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

Form 10-Q

(Mark One)

[X] Quarterly report pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

For the quarterly period ended March 29, 1996 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                         94-240 4110
[State or other jurisdiction       [I.R.S. Employer Identification
of incorporation or               No. ]
organization]

1 Infinite Loop
Cupertino California                      950 14
[Address of principal executive
offices]

Registand's telephone number, including area code: (408) 996-1010

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 [ ]

123,716,810 shares of Common Stock Issued and Outstanding as of May 13,1996
### CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in millions, except per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>THREE MONTHS ENDED</th>
<th>SIX MONTHS ENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>March 29, 1996</td>
<td>March 31, 1995</td>
</tr>
<tr>
<td></td>
<td>March 29, 1996</td>
<td>March 31, 1995</td>
</tr>
<tr>
<td>Net sales</td>
<td>$ 2,185</td>
<td>$ 2,652</td>
</tr>
<tr>
<td></td>
<td>$ 5,333</td>
<td>$ 5,484</td>
</tr>
<tr>
<td>Costs and expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of sales</td>
<td>2,606</td>
<td>1,957</td>
</tr>
<tr>
<td></td>
<td>5,279</td>
<td>3,975</td>
</tr>
<tr>
<td>Research and development</td>
<td>150</td>
<td>143</td>
</tr>
<tr>
<td></td>
<td>303</td>
<td>275</td>
</tr>
<tr>
<td>Selling, general and administrative</td>
<td>404</td>
<td>386</td>
</tr>
<tr>
<td></td>
<td>845</td>
<td>801</td>
</tr>
<tr>
<td>Restructuring costs</td>
<td>207</td>
<td>--</td>
</tr>
<tr>
<td></td>
<td>207</td>
<td>(17)</td>
</tr>
<tr>
<td>Total costs</td>
<td>3,367</td>
<td>2,486</td>
</tr>
<tr>
<td></td>
<td>6,634</td>
<td>5,034</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(1,182)</td>
<td>166</td>
</tr>
<tr>
<td></td>
<td>(1,301)</td>
<td>450</td>
</tr>
<tr>
<td>Interest and other income (expense), net</td>
<td>7</td>
<td>(50)</td>
</tr>
<tr>
<td></td>
<td>17</td>
<td>(35)</td>
</tr>
<tr>
<td>Income (loss) before provision (benefit) for income taxes</td>
<td>(1,175)</td>
<td>116</td>
</tr>
<tr>
<td></td>
<td>(1,284)</td>
<td>415</td>
</tr>
<tr>
<td>Provision (benefit) for income taxes</td>
<td>(435)</td>
<td>43</td>
</tr>
<tr>
<td></td>
<td>(475)</td>
<td>154</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$ (740)</td>
<td>$ 73</td>
</tr>
<tr>
<td></td>
<td>$ (809)</td>
<td>$ 261</td>
</tr>
<tr>
<td>Earnings (loss) per common and common equivalent share</td>
<td>$ (5.99)</td>
<td>$.59</td>
</tr>
<tr>
<td></td>
<td>$(6.55)</td>
<td>$ 2.14</td>
</tr>
<tr>
<td>Cash dividends paid per common share</td>
<td>$ --</td>
<td>$.12</td>
</tr>
<tr>
<td></td>
<td>$ .12</td>
<td>$.12</td>
</tr>
<tr>
<td>Common and common equivalent shares used in the calculations of earnings per share (in thousands)</td>
<td>123,659</td>
<td>122,644</td>
</tr>
<tr>
<td></td>
<td>123,326</td>
<td>122,122</td>
</tr>
</tbody>
</table>

See accompanying notes.
**APPLE COMPUTER, INC.**  
**CONSOLIDATED BALANCE SHEETS**  

**ASSETS**  
(In millions)

<table>
<thead>
<tr>
<th></th>
<th>March 29, 1996</th>
<th>September 29, 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 500</td>
<td>$ 756</td>
</tr>
<tr>
<td>Short-term investments</td>
<td>92</td>
<td>196</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance for doubtful accounts of $87 ($87 at September 29, 1995)</td>
<td>1,366</td>
<td>1,931</td>
</tr>
<tr>
<td><strong>Inventories:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchased parts</td>
<td>535</td>
<td>841</td>
</tr>
<tr>
<td>Work in process</td>
<td>196</td>
<td>291</td>
</tr>
<tr>
<td>Finished goods</td>
<td>735</td>
<td>643</td>
</tr>
<tr>
<td>Total current assets</td>
<td>1,466</td>
<td>1,775</td>
</tr>
<tr>
<td><strong>Deferred tax assets</strong></td>
<td>479</td>
<td>251</td>
</tr>
<tr>
<td>Other current assets</td>
<td>374</td>
<td>315</td>
</tr>
<tr>
<td>Total current assets</td>
<td>4,277</td>
<td>5,224</td>
</tr>
<tr>
<td><strong>Property, plant, and equipment:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land and buildings</td>
<td>518</td>
<td>504</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>647</td>
<td>638</td>
</tr>
<tr>
<td>Office furniture and equipment</td>
<td>142</td>
<td>145</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>197</td>
<td>205</td>
</tr>
<tr>
<td>Accumulated depreciation and amortization</td>
<td>(812)</td>
<td>(781)</td>
</tr>
<tr>
<td>Net property, plant, and equipment</td>
<td>692</td>
<td>711</td>
</tr>
<tr>
<td>Other assets</td>
<td>265</td>
<td>296</td>
</tr>
<tr>
<td><strong>Total assets:</strong></td>
<td>$ 5,234</td>
<td>$ 6,231</td>
</tr>
</tbody>
</table>

See accompanying notes.
### CONSOLIDATED BALANCE SHEETS (Continued)

**LIABILITIES AND SHAREHOLDERS' EQUITY**

(Dollars in millions)

<table>
<thead>
<tr>
<th></th>
<th>March 29, 1996</th>
<th>September 29, 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current liabilities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Short-term borrowings</td>
<td>$ 352</td>
<td>$ 461</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>817</td>
<td>1,165</td>
</tr>
<tr>
<td>Accrued compensation and employee benefits</td>
<td>127</td>
<td>131</td>
</tr>
<tr>
<td>Accrued marketing and distribution</td>
<td>309</td>
<td>206</td>
</tr>
<tr>
<td>Accrued restructuring costs</td>
<td>181</td>
<td>--</td>
</tr>
<tr>
<td>Other current liabilities</td>
<td>487</td>
<td>362</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td>2,273</td>
<td>2,325</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>303</td>
<td>303</td>
</tr>
<tr>
<td>Deferred tax liabilities</td>
<td>602</td>
<td>702</td>
</tr>
<tr>
<td><strong>Shareholders' equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common stock, no par value; 320,000,000 shares authorized; 123,684,863 shares issued and outstanding at March 29, 1996</td>
<td>420</td>
<td>398</td>
</tr>
<tr>
<td>(122,921,601 shares at September 29, 1995)</td>
<td>1,641</td>
<td>2,464</td>
</tr>
<tr>
<td>Retained earnings</td>
<td>(5)</td>
<td>39</td>
</tr>
<tr>
<td><strong>Total shareholders' equity</strong></td>
<td>2,056</td>
<td>2,901</td>
</tr>
</tbody>
</table>

$ 5,234 $6,231

See accompanying notes.
APPLE COMPUTER, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)
(In millions)

<table>
<thead>
<tr>
<th></th>
<th>March 29, 1996</th>
<th>March 31, 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents, beginning of the period</td>
<td>$756</td>
<td>$1,203</td>
</tr>
<tr>
<td><strong>Operations:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>(809)</td>
<td>261</td>
</tr>
<tr>
<td>Adjustments to reconcile net income (loss) to cash generated by (used for) operations:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>88</td>
<td>67</td>
</tr>
<tr>
<td><strong>Changes in assets and liabilities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>565</td>
<td>(52)</td>
</tr>
<tr>
<td>Inventories</td>
<td>309</td>
<td>104</td>
</tr>
<tr>
<td>Deferred tax assets</td>
<td>(228)</td>
<td>--</td>
</tr>
<tr>
<td>Other current assets</td>
<td>(59)</td>
<td>(9)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(348)</td>
<td>(28)</td>
</tr>
<tr>
<td>Accrued restructuring costs</td>
<td>181</td>
<td>(32)</td>
</tr>
<tr>
<td>Other current liabilities</td>
<td>224</td>
<td>30</td>
</tr>
<tr>
<td>Deferred tax liabilities</td>
<td>(100)</td>
<td>118</td>
</tr>
<tr>
<td><strong>Cash generated by (used for) operations</strong></td>
<td>(177)</td>
<td>459</td>
</tr>
<tr>
<td><strong>Investments:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchase of short-term investments</td>
<td>(244)</td>
<td>(928)</td>
</tr>
<tr>
<td>Proceeds from sale of short-term investments</td>
<td>348</td>
<td>372</td>
</tr>
<tr>
<td>Purchase of property, plant, and equipment, net of retirements</td>
<td>(40)</td>
<td>(51)</td>
</tr>
<tr>
<td>Other</td>
<td>(42)</td>
<td>(23)</td>
</tr>
<tr>
<td><strong>Cash generated by (used for) investment activities</strong></td>
<td>22</td>
<td>(630)</td>
</tr>
<tr>
<td><strong>Financing:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase (decrease) in short-term borrowings</td>
<td>(109)</td>
<td>335</td>
</tr>
<tr>
<td>Increase (decrease) in long-term borrowings</td>
<td>--</td>
<td>(1)</td>
</tr>
<tr>
<td>Increases in common stock, net of related</td>
<td>22</td>
<td>38</td>
</tr>
<tr>
<td>Cash dividends</td>
<td>(14)</td>
<td>(29)</td>
</tr>
<tr>
<td>Cash generated by (used for) financing activities</td>
<td>(101)</td>
<td>343</td>
</tr>
<tr>
<td><strong>Total cash generated (used)</strong></td>
<td>(256)</td>
<td>172</td>
</tr>
<tr>
<td>Cash and cash equivalents, end of the period</td>
<td>$500</td>
<td>$1,375</td>
</tr>
</tbody>
</table>

See accompanying notes.
1. Interim information is unaudited; however, in the opinion of the Company's management, all adjustments necessary for a fair statement of interim results have been included. All adjustments are of a normal recurring nature unless specified in a separate note included in these Notes to Consolidated Financial Statements. The results for interim periods are not necessarily indicative of results to be expected for the entire year. These financial statements and notes should be read in conjunction with the Company's annual consolidated financial statements and the notes thereto for the fiscal year ended September 29, 1995, included in its Annual Report on Form 10-K for the year ended September 29, 1995 (the "1995 Form 10-K").

2. 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 Company products and the Company's adoption of a new strategic direction. The Company's restructuring actions consist primarily of terminating approximately 2,800 full-time employees (not including employees who will be hired by the purchaser of one of the Company's domestic manufacturing facilities), canceling or vacating certain facility leases as a result of these employee terminations, writing down operating assets to be sold as a result of downsizing operations and outsourcing various operational functions, and canceling contracts as a result of terminating e-world(TM), Apple's on-line service. These actions have resulted in a charge of $207 million, including cash expenditures of $24 million and non-cash asset write-downs of $2 million, during the second quarter. The Company expects that the remaining $181 million accrued balance at March 29, 1996 will result in cash expenditures of $123 million over the next 12 months and $12 million thereafter. The Company expects that most of the contemplated restructuring actions will be completed within the next twelve months and will be financed through current working capital, the sale of certain long-term assets and investments, possible future short and long term borrowings, and possible combined debt and equity financing.

The following table depicts the restructuring activity during the second quarter of 1996: (In millions)

<table>
<thead>
<tr>
<th>Category</th>
<th>Total Restructuring Charge</th>
<th>Total Restructuring Spending</th>
<th>Balance at March 29, 1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payments to employees involuntarily terminated (C)</td>
<td>$115</td>
<td>$22</td>
<td>$93</td>
</tr>
<tr>
<td>Payments on canceled or vacated facility leases (C)</td>
<td>26</td>
<td>1</td>
<td>25</td>
</tr>
<tr>
<td>Write-down of operating assets to be sold (N)</td>
<td>48</td>
<td>2</td>
<td>46</td>
</tr>
<tr>
<td>Payments on canceled contracts (C)</td>
<td>18</td>
<td>1</td>
<td>17</td>
</tr>
</tbody>
</table>

C: Cash; N: Noncash

3. Interest and other income (expense), net, consists of the following:

(In millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income</td>
<td>$11</td>
<td>$26</td>
<td>$28</td>
<td>$44</td>
</tr>
<tr>
<td>Interest expense</td>
<td>(13)</td>
<td>(10)</td>
<td>(30)</td>
<td>(17)</td>
</tr>
<tr>
<td>Foreign currency gain (loss)</td>
<td>10</td>
<td>(52)</td>
<td>28</td>
<td>(44)</td>
</tr>
<tr>
<td>Net premiums and discounts paid on foreign exchange instruments</td>
<td>(3)</td>
<td>(16)</td>
<td>(10)</td>
<td>(17)</td>
</tr>
<tr>
<td>Other income (expense), net</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>(1)</td>
</tr>
</tbody>
</table>
4. The Company's cash equivalents consist primarily of U.S. Government securities, Euro-dollar deposits, and commercial paper with maturities of three months or less at the date of purchase. Short-term investments consist principally of Euro-dollar deposits and commercial paper with maturities between three and twelve months. The Company's marketable equity securities consist of securities issued by U.S. corporations and are included in "Other assets" on the accompanying balance sheet. The Company's cash equivalents, short-term investments, and marketable equity securities are classified and accounted for as available-for-sale, and the cash equivalents and short-term investments are generally held until maturity. The Company's cash and cash equivalent balance includes $90 million pledged as collateral to support short-term borrowings.

The adjustments recorded to shareholders' equity for unrealized holding gains (losses) on available-for-sale cash equivalents and short-term investments were not material, either individually or in the aggregate, at March 29, 1996. The net adjustment recorded to shareholders' equity for unrealized holding gains (losses) related to marketable equity securities was an unrealized gain of approximately $9 million at March 29, 1996. The realized gains (losses) recorded to earnings on sales of available-for-sale securities, either individually or in the aggregate, were not material for the three and six months ended March 29, 1996.

5. U.S. income taxes have not been provided on a cumulative total of $407 million of undistributed earnings of certain of the Company's foreign subsidiaries. It is intended that these earnings will be indefinitely invested in operations outside of the United States. 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 invested earnings, the Company provides for federal and state income taxes currently on undistributed earnings of foreign subsidiaries.

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 for the years 1984 through 1988, and most of the issues in dispute for these years have been resolved. On June 29, 1995, the IRS issued a notice of deficiency proposing increases to the amount of the Company's federal income taxes for the years 1989 through 1991. The Company has filed a petition with the United States Tax Court to contest these alleged tax deficiencies. Management believes that adequate provision has been made for any adjustments that may result from these tax examinations.

Deferred tax assets resulting from the net loss incurred in the first six months of 1996 loss are realizable based on the ability to offset existing deferred tax liabilities.

6. Earnings per share is computed using the weighted average number of common and dilutive common equivalent shares attributable to stock options outstanding during the period. Loss per share is computed using the weighted average number of common shares outstanding during the period.

7. Certain prior year amounts on the Consolidated Statements of Cash Flows have been reclassified to conform to the current period presentation.

8. No dividend has been declared for the second quarter of 1996, and the Board of Directors anticipates that for the foreseeable future the Company will retain any earnings for use in the operation of its business.

9. The information set forth in Item 1 of Part II hereof is hereby incorporated by reference.
The following information should be read in conjunction with the consolidated financial statements and notes thereto. All information is based on Apple’s fiscal calendar.

(Tabular information: Dollars in millions, except per share amounts)

Except for historical information contained herein, the statements set forth in this Item 2 are forward-looking and involve risks and uncertainties. For information regarding potential factors that could affect the Company’s financial results refer to pages 13 - 19 of this Management Discussion and Analysis of Financial Condition and Results of Operations under the heading “Factors That May Affect Future Results and Financial Condition.”

Results of Operations

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net sales</td>
<td>$2,185</td>
<td>$2,652</td>
<td>(17.6%)</td>
<td>$5,333</td>
<td>$5,484</td>
<td>(2.8%)</td>
</tr>
<tr>
<td>Gross margin</td>
<td>$(421)</td>
<td>$695</td>
<td>(160.6%)</td>
<td>$54</td>
<td>$1,509</td>
<td>(96.4%)</td>
</tr>
<tr>
<td>Percentage of net sales</td>
<td>(19.3%)</td>
<td>26.2%</td>
<td></td>
<td>1.0%</td>
<td>27.5%</td>
<td></td>
</tr>
<tr>
<td>Operating expenses</td>
<td>$761</td>
<td>$529</td>
<td>43.9%</td>
<td>$1,355</td>
<td>$1,059</td>
<td>28.0%</td>
</tr>
<tr>
<td>Percentage of net sales</td>
<td>34.8%</td>
<td>19.9%</td>
<td></td>
<td>29.4%</td>
<td>9.3%</td>
<td></td>
</tr>
<tr>
<td>Restructuring costs</td>
<td>$207</td>
<td>--</td>
<td>--</td>
<td>$207</td>
<td>$(17)</td>
<td>NM</td>
</tr>
<tr>
<td>Percentage of net sales</td>
<td>9.5%</td>
<td>--</td>
<td>--</td>
<td>3.9%</td>
<td>(0.3%)</td>
<td></td>
</tr>
<tr>
<td>Interest and other income (expense), net</td>
<td>$7</td>
<td>$(50)</td>
<td>NM</td>
<td>$17</td>
<td>$(35)</td>
<td>NM</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$(740)</td>
<td>$73</td>
<td>(1113.7%)</td>
<td>$(809)</td>
<td>$261</td>
<td>410.0%</td>
</tr>
<tr>
<td>Earnings per share</td>
<td>$5.99</td>
<td>$0.59</td>
<td>(1115.3%)</td>
<td>$(6.55)</td>
<td>$2.14</td>
<td>406.1%</td>
</tr>
</tbody>
</table>

NM: Not meaningful

Overview

The Company has recently experienced a significant decline in both units shipped and share of the personal computer market. For the quarter ended March 29, 1996, the number of the Company's Macintosh computers shipped worldwide declined by 14% when compared with the corresponding quarter of 1995. Moreover, according to an industry source, the Company’s share of the worldwide and U.S. personal computer markets declined to 5.8% and 7.3%, respectively, for the quarter ended March 29, 1996. This decline in demand, coupled with intense price competition throughout the industry, has resulted in the Company’s decision to develop and recently announce key elements of a new strategic direction intended to improve the Company's competitiveness and restore its profitability. The Company intends to develop and market products and services more selectively targeted to education, home and business segments. In moving in this new strategic direction, the Company expects to reduce the number of new product introductions and the number of products in certain categories within its current product portfolio.
and printers. Total Macintosh computer unit sales decreased 14% in the second quarter when compared with the corresponding quarter of 1995, primarily as a result of a decline in worldwide demand for most product families, primarily entry level products, due principally to customer concerns regarding the Company's strategic direction, financial condition and future prospects. The average aggregate revenue per Macintosh computer unit decreased 1% in the second quarter when compared with the corresponding quarter of 1995, primarily due to pricing actions across all product lines in order to stimulate demand, substantially offset by increased revenues from a shift in the mix towards the Company's newer products and products with multi-media configurations, which have higher average selling prices.

Net sales for the first six months of 1996 decreased when compared with the first six months of 1995, resulting from a decrease in peripheral product net sales such as displays and printers, partially offset by an increase in Macintosh computer net sales. Total Macintosh computer unit sales did not change in the first six months of 1996, when compared with the corresponding periods of 1995. Unit sales increased in the first quarter of 1996 when compared with the corresponding quarter of 1995 due to unit sales increases within the PowerMacintosh(TM) and Performa (registered trademark) families of desktop personal computers, and were offset by unit sales decreases in the second quarter of 1996 when compared with the corresponding quarter of 1995 as discussed in the preceding paragraph. The average aggregate revenue per Macintosh computer unit increased 4% in the first six months of 1996, when compared with the corresponding period of 1995, primarily due to increased revenues from a shift in the mix towards the Company's newer products and products with multi-media configurations, which have higher average selling prices, partially offset by pricing actions across all product lines in order to stimulate demand.

International net sales decreased 11% and increased 4% in the second quarter and first six months of 1996, respectively, when compared with the corresponding periods of 1995. The decrease in the second quarter is primarily attributable to a decrease in net sales in Europe due to a decrease in total Macintosh computer unit sales, partially offset by higher average aggregate revenue per Macintosh computer unit, and to a decrease in net sales in Japan due to a decrease in the average aggregate revenue per Macintosh computer unit. The increase in the first six months primarily reflects strong net sales growth in Japan and certain countries within Europe during the first quarter of 1996. International net sales represented 59% and 54% of total net sales for the second quarter and first six months of 1996, respectively, compared with 54% and 51% for the corresponding periods of 1995. Domestic net sales decreased by approximately 26% and 9% in the second quarter and first six months of 1996, respectively, when compared with the corresponding periods of 1995.

The Company's resellers typically 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. The Company's backlog increased slightly to approximately $369 million at May 3, 1996, from approximately $365 million at February 2, 1996. This increase in backlog reflects the effect of delays in shipments to address quality problems with respect to certain entry level, Performa and Powerbook products, substantially offset by satisfying product backlog in other categories. The Company estimates that product backlog would have declined to approximately $220 million at May 3, 1996 if the above-noted delays had not occurred.

In the Company's experience, the actual amount of product backlog at any particular time is not necessarily 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 over-ordering by dealers anticipating shortages. Backlog often is reduced sharply 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.

The Company believes that net sales will remain below prior years levels through the first quarter of 1997.
Gross Margin

Gross margin represents the difference between the Company's net sales and its cost of goods sold. The amount of revenue generated by the sale of products is influenced in significant part by the price set by the Company for its products relative to competitive products. The cost of goods sold is based primarily on the cost of components and, to a lesser extent, direct labor costs. Because the Company uses some components that are not common to the rest of the personal computer industry (including certain ASICs), its component costs may be higher than those incurred by other manufacturers. 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 decreased to (19.3%) and 1.0% during the second quarter and first six months of 1996, respectively, when compared with the corresponding periods of 1995, primarily as a result of a $616 million charge in the second quarter of 1996 principally for the write-down of certain inventory, as well as the cost to cancel excess component orders, necessitated by significantly lower than expected demand for many of the Company's products, primarily its entry level products. Also, the Company separately incurred a $60 million charge that reflects the estimated cost to correct certain quality problems in certain entry level, Performa and Powerbook products, covering both goods held in inventory and shipped goods. In addition, gross margins were adversely affected by aggressive pricing actions in Japan, primarily in the first quarter of 1996, in response to extreme competitive actions by other companies attempting to gain market share, and pricing actions in the U.S. and Europe across all product lines in order to stimulate demand.

