggregate purchase price of Preferred Stock, no par value, of the Company having the terms and conditions set forth in the Certificate of Determination of Preferences of Series A Non-Voting Convertible Preferred Stock of Apple Computer, Inc. (the "Certificate") substantially in the form attached hereto as Exhibit C (the "Shares") at a price per share (the "Per Share Purchase Price") set forth in Section 1.2 below.

1.2 PER SHARE PURCHASE AND CONVERSION PRICES. The Per Share Purchase Price shall be $1,000. The initial "Conversion Price" (as defined in the Certificate) shall be $16.50 per share.

SECTION 2

CLOSING DATE; DELIVERY

2.1 CLOSING DATE. The Closing of the purchase and sale of the Shares hereunder (the "Closing") shall be held at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California, at 10:00 a.m. (Pacific time), August 11, 1997, or at such other time and place as the Company and the Purchaser mutually agree (the date of the Closing being hereinafter referred to as the "Closing Date").

2.2 DELIVERY. At the Closing, the Company will deliver to the Purchaser a certificate or certificates representing the Shares against payment of the aggregate purchase price of $150,000,000 by wire transfer of immediately available funds to an account designated by the Company. The certificate or certificates representing the Shares and the shares of Common Stock issuable upon conversion of the Shares shall be subject to a legend restricting transfer under the Securities Act of 1933, as amended (the "Securities Act"), and referring to restrictions on transfer herein, such legend to be substantially as follows:

"The shares represented by this certificate have been acquired for investment and have not been registered under the Securities Act of 1933, as amended. Such shares may not be sold or transferred in the absence of such registration or an opinion of counsel reasonably satisfactory to the Company as to the availability of an exemption from registration.

The shares represented by this certificate are subject to restrictions on transfer, including any sale, pledge or other hypothecation, set forth in an agreement dated as of August 5, 1997 between the Company and Microsoft Corporation, a copy of which agreement may be obtained at no cost by written request made by the holder of record of this certificate to the secretary of the Company at the Company's principal executive offices."

The Company agrees (i) to remove the legend set forth in the second preceding paragraph upon receipt of an opinion of counsel in form and substance reasonably satisfactory to the Company that the Shares or the shares of Common Stock issuable upon conversion of the Shares are eligible for transfer without registration under the Securities Act and (ii) to remove the legend set forth in the immediately preceding paragraph at such time as the Shares (or the shares of Common Stock issuable upon conversion of the Shares) may be transferred in compliance with Section 8 or upon the termination of the covenants of Section 8 as provided for in Section 9.4.

SECTION 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to the Purchaser as follows:

3.1 ORGANIZATION. The Company is a corporation duly organized and validly existing under the laws of the State of California and is in good standing under such laws. The Company has the requisite corporate power to own and operate its properties and assets, and to carry on its

business as presently conducted and as proposed to be conducted. The Company is qualified to do business as a foreign corporation in each jurisdiction in which the ownership of its property or the nature of its business requires such qualification, except where the failure to be so qualified would not have a materially adverse effect on the Company and its subsidiaries, taken as a whole.

3.2 AUTHORIZATION. All corporate action on the part of the Company necessary for the authorization, execution, delivery and performance of this Agreement, the Registration Rights Agreement (attached as Exhibit D hereto), the Patent Cross License Agreement and the Technology Agreement by the Company, the authorization, sale, issuance and delivery of the Shares hereunder, and the performance of the Company's obligations hereunder and under said Agreements has been taken. This Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement constitute legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy as they may apply to Section 4 of the Registration Rights Agreement. Upon their issuance and delivery pursuant to this Agreement, the Shares will be validly issued, fully paid and nonassessable. The issuance and sale of the Shares will not give rise to any preemptive rights or rights of first refusal on behalf of any person in existence on the date hereof.

3.3 NO CONFLICT. The execution and delivery of this Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement do not, and the consummation of the transactions contemplated hereby and thereby will not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or to a loss of a material benefit under, any provision of the Articles of Incorporation or By-laws of the Company or any mortgage, indenture, lease or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company, its properties or assets, the effect of which could have a material adverse effect on the Company and its subsidiaries, taken as a whole, or materially impair or restrict the Company's power to perform its obligations as contemplated under said Agreements.