The decrease in gross margin levels in the second quarter and first six months of 1996 compared with the corresponding periods of 1995 was slightly offset by hedging gains less the effects of a stronger U.S. dollar relative to certain foreign currencies. 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.

Although the Company is taking actions to improve gross margins as it implements its new strategic plan, it is anticipated that gross margins will continue to remain under pressure and will remain below prior years' levels through at least the third quarter of 1996 due to a variety of factors, including continued industrywide pricing pressures, increased competition, compressed product life cycles, and the need to sell through current inventory at prices reflecting the recent write-downs.

<table>
<thead>
<tr>
<th>Research and Development</th>
<th>Second Quarter</th>
<th>Six Months</th>
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</thead>
<tbody>
<tr>
<td>Research and development</td>
<td>$150</td>
<td>$143</td>
</tr>
<tr>
<td>Percentage of net sales</td>
<td>6.9%</td>
<td>5.4%</td>
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</tbody>
</table>

Research and development expenditures increased in the second quarter and first six months of 1996 when compared with the corresponding periods of 1995, primarily due to higher project and headcount related spending as the Company continues to invest in the development of new products and technologies. The increase as a percentage of net sales in the second quarter when compared with the corresponding quarter of 1995 was primarily a result of the decrease in the level of net sales.

As part of the Company's restructuring plan and new strategic direction, the Company expects to reduce the number of employees engaged in research and development activities and to streamline its product offerings. As a result, the Company expects that research and development expenditures will decrease relative to historical levels. Nevertheless, the Company believes that continued 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. The Company believes a greater portion of its research and development efforts will be conducted through collaborations with third parties. In addition, where appropriate the Company plans to acquire and license technologies from third parties.
Selling, general and administrative expenses increased in the second quarter and first six months of 1996 when compared with the corresponding periods of 1995 primarily due to increased spending related to marketing and advertising programs. The increase as a percentage of net sales in the second quarter when compared with the corresponding quarter of 1995 was primarily a result of the decrease in the level of net sales.

As a result of its restructuring plan, the Company expects that selling, general and administrative expenditures will decrease relative to historical levels, although marketing and advertising expenses are expected to remain high relative to historical levels during the remainder of 1996 as the Company attempts to stimulate greater demand for its products.

For information regarding the Company's restructuring actions initiated in the second quarter of 1996, refer to Note 2 of the Notes to Consolidated Financial Statements (Unaudited) in Part I, Item I, and to Factors That May Affect Future Results and Financial Condition as well as Liquidity and Capital Resources in Part I, Item II of this Quarterly Report on Form 10-Q, which information is hereby incorporated by reference.

In the first quarter of 1995, the Company lowered its estimates of the total remaining costs associated with its restructuring plan initiated in the third quarter of 1993 and recorded an adjustment that increased income by $17 million.

<table>
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<tr>
<th>Selling, General and Administrative</th>
<th>Second Quarter</th>
<th>Six Months</th>
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<tbody>
<tr>
<td>Selling, general and administrative</td>
<td>$404 $386 4.7% $845 $801 5.5%</td>
<td></td>
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<tr>
<td>Percentage of net sales</td>
<td>18.5% 14.6% 15.8% 14.6%</td>
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<table>
<thead>
<tr>
<th>Restructuring costs</th>
<th>Second Quarter</th>
<th>Six Months</th>
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<tbody>
<tr>
<td>Restructuring costs</td>
<td>207 -- -- $207 (17) NM</td>
<td></td>
</tr>
<tr>
<td>Percentage of net sales</td>
<td>9.5% -- 3.9% (.03%)</td>
<td></td>
</tr>
</tbody>
</table>

11
Interest and other income (expense), net, increased to income from expense in the second quarter and first six months of 1996 when compared to the corresponding periods in 1995, primarily due to favorable variances related to realized and unrealized foreign exchange hedging gains (losses) as a result of less volatility in the foreign exchange markets in the second quarter of 1996 as compared to the second quarter of 1995, offset by unfavorable variances in interest income and expense related primarily to higher borrowing costs, due to the downgradings of the Company's credit ratings by external credit rating agencies, and due to the decrease in cash and short-term investment balances during the second quarter and first six months of 1996 as compared with the corresponding periods in 1995. The Company's cost of funds has increased as a result of the recent downgradings of its short-term debt to NP and C by Moody's Investor Services and Standard and Poor's Rating Agency, respectively, and of its long-term debt to Ba2 and B+ by Moody's Investor Services and Standard and Poor's Rating Agency, respectively.

For information regarding the Company's Income Tax Provision (Benefit), refer to Note 5 of the Notes to Consolidated Financial Statements (Unaudited) in Part I, Item I of this Quarterly Report on Form 10-Q, which information is hereby incorporated by reference.
Factors That May Affect Future Results and Financial Condition

The Company's future operating results and financial condition are dependent on the Company’s ability to successfully develop, manufacture, and market technologically innovative products in order to meet dynamic customer demand patterns. Inherent in this process are a number of factors that the Company must successfully manage in order to achieve favorable future operating results and financial condition. Potential risks and uncertainties that could affect the Company's future operating results and financial condition include, without limitation: continued competitive pressures in the marketplace; the effect any reaction to such competitive pressures has on inventory levels and inventory valuations; the effects of significant adverse publicity; the impact of uncertainties concerning the Company's strategic direction and financial condition on revenue and liquidity; the effect of continued degradation in the Company's liquidity; and the effect of restructuring actions.

The Company expects to incur operating losses throughout at least the remainder of 1996.

Restructuring of Operations

In the second quarter of 1996, the Company formulated a new strategic direction and announced certain restructuring actions aimed at reducing its cost structure, improving its competitiveness and restoring profitability. 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 profitability and improve liquidity and the risk that cost-cutting initiatives will impair the Company’s ability to innovate and remain competitive in the computer industry.

As part of its restructuring effort, the Company intends to implement a new business model. Implementation of the new business model involves several risks, including the risk that by simplifying 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 new business model is that by increasing the proportion of the Company's products to be produced under outsourcing arrangements, the Company could lose control of the quality of the products manufactured and lose the flexibility to make timely changes in production schedules in order to respond to changing market conditions. In addition, the new business model could adversely affect employee morale, thereby damaging the Company's ability to retain and motivate employees. Also, because the new business model contemplates that the Company will reduce its research and development expenditures by, among other things, relying to a greater extent on collaboration and licensing arrangements with third parties, the Company will have less direct control over its research and development efforts and its ability to create innovative new products may be reduced. Finally, even if the new business model is successfully implemented, there can be no assurance that it will effectively resolve the various issues currently facing the Company. In addition, although the Company believes that the action that it is taking under its restructuring plan should help restore marketplace confidence in the Macintosh platform, there can be no assurance that such actions will succeed.

For the foregoing reasons there can be no assurance that the current restructuring actions will achieve their goals or that similar actions will not be required in the future. The Company's future operating results and financial condition could be adversely affected should it encounter difficulty in effectively managing the transition to the new business model and cost structure.

For more information regarding the Company's restructuring actions initiated in the second quarter of 1996, refer to Note 2 of the Notes to Consolidated Financial Statements (Unaudited) in Part I, Item I, and to Liquidity and Capital Resources in Part I, Item II of this Quarterly Report on Form 10-Q, 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 frequently introduces new products and product enhancements. 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 manufacturing 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, the uncertainties and risks associated with new product introductions may be increased as a result of the Company’s new business model which will, in part, emphasize a refocusing of product offerings and the introduction of new products for key growth segments.
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 over-ordering by dealers who anticipate shortages due to the aforementioned factors. The preceding may also be offset by other factors, 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 increasingly coincident with introduction, and then decreasing once dealers and customers believe they can obtain sufficient supply of products.

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 United States, even though localized versions of the Company's products may be available.

The greater integration of 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.

**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. In the first six months of 1996, the Company's results of operations and financial condition were, and in the near future are expected 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. Some of the Company's competitors have greater financial, marketing, manufacturing and technological resources, broader product lines and larger installed customer bases than those of the Company.

The Company's future operating results and financial condition may be affected by its ability to continue to implement this agreement and to manage the risk associated with the transition to this new hardware reference platform.
The Company is currently the primary maker of hardware that uses the Macintosh operating system ("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 MS-DOS (registered trademark) and Microsoft Windows (TM) operating systems. The Company believes that the Mac OS, with its perceived advantages over MS-DOS and Windows, has been a driving force behind sales of the Company's personal computer hardware for the past several years. Recent innovations in the Windows platform, including those introduced by Windows 95, have added features to the Windows platform similar to those offered by the Mac OS. 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 may be affected by its ability to increase the installed base for the Macintosh platform. As part of its efforts to increase the installed base for the Macintosh platform, the Company announced the licensing of the Mac OS to other personal computer vendors in January 1995, and several vendors currently sell products that utilize the Macintosh operating system. The Company believes that licensing the operating system will result in a broader installed base on which software vendors can develop and provide technical innovations for the Macintosh platform. However, there can be no assurance that the installed base will be broadened by the licensing of the operating system or that licensing will result in an increase in the number of application software titles or the rate at which vendors will bring to market application software based on the Mac OS. In addition, as a result of licensing its operating system, the Company is forced to compete with other companies producing Mac OS-based computer systems. The benefits to the Company from licensing the Mac OS to third parties may be more than offset by the disadvantages of being required to compete with them.

As a supplemental means of addressing the competition from MS-DOS and Windows, the Company has devoted substantial resources toward developing personal computer products capable of running application software designed for the MS-DOS or Windows operating systems ("Cross-Platform Products"). These products include both the RISC-based PowerPC 601 microprocessor and the 486 DX2/66 microprocessor, which enable users to run concurrently applications that require the Mac OS, MS-DOS, Windows 3.1 or Windows 95 operating systems. The Company has announced that it intends to ship by June 1996 Cross-Platform Products that include the Pentium or 586-class chip, or in which a Pentium or 586-class microprocessor can be installed through the use of an add-on card.

The Company plans to supply customers who purchase Cross-Platform Products with operating system software under licensing agreements with Microsoft. The Company's prior licensing agreement with Microsoft expired on December 31, 1995. The Company recently entered into new licensing agreements with Microsoft that will permit the Company to distribute MS-DOS and permit the Company to acquire the rights to distribute certain Windows operating systems, including Windows 95. In order to distribute Windows operating systems, the Company will need to enter into one or more agreements with certain Microsoft distributors.

Decisions by customers to purchase the Company's personal computers, as opposed to MS-DOS or 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 the 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 MS-DOS and 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 earned, and the costs of developing such software products. To the extent the Company's recent financial losses have caused software developers to question the Company's position in the personal computer market, they 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 toward developing and upgrading software for the larger MS-DOS and Windows market. Microsoft Corporation is an important developer of application software for the Company's products. Accordingly, Microsoft's interest in producing application software for the Company's products may be influenced by Microsoft's perception of its interests as the vendor of the Windows operating systems.

The Company's ability to produce and market competitive products is also dependent on the ability of IBM and Motorola, Inc., the suppliers of the PowerPC RISC microprocessor for certain of the Company's products, to continue to supply to the Company microprocessors that produce superior price/performance results compared with those supplied to the Company's competitors by Intel Corporation, the developer and producer of the microprocessors used by most personal computers using the MS-DOS and Windows operating systems. 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.
Recently, several competitors of the Company, including Compaq, IBM and Microsoft, have either targeted or announced their intention to target certain of the Company's key market segments, including education and publishing. Some of these companies have greater financial, marketing, manufacturing and technological resources than the Company.

The Company's future operating results and financial condition may also be affected by the Company's ability to successfully expand and capitalize on its investments in other markets, such as the markets for Internet services and personal digital assistant (PDA) products.

Global Market Risks

A large portion of the Company's revenue is derived from its international operations. As a result, the Company's operations and financial results could be significantly affected by international factors, such as changes in foreign currency exchange rates or weak economic conditions in the foreign markets in which the Company distributes its products. 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).

To mitigate the short-term impact of fluctuating currency exchange rates on the Company's non-U.S. dollar-based sales, product procurement, and operating expenses, the Company regularly hedges its non-U.S. dollar-based exposures. Specifically, the Company enters into foreign exchange forward and option contracts to hedge firmly committed transactions. Currently, hedges of firmly committed transactions do not extend beyond one year. The Company also purchases foreign exchange option contracts to hedge certain other probable, but not firmly committed transactions. Hedges of probable, but not firmly committed transactions currently do not extend beyond one year. To reduce the costs associated with these ongoing foreign exchange hedging programs, the Company also regularly sells foreign exchange option contracts and enters into certain other foreign exchange transactions. All foreign exchange forward and option contracts not accounted for as hedges, including all transactions intended to reduce the costs associated with the Company's foreign exchange hedging programs, are carried at fair value and are adjusted on each balance sheet date for changes in exchange rates.

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 interest paid on its short-term borrowings and long-term debt. To mitigate the impact of fluctuations in U.S. interest rates, the Company has entered into interest rate swap and option transactions. Certain of these swaps are intended to better match the Company's floating-rate interest income on its cash, cash equivalents, and short-term investments with the fixed-rate interest expense on its long-term debt. The Company also enters into interest rate swap and option transactions in order to diversify a portion of the Company's exposure away from fluctuations in short-term U.S. interest rates. These instruments may extend the Company's cash investment horizon up to a maximum effective duration of three years.

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 and option positions 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 as such, may adversely affect the Company's operating results and financial position. The Company generally does not engage in leveraged hedging.
The Company's current financial condition may have an impact on the costs of its hedging transactions, as well as the willingness of its trading partners to enter into hedging transactions with the Company.

**Inventory and Supply**

In line with the Company's efforts to redesign its business model, the Company intends to streamline its product offerings in its key usage areas in education, business and the home. This simplification of product lines has resulted in inventory reserves. Cancellation fees related to custom component inventory purchased for anticipated product introductions that have been canceled have also been paid or incurred. The Company has also separately provided for the estimated cost to correct certain quality problems on certain entry level, Performa and Powerbook products. Although the Company believes its inventory and related reserves are adequate, no assurance can be given that the Company will not incur additional inventory charges.

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 operating results and financial condition have been 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 a result of the Company's restructuring plan, which includes the sale of the Company's Fountain, Colorado manufacturing facility to SCI Systems, Inc. ("SCI") and a related manufacturing outsourcing agreement with SCI, the proportion of its products produced under outsourcing arrangements will increase. While outsourcing arrangements may lower the fixed cost of operations, they may also reduce the direct control the Company currently has over production. It is uncertain what effect such lessened control will have on the quality 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 operating results and financial condition.

The Company's ability to satisfy demand for its products may be limited by the availability of key components. 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 produce products. Specific microprocessors manufactured by Motorola, Inc. and IBM are currently available only from single sources, while 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 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 market share and adversely affect the Company's future operating results and financial condition.
Marketing and Distribution

A number of uncertainties may affect the marketing and distribution of the Company's products. Currently, the Company's primary means of distribution is through third-party computer resellers. The Company also distributes product through consumer channels such as mass-merchandise stores, consumer electronics outlets, and computer superstores. The Company's business and financial results could be adversely affected if the financial condition of these resellers weakens or if resellers within consumer channels decide not to continue to distribute the Company's products.

Uncertainty over the demand for the Company's products may cause resellers to reduce the ordering and marketing of 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. In the second quarter of 1996, the Company experienced a reduction in ordering from historical levels by resellers due to uncertainty concerning the Company's condition.

Other Factors

The majority of the Company's research and development activities, its corporate headquarters, and other critical business operations 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 the effect of such regulation will have on the Company's future operating results and financial condition.

The Company is currently in the process of replacing its existing transaction systems (which include order management, distribution, and finance) with a single integrated system as part of its ongoing effort to increase operational efficiency. The Company's future 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 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


Cash used for operations during the first six months of 1996 totaled $177 million, primarily due to the net loss. Also contributing to cash used for operations were lower accounts payable levels, due to a substantial reduction in inventory purchases. Cash used for operations was partially offset by a decrease in accounts receivable.

Net cash used for the purchase of property, plant, and equipment totaled $40 million in the first six months of 1996, and consisted primarily of increases in manufacturing machinery and equipment and buildings. The Company expects that capital expenditures in 1996 will decline relative to 1995 expenditure levels.
Short-term borrowings at March 29, 1996, were approximately $109 million lower than at September 29, 1995. The issuance of commercial paper has been discontinued and short-term borrowings have largely ceased. On March 29, 1996, Apple Japan, Inc., a subsidiary of the Company, entered into loan agreements in the aggregate amount of $146 million with certain banks, which extended or replaced approximately $146 million of existing borrowings. Also on this date, Apple Japan, Inc. repaid approximately $54 million of existing borrowings. The current loans have maturity dates ranging from June 28, 1996 to September 30, 1996. Two of these loans are guaranteed by the Company. On April 2, 1996, Apple Computer B.V., a subsidiary of the Company, entered into an agreement to extend its existing $200 million secured credit facility. The amount currently outstanding is approximately $190 million. The facility matures on June 28, 1996 and is guaranteed by the Company. In connection with this facility, the Company has agreed to maintain a minimum cash balance.

The Company's balance of long-term debt remained relatively constant during the first six months of 1996. Substantially the entire amount of long-term borrowings represents $300 million aggregate principal amount of 6.5% unsecured notes issued under an omnibus shelf registration statement filed with the Securities and Exchange Commission in 1994. This shelf registration was for the registration of debt and other securities for an aggregate offering amount of $500 million. 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 Internal Revenue Service 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 for the years 1984 through 1988, and most of the issues in dispute for these years have been resolved. On June 29, 1995, the IRS issued a notice of deficiency proposing increases to the amount of the Company's federal income taxes for the years 1989 through 1991. The Company has filed a petition with the United States Tax Court to contest these alleged tax deficiencies. Management believes that adequate provision has been made for any adjustments that may result from these tax examinations.

It will be necessary for the Company to borrow in the near term to finance its working capital needs, because the Company does not expect that it will generate cash from operations in this timeframe. In addition, in connection with the restructuring actions, referred to on page 6 in Note 2 of the Notes to the Consolidated Financial Statements, the Company had $24 million of cash expenditures in the second quarter of 1996 and expects to incur $123 million of cash expenditures over the next 12 months. These cash expenditures are expected to be financed through current working capital, the sale of certain assets and other investments, possible future short and long-term borrowings, and possible combined debt and equity financing.

As noted on page 12 under the subheading "Interest and other income (expense), net", the Company's cost of funds has increased as a result of the recent downgradings of its short-term debt to NP and C by Moody's Investor Services and Standard and Poor's Rating Agency, respectively, and of its long-term debt to Ba2 and B+ by Moody's Investor Services and Standard and Poor's Rating Agency, respectively. In addition, the Company may be required to pledge additional collateral with respect to certain of its borrowings and to agree to more stringent covenants than in the past. The Company is seeking alternative sources of liquidity and is discussing various alternatives with several financial institutions. Although the Company believes it will be able to arrange short- and long-term financing that will cover its needs, it currently does not have commitments from lenders to provide such funding. The Company believes that its balances of cash, cash equivalents, and short-term investments, together with possible short- and long-term borrowings and possible combined debt and equity financing that the Company believes it will be able to obtain, will be sufficient to meet its operating cash requirements, including the impact of planned restructuring actions, on a short- and long-term basis. No assurance can be given that the necessary financing will be obtained, or that any additional financing that may be required if the restructuring plan takes longer to implement than anticipated or is not successful can be obtained. If the Company is unable to obtain adequate financing, its liquidity, results of operations and financial condition will be materially adversely affected.
Part II. Other Information

Item 1. Legal Proceedings

Management is not aware of any pending legal proceedings to which the Company is a party that are likely to have a material adverse effect on the Company's financial condition and results of operations as reported in the accompanying financial statements.

Reference is made to Item 1 of Part II of the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended December 29, 1995 for a discussion of certain purported shareholder class action suits filed in January 1996. In February 1996, the complaint in the action styled Abraham and Evelyn Kostick Trust v. Peter Crisp, et al. was amended to add additional parties and to add purported class and derivative claims based on theories such as breach of fiduciary duty, misrepresentation and insider trading. In March 1996, a purported shareholder class action styled Derek Pritchard v. Michael Spindler, et al., was filed in the California Superior Court for Santa Clara County, alleging 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.

The Company has been named as a defendant in numerous lawsuits (fewer than 100) in each of which the complaint alleges that the plaintiff incurred so-called "repetitive stress injuries" to the upper extremities as a result of using keyboards and/or mouse input devices sold by the Company. All of these cases are in various stages of pre-trial activity.

The Company believes that all of the actions cited above are without merit.

Item 4. Submission of Matters to a Vote of Security Holders

a) The annual meeting of shareholders was held on January 23, 1996

b) The following directors were elected at the meeting to serve two-year terms as Class II directors:

Peter O. Crisp
Bernard Goldstein
Delano E. Lewis
A. C. Markkula, Jr.

The following directors are continuing to serve their two-year terms as Class I directors which will expire at the next annual meeting:

Gilbert F. Amelio
B. Jurgen Hintz
Katherine M. Hudson

c) The other matters voted upon at the meeting and results of those votes were as follows:

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<th>Abstained</th>
<th>Broker</th>
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Ratification of Ernst & Young LLP as the Company's independent auditors for fiscal year 1996. The foregoing matters are described in detail in the Registrant's definitive proxy statement dated December 19, 1995, for the Annual Meeting of Shareholders held on January 23, 1996.

**Item 6. Exhibits and Reports on Form 8-K**

**a) Exhibits**

**Exhibit Number Description**


11 Computation of per share earnings

27 Financial Data Schedule

**b) Reports on Form 8-K**

A Current Report on Form 8-K dated April 10, 1996 was filed by Apple with the Securities and Exchange Commission to report under Item 5 thereof the press release issued to the public on March 27, 1996 and the extension or replacement of short-term borrowings of Apple Japan, Inc. and Apple Computer B.V., subsidiaries of the registrant.
Pursuant to the requirements 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.

APPLE COMPUTER, INC.
(Registrant)

DATE: May 13, 1996

BY /s/ Fred D. Anderson

Fred D. Anderson
Executive Vice President and
Chief Financial Officer
Employment Agreement

Dear Dr. Amelio:

The following sets forth our agreement regarding the terms and provisions of your employment as an officer and employee of Apple Computer, Inc. (the "Company") during the Term. 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 (the "Term") shall commence on February 2, 1996 (the "Effective Date") and shall continue until the fifth anniversary of the Effective Date. For purposes of this Agreement, "Contract Year" means each 12-month period during the term beginning on the Effective Date or anniversary thereof, and "Fiscal Year" means the Company's fiscal year. Subject to the provisions of Section 5 below, either party may terminate the Term at any time.