3.4 SEC DOCUMENTS. The Company has filed all required reports, schedules, forms, statements and other documents with the Securities and Exchange Commission (the "SEC") since December 31, 1995 (the "SEC Documents"). As of their respective dates, the SEC Documents complied in all material respects with requirements of the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as the case may be and the rules and regulations of the SEC promulgated thereunder applicable to such SEC Documents, and none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Except to the extent that information contained in any SEC Document has been revised or superseded by a later filed SEC Document, none of the SEC Documents contains any untrue statement of a material fact or omits to state any

material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Documents comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") (except, in the case of unaudited statements as permitted by Form 10Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicted in the notes thereto) and fairly present the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operation and cashflows (or changes in financial position prior to the approval of Financial Accounting Standards Boards Statement of Financial Accounting Standards No. 95) for the periodthen ending in accordance with GAAP (subject, in the case of the unaudited statements, to normal year end audit adjustments). Except as set forth in the filed SEC Documents, neither the Company nor any of its subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be set forth on a consolidated balance sheet of the Company and its consolidated subsidiaries or in the notes thereto and which could reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole.

3.5 ABSENCE OF CERTAIN CHANGES OR EVENTS. Except as disclosed in the SEC Documents since the date of the most recent audited financial statements included in the SEC Documents, there has not been (i) any declaration, setting aside or payment of any dividend or distribution (whether in cash, stock or property) with respect to any of the Company's capital stock, (ii) any split, combination or reclassification of any of its capital stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, (iii) any damage, destruction or loss of property, whether or not covered by insurance, that has or could reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole, or (iv) any change in accounting methods, principles or practices by the Company materially affecting its assets, liabilities, or business, except insofar as may have been required by a change in GAAP.

3.6 GOVERNMENTAL CONSENT, ETC. No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale or issuance of the Shares, or the consummation of any other transaction contemplated hereby, except such filings as may be required to be made with the SEC and the National Association of Securities Dealers, Inc.

3.7 LITIGATION. Except as is disclosed in the SEC Documents, there is no suit, action or proceeding pending or affecting the Company or any of its subsidiaries that, individually or in the aggregate, could (i) have a material adverse effect on the Company and its subsidiaries taken as a whole, (ii) impair the ability of the Company to perform its obligations under this Agreement, the Registration Rights Agreement, the Patent Cross License and the Technology Agreement, or (iii) prevent the consummation of any of the transactions contemplated by said Agreements, nor is there any judgment, decree, injunction, rule or order of any governmental entity or arbitrator

outstanding against the Company or any of its subsidiaries having, or which, could reasonably be expected to have, any such effect.

SECTION 4

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Company as follows:

4.1 ORGANIZATION. The Purchaser is a corporation duly organized and validly existing and in good standing under the laws of the State of Washington, with all requisite corporate power and authority to own, lease and operate its properties and to conduct its business as now being conducted.

4.2 AUTHORITY. All corporate action on the part for the Purchaser necessary of the authorization, execution, delivery and performance of this Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement by the Purchaser has been taken. This Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement have been duly executed and delivered by the Purchaser and constitute legal, valid and binding obligations of the Purchaser, enforceable in accordance with their respective terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy as they may apply to Section 4 of the Registration Rights Agreement. The execution and delivery of said Agreements do not, and the consummation of the transactions contemplated hereby and thereby will not, conflict with or result in any violation of any obligation under any provision of the Articles of Incorporation or By-laws of the Purchaser or any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Purchaser.

4.3 INVESTMENT. The Purchaser is acquiring the Shares for investment for its own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distribution thereof. The Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations and warranties contained herein.

4.4 DISCLOSURE OF INFORMATION. The Purchaser has had full access to all information it considers necessary or appropriate to make an informed investment decision with respect to the Shares to be purchased by the Purchaser under this Agreement. The Purchaser further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Shares and to obtain additional information necessary to verify any information furnished to the Purchaser or to which the Purchaser had access.