2. Employment During the Term. During the Term, you shall be employed as the Chairman and Chief Executive Officer of the Company and shall report directly to the Board of Directors of the Company (the "Board"), and your duties and responsibilities to the Company shall be consistent in all respects with such positions. During the Term, the Company will take all steps reasonably necessary to assure that you continue to be elected or appointed to the Board. You shall devote substantially all of your business time, attention, skills and efforts exclusively to the business and affairs of the Company, other than de minimis amounts of time devoted by you to the management of your personal finances or to engaging in charitable or community services. During the Term, you shall be permitted to continue serving as a member of the boards of directors of the corporations on which you are serving as a director on the Effective Date (and on such other boards of directors as may be approved in writing from time to time by the Board) as long as such service does not adversely affect the performance of your duties to the Company as contemplated hereunder. Your principal place of employment shall be the executive offices of the Company as established from time to time, although you understand and agree that you will be required to travel from time to time for business purposes.
3. Compensation During the Term.

(a) Base Salary. As compensation to you for all services rendered to the Company and its subsidiaries, the Company will pay you a base salary (the "Salary") at the rate of $990,000 per annum. Your Salary will be paid to you in accordance with the Company's regular payroll practices applicable to its executive officers. Your rate of Salary will be reviewed annually by the Board and may be increased by the Board on the basis of such review.

(b) Bonus.

(i) Annual Bonus. You shall be eligible to earn an annual bonus (the "Annual Bonus") for each whole or partial Fiscal Year during the Term consisting of the sum of (i) the Component A Bonus (as defined below) for that Fiscal Year and (ii) the Component B Bonus (as defined below) for such Fiscal Year. The Annual Bonus for each given Fiscal Year will be paid within 90 days following the end of the Fiscal Year to which such Annual Bonus relates. The "Component A Bonus" shall be based upon the Company achieving one or more performance goals established in good faith by the Compensation Committee of the Board (the "Committee") and approved by the Board for such Fiscal Year. The performance goal or goals applicable to the Component A Bonus for the Fiscal Year of the Company that includes the Effective Date will be established within 60 days following the Effective Date. The performance goals for the Component A Bonus for subsequent Fiscal Years will be established, to the extent practicable, prior to the start of the applicable Fiscal Year, but in no event later than 90 days following the commencement of the Fiscal Year. The target amount of your Component A Bonus for each 12-month Fiscal Year will equal 100% of your annual rate of Salary based upon the rate in effect on the first day of that Fiscal Year. The target amount for any Fiscal Year of fewer than 12 months will be prorated by multiplying the target amount determined in accordance with the previous sentence by a fraction (in no event greater than one), the numerator of which is the number of days in such Fiscal Year in the Term and the denominator of which is 365 (the "Proration Fraction"). The actual amount of the Component A Bonus paid to you for a given Fiscal Year (which, for purposes of this Agreement, will be deemed earned as of the last day of the applicable Fiscal Year) may range from 50% to 300% of the target amount, based upon a performance schedule established by the Committee for the applicable Fiscal Year and the relationship between the Company's actual performance for the Fiscal Year and the target performance established for that year by the Committee (it being understood that payments in excess of 200% of target will be made only for extraordinarily good corporate performance and payments of no Component A Bonus will be made for only poor corporate performance); provided, however, that the minimum Component A Bonus for the first Fiscal Year ending during the Term shall be 50% of the target amount for that Fiscal Year. There shall be no minimum guaranteed Component A Bonus for any Fiscal Year other than the first Fiscal Year ending during the Term. The "Component B Bonus" shall be $1,000,000 for each Fiscal Year of the Company ending during the Term (and, for purposes of this Agreement, will be deemed earned as of the last day of the applicable Fiscal Year ending during the Term). In no event may the sum of the Component B Bonuses paid for all Fiscal Years during the Term exceed $5 million. In the event that the Company changes its Fiscal Year during the Term, an equitable adjustment shall be made to the bonus arrangement which, in the reasonable good faith judgment of the Committee, preserves, to the extent practicable, the bonus opportunity (including the timing of payment of the Component B Bonuses) set forth above.

(ii) Signing Bonus. In addition to any amounts payable under Section 3(b)(i) above, the Company will pay you as soon as practicable following the Effective Date a one-time signing bonus of $200,000.
(c) Loan. On or as soon as practicable after the Effective Date, the Company shall cause one of its subsidiaries (the "Lender") to lend you the amount of $5,000,000 (the "Loan"). The Loan shall initially be made to you on a fully recourse basis but shall, subject to Section 5(h), become nonrecourse (and thereafter remain nonrecourse) as to the portion of the principal amount of the Loan that is secured by collateral with a value on the date such collateral is pledged by you equal to 125% of the outstanding principal amount of the Loan. To the extent that the collateral pledged by you does not have a value equal to 125% of the outstanding principal amount of the Loan, the portion of the Loan that shall be recourse shall be determined in accordance with the formula \[ P - \frac{C}{1.25} \], where "P" is the outstanding principal amount of the Loan and "C" is the fair market value of all collateral securing the Loan determined as of the date such collateral is pledged. The collateral that may be pledged by you to secure the Loan shall consist of Performance Shares earned by you and such other collateral as the Lender may reasonably accept. The Company agrees to release its security interest in Performance Shares earned by you and such other collateral as the Lender may reasonably accept. The Company agrees to release its security interest in Performance Shares prior to the full repayment of the Loan to the extent necessary to permit you to sell such shares in order to pay the tax liability incurred by you in connection with your earning of the Performance Shares, to pay any currently due interest on the Loan or to pay any outstanding principal amount of the Loan. The Loan shall bear interest at the minimum rate necessary to avoid the imputation of interest under the Code. Interest shall compound and be payable annually on each anniversary of the Effective Date and on the date of your termination or resignation of employment. Twenty per cent of the initial principal amount of the Loan shall be due and payable on each of the first through fifth anniversaries of the Effective Date. The entire principal amount of the Loan and any accrued but unpaid interest on the Loan shall be immediately due and payable 90 days following the Date of Termination (as hereinafter defined). 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. Repayments of principal and interest on the Loan shall be applied ratably at the time of payment to the recourse and nonrecourse portions of the Loan. Following your termination or resignation of employment for any reason, the Company and the Lender shall have the unconditional right to reduce any payments owed to you hereunder by the amount of any due and unpaid principal and interest on the Loan and you hereby agree and consent to such right on the part of the Company and the Lender. As a condition to making the Loan to you, you shall execute a promissory note in favor of the Lender and any other applicable Loan documentation consistent with the terms of this Section 3(c) which is reasonably requested by the Lender.

(d) Benefits. During the Term, you shall be eligible to participate in all 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. Subject to your insurability at standard commercial rates, in lieu of your participating in the Company's regular life insurance programs, the Company agrees to maintain a whole life insurance policy for you during the Term with a death benefit equal to 5 times your annual rate of Salary. The whole life policy shall be on terms which are substantially similar to those applicable to the whole life policy in effect with your prior employer (including the provisions thereof applicable to the allocation of premiums on the policy between you and the Company).

(e) Expenses. The Company will reimburse you in accordance with its regular policies and practices for business expenses reasonably incurred by you in connection with the performance of your duties under this Agreement, subject to your presentation of appropriate documentation of such expenses.

(f) Airplane Lease. The Company agrees to lease your current airplane for business purposes on terms which are commercially reasonable to you and the Company. The terms of such airplane lease will be negotiated in good faith by you and the Company after the Effective Date and will be memorialized in appropriate documentation.
4. Long-Term Incentive Compensation. In order to align your interests more closely with those of the Company's stockholders, the Company will offer the following long-term incentive compensation arrangements to you, subject to the terms and conditions set forth below.

(a) Stock Option. Subject to Section 4(c) below, as soon as practicable after the Effective Date, the Company will grant to you pursuant to the Apple Computer, Inc. 1990 Stock Option Plan (the "Option Plan") a stock option (the "Option") covering 1,000,000 shares of common stock of the Company (the "Common Stock"). The per share exercise price of the Option shall be the fair market value of a share of Common Stock on the day before the date the Option is granted to you by the Committee, as determined in accordance with the provisions of the Option Plan. The Option shall become vested and exercisable with respect to 20% of the shares of Common Stock subject thereto on the Initial Vesting Date and on each of the second through fifth anniversaries of the Effective Date, provided that you have remained in the continuous full-time employ of the Company through each such vesting date and stockholder approval of the grant of the Option is obtained in accordance with Section 4(c) below. The Option will be subject to the terms and provisions of the Option Plan and such other terms consistent with the Option Plan as the Committee may specify and set forth in the applicable Option Agreement.

(b) Performance Shares. (i) Subject to Section 4(c) below, for each Fiscal Year during the Term, you shall be afforded the opportunity to earn the Target Amount (as defined below) of shares of Common Stock (the "Performance Shares"), subject to the Company's attaining the performance goal or goals established in good faith by the Committee and approved by the Board for that Fiscal Year (hereinafter, the "Performance Share Arrangement"). The "Target Amount" for each 12-month Fiscal Year during the Term shall be 200,000 shares of Common Stock. The "Target Amount" for each Fiscal Year of the Term of fewer than 12 months shall be 200,000 shares of Common Stock multiplied by the Proration Fraction. In no event may you have the opportunity to earn more than 1,000,000 Performance Shares during the Term. The performance goal or goals for first Fiscal Year will be established within 60 days following the Effective Date. The performance goals for subsequent Fiscal Years will be established, to the extent practicable, prior to the start of the applicable Fiscal Year, but in no event later than 90 days following the start of the Fiscal Year. The performance goal or goals established by the Committee for a given Fiscal Year need not be the same goal or goals established by the Committee under Section 3(b) above. You may earn fewer than the full number of Performance Shares in a given year for performance that is below target for that year based upon an award schedule established by the Committee at the time it sets the performance targets for the year. In the event that the Company changes its Fiscal Year during the Term, an equitable adjustment shall be made to the Performance Share Arrangement which, in the reasonable good faith judgment of the Committee, preserves, to the extent practicable, the long-term incentive opportunity set forth above.

(ii) The Performance Shares earned by you for the first Fiscal Year will be deemed earned on the Initial Vesting Date (subject to applicable performance targets being achieved) and will be awarded to you as soon as practicable following the Initial Vesting Date, provided that you have remained in the continuous full-time employ of the Company through that date. The Performance Shares for the second Fiscal Year will be awarded to you on the Initial Vesting Date (provided you are then employed by the Company), but will be forfeited in whole or in part as of the last day of that Fiscal Year if the performance goal or goals applicable to that year are not achieved. The Performance Shares for each subsequent Fiscal Year will be awarded to you as of the first day of the Fiscal Year (provided you are then employed by the Company), but will be forfeited in whole or in part as of the last day of that Fiscal Year if the performance goal or goals applicable to that year are not achieved. Performance Shares will not be transferrable by you until they have been earned by you in accordance with the provisions of this Section 4(b). Performance Shares awarded for Fiscal Years during the Term other than the first Fiscal Year will be issued in your name, but the share certificates representing such shares will be held by the Company or its agent until they have been earned in accordance with the provisions of this Section 4(b) and will bear an appropriate legend or legends reflecting the transfer restrictions and forfeiture provisions applicable thereto.
In the event of a Change in Control of the Company, the Company shall make equitable adjustments to the Performance Share Arrangement in a manner intended to preserve the economic value of the arrangement; provided, however, that, in the event of a merger of the Company with or into another corporation, such adjustment shall consist of a conversion of Performance Shares to be earned under the Performance Share Arrangement into shares of the surviving corporation in accordance with the exchange ratio approved by the Company's stockholders and an equitable adjustment to the performance goals applicable to the Performance Share Arrangement.

Stockholder Approval. The grant of the Option is expressly conditioned upon the stockholders of the Company approving in a separate vote of the stockholders at the first annual or special meeting of stockholders of the Company to occur after the Effective Date (i) the grant of the Option and (ii) an amendment to the Option Plan to permit it to comply with the requirements of Section 162(m) of the Code applicable to qualified performance-based compensation. If such stockholder approval is not obtained in the manner contemplated by the previous sentence, the Option grant shall be void ab initio and of no further force and effect. Similarly, the Performance Share Arrangement is expressly conditioned upon the stockholders of the Company approving in a separate vote of the stockholders at the first annual or special meeting of stockholders of the Company to occur after the Effective Date the Performance Share Arrangement and such additional terms as shall be necessary for the arrangement to meet the requirements of Section 162(m) of the Code applicable to qualified performance-based compensation. If such stockholder approval is not obtained in the manner contemplated by the previous sentence, any outstanding Performance Shares shall be immediately forfeited and the Performance Share Arrangement shall be void ab initio and of no further force and effect. If the stockholder approval contemplated by this Section 4(c) is not obtained, you and the Company agree to negotiate an alternative long-term compensation arrangement to be submitted to stockholders and to submit such alternative long-term compensation arrangement to stockholders as soon as reasonably practicable, and to repeat this process to the extent necessary until an alternative long-term compensation arrangement negotiated by you and the Company is subsequently approved by the stockholders. You and the Company agree to make a good faith and diligent effort to obtain the stockholder approval contemplated by this Section 4(c) as soon as reasonably possible. Anything in this Agreement to the contrary notwithstanding, the Company shall have no obligation to call a special meeting of stockholders for the purpose of obtaining any approval contemplated by this Section 4(c).

Registration; Reservation of Shares. To the extent practicable, the Company will undertake to register the Option, the shares of Common Stock underlying the Option and the Performance Shares on Form S-8 under the Securities Act. The previous sentence, however, shall not in any way be construed as (i) prohibiting the Company from engaging in any transaction (including a transaction that will result in a Change in Control), (ii) requiring the Company to file any reports under the Exchange Act or to maintain its registration under the Exchange Act if such registration is not otherwise required or (iii) requiring the registration of the Option, the shares of Common Stock underlying the Option or the Performance Shares on Form S-8 (or any other form) if Form S-8 is not available to the Company. As soon as practicable following the Effective Date, the Company shall reserve for issuance 1,000,000 shares of Common Stock for issuance under the Performance Share Arrangement. As soon as practicable following the Effective Date, the Company shall reserve for issuance 1,000,000 shares of Common Stock for issuance under the Option Plan in connection with the grant of the Option.
5. Effect of Termination of Employment.

(a) Right to Resign Following a Year One Change in Control. In the event of a Year One Change in Control, you shall have the right to resign for any reason or for no stated reason during the Election Window. In the event of such a resignation, the Company shall pay you the full amount of the accrued but unpaid Salary you have earned through the Date of Termination, plus a cash payment (calculated on the basis of your rate of Salary then in effect) for all unused vacation time which you may have accrued as of the Date of Termination. In addition, the Company shall pay you on the Severance Payment Date an "all in" cash lump sum payment of $10 million. You will relinquish, as of the Date of Termination, the Option, all rights under the Performance Share Arrangement and any outstanding Performance Shares and the right to any additional payments or benefits from the Company under this Agreement. The provisions of the Section 5(a) shall not apply if, at the time of your resignation, the Company is entitled to terminate your employment for Cause.

(b) Involuntary Termination Prior to the Initial Vesting Date. In the event of your Involuntary Termination prior to the Initial Vesting Date, the Company shall pay you the full amount of the accrued but unpaid Salary you have earned through the Date of Termination, plus a cash payment (calculated on the basis of your rate of Salary then in effect) for all unused vacation time which you may have accrued as of the Date of Termination. In addition, the Company shall pay you on the Severance Payment Date an "all in" cash lump sum payment of $10 million. You will relinquish as of the Date of Termination the Option, all rights under the Performance Share Arrangement and any outstanding Performance Shares and the right to any additional payments or benefits from the Company under this Agreement.

(c) Involuntary Termination On or After the Initial Vesting Date. (i) In the event of your Involuntary Termination on or after the Initial Vesting Date, the Company shall pay you the full amount of the accrued but unpaid Salary you have earned through the date of such Involuntary Termination, plus a cash payment (calculated on the basis of your rate of Salary then in effect) for all unused vacation time which you may have accrued as of the date of Involuntary Termination. In addition, the Company shall pay you on the Severance Payment Date a cash lump sum amount equal to the sum of (i) the Salary payable to you for the remaining portion of the Term and (ii) your annual rate of Salary (at the rate then in effect) times the number of whole and partial Contract Years remaining in the Term. In the event of an Involuntary Termination on or after the Initial Vesting Date, you will retain all Performance Shares that have been earned by you on or prior to the date of such Involuntary Termination and you will continue to have the opportunity to earn the Performance Shares for the Fiscal Year in which the Involuntary Termination occurs if the applicable performance goals for that Fiscal Year are achieved; provided, however, that, if your employment is Involuntarily Terminated (i) on or after the Initial Vesting Date and (ii) on or after a Change in Control (other than a Year One Change in Control), then the number of Performance Shares you shall earn for the Fiscal Year in which the Date of Termination occurs shall not be less than the Target Amount for that Fiscal Year (in no event greater than 200,000) multiplied by a fraction (in no event greater than one), the numerator of which is the number of days in such Fiscal Year up to and including the Date of Termination and the denominator of which is 365 (the "Change in Control Fraction"). All other rights under the Performance Share Arrangement and all other outstanding Performance Shares will be forfeited as of the Date of Termination. You will retain the portion of the Option that has vested on or prior to the Date of Termination. In addition, if your employment is Involuntarily Terminated

(ii) on or after the Initial Vesting Date and (ii) on or after a Change in Control (other than a Year One Change in Control), you shall also vest in an additional portion of the Option on the Date of Termination determined by multiplying the number of shares of Common Stock in which the Option was scheduled to vest on the anniversary of the Effective Date occurring on or immediately following the Date of Termination by the Change in Control Fraction. The vested portion of the Option will remain exercisable for 90 days following the Date of Termination. Any remaining unvested portion of the Option will be forfeited as of the Date of Termination.
(ii) In the event of your Involuntary Termination on or after the Initial Vesting Date, 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 and life insurance plans 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 Date of Termination and ending on the first anniversary of the Date of Termination; provided, however, that your coverage under such plans and arrangements shall end on 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. Following the end of the Benefit Continuation Period, you shall be eligible to elect any applicable "continuation coverage" under Section 4980B(f) of the Code as if the last day of the Benefit Continuation Period was the date of your "qualifying event" for such continuation coverage.

(iii) Except as otherwise provided in this Section 5(c), as of the Date of Termination, you will relinquish the right to any additional payments or benefits from the Company under this Agreement.

(d) Termination for Cause; Resignation Without Good Reason. In the event you resign without Good Reason or you are terminated by the Company for Cause at any time during the Term, the Company shall pay you the full amount of the accrued but unpaid Salary you have earned through the Date of Termination, plus a cash payment (calculated on the basis of your rate of Salary then in effect) for all unused vacation time which you may have accrued as of the Date of Termination. You will immediately forfeit all future rights under the Performance Share Arrangement and any outstanding Performance Shares that have not been earned as of the Date of Termination. You will retain the portion of the Option that has vested on or prior to the Date of Termination which will remain exercisable for 90 days following the Date of Termination. In addition, you shall immediately relinquish the right to any additional payments or benefits from the Company under this Agreement.

(e) Death or Disability. If your employment with the Company ends as a result of your death or Disability during the Term, the Company shall pay you (or, in the event of your death, your Beneficiary) the full amount of the accrued but unpaid base salary you have earned through the Date of Termination, plus a cash payment (calculated on the basis of your rate of Salary then in effect) for all unused vacation time which you may have accrued as of the Date of Termination. In the event of your death or Disability, you (or in the event of your death, your Beneficiary) will retain all Performance Shares that have been earned on or prior to the date of your death or Disability and you (or in the event of your death, your Beneficiary) will continue to have the opportunity to earn the Performance Shares for the Fiscal Year in which the Involuntary Termination occurs if the applicable performance goals for that Fiscal Year are achieved. All other rights under the Performance Share Arrangement or and all other outstanding Performance Shares will be forfeited as of the Date of Termination. You will retain the portion of the Option that has vested on or prior to the Date of Termination which will remain exercisable in accordance with the provisions of the Option Plan. In addition, in the event of your death, the Option will continue to vest in accordance with the provisions of the Option Plan during the six-month period beginning on the date of your death. Any remaining portion of the Option which has not vested by the end of the period described in the previous sentence will be forfeited. Except as otherwise provided in this Section 5(e), as of the Date of Termination, you will relinquish the right to any additional payments or benefits from the Company under this Agreement.
(f) 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 delivered to you by the Company (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, the date the Notice of Termination is delivered to you by the Company, (iii) if your employment is terminated by the Company for Cause, subject to the applicable cure provisions, the date such notice is delivered to you by the Company and (iv) if you resign during the Election Window, the date the Notice of Termination is delivered to the Company by you. If the basis for your Involuntary Termination is your resignation for Good Reason, the Date of Termination shall be, subject to the applicable cure provisions, ten (10) days after the date your Notice of Termination is delivered to the Company by you. The Date of Termination for a resignation of employment other than for Good Reason other than during the Election Window shall be the date the Notice of Termination is delivered to you by the Company. The Date of Termination in the event of your death shall be the date of your death. If your employment ends as a result of the expiration of the Term, the Date of Termination shall be the last day of the Term.

(g) No Mitigation. 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.

(h) Right of Setoff. Anything in this Agreement to the contrary notwithstanding, upon your termination or resignation of employment with the Company for any reason, the full amount of the outstanding principal and interest on the Loan shall become due and payable 90 days following the applicable Date of Termination, and the Company and the Lender shall have the right to apply any and all amounts payable to you under this Section 5 (or otherwise payable to you under this Agreement) to the payment of the full amount of the then outstanding principal and interest on the Loan. You hereby consent to such action by the Company and hereby irrevocably designate the Company as your agent for purposes of the Loan repayment and authorize and direct the Company to repay the Loan in the manner contemplated by this Section 5(h). Any remaining amount of outstanding principal and interest that is not paid in the manner contemplated by this Section 5(h) shall be due and payable by you within 90 days following the applicable Date of Termination.

6. 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 \( \{(E \times (1 - M)/(1 - T)) - E\} \) (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.

(b) Determination of Gross-Up Payment. Subject to the provisions of Section 5(c), all determinations required under this Section 6, 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 after the Change in Control Date or any other date reasonably requested by you or the Company on which a determination under this Section 6 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 6(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 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 6, 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 6, 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 6(b).

7. Successors; Binding Agreement; Attorneys Fees.

(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 in writing, with a copy to you, 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 or other Beneficiary. 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 Beneficiary.

(c) Attorney's Fees. The Company will pay or reimburse you for the reasonable attorneys fees and expenses incurred by you in the negotiation of this Agreement in an amount not to exceed $5,000.

8. Definitions. For purposes of this Agreement, the following capitalized words shall have the meanings set forth below:
"Accounting Firm" shall mean Ernst & Young 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.

"Beneficiary" shall mean the person or persons designated by you in writing to receive any benefits payable to you hereunder in the event of your death or, if no such persons are so designated, your estate. No Beneficiary designation shall be effective unless it is in writing and received by the Company prior to the date of your death.

"Cause" shall mean a termination of your employment during the Term which is a result of (i) your felony conviction or your plea of "no contest" to a felony, (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 delivery of such demand to you. 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 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 reasonable 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 a majority 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, 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 percent 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.