4.5 INVESTMENT EXPERIENCE. The Purchaser understands that the purchase of the Shares involves substantial risk. The Purchaser has experience as an investor in securities of companies and

acknowledges that it is able to fend for itself, can bear the economic risk of its investment in the Shares and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of this investment in the Shares and protecting its own interests in connection with this investment.

4.6 ACCREDITED INVESTOR STATUS. The Purchaser is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

4.7 RESTRICTED SECURITIES. The Purchaser understands that the Shares to be purchased by the Purchaser hereunder are characterized as "restricted securities" under the Securities Act inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under the Securities Act and applicable regulations thereunder such securities may be resold without registration under the Securities Act only in certain limited circumstances. The Purchaser is familiar with Rule 144 of the SEC, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act. The Purchaser understands that the Company is under no obligation to register any of the Shares sold hereunder except as provided in the Registration Rights Agreement.

SECTION 5

CONDITIONS TO OBLIGATION OF THE PURCHASER

The Purchaser's obligation to purchase the Shares at the Closing is, at the option of the Purchaser, which may waive any such conditions, subject to the fulfillment on or prior to the Closing Date of the following conditions:

5.1 REPRESENTATIONS AND WARRANTIES. Each of the representations and warranties of the Company contained in Section 3 will be true and correct on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made as of the Closing Date. The Purchaser shall have received a certificate signed by an officer of the Company to such effect on the Closing Date.

5.2 COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing Date shall have been performed or complied with in all material respects. The Purchaser shall have received a certificate signed by an officer of the Company to such effect on the Closing Date.

5.3 NO ORDER PENDING. There shall not then be in effect any order enjoining or restraining the transactions contemplated by this Agreement.

5.4 NO LAW PROHIBITING OR RESTRICTING SALE OF THE SHARES. There shall not be in effect any law, rule or regulation prohibiting or restricting the sale of the Shares, or requiring any consent or approval of any Person which shall not have been obtained to issue the Shares with full benefits

afforded the Preferred Stock or the Common Stock into which the Preferred Stock is convertible (except as otherwise provided in this Agreement).

5.5 REGISTRATION RIGHTS AGREEMENT. The Company shall have executed and delivered the Registration Rights Agreement substantially in the form attached hereto as Exhibit D.

5.6 PATENT CROSS LICENSE AGREEMENT AND TECHNOLOGY AGREEMENT. The Company shall have executed and delivered the Patent Cross License Agreement and Technology Agreement substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively.

SECTION 6

CONDITIONS TO OBLIGATION OF THE COMPANY

The Company's obligation to sell and issue the Shares at the Closing is, at the option of the Company, which may waive any such conditions, subject to the fulfillment on or prior to the Closing Date of the following conditions:

6.1 REPRESENTATIONS AND WARRANTIES. The representations and warranties of the Purchaser contained in Section 4 will be true and correct on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made as of the Closing Date. The Company shall have received a certificate signed on behalf of the Purchaser by an officer of the Purchaser to such effect on the Closing Date.

6.2 COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed by the Purchaser on or prior to the Closing Date shall have been performed or complied with in all material respects. The Company shall have received a certificate signed on behalf of the Purchaser by an officer of the Purchaser to such effect on the Closing Date.

6.3 NO ORDER PENDING. There shall not then be in effect any order enjoining or restraining the transactions contemplated by this Agreement.

6.4 NO LAW PROHIBITING OR RESTRICTING THE SALE OF THE SHARES. There shall not be in effect any law, rule or regulation prohibiting or restricting the sale of the Shares, or requiring any consent or approval of any person which shall not have been obtained to issue the Shares with full benefits afforded the Preferred Stock or the Common Stock into which the Preferred Stock is convertible (except as otherwise provided in this Agreement).

6.5 THE PURCHASER. The Purchaser shall have executed and delivered the Registration Rights Agreement substantially in the form attached hereto as Exhibit D.

6.6 PATENT CROSS LICENSE AGREEMENT AND TECHNOLOGY AGREEMENT. The Purchaser shall have executed and delivered the Patent Cross License Agreement and Technology Agreement substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively.

SECTION 7

COVENANTS OF THE COMPANY

7.1 REGISTRATION RIGHTS. The Company will comply with the provisions regarding registration rights contained in the Registration Rights Agreement attached hereto as Exhibit D.

SECTION 8

COVENANTS OF THE PURCHASER

8.1 RIGHT OF FIRST REFUSAL. Prior to making any sale or transfer of the Shares (other than a sale or transfer registered under the Securities Act or pursuant to Rule 144, or a sale or transfer of that number of Shares representing less than three percent (3%) of the Company's outstanding Common Stock to any person or group), the Purchaser shall give the Company the opportunity to purchase such Shares in the following manner:

(i) The Purchaser shall give notice (the "Transfer Notice") to the Company in writing of such intention specifying the approximate number of the proposed purchasers or transferees, the amount of Shares proposed to be sold or transferred, the proposed price per share therefor (the "Transfer Price") and the other material terms upon which such disposition is proposed to be made.

(ii) The Company shall have the right, exercisable by written notice given by the Company to the Purchaser within five (5) business days after receipt of such Transfer Notice, to purchase all but not part of the Shares specified in such Transfer Notice for cash per share equal to the Transfer Price, provided, within five (5) business days after written notice of exercise by the Company, the Company shall provide the Purchaser with evidence satisfactory to the Purchaser (by written commitment letter subject only to customary representations, diligence and documentation, letter of credit or otherwise) of its ability to finance such repurchase.

(iii) If the Company exercises its right of first refusal hereunder, the closing of the purchase of the Shares with respect to which such right has been exercised shall take place within ten (10) business days after the Company gives notice of such exercise. Upon exercise of its right of first refusal, the Company and the Purchaser shall be legally obligated to consummate the purchase contemplated thereby and shall use their best efforts to secure any approvals required in connection therewith.

(iv) If the Company does not exercise its right of first refusal hereunder within the time specified for such exercise, the Purchaser shall be free, during the period of 90 calendar days

following the expiration of such time for exercise, to sell the Shares specified in such Transfer Notice on terms no less favorable to the Purchaser than the terms specified in such Transfer Notice.

(v) Notwithstanding the foregoing, prior to making any sale or exchange of Shares in response to a tender or exchange offer, the Purchaser shall give the Company the opportunity to purchase such Shares in the following manner:

(a) The Purchaser shall give notice (the "Tender Notice") to the Company in writing of such intention no later than 10 calendar days prior to the latest time by which Shares must be tendered in order to be accepted pursuant to such offer or to qualify for any proration applicable to such offer (the "Tender Date"), specifying the amount of Shares proposed to be tendered. For purposes hereof, a tender offer to purchase Shares shall be deemed to be an offer at the price specified therein, without regard to any provisions thereof with respect to proration or conditions to the offeror's obligation to purchase (assuming such conditions are not impossible of performance when the offer is made, without giving effect to the Company's right of first refusal).

(b) If the Tender Notice is given, the Company shall have the right, exercisable by giving notice to the Purchaser at least two business days prior to the Tender Date, to purchase all but not part of the Shares specified in the Tender Notice for cash. If the Company exercises such right by giving such notice, the closing of the purchase of such Shares shall take place not later than one business day prior to the Tender Date; provided, however, that if the purchase price specified in the tender offer includes any property other than cash, the value of any property included in the purchase price shall be jointly determined by a nationally recognized investment banking firm selected by each party or, in the event such firms are unable to agree, a third nationally recognized investment banking firm to be selected by such two firms. For this purpose:

(x) The parties shall use their best efforts to cause any determination of the value of any securities included in the purchase price to be made within three business days after the date of delivery of the Tender Notice. If the firms selected by the Purchaser and the Company are unable to agree upon the value of any such securities within such three-day period, the firms shall promptly select a third firm whose determination shall be made promptly and shall be conclusive.

(y) The parties shall use their best efforts to cause any determination of the value of property other than securities to be made within four business days after the date of delivery of the Tender Notice. If the firms selected by the Purchaser and the Company are unable to agree upon a value within six business days after the date of delivery of the Tender Notice, the firms shall promptly select a third firm whose determination shall be made promptly and shall be conclusive.