"Change in Control Date" shall mean the date on which the Change in Control occurs.

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

"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.

"Election Window" shall mean the thirty-day period beginning 180 days following the Change in Control Date applicable to the Year One Change in Control.


"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, titles, responsibilities or reporting responsibilities from that contemplated under this Agreement; provided, however, that a change in your position, titles, responsibilities or reporting responsibilities as a result of or in connection with a Year One Change in Control shall not constitute an event of Good Reason for purposes of this Agreement; (ii) 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 (iii) the reduction by the Company in your annual rate of Salary or the failure of the Company to pay you in the time and manner contemplated by Section 3(b) above any Component A Bonus or Component B Bonus earned by you; or (iv) the failure of the Company to grant you the Option or to pay you any Performance Shares earned by you, in each case, in the manner contemplated by Section 4 above; provided, however, that the failure of the stockholders of the Company to approve the Option grant or the Performance Share Arrangement shall in no event constitute Good Reason hereunder; and provided further, that an event described in this sentence shall not constitute Good Reason unless it is communicated by you to the Company in writing within thirty days of the date you know or have reason to know of such event 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 date of your delivery of such written notice to the Company.

"Initial Vesting Date" shall mean the following:

1. In the event a Year One Change in Control occurs, the earlier to occur of (i) the expiration of the Election Window and (ii) 18 months after the Effective Date, but in no event prior to the later to occur of the first anniversary of the Effective Date and the date of the stockholder approval contemplated by Section 4(c) hereof; and

2. In the event a Year One Change in Control does not occur, the later of (i) first anniversary of the Effective Date and (ii) the date of the stockholder approval contemplated by Section 4(c) hereof.
"Involuntary Termination" shall mean (i) your termination of employment by the Company and its subsidiaries other than for Cause or Disability or (ii) your resignation of employment with the Company and its subsidiaries for Good Reason.

"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, under the equity plans of the Company), 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 of 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 hereunder or under any equity plan of the Company, (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.

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

"Securities Act" shall mean the Securities Act of 1933, as amended, and any successor provisions thereto.

"Severance Payment Date" shall mean five business days following the later to occur of (i) the Date of Termination applicable under Section 5(a), 5(b) or 5(c), as the case may be, and (ii) the date that all outstanding principal and interest on the Loan has been repaid in full.

"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.

"Year One Change in Control" shall mean a Change in Control occurring on or prior to the first anniversary of the Effective 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 95401, 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.
(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) Representation. You hereby represent and warrant to the Company that the execution and delivery by you of this Agreement to the Company will not breach the terms of any contract, agreement or understanding to which you are a party. You further acknowledge and agree that a breach of this representation by you shall render this Agreement void ab initio and of no further force and effect.

(d) 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.

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

(f) Source of Payments. All payments provided under this Agreement (other than payments made pursuant to a plan which provides otherwise or as otherwise expressly provided hereunder), 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) Arbitration and Expenses. Any controversy or claims arising out of or relating to this Agreement or the breach of this Agreement that cannot be resolved by you and the Company, including any dispute as to the calculation of your benefits or any payments hereunder, shall be submitted to arbitration in San Francisco under the supervision of the American Arbitration Association (“AAA”) by one arbitrator to be mutually selected by the Company and you, with the AAA to appoint an arbitrator experienced in the resolution of executive employment disputes in the event that the parties are unable to agree on the selection of an arbitrator. The proceedings at arbitration shall be confidential, and all documents and other information relating to the arbitration shall not be disclosed to any third party except as required by law. The award of the arbitrator shall be final and conclusive upon the parties, and the parties shall not contest or seek relief from the award in any court. Judgment upon the arbitration award may be rendered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The Company shall pay or reimburse you for any and all costs and expenses reasonably incurred by you (including arbitration costs and legal fees and expenses) in clarifying or enforcing your rights under this Agreement if you prevail on the merits of the claim in respect of which such legal fees and expenses are incurred, and you shall pay or reimburse the Company for any and all costs and expenses reasonably incurred by the Company (including arbitration costs and legal fees and expenses) in clarifying or enforcing its rights under this Agreement if the Company prevails on the merits of the claim in respect of which such legal fees and expenses are incurred.

(i) 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.

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* * * 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/ A.C. Markkula, Jr.

_/s/ G.F. Amelio___
Gilbert F. Amelio

Agreed to as of this 28th day of February, 1996.
Dear George:

The following sets forth our agreement regarding the terms and provisions of your employment as an officer and employee of Apple Computer, Inc. (the "Company"). Capitalized words which are not otherwise defined herein shall have the meanings assigned to such words in Section 5 of this Agreement.

1. Commencement of Employment. Your employment under this Agreement shall commence on March 1, 1996 (the "Effective Date").

2. Position. You shall be employed as Executive Vice President and Chief Administrative Officer, reporting to me, in my position as Chief Executive Officer and Chairman of the Board, and your duties and responsibilities to the Company shall be consistent in all respects with such position. You shall devote substantially all of your business time, attention, skills and efforts exclusively to the business and affairs of the Company, other than de minimis amounts of time devoted by you to the management of your personal finances or to engaging in charitable or community services. Your principal place of employment shall be the executive offices of the Company in Cupertino, California, although you understand and agree that you will be required to travel from time to time for business purposes.

3. Compensation.

(a) Base Salary. As compensation to you for all services rendered to the Company and its subsidiaries, the Company will pay you a base salary at the rate of not less than Four Hundred Twenty Thousand Dollars ($420,000) per annum as of the Effective Date. Your base salary will be paid to you in accordance with the Company’s regular payroll practices applicable to its executive employees.

(b) Bonus. You shall be eligible to participate in the annual Senior Executive Bonus Plan (domestic) sponsored by the Company or any successor plan thereto. Such bonus program shall
afford you the opportunity to earn an annual bonus for each fiscal year of the Company during your employment. During the Company’s Fiscal Year 1996 only, your target bonus shall be Three Hundred Fifteen Thousand Dollars ($315,000), prorated based on that portion of FY96 during which you are employed by the Company, commencing on the Effective Date. The amount of your annual bonus thereafter shall be an amount equal to seventy-five percent (75%) of your base salary which shall be reviewed annually by the Company. Each annual bonus shall be paid to you in accordance with the payment provisions of the bonus plan then in effect.

(c) Hiring Bonus. Subject to other provisions of this Agreement, the Company shall pay you a Hiring Bonus in the amount of Six Hundred Thirty Thousand Dollars ($630,000). Fifty percent (50%) of this Hiring Bonus, in the amount of Three Hundred Fifteen Thousand Dollars ($315,000), shall be paid to you within thirty (30) days of the Effective Date of this Agreement. The balance of your Hiring Bonus, in the amount of Three Hundred Fifteen Thousand Dollars ($315,000), shall be paid to you within five (5) days after the first anniversary of the Effective Date.

(d) Long-Term Incentive Compensation. In consideration of this Agreement, we will recommend to the Company's Board of Directors an initial stock option grant of two hundred forty thousand (240,000) shares of Apple Computer, Inc. common stock. 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 Long-Term Incentive Plan or Arrangement. The Company shall revise and restate as appropriate its Long-Term Incentive Plans and Arrangements in order to attract and retain the best qualified executives and officers. You will receive a reasonable amount of incentives under the Company’s revised and restated Long-Term Incentive Plans and Arrangements.

(e) Benefits. You shall be eligible to participate in all employee 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.

4. Termination.

(a) Termination for Cause. If your employment is terminated by the Company for Cause, the Company shall pay you the full amount of the accrued but unpaid base salary you have earned through the date of your termination, plus a cash payment (calculated on the basis of your base salary then in effect) for all unused accrued vacation. In addition, you shall be entitled to benefits under the employee plans and arrangements described in Section 3(e) above in accordance with terms and provisions of such plans and arrangements.
(b) Termination Other than for Cause. During the five (5) year period following the Effective Date only, if your employment is terminated by the Company for reasons other than for Cause, the Company shall pay you the full amount of the accrued but unpaid base salary you have earned through the date of your termination, plus a cash payment (calculated on the basis of your base salary then in effect) for all unused accrued vacation. In addition, the Company shall pay you a lump sum amount depending on the date of your employment termination as follows:

<table>
<thead>
<tr>
<th>Termination Date</th>
<th>Amount</th>
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<tbody>
<tr>
<td>During 1-year period following Effective Date</td>
<td>100% of annual base salary ($420,000)</td>
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<td></td>
<td>100% of target bonus ($315,000)</td>
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<td></td>
<td>50% of hiring bonus ($315,000)</td>
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<tr>
<td>Following first anniversary of Effective Date</td>
<td>100% of annual base salary</td>
</tr>
<tr>
<td></td>
<td>100% of target annual bonus</td>
</tr>
</tbody>
</table>

There shall be no other payments or benefits on termination.

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

"Cause" shall mean a termination of your employment 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). 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.

"Long-Term Incentive Plan and/or Arrangement" shall mean the Apple Computer, Inc. 1990 Stock Option Plan, as amended, and any successor plan thereto.

6. 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 mail, registered, return receipt requested, postage prepaid, addressed to the Apple Computer, Inc., 1 Infinite Loop, MS 75-8A, Cupertino, California 95014, Attn.: Gilbert F. Amelio, 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.
7. 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, except as expressly set forth herein, this Agreement shall not supersede the terms of any stock options previously granted to you under the Long-Term Incentive Plans and Arrangements.

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

(e) 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.

(f) 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.

(g) 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/ G. F. Amelio__
   Gilbert F. Amelio

Agreed to as of this 26th day of February, 1996.

__/s/ George M. Scalise____
   George M. Scalise
March 4, 1996

Mr. Fred D. Anderson, Jr.
114 Old Chester Road
Essex Fells, New Jersey 07021

Employment Agreement

Dear Mr. Anderson:

The following sets forth our agreement regarding the terms and provisions of your employment as an officer and employee of Apple Computer, Inc. (the "Company"). Capitalized words which are not otherwise defined herein shall have the meanings assigned to such words in Section 7 of this Agreement.

1. Commencement of Employment. Your employment under this Agreement shall commence on April 1, 1996 (the "Effective Date").

2. Position. You shall be employed as Executive Vice President/Chief Financial Officer of the Company and shall report directly to the Chief Executive Officer of the Company, and your duties and responsibilities to the Company shall be consistent in all respects with such position. You shall devote substantially all of your business time, attention, skills and efforts exclusively to the business and affairs of the Company, other than de minimis amounts of time devoted by you to the management of your personal finances or to engaging in charitable or community services. Your principal place of employment shall be the executive offices of the Company in Cupertino, California, although you understand and agree that you will be required to travel from time to time for business purposes.

3. Compensation.

   (a) Base Salary. As compensation to you for all services rendered to the Company and its subsidiaries, the Company will pay you a base salary at the rate of not less than five hundred thousand dollars ($500,000) per annum as of the Effective Date. Your base salary will be paid to you in accordance with the Company's regular payroll practices applicable to its executive employees.
(b) Bonus. You shall be eligible to participate in the annual Senior Executive Bonus Plan (domestic) sponsored by the Company or any successor plan thereto. Such bonus program shall afford you the opportunity to earn an annual bonus for each fiscal year of the Company during your employment. During the Company's Fiscal Year 1996 only, you shall be guaranteed a bonus payout of at least $400,000. During the Company's Fiscal Year 1997 only, your target annual bonus will be set at 80% of your base salary. The amount of your target annual bonus thereafter shall be reviewed annually by the Company. Subject to the provision above regarding a guaranteed bonus payout during the Company's Fiscal Year 1996 only, each annual bonus shall be paid to you in accordance with the terms and conditions of the bonus plan then in effect.

(c) Hiring Bonus. Subject to other provisions of this Agreement, the Company shall pay you a Hiring Bonus in the amount of eight hundred thousand dollars ($800,000). 50% of this Hiring Bonus ($400,000) shall be paid to you within 5 days after the Effective Date of this Agreement. The balance of your Hiring Bonus ($400,000) shall be paid to you within 5 days after the first anniversary of the Effective Date.

(d) Long-Term Incentive Compensation In consideration of this Agreement, we will recommend to the Apple Computer, Inc. Board of Directors an initial stock option grant of 400,000 shares of Apple Computer, Inc. common stock. Each grant vests over a three year period at 33% increments beginning one year from the grant date and shall at all times be subject to the terms and conditions of the Long-Term Incentive Plan or Arrangement. 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 Long-Term Incentive Plan or Arrangement. The Company shall revise and restate as appropriate its Long-Term Incentive Plans and Arrangements in order to attract and retain the best qualified executives and officers. You will receive a reasonable amount of incentives under the Company's revised and restated Long-Term Incentive Plans and Arrangements.

(e) Benefits. You shall be eligible to participate in all employee 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.

4. Termination.

(a) Termination for Cause. If your employment is terminated by the Company for Cause, the Company shall pay you the full amount of the accrued but unpaid base salary you have earned through the date of your termination, plus a cash payment (calculated on the basis of your base salary then in effect) for all unused accrued vacation. In addition, you shall be entitled to benefits under the employee plans and arrangements described in Section 3(e) above in accordance with terms and provisions of such plans and arrangements.
(b) Termination Other than for Cause. During the five (5) year period following the Effective Date only, if your employment is terminated by the Company for reasons other than for Cause, the Company shall pay you the full amount of the accrued but unpaid base salary you have earned through the date of your termination, plus a cash payment (calculated on the basis of your base salary then in effect) for all unused accrued vacation. In addition, the Company shall pay you a lump sum amount depending on the date of your employment termination as follows:

<table>
<thead>
<tr>
<th>Termination Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>During 1-year period following Effective Date</td>
<td>100% of annual base salary ($500,000)</td>
</tr>
<tr>
<td></td>
<td>100% of target bonus ($400,000)</td>
</tr>
<tr>
<td></td>
<td>50% of hiring bonus ($400,000)</td>
</tr>
<tr>
<td>Following first anniversary</td>
<td>100% of annual base salary</td>
</tr>
</tbody>
</table>

of Effective Date 100% of target annual bonus

There shall be no other payments or benefits on termination.

5. Relocation. The Company will provide you with full executive relocation benefits in accordance with the Company's Relocation Policy for executives. Any additional relocation items or arrangements will be determined in writing as authorized by the Company's Senior Vice President of Human Resources.

6. Automobile Expense. For the first 3 years of your employment, the Company will provide you with an annual automobile expense not to exceed ten thousand dollars ($10,000).

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

"Cause" shall mean a termination of your employment 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) after a written demand for substantial performance is delivered to you by the Company's Chief Executive Officer, which demand specifically identifies the manner in which the Company 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.
"Long-Term Incentive Plan and/or Arrangement" shall mean the Apple Computer, Inc. 1990 Stock Option Plan, as amended, and any successor plans thereto.

8. 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 Apple Computer, Inc., 1 Infinite Loop, MS 75-8A, Cupertino, California 95014, Attn.: Gilbert F. Amelio, Chairman and Chief Executive Officer, 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.


(a) Amendments, Waivers, Retention Agreement, 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 the Retention Agreement between you and the Company shall supersede this Agreement in its entirety, with the exception of paragraph 3(c) above, upon the Change in Control Date as specified in the Retention Agreement.

(b) Beneficiaries. If you should die while any amount for accrued salary, vacation, guaranteed bonus during Fiscal Year 1996 only or hiring bonus under paragraph 3(c) of this Agreement would still be payable to you 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 personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees or other beneficiary.

(c) 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.

(d) 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.

(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/ G.F. Amelio___
    Gilbert F. Amelio
_/s/ F.D. Anderson______
   Fred D. Anderson, Jr.

Agreed to as of this 4th day of March, 1996.

_/s/ F.D. Anderson______
   Fred D. Anderson, Jr.
Retirement Agreement

March 4, 1996

Fred D. Anderson, Jr.
114 Old Chester Road
Essex Fells, NJ 07021

Dear Fred:

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) two times your Reference Salary and (ii) one 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 \(\{(E \times (1 - M)/(1 - T)) - E\}\) (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 ratesTo 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. 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 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 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 (including Short-Term Awards) 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) Short-Term Awards. In the event that (i) the transaction resulting in an Equity Plan Change in Control occurs at such a time or is structured in such a manner so as to make it reasonably likely that you would be subject to actual or potential liability for short-swlng profits under Section 16 of the Exchange Act ("Short-Swing Profit Liability") if you were to exercise, tender, sell or otherwise dispose (including through a merger) of your Short-Term Awards as part of, or prior to, such transaction and (ii) your inability to exercise, tender, sell or otherwise dispose of your Short-Term Awards on or prior to the date of such Equity Plan Change in Control eliminates or reduces the value of some or all of your Short-Term Awards, then, on the date of the Equity Plan Change in Control, the Company shall pay you in a cash lump sum the amount of . The provisions of clause (ii) of the previous sentence shall be deemed to apply where (a) you are precluded from exercising,
tendering or otherwise disposing of your Short-Term Awards on or prior to the Transaction Date in order to avoid Short-Swing Profit Liability, 
(b) a Short-Term Award cannot be repurchased, exchanged or cashed-out by the Company (or other person) on or prior to the Transaction Date without a risk of Short-Swing Profit Liability to you, or (c) you are required to delay the exercise, sale, tender, or other disposition of your Short-Term Awards in order to avoid Short-Swing Profit Liability and such delay results in your receiving consideration for your Short-Term Awards (valued at the date such consideration is received) which is of lesser value than the consideration you would have received (valued as of the date of the Equity Plan Change in Control) for such awards had such delay not occurred. The foregoing provisions shall apply to your Equity Awards notwithstanding your Involuntary Termination of employment with the Company on or after the Change in Control Date but prior to the Equity Plan Change in Control. The provisions of this Section 5(c) shall not apply if (A) prior to the Equity Plan Change in Control, the Company provides you at its expense with an opinion from a nationally recognized firm of attorneys stating that the exercise, tender, sale or other disposition of your Short-Term Awards as part of, or prior to, the transaction resulting in the Equity Plan Change in Control will not subject you to Short-Swing Profit Liability and (B) following your receipt of such opinion there is sufficient time for you to exercise, tender, sell or otherwise dispose of your Short-Term Awards on or prior to the Equity Plan Change in Control without impairing the value thereof.

(d) 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 then 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 Ernst & Young 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 percent 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" 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 section, 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.


"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;
(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 of the Company 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 \[A \times B \times C\], 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 of 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 final regulations under Section 280G of the Code or any successor provision thereto.

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

"Short-Term Awards" shall mean Equity Awards which have been granted to you within the six-month period ending on the date of a Equity Plan Change in Control. For purposes of this Agreement, Short-Term Awards shall also include any securities acquired upon the exercise of an Equity Award that constitutes a Short-Term Award.
"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: 75 8A, 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/ G.F. Amelio__
Name: 
Title:

Agreed to as of this 4th day of March, 1996.

_/s/ F.D. Anserson___
Fred D. Anderson, Jr.
April 2, 1996

John Floisand
21223 Deepwell Court
Saratoga, CA 95070

Re: Apple Computer, Inc. Employment

Dear John:

The following sets forth our agreement ("Letter Agreement") regarding the terms and provisions of your employment as an officer and employee of Apple Computer, Inc. ("Apple"). This Letter Agreement shall supersede any and all other agreements, oral and written, which may presently exist between you and Apple with the following exception; the June 9, 1995 Retention Agreement ("Retention Agreement") between you and Apple. Upon a Change in Control Date, as defined in the Retention Agreement, the Retention Agreement shall supercede this Letter Agreement and shall govern exclusively.

1. Term of Employment Under the Agreement. The initial term of your employment under this Agreement (the "Term") shall be effective as of November 1, 1995 (the "Effective Date") and shall continue until the third anniversary of the Effective Date. Thereafter, the parties agree to renegotiate the terms and provisions of your employment with Apple.

2. Employment. You will be an Appointed Senior Vice-President of Apple (grade 98), specifically assigned to Apple Pacific (and excluding Apple Japan), and your duties and responsibilities to Apple shall be consistent in all respects with such positions. You shall prorate your business time, attention, skills and efforts to the business and affairs of Apple and Apple Japan, as provided for in your employment Letter Agreement with Apple Japan, other than de minimis amounts of time devoted by you to the management of your personal finances or to engaging in charitable or community services.
3. Compensation.

(a) Base Salary. As compensation to you for all services rendered to Apple, Apple will pay you a base salary at the rate of not less than one hundred seventy-five thousand dollars ($175,000) per annum as of the Effective Date. This will be paid in United States dollars and in monthly increments of $14,583.33. The amount of your base salary shall be reviewed annually by Apple and shall be increased to reflect market compensation of similarly situated executive officers as determined by Apple. Any increase in your base salary shall be effective as of each anniversary of the Effective Date and shall be treated as your rate of base salary for all purposes under this Letter Agreement. Your base salary will be paid to you in accordance with Apple's regular payroll practices applicable to its executive employees.

(b) Hire-On Bonus. Apple has paid you a hire-on bonus of one hundred thousand dollars ($100,000). This amount was paid in United States dollars and in lump sum.

(c) Bonus. You shall be eligible to participate in Apple's Senior Executive Bonus Plan or any successor plan thereto. Such bonus program shall afford you the opportunity to earn an annual bonus for each fiscal year of Apple. During the first year of the Term, your annual target bonus is two hundred, eighty-one thousand, two hundred fifty dollars ($281,250). The actual amount paid to you, if any, will be based on a combination the overall corporate results, including Apple Pacific, as outlined in Apple's Senior Executive Bonus Plan.

The amount of your annual bonus shall be reviewed annually by Apple and shall be increased to reflect market bonus compensation of similarly situated executive officers as determined by Apple. Any increase in your annual bonus shall be effective as of each anniversary of the Effective Date. Each annual bonus shall be paid to you in accordance with the payment provisions of Apple's Senior Executive Bonus Plan.

(d) Long-Term Incentive Compensation. You shall be eligible to participate in each Long-Term Incentive Plan or Arrangement established by Apple for its executive employees in accordance with the terms and provisions of such Long-Term Incentive Plan or Arrangement. In consideration of this Letter Agreement, we
will recommend to the Apple Computer, Inc. Board of Directors an initial stock option grant of 30,000 shares of Apple Computer, Inc. common stock. Each grant vests over a three year period at 33% increments beginning one year from the grant date and shall at all times be subject to the terms and conditions of the Long-Term Incentive Plan or Arrangement.

(e) Benefits. You shall be eligible to participate in all employee benefit plans and arrangements that Apple 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 Apple.