The purchase price to be paid by the Company pursuant to this
Section 8.1(v) shall be (A) if such tender offer is consummated, the purchase price that the Purchaser would have received if it had tendered the Shares purchased by the Company and all such Shares had been

purchased in such tender offer, including any increases in the price paid by the tender offeror after exercise by the Company of its right of first refusal hereunder, or (B) if such tender offer is not consummated, the highest price offered pursuant thereto, in each case with property, if any, to be valued as aforesaid. Each party shall bear the cost of its own investment banking firm and the parties shall share the cost of any third firm selected hereunder.

(c) If the Company does not exercise such right by giving such notice, then the Purchaser shall be free to accept the tender offer with respect to which the Tender Notice was given.

8.2 VOTING. Unless the Company otherwise consents in writing, the Purchaser shall take such action as may be required so that all Shares are voted on all matters to be voted on by holders of Voting Stock (to the extent the Shares are entitled to a vote) in the same proportion as the votes cast by the other holders of Voting Stock with respect to such matters; provided, that the Shares and any other voting securities of the Company owned by the Purchaser may be voted as the Purchaser determines in its sole discretion on any Significant Event (as defined in Section 9.1 below) presented to the holders of Voting Stock for a vote. In the event that the Shares are entitled to vote on a matter submitted to the shareholders of the Company, the Purchaser, as the holder of Shares, shall be present, in person or by proxy, at all meetings of shareholders of the Company so that the Shares may be counted for the purposes of determining the presence of a quorum at such meetings.

8.3 VOTING TRUST, ETC. The Purchaser shall not deposit any Shares in a voting trust or, except as otherwise provided herein, subject any Shares to any arrangement or agreement with respect to the voting of such Shares.

8.4 SOLICITATION OF PROXIES. Without the Company's prior written consent, the Purchaser shall not solicit proxies with respect to any Shares of the Company owned by the Purchaser, nor shall it become a "participant" in any "Election Contest" (as such terms are used in Rule 14a-11 of Regulation 14A under the Exchange Act) relating to the election of directors of the Company. The Purchaser shall exercise its influence on the management, the Board of Directors and policies of the Company in a manner consistent with its shareholding and any business agreements between the Purchaser and the Company.

8.5 ACTS IN CONCERT WITH OTHERS. Except as contemplated herein with regard to permissible sales of the Purchaser's Shares, the Purchaser shall not join a partnership, limited partnership, syndicate or other group, or otherwise act in concert with any Person, for the purpose of acquiring, holding or disposing of Shares of the Company owned by the Purchaser.

8.6 RESTRICTIONS ON TRANSFER OF SHARES. For a period of three years from the date of this Agreement, the Purchaser shall not, directly or indirectly, sell, transfer, pledge or hypothecate any Shares (or shares of Common Stock received upon the conversion of the Shares) owned by it except (i) to the Company or any person or group approved in writing by the Company, or (ii) to a corporation of which the Purchaser owns not less than 50% of the voting power entitled to be cast in

the election of directors (a "Controlled Corporation"), so long as such Controlled Corporation agrees to hold such Shares subject to all the provisions of this Agreement, including this Section 8.6, and agrees to transfer such Shares to the Purchaser or another Controlled Corporation of the Purchaser if it ceases to be a Controlled Corporation of the Purchaser. Notwithstanding the foregoing or anything else to the contrary in this Agreement, the Purchaser may enter into bona fide transactions through a nationally recognized investment banking firm which constitute a hedge against changes in the market price of the Common Stock, provided, however, no public disclosure is made with respect to such hedge transactions, except in an initial Schedule 13D, the text of which is reasonably satisfactory to the Company, or if in the opinion of counsel to Purchaser such disclosure is required as a matter of law.

8.7 ACQUISITION OF STOCK. The Purchaser shall advise management of the Company as to the Purchaser's general plans to acquire shares of Common Stock, or rights thereto, reasonably in advance of any such acquisitions. All of the Purchaser's purchases of Common Stock shall be in compliance with applicable laws and regulations and the provisions of this Agreement.

SECTION 9

MISCELLANEOUS

9.1 CERTAIN DEFINITIONS. As used in this Agreement:

(a) The term "Voting Stock" means the Common Stock and any other securities issued by the Company having the ordinary power to vote in the election of directors of the Company (other than securities having such power only upon the happening of a contingency).

(b) The terms "Beneficial Owner," "beneficial Ownership" and "group" shall have the meaning comprehended by Section 13(d)(3) of the Exchange Act and the rules and regulations promulgated thereunder.

(c) The term "Person" shall mean any person, individual, corporation, partnership, trust or other non-governmental entity or any governmental agency, court, authority or other body (whether foreign, federal, state, local or otherwise).

(d) The term "Change of Control" shall mean (i) an acquisition of Voting Stock by a Person or group in a purchase or transaction or series of related purchases or transactions if immediately thereafter such Person or group has Beneficial Ownership of more than fifty percent (50%) of the combined voting power of the Company's then outstanding Voting Stock; (ii) the execution of an agreement providing for a tender offer, merger, consolidation or reorganization, or series of such related transactions involving the Company, unless the stockholders of the Company, immediately after such transaction or transactions are the Beneficial Owners of at least fifty percent (50%) of the Voting Stock;
(iii) a change or changes in the membership of the Company's Board of

Directors which represent a change of a majority or more of such membership during any twelve month period (unless such change or changes in membership are caused by the actions of the then existing Board of Directors and do not occur within twelve months of the commencement, threat or proposal of an Election Contest, tender offer or other transaction which would constitute a Change of Control under (i) or (ii) of this Section 9.1(d)); or (iv) a sale of all or substantially all of the Company's assets.

(e) The term "Insolvency Proceeding" shall mean (i) an assignment for the benefit of creditors, (ii) the filing by or against Company of a petition to have Company adjudged insolvent, bankrupt or seeking a reorganization or liquidation under any law relating to bankruptcy, insolvency or receivership, (iii) an appointment of a receiver or trustee for all or substantially all of the assets of the Company, (iv) a public admission in writing of the Company's inability to pay its debts as they come due, or (v) the adoption of a plan of liquidation or dissolution by the Board of Directors of the Company.

(f) The term "Significant Event" means (i) any proposed amendment to the Articles of Incorporation or By-laws of the Company (other than a proposal to increase the number of authorized shares of Common Stock or Preferred Stock; provided such increase(s) is (are) not contrary to clause (v) of this Section
9.1 (f)), (ii) a disposition of the Company (by way of merger, disposition of assets or otherwise), (iii) a recapitalization of the Company, (iv) a liquidation of the Company, or (v) any vote pursuant to any provision of law or the Company's Articles of Incorporation or By-laws requiring or permitting shareholders to approve any business combination proposed by or with another Person or its affiliates which have acquired a certain percentage of the Company's shares or to grant voting rights to such Person or to waive or adopt provisions requiring such a vote.

9.2 BEST EFFORTS. Each of the Company and the Purchaser shall use its best efforts to take all actions required under any law, rule or regulation adopted subsequent to the date hereto to ensure that the conditions to the Closing set forth herein are satisfied on or before the Closing Date.

9.3 GOVERNING LAW. This Agreement shall be governed in all respects by the internal laws of the State of California as applied to contracts entered into solely between residents of, and to be performed entirely within, such state, and without reference to principles of conflicts of laws or choice of laws.

9.4 SURVIVAL; TERMINATION OF COVENANTS. The representations and warranties in Sections 3 and 4 of this Agreement shall not survive the Closing except for the representations and warranties in Sections 4.3 and 4.7 hereof which shall continue to survive. The covenants of the Company and the Purchaser under Section 7 and Section 8 hereof shall terminate on the fifth anniversary of this Agreement, provided the Purchaser's covenants in Section 8 shall terminate in the event of a Change of Control or Insolvency Proceeding.