4. Termination.

Subject to the conditions of this paragraph, Apple shall designate you for participation in the Apple Computer, Inc. Executive Severance Plan upon the termination of your employment during the term or thereafter provided that (1) you have not obtained or been offered another position with Apple or its affiliates, or (2) the termination of your employment was not the result of your voluntary resignation, or (3) the decision to terminate your employment was not for "Business Reasons". "Business Reasons" shall mean that you are terminated for any of the following reasons: (i) engaging in unfair or unlawful competition with Apple; or (ii) inducing any customer of Apple to breach any contract with Apple; or (iii) making any unauthorized disclosure of or otherwise misusing any of the secrets or confidential information of Apple; or (iv) committing any act of embezzlement, fraud or material theft with respect to any Apple property; or (v) violating any Apple policy or guideline or the terms of this Letter Agreement; or (vi) causing material loss, damage or injury to or otherwise endangered the property, reputation or employees of Apple; or

(vii) engaging in malfeasance, negligence or misconduct, or failing to perform reasonable duties and responsibilities consistent with your duties and responsibilities to Apple; or (viii) failure to act in accordance with specific, reasonable and lawful instructions from Apple's Chief Executive Officer, or his designee.

5. Relocation. Apple will provide you with full international relocation benefits to Japan in accordance with Apple's Relocation Policy. Apple will continue to pay for and maintain your apartment in Japan, including its furnishings and utilities, and reasonable costs of maintenance and cleaning. In the event you choose to move
your personal household goods to Japan, Apple will pay the reasonable costs of moving your household goods and provide you with a relocation allowance of $31,250. Apple also will reimburse you for the reasonable costs of supplementing your current furnishings when you move to your new residence in Japan. Upon Termination of your employment, Apple will provide you with full relocation to the destination of your choice in accordance with Apple's Relocation Policy.

6. Housing. Apple shall provide you with housing in accordance with Apple's Expatriate Policy. In the event you elect not to stay in the apartment currently provided to you, you will be responsible to pay for your Japanese housing to the extent it represents the hypothetical housing costs if you were in the United States in a similar home in accordance with Apple's Expatriate Policy.

Your wife and daughter currently do not intend to relocate to Japan so that your daughter may complete her education in California. So long as your wife and daughter continue to live in your California home, Apple will pay for the reasonable costs of an appliance guarantee contract and pool and gardening services, not to exceed $250 per month. In the event you choose to sell your California home, Apple will arrange for the purchase your home. The purchase price will be determined based on three (3) independent appraisals which will be obtained at Apple's expense. If you travel to California on business after the sale of your California home, you will be entitled to reasonable per diem expenses. If you choose not to sell your California home, Apple will facilitate the rental of your California home and pay mortgage payments, fees, taxes and maintenance from the Effective Date. In the event your California home is not rented within 6 months, Apple will arrange for the purchase your home as outlined above.

7. Home Leave and Education. Apple will pay for six (6) round trip business class airline tickets between Japan and California for your wife and your daughter.

In the event your wife and daughter relocate to Japan during the Term, Apple will pay for the reasonable costs of tuition, books and fees for your daughter's education in Japan.
8. Accountant Fees. Apple will pay the reasonable costs of accounting services as provided in Apple's Expatriate Policy to handle appropriate and covered financial matters.

9. Notice. For the purpose of this Letter Agreement, notices and all other communications provided for in this Letter Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by registered mail, return receipt requested, postage prepaid, addressed to Apple Computer, Inc., 1 Infinite Loop, Mail Stop, MS 75-8A, Cupertino, California 95014, Attn.: General Counsel, 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 Letter 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 Letter 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 Letter Agreement and this Letter 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 Letter Agreement shall not supersede the Retention Agreement or the terms of any stock options previously granted to you under the Long-Term Incentive Plans and Arrangements. "Long-Term Incentive Plan and/or Arrangement" shall mean the Apple Computer, Inc. 1990 Stock Option Plan and the Apple Computer, Inc. 1987 Executive Long Term Stock Option Plan, all as amended, and any successor plans thereto.

(b) Validity. The invalidity or unenforceability of any provision of this Letter Agreement shall not affect the validity or enforceability of any other provision of this Letter Agreement, which shall remain in full force and effect.
(c) Counterparts. This Letter 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) Equalization. Apple will provide you with tax equalization benefits in accordance with Apple's Expatriate Policy.

(e) Source of Payments. All payments provided under this Letter Agreement, other than payments made pursuant to a plan which provides otherwise, shall be paid in cash from the general funds of Apple, 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 Apple may make to aid it in meeting its obligations hereunder. To the extent that any person acquires a right to receive payments from Apple hereunder, such right shall be no greater than the right of an unsecured creditor of Apple.

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

(g) Governing Law. The validity, interpretation, construction, and performance of this Letter Agreement shall be governed by the laws of the State of California without regard to its choice of law principles. The parties agree that, except as expressly provided for to the contrary, venue for any dispute shall be Santa Clara County, California.

(h) Remedies in Event of Future Dispute. In the event of any future dispute, controversy or claim between the parties arising from or relating to this Letter Agreement, its breach, any matter addressed by this Letter 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 Gregoria, Haldeman & Piazza, Mediated Negotiations, 625 Market Street, Suite 400, San Francisco, California 94105. If the parties’ dispute is not resolved through mediation, it will be resolved through binding confidential arbitration to be conducted by the American Arbitration Association in San Francisco, pursuant to its Model Employment Arbitration 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 from the losing party, not only the amount of any judgment awarded in its favor, but also any and all costs and expenses incurred in arbitrating the dispute or in preparing for such arbitration.

***

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

Sincerely,

APPLE COMPUTER, INC.

By _/s/ Kevin Sullivan
Kevin Sullivan
Senior Vice-President,
Human Resources

Agreed to as of this ___ day of April, 1996.

John Floisand
April 3, 1996

John Floisand
21223 Deepwell Court
Saratoga, CA 95070

Re: Apple Japan Employment

Dear John:

The following sets forth our agreement ("Letter Agreement") regarding the terms and provisions of your employment as an officer and employee of Apple Japan ("Apple Japan" or "Company"). This Letter Agreement shall supersede any and all other agreements, oral and written, which may presently exists between you and the Company with the following exception; the June 9, 1995 Retention Agreement ("Retention Agreement") between you and Apple. Upon a Change in Control Date, as defined in the Retention Agreement, the Retention Agreement shall superseded this Letter Agreement and shall govern exclusively.

1. Term of Employment Under the Agreement. The initial term of your employment under this Agreement (the "Term") shall be effective as of November 1, 1995 (the "Effective Date") and shall continue until the third anniversary of the Effective Date. Thereafter, the parties agree to renegotiate the terms and provisions of your employment with the Company. A milestone under during the first year of the Term is that you hire the President of Apple Japan. Once hired, another milestone is that you will work with and mentor the new President of Apple Japan for one (1) year following his hire in order to facilitate his new status.

2. Employment. You will be Chairman of the Apple Japan Board of Directors and Chief Executive Officer of Apple Japan (grade 98) and your duties and responsibilities to the Company shall be consistent in all respects with such positions. The Company will take all steps reasonably necessary to assure that you are elected or
appointed to the Board. You shall prorate your business time, attention, skills and efforts to the business and affairs of the Company and Apple Computer, Inc., as provided for in your employment Letter Agreement with Apple Computer, Inc., other than de minimis amounts of time devoted by you to the management of your personal finances or to engaging in charitable or community services.

3. Compensation.

(a) Base Salary. As compensation to you for all services rendered to the Company, the Company will pay you a base salary at the rate of not less than two hundred thousand dollars ($200,000) per annum as of the Effective Date. This will be paid in United States dollars and in monthly increments of $16,666.67. The amount of your base salary shall be reviewed annually by the Company and shall be increased to reflect market compensation of similarly situated executive officers as determined by the Company. Any increase in your base salary shall be effective as of each anniversary of the Effective Date and shall be treated as your rate of base salary for all purposes under this Letter Agreement. Your base salary will be paid to you in accordance with the Company's regular payroll practices applicable to its executive employees.

(b) Benefits. You shall be eligible to participate in all employee 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.

(c) Bonus. You shall be eligible to receive an annual bonus as determined by the Board based on the overall corporate results of the Company.

4. Termination.

Subject to the conditions of this paragraph, Apple shall designate you for participation in the Apple Computer, Inc. Executive Severance Plan upon the termination of your employment during the term or thereafter provided that (1) you have not obtained or been offered another position with the Company or its affiliates, or (2) the termination of your employment was not the result of your voluntary resignation, or (3) the decision to terminate your employment was not for "Business
Reasons". "Business Reasons" shall mean that you are terminated for any of the following reasons: (i) engaging in unfair or unlawful competition with the Company; or (ii) inducing any customer of the Company to breach any contract with the Company; or (iii) making any unauthorized disclosure of or otherwise misusing any of the secrets or confidential information of the Company; or (iv) committing any act of embezzlement, fraud or material theft with respect to any Company property; or (v) violating any Company policy or guideline or the terms of this Letter Agreement; or (vi) causing material loss, damage or injury to or otherwise endangered the property, reputation or employees of the Company; or (vii) engaging in malfeasance, negligence or misconduct, or failing to perform reasonable duties and responsibilities consistent with your duties and responsibilities to the Company.

5. Automobiles. The Company shall provide you with an annual automobile allowance of forty thousand dollars ($40,000) or, at the Company's election, lease a vehicle for you of similar cost under the Company's name. All maintenance, fuel, insurance and other miscellaneous costs for this vehicle will be paid by the Company. In the event your wife joins you in Japan, the Company will provide you with an annual automobile allowance of twenty thousand dollars ($20,000) for a second vehicle for her use. All maintenance, fuel, insurance and other miscellaneous costs for this vehicle will be your responsibility.

In addition, the Company will reimburse you for the reasonable costs of a taxi or hired car when you are required to attend business functions and it is impractical for you to drive yourself.

6. Cost of Living. The Company will provide you with a cost of living adjustment in accordance with the Company's Policy.

7. Membership Fees. The Company will pay the reasonable costs of business memberships which you will need in order to perform your duties for Apple Japan including membership in the Tokyo American Club. You will be responsible for expenses related to your use of the Tokyo American Club facilities.

8. Accountant Fees. The Company will pay the reasonable costs of accounting services as provided in Apple's Expatriate Policy to handle appropriate and covered financial matters.
9. Notice. For the purpose of this Letter Agreement, notices and all other communications provided for in this Letter Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by registered mail, return receipt requested, postage prepaid, addressed to Apple Japan, 1-14-1 Sendagaya, Shibuya-ku, Tokyo, 151 Japan, with a copy sent in the same manner to Apple Computer, Inc., 1 Infinite Loop, MS 75-8A, Cupertino, California 95014, Attn.: General Counsel, 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 Letter 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 Letter 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 Letter Agreement and this Letter Agreement shall supersede all prior agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, with respect to the subject matter hereof with the exception that this Letter Agreement shall not supersede the Retention Agreement.

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

(c) Counterparts. This Letter 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) Equalization. Apple will provide you with tax equalization benefits in accordance with Apple's Expatriate Policy.
(e) Source of Payments. All payments provided under this Letter 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.

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

(g) Governing Law. The validity, interpretation, construction, and performance of this Letter Agreement shall be governed by the laws of the State of California without regard to its choice of law principles. The parties agree that, except as expressly provided for to the contrary, venue for any dispute shall be Santa Clara County, California.

(h) Remedies in Event of Future Dispute. In the event of any future dispute, controversy or claim between the parties arising from or relating to this Letter Agreement, its breach, any matter addressed by this Letter 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 Gregoria, Haldeman & Piazza, Mediated Negotiations, 625 Market Street, Suite 400, San Francisco, California 94105. If the parties’ dispute is not resolved through mediation, it will be resolved through binding confidential arbitration to be conducted by the American Arbitration Association in San Francisco, pursuant to its Model Employment Arbitration 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 from the losing party, not only the amount of any judgment awarded in its favor, but also any and all costs and expenses incurred in arbitrating the dispute or in preparing for such arbitration.
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 JAPAN, INC.

By /s/ M. Tashiro___
Masazumi Tashiro
Director

Agreed to as of this ___ day of April, 1996.

John Floisand

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RESTRUCTURING AGREEMENT

RESTRUCTURING AGREEMENT (this "Agreement") dated as of December 14, 1995 among TALIGENT, INC., a Delaware corporation (the "Company"), APPLE COMPUTER, INC., a California corporation ("Apple"), and INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation ("IBM").

RECITALS

HP has indicated its intention to exercise its rights to the Early Exit Option under the Stockholder Agreement between HP, Apple and IBM, and tender all the HP Shares to the Company.

Accordingly, Apple, IBM and the Company have determined it is in the best interest of the Company and its stockholders to make fundamental changes in the Company (the "Restructuring").

The parties intend that Apple, like HP, will transfer all its shares in the Company to the Company, and at that time the Company will become a wholly-owned subsidiary of IBM.

The parties will cause the mission and management of the Company to be simplified and expect the number of employees to be reduced from approximately 400 to approximately 150.

The parties expect that Company employees, customers and the public will begin to be informed of the planned changes on approximately December 4, 1995.

AGREEMENT

The parties hereby agree as follows:

ARTICLE 1. Definitions and Construction

1.1 Certain Definitions.

As used in this Agreement, the following terms shall have the meanings specified below:

"Affiliate" shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified.

"Apple Confidentiality Agreement" shall mean the Confidentiality Agreement between Apple and the Company dated February 16, 1994.
"Apple" shall mean Apple Computer, Inc., a California corporation.

"Apple Company Note" shall mean the note evidencing the approximately $8 million obligation of the Company to Apple due 1996.

"Apple License In" shall mean the Technology License and Transfer Agreement between Apple and the Company dated as of March 1, 1992, as amended.

"Apple License Out" shall mean the Agreement for License of the Company's Products to Apple dated as of March 1, 1992, as amended.


"Apple Support Agreement" shall mean the Support and Services Agreement between Apple and the Company dated as of March 1, 1992.

"Apple Trademark License" shall mean the Trademark License Agreement between Apple and the Company dated as of December 14, 1994.

"Apple Patent Venture Shares" shall mean shares representing one-half of the equity of the Patent Venture.

"Apple Shares" shall mean the 1,000,000 shares of Class A Common Stock, par value $.01 per share, of the Company, held by Apple.

"Approval" shall mean any consent, approval, license, permit or authorization.

"Board" shall mean the board of directors of the Company.

"Business Day" shall mean any day other than a day which is a Saturday or Sunday or other day on which commercial banks in New York, New York, or San Francisco, California, are authorized or required to remain closed. In no case shall any day in the period from December 23 of a particular year to January 2 of the following year be considered a "Business Day".

"Closing" shall mean transactions described in Section 2.1 and Section 2.2.

"Closing Agreements" shall mean the New Apple License Out, the New Research Agreement, and the Patent Venture Agreement.

"Closing Date" shall mean the date on which each Closing shall occur.

"Contract" shall mean contract, indenture, mortgage, lease, deed, commitment, agreement, arrangement or legally binding understanding.
As used in this Agreement, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Dollars" or "$" shall mean lawful money of the United States of America.

"Existing Patent Licenses" shall mean Patent Cross Licensing Agreements between the Company and each of Apple, HP, and IBM; and any patent grant or immunity requirement in the New Apple License Out or similar agreements between the Company and each of HP and IBM.

"Existing Patents" shall mean all of the Company's issued patents, patent applications and written invention disclosures received by the Company's patent counsel as of January 29, 1996.

"Governmental Approval" shall mean any Approval of, or declaration or filing with, any Governmental Authority.

"Governmental Authority" shall mean any court, administrative agency or commission or other governmental agency or instrumentality, domestic or foreign, or any arbitrator, of competent jurisdiction.

"HP" shall mean Hewlett-Packard Company, a California corporation.

"HP Shares" shall mean the shares of Class E Common Stock, par value $.01 per share, of the Company, held by HP.

"Holder" shall mean any registered holder of Common Stock.

"HSR Act" shall mean Section 7A of the Clayton Act.

"IBM" shall mean International Business Machines Corporation, a New York corporation.

"IBM Company Note" shall mean the note evidencing the approximately $8 million obligation of the Company to IBM due 1996.

"IBM Patent License" shall mean the Patent Cross-License Agreement between IBM and the Company dated as of March 1, 1992.

"IBM Patent Venture Shares" shall mean shares representing one-half of the equity of the Patent Venture.

"Injunction" shall mean any preliminary, temporary, interim or final injunction, temporary restraining order or other legal prohibition.

"Judgment" shall mean any judgment, order, decree or arbitral award.
"Law" shall mean any statute, law, ordinance, rule or regulation.

"Lien" shall mean, with respect to any asset, (i) any mortgage, deed of trust, lien, pledge, charge, security interest, easement, covenant, right of way, restriction, equity or encumbrance of any nature whatsoever in or on such asset, (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (iii) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Litigation" shall mean any written claim, action, lawsuit, arbitration or proceeding.

Any reference to any fact, event, change or effect being "material" with respect to any party shall mean an event, change or effect that is or, insofar as can reasonably be foreseen, will be material to the business, properties, assets, liabilities, financial condition or results of operations of such party and its Subsidiaries taken as a whole.

"New Apple License Out" shall mean the amended and restated Agreement for License of the Company's Products to Apple in the form attached as Exhibit 1.

"New Research Agreement" shall mean a new Research and Experimentation Agreement among the Company, Apple and IBM containing substantially the terms of the Research Agreement.

"Operative Agreements" shall mean the Apple Confidentiality Agreement, the Apple License In, the Apple License Out, the Apple Patent License, the Research Agreement and the Stockholder Agreement.

"Party" shall mean any party hereto.

"Patent Venture" shall mean a Delaware corporation to be created on or before January 26, 1996, of which half the capital stock shall be issued to Apple at the First Closing.

"Patent Venture Agreement" shall mean the Patent Venture Agreement and related corporate or other organizational documents to be entered into by Apple and IBM as described in Section 5.3.

"Person" shall mean any individual, firm, corporation, partnership, trust, joint venture, Governmental Authority or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Research Agreement" shall mean the Research and Experimentation Agreement among the Company, HP, Apple and IBM dated as of February 16, 1994.

"Shares" shall mean shares of Common Stock.

"Stockholder Agreement" shall mean the Stockholder Agreement among the Company, HP, Apple and IBM dated as of February 16, 1994.
"Subsidiary" of any Person shall mean a corporation, company or other entity (i) more than 50% 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 more than 50% 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 such Person, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.

"Tax" or "Taxes" shall mean all Federal, state, local and foreign taxes, assessments and other governmental charges, including (i) taxes based upon or measured by gross receipts, income, profits, sales, use or occupation, (ii) value added, ad valorem, transfer, franchise, withholding, payroll, employment, excise or property taxes, (iii) all interest, penalties and additions imposed with respect to such amounts and (iv) any obligations under any agreements or arrangements with any other Person with respect to such amounts.

"Transactions" shall mean the transactions contemplated by the Closing Agreements which are to be effected at the First Closing and the Second Closing.

1.2 Terms Generally.

The definitions in Section 1.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement or other instrument or statute or regulation are to it as amended and supplemented from time to time (and, in the case of a statute or regulation, to any successor provision). Any reference in this Agreement to a "day" or a number of "days" (without the explicit qualification of "Business") shall be interpreted as a reference to a calendar day or number of calendar days. If any action or notice is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action or notice shall be deferred until, or may be taken or given, on the next Business Day.

ARTICLE 2. Purchase and Sale

2.1 First Closing
(a) The First Closing will take place on January 30, 1996 at 10:00 a.m. local time at the offices of Apple's corporate law department, 20400 Stevens Creek Blvd., Cupertino, California, or such other date and place specified by agreement of Apple and IBM.
(b) At the First Closing, upon the terms and subject to the conditions set forth herein,

(i) the Company will transfer to Apple the Apple Patent Venture Shares, by delivery of a certificate or certificates representing the Apple Patent Venture Shares, registered in Apple's name, in exchange for the return by Apple and cancellation of the Apple Company Note; and

(ii) the Company will transfer to IBM the IBM Patent Venture Shares, by delivery of a certificate or certificates representing the IBM Patent Venture Shares, registered in IBM's name, in exchange for the return by IBM and cancellation of the IBM Company Note.

2.2 Second Closing

(a) The Second Closing will take place on April 15, 1996 at 10:00 a.m. local time at the offices of Apple's corporate law department, 20400 Stevens Creek Blvd., Cupertino, California, or such other date and place specified by agreement of Apple and IBM.

(b) At the Second Closing, upon the terms and subject to the conditions set forth herein:

(i) Apple shall transfer to the Company the Apple Shares in exchange for which Apple, IBM and the Company shall enter into agreements pursuant to which

(A) the parties will execute the New Research Agreement under which Apple's obligations under the previous Research Agreement are reduced from $10 million to $5 million, payable $2.5 million on January 3, 1996 and $2.5 million on October 2, 1996; and

(B) Apple is released from any obligations under the Stockholder Agreement and the Apple Support Agreement and Apple releases IBM and the Company from any obligations under the Stockholder Agreement and the Apple Support Agreement.

(ii) Apple and the Company shall enter into a New Apple License Out agreement in substantially the form attached hereto, which license agreement shall supersede the Apple License Out.

(iii) IBM intends to tightly integrate some of the Company's frameworks as class libraries into IBM's Open Class library. An initial version of this integration, called the "Starter Set" is planned for approximately January, 1996, and a second version is planned for approximately year end 1996 (the "Open Class Starter Set"). IBM shall license to Apple the Open Class Starter Set pursuant to a license agreement in substantially the form of the New Apple License Out, except that the "Last Development Date" would be December 31, 1996.
(iv) If IBM and Apple do not extend their existing patent cross-license of October 1, 1991 or otherwise enter into a license agreement to provide coverage at least equal to the following, then Apple and the Company shall amend the Apple Patent License to:

(A) extend the applicability of "Licensed Patents" under Section 1.5 of the Apple Patent License and under Section 1.5 of the IBM Patent License from an effective date of October 1, 1996 to December 31, 1997;

(B) for such extended period, the scope of the grants thereunder shall be conformed to the scope of the technology grants under the New Apple License Out;

(C) confirm IBM will permit the Company to license patents under the Apple Patent License to encompass all inventions created by the Company or otherwise licensable by IBM necessary to make, use, license and sell the "Taligent Licensed Work" under the New Apple License Out and in exchange Apple will license Company with the right to sublicense IBM under the IBM Patent License to encompass all inventions created by Apple or otherwise licenseable by Apple necessary for Company and IBM to make, use, license and sell "Taligent Licensed Work" as defined in the New Apple License Out; and

(D) confirm that the provisions of Section 5.2 of the Apple Patent License and Section 5.2 of the IBM Patent License will not apply to the acquisition by IBM of more than fifty percent (50%) of the capital stock of the Company.

(v) Apple and the Company shall amend the Apple Trademark License to:

(A) change the scope of "Licensed Goods" to all Licensee's software programs which are licensed to Licensee pursuant to the New Apple License Agreement (removing the requirement of "Qualified"); and

(B) extend the term of the Apple Trademark License to be perpetual.

(vi) Apple and IBM shall enter into the Patent Venture Agreement.

ARTICLE 3. Conditions to Closings

3.1 Conditions to Each Party's Obligations at Each Closing

The obligations of Apple, IBM and the Company to be performed at the First Closing and the Second Closing are each subject to the satisfaction or waiver, as of each respective Closing Date, of the following conditions:
(a) Governmental Approvals. All Governmental Approvals necessary for the consummation of the Transactions shall have been obtained or made and all waiting periods imposed by any Governmental Authority or Law shall have expired.