9.5 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.6 ENTIRE AGREEMENT; AMENDMENT. This Agreement, the Certificate and the Registration Rights Agreement constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersede all prior agreements and understandings among the parties relating to the subject matter hereof. Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought. The enforceability and validity of this Agreement, the Patent Cross License Agreement and the Technology Agreement are each to be determined separately and any finding that any one or more of such agreements is invalid or nonenforceable shall have no effect on the validity or enforceability of this Agreement.

9.7 NOTICES. All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of delivery if delivered by hand, (ii) upon the third day after such notice is
(a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice:

(a) if to the Company, to it at:

One Infinite Loop
Cupertino, CA 95014
Attention: Chief Financial Officer

with a copy addressed as set forth above but to the attention of the General Counsel; with a copy to:

Larry W. Sonsini
Wilson Sonsini Goodrich & Rosati Professional Corporation
650 Page Mill Road
Palo Alto, CA 94306

(b) if to the Purchaser, to it at:

Microsoft Corporation
One Microsoft Way
Building 8
North Office 2211
Redmond, WA 98052
Attention: Chief Financial Officer

with a copy addressed as set forth above but to the attention of Senior Vice President, Law and Corporate Affairs, with a copy to:

Richard B. Dodd
Preston Gates & Ellis LLP 5000 Columbia Center
701 Fifth Avenue
Seattle, WA 98104-7078

9.8 BROKERS.

(a) The Company has not engaged, consented to or authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. The Company hereby agrees to indemnify and hold harmless the Purchaser from and against all fees, commissions or other payments owing to any party acting on behalf of the Company hereunder.

(b) The Purchaser has not engaged, consented to or authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. The Purchaser hereby agrees to indemnify and hold harmless the Company from and against all fees, commissions or other payments owing to any party acting on behalf of the Purchaser hereunder.

9.9 FEES, COSTS AND EXPENSES. All fees, costs and expenses (including attorneys' fees and expenses) incurred by either party hereto in connection with the preparation, negotiation and execution of this Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement and the consummation of the transactions contemplated hereby and thereby, shall be the sole and exclusive responsibility of such party.

9.10 SEVERABILITY. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restriction of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

9.11 INITIAL PUBLIC ANNOUNCEMENT. The Company and the Purchaser shall agree on the form and content of the initial public announcement which shall be made concerning this Agreement, the Patent Cross License Agreement and the Technology Agreement and the transactions contemplated hereby and thereby, and neither the Company nor the Purchaser shall make such public announcement without the consent of the other, except as required by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized officers as of the date set forth above.

APPLE COMPUTER, INC.

By: /s/ John B. Douglas, III

Name: John B. Douglas, III

Title: Senior Vice President

MICROSOFT CORPORATION

By: /s/ Greg Maffei

Title: Chief Financial Officer

EXHIBIT 11

APPLE COMPUTER, INC.

COMPUTATION OF EARNINGS (LOSS) PER COMMON SHARE
(DOLLARS IN MILLIONS, EXCEPT PER SHARE AMOUNTS)

	FISCAL YEARS ENDED		
	SEPTEMBER 26, 1997	SEPTEMBER 27, 1996	SEPTEMBER 29, 1995
PRIMARY EARNINGS (LOSS) PER SHARE			
Net income (loss)	$ (1,045)	$ (816)	$ 424
Shares			
Weighted average number of common shares outstanding (in thousands)	126,062	123,734	121,192
Adjustment for dilutive effect of outstanding stock options (in thousands)	--	--	1,855
Weighted average number of common and common equivalent shares used for primary earnings (loss) per share (in thousands)	126,062	123,734	123,047
Primary earnings (loss) per common and common equivalent share	$ (8.29)	$ (6.59)	$ 3.45
FULLY DILUTED EARNINGS (LOSS) PER SHARE			
Net income (loss)	$ (1,045)	$ (816)	$ 424
Shares			
Weighted average number of common shares outstanding (in thousands)	126,062	123,734	121,192
Adjustment for dilutive effect of outstanding stock options (in thousands)	--	--	2,076
Weighted average number of common and common equivalent shares used for fully diluted earnings (loss) per share (in thousands)	126,062	123,734	123,268
Fully diluted earnings (loss) per common and common equivalent share	$ (8.29)	$ (6.59)	$ 3.44