(b) No Injunctions or Litigation. No Injunction restraining or preventing the consummation of the Transactions shall be in effect, and no Litigation shall be pending or threatened by or before any Governmental Authority that would restrain or prevent the consummation of the Transactions.

(c) Other Closing Agreements. The parties to each other Closing Agreement shall have entered into all such other Closing Agreements, each of which shall be in full force and effect (except each such other Closing Agreement may be similarly conditioned on the entering into of all other Closing Agreements).

(d) Approvals. All Approvals necessary for the consummation of the Transactions shall have been obtained.

3.2 Additional Condition to First Closing.

The obligations of Apple, IBM and the Company at the First Closing are subject to the satisfaction or waiver, as of the First Closing Date, of the additional condition that the Company shall not be or have been on or prior to the First Closing Date a Subsidiary of IBM (other than prior to the initial investment by Apple).

3.3 Additional Condition to Second Closing.

The obligations of Apple, IBM and the Company at the Second Closing are subject to the satisfaction or waiver, as of the Second Closing Date, of the additional condition that the First Closing shall have occurred.

ARTICLE 4. Representations and Warranties

4.1. Representations and Warranties of the Company.

The Company represents and warrants to Apple and IBM that, as of the date of this Agreement and on and as of the Closing Date:

(a) Organization and Standing of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.
(b) Authority. The Company has all requisite corporate power and authority to enter into this Agreement and the other Closing Agreements and to consummate the Transactions. The execution and delivery by the Company of this Agreement and the other Closing Agreements and the consummation by the Company of the Transactions have been duly authorized by all necessary corporate action on the part of the Company. This Agreement and the other Closing Agreements have been, or will at the Closing have been, duly executed and delivered by the Company and constitute, or will at the Closing constitute, legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms. The execution and delivery by the Company of this Agreement and the other Closing Agreements do not and did not, and the consummation of the Transactions and compliance with the terms of the Closing Agreements will not, conflict with, result in any violation of or default (with or without notice or lapse of time or both) under, give rise to a right of termination, cancellation or acceleration of any material obligation or to the loss of any material benefit under or result in or require the creation, imposition or extension of any Lien upon any of the properties or assets of the Company under (i) any Contract, (ii) any provision of the Amended and Restated Certificate of Incorporation or By-laws of the Company or (iii) any Judgment or Law, except with respect to clauses (i) or (iii), for such conflicts, violations, defaults, rights or losses that, individually or in the aggregate, would not have a material adverse effect on the Company or on the Company's ability to perform its obligations under this Agreement and the other Closing Agreements in accordance with their respective terms. No Governmental Approval or Approval of any other Person is required to be obtained or made by the Company in connection with the execution and delivery of this Agreement or the other Closing Agreements or the consummation of the Transactions (other than Governmental Approvals (I) relating to the Transactions that must be obtained by the Company by reason of facts peculiar to another party which such other party has not disclosed or (II) the absence of which would not have a material adverse effect on any party or on any party's ability to perform its obligations under this Agreement and the other Closing Agreements to which it is a party in accordance with their respective terms).

(c) Financial Statements. Attached to this Agreement as Exhibit 2 is an unaudited balance sheet of the Company dated October 31, 1995, an audited income statement and statement of changes in cash flows of the Company for its fiscal year ended December 31, 1994, an unaudited balance sheet of the Company dated October 31, 1995 (the "Balance Sheet Date") and an unaudited income statement of the Company for the period ended October 31, 1995 (all such financial statements being collectively referred to herein as the "Financial Statements"). The Financial Statements (i) are in accordance with the books and records of the Company, (ii) are true, correct and complete and present fairly the financial condition of the Company at the date or dates therein indicated and the results of operations for the period or periods therein specified, and (iii) have been prepared in accordance with generally accepted accounting principles applied on a consistent basis, except, as to the unaudited financial statements, for the omission of notes thereto and normal year-end audit adjustments.
(4) ERISA Plans. Except for its "401(k) Plan," the Company does not have any Employee Pension Benefit Plan as defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended.

(e) Patent Agreements. The Existing Patent Licenses are all of the contracts, agreements, and instruments to which the Company is a party relating to patents, patent applications or inventions (except for employee confidentiality and invention agreements).

4.2. Representations and Warranties of Apple.

Apple represents and warrants to IBM that as of the date of this Agreement and as of the Closing Date:

(a) Organization and Standing. Apple is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

(b) Authority. Apple has all requisite corporate power and corporate authority to enter into this Agreement and the other Closing Agreements and to consummate the Transactions. The execution and delivery by Apple of this Agreement and the other Closing Agreements and the consummation by Apple of the Transactions have been duly authorized by all necessary corporate action on the part of Apple. This Agreement and the other Closing Agreements have been, or will at the Closing have been, duly executed and delivered by Apple and constitute, or will at the Closing constitute, its legal, valid and binding obligations, enforceable against it in accordance with their respective terms. No Governmental Approval or Approval of any other Person is required to be obtained or made by Apple or any of its Affiliates in connection with the execution and delivery of this Agreement or the other Closing Agreements or the consummation of the Transactions (other than under Governmental Approvals (I) relating to the Transactions that must be obtained by Apple by reason of facts peculiar to another party which such other party has not disclosed or (II) the absence of which would not have a material adverse effect on any party or on any party's ability to perform its obligations under this Agreement and the other Closing Agreements to which it is a party in accordance with their respective terms).

(c) Encumbrances. Apple is the record holder and sole beneficial owner of the Apple Shares being transferred pursuant to this Agreement and such Apple Shares are free and clear of any Lien.

4.3 Representations and Warranties of IBM.

IBM represents and warrants to Apple that as of the date of this Agreement and as of the Closing Date:

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(a) Organization and Standing. IBM is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

(b) Authority. IBM has all requisite corporate power and corporate authority to enter into this Agreement and the other Closing Agreements and to consummate the Transactions. The execution and delivery by IBM of this Agreement and the other Closing Agreements and the consummation by Apple of the Transactions have been duly authorized by all necessary corporate action on the part of IBM. This Agreement and the other Closing Agreements have been, or will at the Closing have been, duly executed and delivered by IBM and constitute, or will at the Closing constitute, its legal, valid and binding obligations, enforceable against it in accordance with their respective terms. No Governmental Approval or Approval of any other Person is required to be obtained or made by Apple or any of its Affiliates in connection with the execution and delivery of this Agreement or the other Closing Agreements or the consummation of the Transactions (other than under Governmental Approvals (I) relating to the Transactions that must be obtained by Apple by reason of facts peculiar to another party which such other party has not disclosed or (II) the absence of which would not have a material adverse effect on any party or on any party's ability to perform its obligations under this Agreement and the other Closing Agreements to which it is a party in accordance with their respective terms).

ARTICLE 5. Covenants Pending the Closing

5.1 Operations of the Company.

From the date of this Agreement to the Second Closing Date, the Company covenants that (except (i) as expressly contemplated by this Agreement, or (ii) to the extent that the other parties shall otherwise consent in writing) that the Company shall carry on its business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted.

5.2 Restructuring Cooperation

(a) The parties will cause the Company to (i) provide the employees who are terminated in connection with the Restructuring with 60 days written notice of termination and separation benefits, including JVAR payouts and MPAP 10 payments approved by the parties (ii) and take the other related actions make the other payments approved by the Board of Directors of the Company on November 30, 1995 (hereinafter "Restructuring Costs"). As between Apple and IBM, IBM shall be responsible for all Restructuring Costs, and IBM shall indemnify Apple with respect to any claim by any third party against Apple with respect to any obligation of the Company existing on or arising after November 30, 1995 (other than obligations undertaken by Apple pursuant to the Closing Agreements).
(b) As part of the Restructuring, the Company management and IBM will be determining which Company employees will be required to remain with the Company to help the Company accomplish its new mission (hereinafter "Core Team"). The Company will identify the "Core Team" to Apple. IBM and Apple may wish to hire other Company employees, not designated as the "Core Team". While Apple and IBM will not require the others permission or review for any hiring decisions, neither Apple nor IBM will interfere with the attempt by the Company to retain the Company employees designated as the Core Team.

5.3 Establishment of Patent Licensing Company

(a) In order to maximize the value of the Company's patent portfolio and to attempt to recover the cost of their advances to the Company, the parties will establish a separate legal entity to manage and license the patent portfolio now held by the Company (the "Patent Venture").

(b) The Patent Venture will be established prior to the First Closing and will initially be owned 100% by the Company. The Company will inventory all of the Existing Patents by January 26, 1996. The Company will use its best efforts to cause all Existing Patents to be memorialized to written invention disclosures by January 29, 1996. The Company will assign ownership of the Existing Patents to the Patent Venture on or before January 29, 1996, subject to Existing Patent Licenses.

(c) The details of the management of the Patent Venture and the rights and obligations of each party with respect ot such Patent Venture will be defined in the Patent Venture Agreement.

(d) Immediately following the First Closing, until the execution of the Patent Venture Agreement, the following provisions shall govern the Patent Venture:

(i) Apple and IBM will establish a management committee of equal representation which will manage the Patent Venture, determine licensing policy, and hire employees. All significant decisions will be subject to unanimous consent by Apple and IBM. Apple and IBM will make an equal initial capital contribution (amount to be determined), will split equally the costs of formation, and will contribute equally on a quarterly basis operating funds for the Patent Venture. The Patent Venture will provide to each of Apple and IBM full access to all information concerning its assets and financial condition. The Company will provide the Patent Venture full access and cooperation in ensuring the perfection of the broadest possible rights in the portfolio.

(ii) Unless otherwise agreed, the Patent Venture will terminate, and the assets distributed to and liabilities assumed by Apple and IBM (or their designees) as follows:

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(A) On or before September 2, 1996, the Patent Venture will provide to each of Apple and IBM a schedule of the Existing Patents. Such schedule will enumerate each such Existing Patent separately, provided that rights to "counterparts" shall be considered to be part of the related domestic Existing Patent. In the event that two or more U.S. Patents or patent applications have been combined into a single patent application outside the U.S., such U.S. Patents and/or patent applications shall be considered as a single Existing Patent for the purposes of this schedule.

(B) On September 16, 1996, Apple and IBM will divide up the portfolio by means of alternate picks: one party will have the opportunity to select a single Existing Patent to be assigned to it; followed by the other party selecting another single Existing Patent; and continuing in turn until each Existing Patent in the portfolio has been selected by one or the other party. The determination of who will select the first Existing Patent will be made by a toss of coin.

(C) Upon completion of the selection process, Apple and IBM shall cooperate to initiate a bid process to obtain the highest possible third party bid for the entire patent portfolio of the Venture. This process shall be completed and the highest bid obtained on or before January 16, 1997.

(D) Within ten (10) days of the completion of the bid process and no later than January 26, 1997, each of Apple and IBM shall simultaneously declare to the other in writing whether the highest bid is acceptable to it or not acceptable to it with the following results:

1. If both Apple and IBM agree, then the highest bid will be accepted and the entire portfolio transferred by the Patent Venture to the highest bidder subject to all existing licenses. Licenses granted to third parties during the term of the Patent Venture ("Venture Licenses") will be assigned to and future proceeds therefrom will benefit the highest bidder.

2. If both Apple and IBM disagree, then the Patent Venture will assign to each of Apple and IBM (or their respective designees) the Patents so selected, subject to any liabilities in the form of licenses set forth in Section 5.3(b) and the Venture Licenses. Each Venture License will be assigned to one or the other of Apple and IBM as appropriate, or to both, but in any case the future proceeds from each such Venture License will be equally split between the Apple and IBM.
(3) If one of Apple or IBM agrees and one disagrees, then the portfolio shall be transferred as set forth in (2) above, provided however that the disagreeing party shall have the option within ten (10) days from the receipt of the other parties' declaration to inform the other party that it will pay to the other party one-half of the highest bid and in this event the Patent Venture will transfer the entire patent portfolio to the disagreeing party or its designee as set forth in (1) above.

(E) The other assets of the Patent Venture which are not Existing Patent or Venture Licenses will be liquidated and the proceeds distributed equally net of the payment of remaining debts or obligations. Notwithstanding the provisions of Section (D) above, upon request of either Apple or IBM, Apple and IBM agree to continue the Patent Venture as a legal entity to manage the separate portfolios for a reasonable period of time (not to exceed 6 months) necessary for an orderly assignment of Existing Patent assets to third party designees of the parties.

5.4 Obligations Suspended under Research Agreement, etc.

Unless and until this Agreement is terminated pursuant to Section 6.1 without the Second Closing having occurred:

(a) Apple and IBM agree to suspend each obligation under the Research Agreement or Apple License Out which would not be an obligation under the New Research Agreement or New License Out, including without limitation any funding amounts required to be paid by Apple under the Research Agreement but not required to be paid under the New Research Agreement.

(b) Apple and IBM agree that neither party will invoke any default or similar mechanism under the Stockholder Agreement or the Company's Restated Certificate of Incorporation or By-laws.

5.5 Further Actions

IBM shall not cause or permit the Company to become a Subsidiary of IBM prior to the First Closing Date. Apple shall not cause or permit any Lien to be created with respect to the Apple Shares prior to the Second Closing Date (other than any created as a result of the execution of this Agreement). In addition, each party shall take all actions commercially reasonable or appropriate to ensure that the conditions to Closing set forth herein to be satisfied by such party are satisfied on or prior to each Closing Date and to obtain (and cooperate with the other parties in obtaining) any
Governmental Approvals required to be obtained or made by it in connection with any of the Transactions. The Company shall afford to the other parties and their representatives access to properties, books and records, subject to appropriate confidentiality restrictions, sufficient to permit such other party to perform adequately its due diligence and business reviews relating to the Company.

ARTICLE 6. Miscellaneous

6.1 Termination.

If the Second Closing shall not have occurred on or prior to June 30, 1996, this Agreement and all obligations of the parties hereunder, except obligations under Section 5.3(d) and Section 6.12, shall terminate; provided that no such termination shall relieve any party of any liability it may have for any breach of this Agreement occurring prior to that date. Following any such termination, if the Patent Venture shall have previously been formed, it will terminate in accordance with the provisions of Section 5.3(d)(ii).

6.2 Notices.

Except as expressly provided herein, notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed or sent by telex, graphic scanning or other telegraphic communications equipment of the sending party, as follows:

(a) if to the Company:

Taligent, Inc.
10201 N. De Anza Blvd.
Cupertino, CA 95014-2233
Attention: General Counsel
Telephone: (408) 255-2525
Telecopier: (408) 777-5280

(b) if to Apple:

Apple Computer, Inc. 1 Infinite Loop
Cupertino, CA 95014
Attention: General Counsel Telephone: (408) 996-1010 Telecopier: (408) 974-8530
or to such other address or attention of such other person as any party shall advise the other parties in writing. All notices and other communications given to a party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

6.3 Applicable Law; Waiver of Jury Trials; Consent to Jurisdiction.

The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of New York, applicable to contracts executed in and performed entirely within such State, without reference to any choice of law principles of such State. With respect to any Litigation arising out of this Agreement or any Transaction, the parties expressly waive any right they may have to a jury trial and agree that any such Litigation shall be tried by a judge without a jury. Each party agrees to non-exclusive personal jurisdiction and venue in the United States District Court for the Northern District of California (and any California State court within that District) and the United States District Court for the Southern District of New York (and any New York State court within that District) for that purpose, and appoints the person set forth in Section 6.2 as its agent for service of process in such jurisdiction.

6.4 Severability.

If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. If necessary to effect the intent of the parties, the parties will negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language which as closely as possible reflects such intent.

6.5 Amendments.

This Agreement may be modified or waived only by a written amendment signed by persons authorized to so bind each party.
6.6 Waiver.

The waiver by any party of any instance of any other party's noncompliance with any obligation or responsibility herein shall not be deemed a waiver of other instances or of any party's remedies for such noncompliance.

6.7 Counterparts; Effectiveness.

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts shall have been signed by each party and delivered to each other party. This Agreement shall become effective upon execution by Apple and IBM; provided that in that event, Apple and IBM agree to cause Taligent to execute this Agreement as soon as practicable after January 3, 1996.

6.8. Entire Agreement.

The provisions of this Agreement and the other Closing Agreements set forth the entire agreement and understanding among the parties as to the subject matter hereof and supersede all prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof.

6.9. Assignment.

(a) No party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other parties, except that no such consent shall be required for (i) an assignment to a wholly-owned direct or indirect Subsidiary of a party, or a parent corporation of which such party is a wholly-owned direct or indirect Subsidiary, provided that no such assignment shall relieve such party of any obligations hereunder; or (ii) an assignment by operation of law in connection with a merger or consolidation of such party.

(b) Any attempted assignment of this Agreement in violation of this Section shall be void and of no effect.

(c) This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

6.10. No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the parties and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties and such assigns, any legal or equitable rights hereunder.
6.11. Remedies.

(a) In no event will any party be liable to another party for incidental or special damages regardless of the form of action, lost profits, lost savings or any other consequential damages, even if such party has been advised of the possibility of such damages, resulting from the breach of its obligations under any Closing Agreement or from the use of any confidential or other information or any items or products supplied pursuant to the Closing Agreements.

(b) Because the breach by any party of the provisions of this Agreement would cause irreparable harm and significant injury that would be difficult to ascertain and would not be compensable by damages alone, the parties agree that each party will have the right to enforce such provisions by Injunction, specific performance or other equitable relief without prejudice to any other rights and remedies the enforcing party may have. The reference to specific Sections in this Section is not a waiver of any party's rights to seek equitable relief for breaches of other Sections.


(a) Whether or not any of the Transactions are consummated, all costs and expenses incurred in connection with the Closing Agreements and the Transactions shall be paid by the party incurring such cost or expense, except as the parties shall otherwise agree.

(b) The provisions of this Section shall remain operative and in full force and effect regardless of the expiration of this Agreement or the consummation of the Transactions.

6.13 Construction.

This Agreement has been negotiated by the parties and their respective counsel and will be fairly interpreted in accordance with its terms and without any strict construction in favor of or against any party.
IN WITNESS WHEREOF, the Company, Apple and IBM have duly executed this Agreement as of the day and year first above written.

TALIGENT, INC.

By: /s/ Deborah S. Coutant
Name: Deborah S. Coutant
Title: General Manager and CEO

APPLE COMPUTER, INC.

By: /s/ David C. Nagel
Name: David C. Nagel
Title: Senior V.P., Worldwide R&D

INTERNATIONAL BUSINESS MACHINES CORPORATION

By: /s/ R.L. Jones
Name: R.L. Jones
Title: Software Group Controller
Exhibit List

Exhibit 1: Form of New Apple License Agreement
Exhibit 2: Financial Statements of the Company
THIS STOCK PURCHASE AGREEMENT (the "Agreement") is dated as of April 4, 1996 (the "Effective Date"), and is made by and between APPLE COMPUTER, INC., a California corporation (hereinafter "Apple"), and SCI SYSTEMS, INC., a Delaware corporation ("SCI").

Recitals

A. Apple is engaged in the business of designing, manufacturing, marketing, distributing and selling personal computers and other related electronic products.

B. Apple desires to sell, and SCI desires to purchase, upon the terms and subject to the conditions set forth by the appropriate person outstanding shares of capital stock of a wholly-owned subsidiary of Apple ("NEWCO"), a corporation which will be formed on or before the Closing Date to hold certain assets used by Apple in the operation of its manufacturing facility in Fountain, Colorado (the "Fountain Facility").

C. Apple and SCI mutually desire that, after the Closing, NEWCO shall operate the Fountain Facility, and shall, inter alia, manufacture and assemble certain Apple Products at the Fountain Facility, pursuant to the terms and conditions set forth in the Manufacturing Agreement and the other Related Agreements to be executed and entered into by the parties at or prior to the Closing.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. SALE AND TRANSFER OF SHARES; CLOSING

1.1 Shares. Subject to the terms and conditions of this Agreement, at the Closing, Apple will sell, transfer and deliver all of the outstanding shares of the capital stock of NEWCO (the "Shares") to SCI, and SCI will purchase the Shares from Apple for the Purchase Price set forth in Section 1.2.

1.2 Purchase Price. The purchase price (the "Purchase Price") for the Shares will be equal to the total capitalization of NEWCO as of the Closing. Such amount shall be the sum of: (i) an amount equal to the net book value of the Real Property and the Personal Property (other than the Spare Parts) as of the Closing Date, calculated in accordance with generally accepted accounting principles (GAAP) (as shown on NEWCO's books).
and records); (ii) an amount equal to Apple's original purchase cost of the Spare Parts (for purposes of this Agreement, the parties estimate that the portion of the total Purchase Price allocated to such Spare Parts shall be Five Hundred Thousand Dollars ($500,000), but the final amount with respect thereto shall be determined by the parties prior to the expiration of the Due Diligence Period); and (iii) One Hundred Sixty Million Dollars ($160,000,000). At the Closing, the parties shall execute an amendment to this Agreement setting forth the final amount of the total Purchase Price. The entire Purchase Price shall be paid, in cash or other immediately available funds, at the Closing.

1.3 Closing. Consummation of the Transaction (the "Closing") shall take place at the offices of the Person mutually agreed upon by SCI and Apple to act as the escrow agent for the Closing (the "Escrow Agent"), at 10:00 o'clock A.M. (local Colorado time) on May 31, 1996, or on such other date as the parties hereto agree. The date on which the Closing shall occur is referred to herein as the "Closing Date". All deliveries provided for herein from one party to the other shall be made to the Escrow Agent, unless both parties expressly agree otherwise, in writing.

1.4 Closing Obligations.

A. At the Closing, but prior to delivering the Shares to SCI pursuant to Section 1.4.B, Apple will deliver to NEWCO:

(i) A duly executed Bill of Sale and Assignment and Assumption Agreement in substantially the form of Exhibit G and Exhibit H, respectively, attached hereto;

(ii) A warranty deed in form sufficient to transfer title to the Real Property from Apple to NEWCO (the "Deed");

(iii) All such other assignments and other instruments as are reasonably necessary to vest in NEWCO good, valid and marketable title to the Assets; and

(iv) All other previously undelivered documents required to be delivered by Apple to NEWCO at or prior to the Closing in connection with the Transaction, all as provided herein.

B. At the Closing, but subsequent to transferring the Assets to NEWCO pursuant to Section 1.4.A, Apple will deliver to SCI:

(i) Certificates representing the Shares, duly endorsed (or accompanied by duly executed stock powers), with signatures guaranteed by a commercial bank or by a member firm of the New York Stock Exchange, for transfer to SCI;

(ii) All other previously undelivered documents required to be delivered by Apple to SCI at or prior to the Closing in connection with the Transaction, all as provided herein; and
C. At the Closing, but subsequent to Apple transferring the Assets to NEWCO pursuant to Section 1.4.A, SCI will deliver to Apple:

(i) The Purchase Price, in cash or immediately available funds;

(ii) All other previously undelivered documents required to be delivered by SCI to Apple at or prior to the Closing in connection with the Transaction, all as provided herein; and

(iii) A certificate executed by SCI, representing and warranting to Apple that each of SCI's representations and warranties in this Agreement was accurate in all respects as of the Effective Date and is accurate in all respects as of the Closing Date as if made on the Closing Date (giving full effect to any supplements to or amendments of this Agreement or any of the exhibits attached hereto, in accordance with the provisions of Section 9.4, below).