EXHIBIT 21

SUBSIDIARIES OF
APPLE COMPUTER, INC*

NAME	JURISDICTION OF INCORPORATION
Apple Computer B.V.	Netherlands
Apple Computer, Inc. Limited	Ireland
Apple Computer Limited	Ireland
Apple Japan, Inc.	Japan
Claris (Ireland) Limited	Ireland

* Pursuant to Item 601(b)(21)(ii) of Regulation S-K, the names of other subsidiaries of Apple Computer, Inc. are omitted because, considered in the aggregate, they would not constitute a significant subsidiary as of the end

of the year covered by this report.

EXHIBIT 23.1

CONSENT OF INDEPENDENT AUDITORS

The Board of Directors
Apple Computer, Inc.

We consent to incorporation by reference in the registration statements (Nos. 2-70449, 2-77563, 2-85095, 33-00866, 33-24650, 33-31075, 33-40877, 33-47596, 33-57092, 33-57080, 33-53873, 33-53879, 33-53895, 33-60279, 33-60281, 333-07437, and 333-23725) on Forms S-8 and registration statements (No. 33-62310) on Form S-3 and (Nos. 333-10961 and 333-28191) on Forms S-3/A of Apple Computer, Inc. of our report dated October 15, 1997, relating to the consolidated balance sheet of Apple Computer, Inc. and subsidiaries as of September 26, 1997, and the related consolidated statements of operations, shareholders' equity, and cash flows for the year then ended, and the related schedule, which report appears in the September 26, 1997 annual report on Form 10-K of Apple Computer, Inc.

/s/ KPMG PEAT MARWICK LLP

KPMG Peat Marwick LLP

San Jose, California

December 4, 1997

EXHIBIT 23.2

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 2-70449, 2-77563, 2-85095, 33-00866, 33-23650, 33-31075, 33-40877, 33-47596, 33-57092 33-57080, 33-53873, 33-53879, 33-53895, 33-60279, 33-60281, 333-07437, and 333-23725) pertaining to the 1981 and 1990 Stock Option Plans, the Employee Stock Purchase Plan, the 1980 Key Employee Stock Purchase Plan, the 1986 Employee Incentive Stock Option Plan, the 1987 Executive Long Term Stock Option Plan, the 1993 Executive Restricted Stock Plan, the Form of Director Warrant of Apple Computer, Inc. and the NeXT Software, Inc. 1990 Stock Option Plan and Form S-3 No. 33;-62310, Form S-3/A No. 333-10961 and Form S-3/ANo. 333-28191 in the related Prospectuses of our report dated October 14, 1996 with respect to the consolidated financial statements and schedule of Apple Computer, Inc. included in this Annual Report (Form 10-K) for the year ended September 26, 1997.

/s/ ERNST & YOUNG LLP

Ernst & Young LLP

San Jose, California

December 4, 1997

ARTICLE 5

MULTIPLIER: 1,000,000

PERIOD TYPE	YEAR
FISCAL YEAR END	SEP 26 1997
PERIOD END	SEP 26 1997
CASH	1,230
SECURITIES	229
RECEIVABLES	1,134
ALLOWANCES	99
INVENTORY	437
CURRENT ASSETS	3,424
PP&E	1,195
DEPRECIATION	709
TOTAL ASSETS	4,233
CURRENT LIABILITIES	1,818
BONDS	951
PREFERRED MANDATORY	0
PREFERRED	150
COMMON	498
OTHER SE	552
TOTAL LIABILITY AND EQUITY	4,233
SALES	7,081
TOTAL REVENUES	7,081
CGS	5,713
TOTAL COSTS	5,713
OTHER EXPENSES	2,438
LOSS PROVISION	0
INTEREST EXPENSE	(72)
INCOME PRETAX	(1,045)
INCOME TAX	0
INCOME CONTINUING	(1,045)
DISCONTINUED	0
EXTRAORDINARY	0
CHANGES	0
NET INCOME	(1,045)
EPS PRIMARY	(8.29)
EPS DILUTED	(8.29)