1.5 Costs and Fees of Escrow. SCI shall pay the premium for or cost of any endorsement desired by SCI to any Title Insurance (as defined in Section 5.9) which may be issued in connection with the Transaction, the cost of any new or updated survey of the Real Property which SCI may elect to obtain or request NEWCO to obtain, all recording costs and all documentary stamp taxes in connection with the transfer of the Assets to NEWCO, an amount equal to sixty-three percent (63%) of all state and local sales and transfer taxes, if any, with respect to the Personal Property arising from the Transaction, including without limitation any such taxes arising from the transfer of the Assets to NEWCO, and one-half of the Escrow Agent's fee, and all other customary and usual buyer's closing costs and escrow charges applicable to the Transaction. Apple shall pay the premium for a standard owner's policy of title insurance for the Real Property, one-half of the Escrow Agent's fee, an amount equal to thirty-seven percent (37%) of all state and local sales and transfer taxes, if any, with respect to the Personal Property arising from the Transaction, including without limitation any such taxes arising from the transfer of the Assets to NEWCO, and all other customary and usual seller's closing costs and escrow charges applicable to the Transaction. Real estate and personal property taxes and assessments shall be prorated using the most recent levy and assessments allocable to the Real Property as of the date the Deed is recorded.

2. TRANSFER OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Assets to be Transferred to NEWCO.; Subject to and in accordance with the terms and conditions hereof, at the Closing, Apple will assign, transfer, convey and deliver to NEWCO, all of Apple's right, title and interest in the following:
A. The real property commonly known as 702 Bandley Drive, Fountain, Colorado, as more particularly described in Exhibit A attached hereto, together with all improvements on the real property (collectively the "Real Property" or the "Site"), and all appurtenant rights thereto, including without limitation easements, rights of way, licenses and other interests therein; and

B. All personal property (including manufacturing and operating equipment, and certain spare parts relating thereto [the "Spare Parts"]) owned by Apple and used by Apple in its operation of the Fountain Facility, to the extent set forth on Exhibit B attached hereto, including machinery, equipment, computers, tools, vehicles, furniture, all relevant data, files, books and records at the Fountain Facility regarding the Assets, and office supplies and office equipment (collectively, the "Personal Property"). During the Due Diligence Period, SCI and Apple shall identify with specificity those Spare Parts currently located at the Fountain Facility which shall be transferred to NEWCO pursuant to this Agreement, and Exhibit B shall be amended, at or prior to the Closing, to accurately reflect such items; and

C. Certain inventories of materials and components currently at the Site and owned by Apple, and used in connection with Apple's ownership and operation of the Assets, which inventory shall be identified by the parties prior to the expiration of the Due Diligence Period, and shall be set forth in Exhibit C attached hereto (the "Initial Inventory").

D. The Real Property, the Personal Property (including the Spare Parts) and the Initial Inventory are sometimes referred to collectively herein as the "Assets".

E. As part of the Transaction, Apple shall assign to NEWCO, and NEWCO shall assume, all authorizations, consents, approvals, licenses, orders, permits, exemptions of or filings or registrations with any court or governmental or administrative authority which relate solely to Apple's ownership and operation of the Assets, to the extent such Assigned Permits are assignable or transferable, and to the extent not encompassed within or addressed by any of the Related Agreements, all as more particularly set forth in Exhibit D attached hereto (collectively, the "Assigned Permits").

F. As part of the Transaction, Apple shall assign to NEWCO, and NEWCO shall assume, certain agreements and contracts relating to the operation of the Site, including leases to which Apple is a party and relating solely to the Assets, which are set forth in Exhibit E attached hereto, and which SCI shall agree, by written notice to Apple prior to the Due Diligence Completion Date, to have NEWCO assume (collectively, the "Assigned Contracts"). To the extent any consents or approvals by, of or from the other parties to said Assigned Contracts are necessary with respect to such assignment and assumption, Apple shall use commercially reasonable efforts to secure such consents or approvals. If such consents or approvals are not secured by the Closing Date, SCI may elect to have NEWCO assume any contract for which the required third party consent has not been obtained, or may elect not to have NEWCO assume any such contract, and in any case SCI shall advise Apple, in writing, of its election with respect to any such contract not later than the Closing.
2.2 Assignment and Assumption of Liabilities. As of the Closing Date, Apple shall assign to NEWCO, and NEWCO shall assume and agree to pay, the following liabilities and obligations, known and unknown, liquidated and unliquidated, contingent or fixed, rights and causes of action with respect to the Assets, the Assigned Permits and the Assigned Contracts (collectively, the "Assumed Liabilities"): (i) all of Apple's obligations arising on and after the Closing under the Assigned Contracts, and (ii) all of Apple's obligations arising on and after the Closing under the Assigned Permits; provided, however, that NEWCO shall have no liability or obligation to perform under any Assigned Contracts and Assigned Permits unless and until Apple's rights thereunder have been effectively assigned to NEWCO.

2.3 Sale of Assets "AS IS". Except as expressly set forth in this Agreement, Apple shall transfer the Assets to NEWCO in their "AS IS, WHERE IS" condition as of the Effective Date, and solely in reliance on SCI's inspection and examination of the Assets prior to the Closing Date. Neither Apple, nor any of Apple's agents, representatives or employees, have made any representations or warranties, direct or implied, verbal or written, with respect to the Assets, or their merchantability, or the fitness thereof for any particular purpose, except as expressly set forth in this Agreement and the instruments of conveyance delivered at the Closing, and Apple shall not be obligated to SCI or to NEWCO in connection with any defect, whether patent or latent, with respect to the same, except as provided in this Agreement and such instruments.

2.4 Risk of Loss. Risk of physical loss to the Assets shall be borne by Apple prior to the Closing, and by NEWCO on and after the Closing. If, prior to the Closing, the Assets or any material portion thereof are damaged by flood, fire, earthquake or other casualty, or any governmental or quasi-governmental entity commences any legal action or eminent domain proceeding to take any portion of the Assets, then Apple shall give prompt notice thereof to SCI and SCI shall have the right to terminate this Agreement by written notice to Apple within five (5) days after SCI's receipt or deemed receipt of such notice, in which event this Agreement shall immediately terminate and the parties shall thereafter have no further rights or obligations hereunder; provided, however, that if SCI elects to go forward with the Transaction, all casualty insurance proceeds relating solely to said casualty or loss with respect to any such damage to any of the Assets, and/or all the proceeds of any such taking shall be assigned to NEWCO at the Closing, to the extent that such proceeds would otherwise be payable to Apple.

2.5 Excluded Assets.; The Assets which are the subject of this Agreement shall not include the assets and/or property of Apple described in this Section 2.5, none of which shall be transferred to NEWCO (collectively, the "Excluded Assets"):  
A. Inventories of raw materials, work-in-progress, and finished goods or products (other than the Initial Inventory), located at the Site and used in connection with Apple's business at the Site, all of which shall be governed by the terms and conditions of the Manufacturing Agreement.
B. Apple's right, title and interest under such contracts, leases, licenses and agreements which relate to Apple's operations at the Site, to the extent not expressly assigned, transferred or sold to NEWCO pursuant to the terms of this Agreement.

C. Information used by Apple to operate and conduct its business at the Site with respect to the design, production and distribution of Apple Products, including, without limitation, technical information, know-how, processes, and procedures; and intellectual property rights of Apple and all Apple Affiliates, of every nature and description, developed by Apple or such Apple Affiliates prior to or after the Closing Date, including, without limitation, all intellectual property rights developed or used at the Site in connection with the design, development or manufacture of the Apple Products manufactured at the Site, or used in connection with the activities described in and contemplated by the Manufacturing Agreement. To the extent that any such information and intellectual property is part of the Transaction, it shall be subject to the terms and conditions of the Intellectual Property Agreement.

D. Cash, cash equivalents, certificates of deposit, bank accounts, prepaid items, accounts or notes receivable, and unbilled accounts or notes arising from work completed at the Site on or prior to the Closing Date.

E. Claims or rights against third parties relating to liabilities or obligations which are not assumed by NEWCO hereunder.

2.6 Excluded Liabilities.

A. Except as specifically assumed by NEWCO pursuant to Section 1 and Section 2, NEWCO shall not assume, perform, pay or discharge any liabilities, obligations, payables or debts of Apple, whether known or unknown, accrued, absolute, contingent or otherwise, and Apple shall be solely responsible for the payment or discharge thereof.

B. Without limiting the generality of the foregoing paragraph, SCI and NEWCO shall not assume any liabilities or obligations of Apple:

(i) for any Taxes except as otherwise expressly provided in this Agreement;

(ii) for product liabilities, liabilities to customers, contractors and purchasers for defects in products, worker's compensation, and automobile and similar liabilities for personal injuries, in each case to the extent such liability arises from an injury, event or occurrence prior to the Closing;

(iii) for any employee-related liability or obligation of Apple, other than as expressly set forth in the Employee Agreement;
2.7 Prorations; Tax Elections.

A. Prorations at Closing. At the Closing, there shall be prorated between Apple, on the one hand, and NEWCO, on the other hand, as of the Closing Date, the following accrued or prepaid items relating to Apple's conduct of its business at the Site: (i) ad valorem and similar taxes with respect to the Assets; (ii) rents, royalties and other payments due under the Assigned Contracts; (iii) charges for utilities serving the Real Property; (iv) deposits with respect to the Assets; (v) interest charges relating to the Assumed Liabilities; (vi) license fees relating to any of the Assets; (vii) fees under any of the Assigned Permits; and (viii) governmental assessments and charges for services to or with respect to any of the Assets. The Purchase Price to be paid hereunder shall be appropriately decreased by the pro rata amount of any such items which are accrued but unpaid as of the Closing Date, and shall be appropriately increased by the pro rata amount of any such items which have been prepaid by Apple as of the Closing Date.

B. 338(h)(10) Election. Apple and SCI will make an election under Section 338(h)(10) of the Internal Revenue Code of 1986, as amended (the "Code") (and any corresponding elections under applicable state, local or foreign tax law) (collectively, the "338(h)(10) Election") with respect to the purchase and sale of the Shares under this Agreement. In connection with any such election, Apple and SCI will jointly execute IRS Form 8023-A (Corporate Qualified Stock Purchases) at the Closing. The parties will timely file the Form 8023-A with the appropriate Internal Revenue Service ("IRS") Center, via certified mail, return receipt requested to establish proof of filing of the form with the IRS. Apple and SCI also agree to file any other forms or to take such other steps as may be necessary to properly effect such election. Apple will pay any tax attributable to any gain or loss incurred by Apple with regard to the making of the 338(h)(10) Election and will indemnify SCI and NEWCO against any liabilities arising out of any failure by Apple to pay such taxes. In connection with such 338(h)(10) election, the Purchase Price shall be allocated by mutual agreement of Apple and SCI, as set forth in Exhibit F attached hereto. Apple and SCI will file all tax returns (including amended returns and any claims for refund) and information reports in a manner consistent with such allocation.
2.8 No Breach By Reason of Sale.; It is the intention of the parties that this Agreement shall not constitute an assignment or attempted assignment of any lease, license, commitment or other contract or agreement to which either SCI or Apple is a party, if any such assignment or attempted assignment would constitute a breach or violation thereof; it being understood, however, that the preceding does not relieve Apple from any liability to NEWCO or to SCI which Apple would otherwise have hereunder by reason of a breach of Apple's representations, warranties, covenants or conditions resulting from the failure of Apple to transfer such lease, license, commitment, or other contract or agreement to NEWCO.

2.9 Waiver of Bulk Sales Law Compliance.; Compliance with the bulk sales laws of the State of Colorado, if any, and those of any other jurisdiction which may be applicable to the Transaction, is hereby waived by SCI, and Apple hereby agrees to defend, indemnify and hold NEWCO and SCI harmless from and against any claims by any Person arising out of or due to the failure to comply with such bulk sales laws, including without limitation any claims by any Person against all or any part of the Assets.

2.10 Hart-Scott-Rodino Filing.; Promptly following execution of this Agreement by the parties, SCI and Apple shall prepare such documentation as may be necessary to make any required filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"). The parties shall cooperate with respect to the filing, including without limitation providing relevant data to the other as needed to complete said filing. SCI shall pay all required fees with respect to such filing.

3. REPRESENTATIONS AND WARRANTIES OF APPLE.

Apple hereby represents and warrants to SCI and to NEWCO, as of the Effective Date and as of the Closing Date, as follows:

3.1 Corporate Organization.; Apple is a corporation duly organized, validly existing and in good standing under the laws of California, has full corporate power and authority to carry on its business as it is now being conducted at the Site and to own the Assets, and is duly qualified to do business in the State of Colorado as a foreign corporation.

3.2 Authorization.; The execution and delivery of this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the transfer of the Shares, and all deeds, endorsements, assignments and other instruments to be executed and delivered by Apple hereunder, and the consummation of the Transaction, have been duly authorized by all necessary corporate action on the part of Apple. This Agreement has been duly executed and delivered by Apple and, when duly and validly executed by SCI, will constitute the valid and binding obligation of Apple, enforceable against Apple in accordance with its terms, except as enforceability may be limited by bankruptcy and other similar laws and general principles of equity. The Deed, the Bill of Sale, the Assignment and Assumption Agreement, and the deeds, endorsements, assignments and other instruments to be executed and delivered to NEWCO by Apple at the Closing will be valid and binding obligations of Apple.
enforceable against Apple in accordance with their terms, except as enforceability may be limited by bankruptcy and similar laws and general principles of equity, and will effectively convey to and vest in NEWCO good and marketable title to the Assets, subject only to the conditions set forth therein and to the Permitted Liens (as defined in Section 3.5). The transfer of the certificates representing the Shares, and all endorsements and stock powers executed in connection therewith, and all other documents, instruments and certificates to be executed and delivered to SCI by Apple at the Closing will be valid and binding obligations of Apple, enforceable against Apple in accordance with their terms, except as enforceability may be limited by bankruptcy and similar laws and general principles of equity, and will effectively convey to and vest in SCI good and marketable title to the Shares.

3.3 No Violation. The execution and delivery of this Agreement by Apple and the performance of this Agreement by Apple will not (i) conflict with or violate the Articles of Incorporation or Bylaws of Apple, (ii) subject to the obtaining of all required consents from governmental entities having jurisdiction or other third parties, as provided in this Agreement, conflict with or violate any law, rule, regulation, order, judgment or decree applicable to Apple or by which any of its property is bound or affected, or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair Apple's rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any lien or encumbrance on any of the Assets or the Shares pursuant to, any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Apple is a party or by which Apple is bound or affected, except, with respect to clauses (ii) and (iii), for any such conflicts, violations, defaults or other occurrences that would not have a Material Adverse Effect on Apple.

3.4 Consents. Except for governmental consents required under the HSR Act, which will be requested as provided in Section 2.10 of this Agreement, and as may be required under the Assigned Contracts and the Assigned Permits, no consent of any Person (other than those previously obtained) is necessary to the consummation of the Transaction, including, without limitation, consents from parties to loans, contracts, leases or other agreements and consents from governmental agencies, whether federal, state, or local or foreign.

3.5 Title to Assets; Encumbrances.

A. Apple has good and marketable title to the Personal Property and the Initial Inventory, and good, marketable fee simple title to the Real Property, subject only to the Permitted Liens. The Assets are free and clear of all liens (including liens for Taxes as defined below), claims, charges, security interests or other encumbrances of any nature whatsoever including, without limitation, leases, chattel mortgages, conditional sales contracts, collateral security arrangements and other title or interest retention arrangements (collectively, "Liens"), except for the following, all of which shall be deemed "Permitted Liens": (i) minor imperfections of title, exceptions, variances, reservations or limitations (if any), (ii) Liens for current taxes, assessments and like impositions not yet delinquent, (iii) zoning code and building code provisions applicable to
the Real Property, (iv) rights reserved to any governmental authority to regulate any of the Assets, and (v) inchoate materialmen's, mechanic's and workmen's liens or other like liens arising in the ordinary course of business; none of which materially detract from the value or impair the use of the property subject thereto as currently used, or materially impair the current operations of the Site.

B. With respect to the Real Property, Apple warrants and represents as follows:

(i) No options have been granted to others to purchase, lease or otherwise acquire any interest in the Real Property, or any part thereof. Apple has the exclusive right of possession of each tract comprising the Real Property, subject only to matters of record (including easements, rights of way and other similar matters of record).

(ii) Neither Apple nor any other Person has caused any work or improvements to be performed upon or made to the Real Property for which there remains outstanding any payment obligation that would or might serve as the basis for any claim, lien, charge or encumbrance in favor of the Person which performed the work, other than Permitted Liens.

(iii) All requisite certificates of occupancy and other permits or approvals required with respect to the improvements on any of the Real Property and the occupancy and use thereof have been obtained and are currently in effect.

(iv) Except as disclosed to SCI, Apple has received no notification that it is in violation of any applicable building, zoning, anti-pollution, health or other law, ordinance or regulation in respect of the Assets or in respect of Apple's operations at the Site, and no facts have come to the attention of Apple to cause it to believe any such violation exists.

(v) Neither the whole nor any portion of the Real Property is subject to any governmental decree or order to be sold or is being condemned, expropriated or otherwise taken by any public authority with or without payment of compensation therefor, nor to Apple’s best knowledge has any such condemnation, expropriation or taking been proposed.

3.6 Condition of Assets. The Personal Property has no material defects and is in good operating condition and repair, normal wear and tear excepted, and is adequate for the uses to which it is being put; and that portion of the Personal Property identified in Exhibit B as equipment used in the manufacture and assembly of Apple Products has been regularly maintained in the ordinary course of business.

3.7 Assigned Permits. To the best of Apple’s knowledge, the Assigned Permits constitute all permits needed to operate the Assets at the Fountain Facility.
3.8 Taxes.

A. "Taxes" shall mean all taxes, charges, fees, levies, imposts or other assessments, including, without limitation, income, gross receipts, excise, use, transfer, property, sales, license, payroll, withholding and franchise taxes, imposed by the United States, or any state, local or foreign government or subdivision or agency thereof, whether computed on a unitary, combined or any other basis, and also including any interest and penalties or additions to tax.

B. As of the date hereof, there are no Liens with respect to Taxes (other than Permitted Liens for Taxes not yet delinquent) in connection with the Assets. Apple has reserved for or paid, withheld, collected, and paid over to the proper governmental authorities all Taxes which are required to be paid, withheld, collected, or paid to and including the Closing Date with respect to the Assets and its operations at the Site (other than Taxes which are being contested by Apple in good faith), and Apple shall pay all Taxes due and payable to and including the Closing Date, to the extent that such amounts are not prorated at the Closing and the payment obligation therefor would thereafter rest with NEWCO.

C. For all periods to and including the Closing (whether such periods are reflected in a return or report ending on or before the Closing, or after the Closing), NEWCO has timely filed or will have filed, all Federal, foreign, state, county, local and/or other taxing authority tax returns, reports, or other required filings with respect to any Taxes, and has paid or will pay such Taxes with respect to such returns, reports or required filings for all such periods as such Taxes become due.

D. Apple agrees that it shall indemnify and hold SCI and NEWCO harmless of and from any loss, liability or expense actually incurred by SCI or NEWCO as a result of all tax liability for which NEWCO may be liable as a member of an affiliated, consolidated, unitary or combined group (as defined in Section 1502 of the Code, or any comparable state or local statute, rule or regulation) which includes Apple or any Apple Affiliates.

3.9 Contracts. The list of contracts and agreements set forth in Exhibit E attached hereto is a true, complete and correct list of all agreements, contracts and commitments necessary to operate the Assets, and to Apple's best knowledge there are no material defaults by any party thereunder nor have any amendments, oral or written, to any such Assigned Contracts been made or entered into by Apple except as set forth in said Exhibit E.

3.10 Assumed Liabilities. Apple has disclosed to SCI all known liabilities of Apple under and pursuant to the Assigned Contracts and the Assigned Permits, and with respect to the Assets.

3.11 Litigation. There are no actions, suits, inquiries, proceedings or investigations by or before any court or governmental or other regulatory or administrative agency or commission (collectively, "Proceedings") pending or, to Apple's best knowledge, threatened against or involving Apple (other than solely as plaintiff initiated by Apple in the ordinary course of collecting receivables) relating to the Assets. There is no Proceeding known to Apple to be pending or threatened which questions or
challenges the validity of this Agreement or any action taken or to be taken by Apple pursuant to this Agreement or in connection with the Transaction; nor to Apple's best knowledge is there any valid basis for any such Proceeding with respect to Apple. Apple is not in default under or in violation of, nor to Apple's best knowledge is there any valid basis for any claim of default under or violation of, any of the Assigned Contracts, which default or violation would have a Material Adverse Effect on NEWCO's ownership and operation of the Assets, or on SCI's ownership of NEWCO.

3.12 Compliance with Law. Except for insubstantial violations which would have no Material Adverse Effect, Apple's operations at the Site have been conducted in accordance with all applicable laws, regulations and other requirements of all national governmental authorities, and of all states, municipalities and other political subdivisions and agencies having jurisdiction over Apple's operations at the Site, including, without limitation, all such laws, regulations and requirements relating to antitrust, consumer protection, currency exchange, equal opportunity, health, occupational safety, pension, and securities. Apple has not received any notification of any asserted present or past failure by Apple to comply with such laws, rules or regulations.

3.13 Environmental Protection. To Apple's best knowledge, during Apple's ownership and operation of the Fountain Facility, Apple has had all permits, licenses and other authorizations which are required in connection with its operations at the Fountain Facility under and pursuant to applicable Federal, state and local laws, rules, regulations, codes, orders, decrees, judgments or injunctions relating to pollution or protection of the environment, including without limitation laws relating to torts and laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or any other industrial, hazardous or toxic substances, materials or wastes (collectively, "Hazardous Materials") into the environment (including, without limitation, ambient air, surface water, ground water, or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling of, or exposure to, Hazardous Materials (collectively, "Environmental Laws") at the Fountain Facility. Except as may have been disclosed to SCI in any documentation delivered by Apple to SCI prior to the Effective Date, Apple is, and has been during its operations at the Fountain Facility, in compliance with all terms and conditions of such required permits, licenses and authorizations, and, to the best of Apple's knowledge, nothing has occurred while Apple has owned the Fountain Facility which would cause Apple to fail to be in compliance with said Environmental Laws with respect to its operations at the Fountain Facility. Except as may have been disclosed to SCI in any documentation delivered by Apple to SCI prior to the Effective Date, Apple is not aware of, nor has Apple received notice of, any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance with said Environmental Laws, or which may give rise to any common law or legal liability, or may otherwise form the basis of any claim, action, demand, suit, proceeding or hearing, based on or related to Apple's manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, exposure to, emission, discharge, release or threatened release into the environment, of any Hazardous Materials at the
Fountain Facility. There is no civil, criminal or administrative action, suit, demand, claim, hearing, notice or demand letter, notice of violation, investigation, or proceeding pending or, to Apple's best knowledge, threatened, against Apple relating in any way to said Environmental Laws with respect to Apple's use and operation of the Fountain Facility.

3.14 Occupational Safety and Health. Except as set forth in Exhibit I attached hereto, to Apple's best knowledge, Apple is, in all material respects, in compliance with all standards, duties, requirements, responsibilities, rules, regulations and orders (hereinafter "safety and health obligations") currently promulgated under, or issued pursuant to or in enforcement of the Occupational Safety and Health Act of 1970, or any laws, plans, or safety and health obligations currently established by any state or political subdivision thereof or by common law, applicable to Apple's operations at the Site, with respect to occupational safety and health. Except as set forth in said Exhibit I, Apple is not aware of, nor has Apple received notice of, any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans relating to its operations at the Site which prevent compliance or continued compliance with the aforesaid laws, plans or safety and health obligations as they exist on the date hereof or any orders, decrees, judgments, or injunctions, which have been issued, entered, promulgated or approved thereunder, or which may give rise to any common law or legal liability, or otherwise form the basis of any claim, action, demand, suit, proceeding or hearing, based on Apple's violation of any of the aforesaid laws, plans, or safety and health obligations to employees or others and on its duty to maintain a workplace free of safety and health hazards. Except as set forth in said Exhibit I, there is no civil, criminal or administrative action, suit, demand, claim, hearing, citation, employee or other complaint, notice of violation, investigation, or proceeding pending or, to Apple's best knowledge threatened against Apple relating in any way to the aforesaid laws, plans, or safety and health obligations established by the Federal government or any state or political subdivision thereof, or by common law, or any orders, decrees, judgments or injunctions issued, entered, promulgated or approved thereunder with respect to Apple's operations at the Site.

3.15 Financial and Cost Data. All financial and cost data relating to Apple's ownership and operation of the Assets disclosed to SCI by Apple is accurate and complete in all material respects.

3.16 Representations and Warranties With Respect to NEWCO.

A. Organization of NEWCO. NEWCO will be formed by Apple, on or before the Closing Date, solely for the purpose of engaging in the Transaction. From the date of its incorporation and at all times through and until the Closing, NEWCO will be a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, have full corporate power and authority to carry on its business, and (if not incorporated in Colorado) be duly qualified in the State of Colorado as a foreign corporation.

B. Capitalization. From the date of the incorporation of NEWCO and at all times through and including the Closing:
(i) Apple will be the record and beneficial owner and holder of the Shares, free and clear of any encumbrances or restrictions of any nature, including, without limitation, any liens, judgments, security interests, equities, claims and demands.

(ii) Apple will not be a party to any option, warrant, purchase right, or other contract or commitment that could require Apple to sell, transfer, or otherwise dispose of the Shares (other than this Agreement).

(iii) Apple will not be a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of the Shares.

(iv) No legend or other reference to any purported encumbrance will appear upon any certificate representing the Shares.

(v) All of the Shares will be duly authorized, validly issued, fully paid and nonassessable.

(vi) NEWCO will not be a party to or be bound by any outstanding or authorized options, warrants, calls, rights, commitments or any other agreements of any character requiring NEWCO to issue, transfer, sell, purchase, redeem or acquire any shares of capital stock or any other equity or debt securities or any securities or rights convertible into, exchangeable for, or evidencing the right to subscribe for or acquire, any shares of capital stock or any other equity or debt securities of NEWCO.

C. Authorization. At the Closing, NEWCO will have full corporate power and authority to execute and deliver any and all agreements contemplated under this Agreement, including, without limitation, the Bill of Sale and the Assignment and Assumption Agreement.

D. No Violation. As of the Closing, NEWCO’s execution and delivery of the Closing documents to which it is a party, and its performance of and under any of the Assigned Contracts or the Assigned Permits, will not (i) conflict with or violate the Articles of Incorporation or Bylaws of NEWCO, (ii) subject to the obtaining of all required consents from governmental entities having jurisdiction, as provided in this Agreement, conflict with or violate any law, rule, regulation, order, judgment or decree applicable to NEWCO, or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair NEWCO’s rights or alter the rights or obligations of any third party under, or give to others any right of termination or amendment, acceleration or cancellation of, or result in the creation of any lien or encumbrance (other than Permitted Liens) on any of the Assets pursuant to, any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligations to which Apple or NEWCO is a party or by which Apple or NEWCO is bound or affected, except, with respect to clauses (ii) and (iii), for any such conflicts, violations, defaults or other occurrences that would not have a Material Adverse Effect on Apple or NEWCO, or affect the transfer of the Assets and the sale of the Shares as provided herein.
E. Assets and Liabilities. From the date of the incorporation of NEWCO and at all times to and until the Closing,

(i) Except for obligations or liabilities incurred in connection with its incorporation or organization and the Transaction, NEWCO will not have incurred, directly or indirectly through any affiliate, any obligations or liabilities or engaged in any business or activities of any type or kind whatsoever or entered into any arrangements with any person or entity;

(ii) NEWCO will not own, or have any contract to acquire, any equity securities or other securities of any entity or any direct or indirect equity or ownership interest in any business (other than the Assets);

(iii) NEWCO will have no assets or liabilities other than the Assets and the Assumed Liabilities.

3.17 Operation of Fountain Facility Prior to Closing. As of the Closing Date, the Fountain Facility (including the Assets) shall have been operated by Apple in accordance with the provisions of Section 7.

4. REPRESENTATIONS AND WARRANTIES OF SCI.

SCI hereby represents and warrants to Apple, as of the Effective Date and as of the Closing Date, as follows:

4.1 Corporate Organization. SCI is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has full corporate power and authority to carry on its business as it is now being conducted.

4.2 Authorization. SCI has full corporate power and authority to enter into this Agreement and to carry out the Transaction. The execution and delivery of this Agreement and the consummation of the Transaction has been duly authorized by all necessary corporate action on the part of SCI. This Agreement, and all other documents, instruments and certifications to be executed and delivered by SCI hereunder, have been duly executed and delivered by SCI and, when duly and validly executed by Apple (to the extent necessary), will constitute the valid and binding obligation of SCI, enforceable against SCI in accordance with their terms, except as enforceability may be limited by bankruptcy and other similar laws and general principles of equity.

4.3 No Violation. The execution and delivery of this Agreement by SCI and the performance of this Agreement by SCI will not (i) conflict with or violate the Articles of Incorporation or Bylaws of SCI, (ii) subject to the obtaining of all required consents from governmental entities having jurisdiction, as provided in this Agreement, conflict with or violate any law, rule, regulation, order, judgment or decree applicable to SCI or by which any of its property is bound or affected, or (iii)
result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair SCI's rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any lien or encumbrance on any of the Assets pursuant to, any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which SCI is a party or by which SCI is bound or affected, except, with respect to clauses (ii) and (iii), for any such conflicts, violations, defaults or other occurrences that would not have a Material Adverse Effect on SCI.

4.4 Consents. Except for governmental consents required under the HSR Act, which will be requested as provided in Section 2.10 of this Agreement, and as may be required under the Assigned Contracts and the Assigned Permits, no consent of any Person (other than those previously obtained) is necessary to the consummation of the Transaction, including, without limitation, consents from parties to loans, contracts, leases or other agreements and consents from governmental agencies, whether federal, state, or local or foreign.

4.5 Adequate Financing. SCI has adequate financial resources to pay the Purchase Price, in full, at the Closing, as required by Section 1.2 of this Agreement, and all other costs to be paid by SCI as provided in Section 1.5, without placing a lien or encumbrance on the Assets such that the foreclosure of said lien or encumbrance could have a Material Adverse Effect on the performance under the Manufacturing Agreement or any of the Related Agreements by SCI or NEWCO, as the case may be.

5. CONDITIONS TO THE OBLIGATIONS OF SCI.

The obligations of SCI under this Agreement are subject to the satisfaction on or before the Closing Date of the following conditions, any of which may be waived by SCI in writing:

5.1 Inspection of Assets; Completion of Due Diligence.

A. SCI shall have the right, at all times between the Effective Date of this Agreement and 12:00 o'clock midnight on May 24, 1996 (the "Due Diligence Completion Date"), which period is referred to herein as the "Due Diligence Period", within which to make or obtain any investigations, tests, examinations, reports, approvals or arrangements which SCI may desire with regard to the Assets (herein, the "Due Diligence"), including without limitation: the physical condition of the Assets, the presence of Hazardous Materials on or about the Real Property, all documents and other matters described in any title report which SCI may obtain with respect to the Real Property, the zoning and other governmental or quasi-governmental approvals or consents relating to the Assets, and the like. SCI agrees to indemnify, defend and hold Apple and the Assets harmless of and from any claim, liability or expense (including reasonable attorneys' fees and costs) arising out of or in connection with any damage or destruction of any property and/or injury or death to any person in connection with SCI's performance or conduct of the Due Diligence, including without limitation SCI's entry, or the entry of its employees, agents, contractors, consultants and experts, upon the Site for the purpose of performing or conducting the Due Diligence, and SCI further agrees to keep the
Assets free and clear of all liens, claims and encumbrances of any kind arising from or in regard to the Due Diligence. During the Due Diligence Period, upon reasonable prior notice to Apple's designated representative at the Site, Apple shall permit SCI and its representatives access to the Site for the purpose of performing or conducting the Due Diligence, provided that: (i) at all times SCI and its representatives shall, if Apple so requests or requires, be escorted by an Apple representative, and (ii) except as provided in Section 5.1.B, below, SCI shall not extract or sample any portion of the Real Property or the ground water thereunder for the purpose of testing or evaluation, nor drill any hole, dig any well, or perform any borings on or about the Real Property (collectively, "Sampling").

B. During the Due Diligence Period, SCI, at its sole expense, shall have the right, in order to complete its Due Diligence, and in order to determine whether Hazardous Materials are present on the Real Property, to extract and sample portions of the Real Property and the ground water thereunder, and to otherwise perform investigations, historical analyses, and make inquiries relative to the presence or potential presence of Hazardous Materials on the Real Property, and shall have the right to drill holes, dig wells, and perform borings, provided that such entry onto the Real Property shall comply with the terms and provisions of Section 5.1.A, above, and further provided that:

(i) Apple shall have the right to approve, in its reasonable discretion, all engineers, consultants, companies, laboratories, drillers and other persons proposed by SCI to perform any of the Due Diligence, prior to their entry onto the Site, and SCI shall not allow any such persons onto the Site prior to advising Apple and giving Apple an opportunity to approve all such persons, with such approval being deemed given if Apple does not advise SCI, within three (3) business days after being advised of SCI's selection of any third party, of Apple's disapproval of the designated third party;

(ii) SCI shall obtain Apple's prior written consent (which consent shall not be unreasonably withheld or delayed) to the sampling plan, testing methods and other material elements of the sampling or testing proposed by SCI;

(iii) SCI shall, at its sole expense, seal and cap any holes, wells, or other borings made by it, and shall restore the Site to its condition existing prior to any such sampling or testing by SCI;

(iv) SCI shall conduct all sampling or testing, and all closure work with respect to such sampling or testing, in accordance with all Federal, state and local rules, regulations, laws and statutes applicable thereto;

(v) SCI shall bear all costs of any sampling or testing, and any closure work in connection therewith; and

(vi) SCI shall hold and maintain all reports, results and other information concerning any testing or sampling, and the Assets, in the strictest confidence, and shall promptly deliver true, complete and correct copies thereof to Apple, upon SCI's receipt of the same.
C. Prior to the expiration of the Due Diligence Period, Apple shall have completed and delivered to SCI an environmental questionnaire in a form reasonably acceptable to the parties.

D. Prior to the expiration of the Due Diligence Period, SCI shall have received all documents and information reasonably requested by it as part of the Due Diligence, and shall have approved the condition of the Assets, and otherwise be satisfied with the results of its Due Diligence.

5.2 Representations and Warranties True. The representations and warranties of Apple contained in Section 3, as such section may be amended by the parties prior to the expiration of the Due Diligence Period, and in all certificates and other documents delivered and to be delivered by Apple to SCI and NEWCO pursuant to the terms of this Agreement or in connection with the Transaction shall be true, complete and accurate in all material respects as of the date when made and at and as of the Closing Date as though such representations and warranties were made at and as of such date.

5.3 Performance. Apple shall have performed and complied in all material respects with all agreements, obligations and conditions required by this Agreement to be performed or complied with by Apple on or prior to the Closing.

5.4 Certificate of Apple. Apple shall have delivered to SCI a certificate, dated as of the Closing Date, certifying in such detail as SCI may reasonably request, as to the fulfillment and satisfaction of the conditions set forth in Sections 5.2 and 5.3, above.

5.5 Resolutions.

A. Apple shall have delivered to SCI duly adopted resolutions of the Board of Directors of Apple, certified by the Secretary or an Assistant Secretary of Apple as of the Closing Date, authorizing and approving the execution and delivery of this Agreement by Apple, and all other action necessary to enable Apple to perform under this Agreement.

B. Apple shall have delivered to SCI duly adopted resolutions of the Board of Directors of NEWCO, certified by the Secretary or an Assistant Secretary of NEWCO as of the Closing Date, authorizing and approving NEWCO's performance under this Agreement.

5.6 Opinion of Counsel. SCI shall have received an opinion from counsel for Apple, in form and substance reasonably acceptable to SCI, with respect to the matters set forth in Sections 3.1, 3.2 and 3.3 of this Agreement, as well as with respect to the matters set forth in Sections 3.16.A, 3.16.B, 3.16.C, and 3.16.D.

5.7 No Injunction. On the Closing Date there shall be no effective injunction, writ, preliminary restraining order or any order of any nature issued by a court of competent jurisdiction or other governmental authority having jurisdiction, directing that the Transaction not be consummated or imposing any conditions on the consummation of the Transaction which SCI, in its sole discretion, deems unacceptable.
5.8 SCI Board Approval; Consents Obtained. The Board of Directors of SCI shall have approved the execution and delivery of this Agreement, and SCI shall have obtained all other consents and approvals required to be obtained by it in order to consummate the transactions contemplated by this Agreement, and any applicable waiting period under the HSR Act shall have expired or been terminated.

5.9 Title Insurance. NEWCO shall be able to obtain, at standard rates, from a title insurance company satisfactory to SCI, a policy of title insurance, or an unconditional undertaking to issue the same, dated as of the Closing Date, in face amounts and in form reasonably satisfactory to SCI, insuring that fee simple title to the Real Property is vested in NEWCO, subject only to exceptions to title reasonably acceptable to SCI (the "Title Insurance"). In connection therewith, Apple agrees that it shall, promptly following execution of this Agreement, deliver to SCI true and correct copies of all surveys of the Real Property in Apple's possession; and if Apple does not have such a survey for either parcel constituting the Real Property, then Apple shall obtain such a survey for SCI as promptly as possible upon SCI's request.

5.10 Execution of Related Agreements. The Related Agreements shall have been fully negotiated and executed by the parties, and no bar shall exist to the effectiveness of such agreements, including any default by either party thereunder.

6. CONDITIONS TO OBLIGATIONS OF APPLE.

The obligations of Apple under this Agreement are subject to the satisfaction on or before the Closing Date of the following conditions, any of which may be waived by Apple:

6.1 Representations and Warranties True. The representations and warranties of SCI contained in Section 4 and in all certificates and other documents delivered and to be delivered by SCI to Apple pursuant to the terms of this Agreement or in connection with the Transaction shall be true, complete and accurate in all material respects as of the date when made and at and as of the Closing Date as though such representations and warranties were made at and as of such date.

6.2 Performance. SCI shall have performed and complied in all material respects with all agreements, obligations and conditions required by this Agreement to be performed or complied with by it on or prior to the Closing.

6.3 Certificate of SCI. SCI shall have delivered to Apple a certificate, dated as of the Closing Date, certifying in such detail as Apple may reasonably request, as to the fulfillment and satisfaction of the conditions set forth in Sections 6.1 and 6.2, above.
6.4 Resolutions. SCI shall have delivered to Apple duly adopted resolutions of the Board of Directors of SCI, certified by the Secretary or an Assistant Secretary of SCI as of the Closing Date, authorizing and approving the execution and delivery of this Agreement by SCI, and all other action necessary to enable SCI to perform under this Agreement.

6.5 Opinion of Counsel. Apple shall have received an opinion from counsel for SCI, in form and substance reasonably acceptable to Apple, with respect to the matters set forth in Sections 4.1, 4.2 and 4.3 of this Agreement.

6.6 No Injunction. On the Closing Date there shall be no effective injunction, writ, preliminary restraining order or any order of any nature issued by a court of competent jurisdiction or other governmental authority having jurisdiction, directing that the Transaction not be consummated or imposing any conditions on the consummation of the Transaction which Apple, in its sole discretion, deems unacceptable.

6.7 Apple and NEWCO Board Approval; Consents Obtained. The Boards of Directors of Apple and of NEWCO shall have approved the execution and delivery of this Agreement, and Apple and/or NEWCO, as the case may be, shall have obtained all other consents required to be obtained by either of them in order to consummate the Transaction, and any applicable waiting period under the HSR Act shall have expired or been terminated.

6.8 Execution of Related Agreements. The Related Agreements shall have been fully negotiated and executed by both Apple and SCI, and no bar shall exist to the effectiveness of such agreements, including any default by either party thereunder.

7. CONDUCT OF APPLE'S BUSINESS AT THE SITE PENDING THE CLOSING.

Between the signing of this Agreement and the Closing Date, except as otherwise consented to by SCI in writing in advance, Apple agrees as follows.

7.1 Business in Ordinary Course. Apple's business at the Site shall be conducted only in the ordinary course, consistent with Apple's past practice, which shall not include the making of any commitment which extends beyond ninety (90) days from the date hereof, the acquisition of capital assets in excess of Fifty Thousand Dollars ($50,000) in the aggregate, or the removal of any Assets other than in the ordinary course of business. Subject to the dollar limitations set forth above in this Section 7.1, and provided that Apple shall not be obligated or required to expend more than Five Thousand Dollars ($5,000) in repairing or replacing any of the Assets, Apple will use commercially reasonable efforts to maintain and keep the Assets in substantially as good condition and working order as at the Effective Date hereof, except for depreciation through ordinary wear and tear.
7.2 Sale or Pledge of Assets. Subject to Apple's rights under Section 7.1, above, Apple shall not sell or lease any of the Assets or incur and allow to continue to exist at the Closing Date any Liens on any of the Assets, except for Permitted Liens, and those Liens which arise by operation of law, or are incurred in the ordinary course in accordance with Section 7.1, or would not cause the representations contained in Section 3, above, to be untrue were such Liens to exist on the Closing Date.

7.3 Changes in Agreements. Apple shall not amend or modify in any material respect, or consent to the early termination of, any of the Assigned Contracts.

7.4 Preservation of Business Organization. Consistent with the other provisions of this Agreement, Apple shall use commercially reasonable efforts to preserve the Assets and the business of Apple at the Site intact, and to keep available to SCI and/or to NEWCO, as the case may be, the services of Apple's present employees consistent with past practice, and to preserve the goodwill of Apple's suppliers and others with respect to the Assigned Contracts.

7.5 Insurance. Apple shall keep all insurance currently in place with respect to the Assets in full force and effect. All premiums due from Apple with respect to such insurance have been paid, and Apple has not received any notice of cancellation with respect thereto.

7.6 Compliance with Laws. Apple shall comply with all laws applicable to its ownership and operation of the Assets, except for insubstantial violations which would have no Material Adverse Effect.

8. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION.

8.1 Survival of Representations and Warranties. Each of the representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the Closing Date for a period of two (2) years from the Closing Date; provided, however, that the warranties and representations set forth in Section 3.13 shall survive for a period ten (10) years from the Closing Date; and, provided further, that the warranties and representations set forth in Section 3.8, the obligations of the parties with respect to the payment of any state and local sales and transfer taxes with respect to the Personal Property (as set forth in Section 1.5), and the obligations under Section 2.7.B shall survive for a period of five (5) years from the Closing Date, or such later date on which the statute of limitations for any Taxes covered thereby has expired. None of the warranties and representations of Apple set forth in this Agreement shall be deemed to merge into the Deed at the Closing.
8.2 Indemnification.

A. By Apple. Apple shall indemnify, defend, and hold harmless NEWCO, SCI and their respective subsidiaries, affiliates, directors, officers, employees, representatives and agents (collectively, the "Indemnified SCI Persons"), and reimburse the Indemnified SCI Persons for, from, and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties and reasonable attorneys' fees, disbursements and expenses, imposed on or incurred by the Indemnified SCI Persons, directly or indirectly, by reason of

(i) any breach by Apple of any of its representations and warranties contained in this Agreement,

(ii) any failure by Apple to perform any covenant, undertaking or obligation on its part hereunder,

(iii) all Liens referred to in Section 3.5 (including, without limitation, Permitted Liens for Taxes not yet delinquent and Permitted Liens for Taxes which are being contested by Apple in good faith),

(iv) the failure of Apple hereto to comply with the provisions of any applicable bulk sales, fraudulent conveyance or other law for the protection of creditors,

(v) any liability related to the Excluded Assets, and/or

(vi) any other liability of Apple other than the Assumed Liabilities.

B. By SCI. SCI shall indemnify, defend and hold harmless Apple and its subsidiaries, affiliates, directors, officers, employees, representatives and agents (collectively, the "Indemnified Apple Persons"), and reimburse the Indemnified Apple Persons for, from, and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties and reasonable attorneys' fees, disbursements and expenses, imposed on or incurred by the Indemnified Apple Persons, directly or indirectly, by reason of

(i) any breach by SCI of any of its representations and warranties contained in this Agreement,

(ii) any failure by SCI to perform any covenant, undertaking or obligation on its part hereunder, and/or

(iii) the failure of SCI hereto to comply with the provisions of any applicable bulk sales, fraudulent conveyance or other law for the protection of creditors.
C. If any action or claim shall be brought or asserted against an indemnified party under this Section 8.2 or any successor thereto (the "Indemnified Party") in respect of which indemnity may be sought from an indemnifying party under this Section 8.2 (the "Indemnifying Party"), the Indemnified Party shall immediately notify the Indemnifying Party who shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all expenses; except that any delay or failure to so notify the Indemnified Party shall only relieve the Indemnifying Party of its obligations hereunder to the extent, if at all, that the Indemnifying Party is prejudiced by reason of such delay or failure. The Indemnified Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be borne by the Indemnified Party unless (i) the employment thereof shall have been specifically directed and required by the Indemnifying Party or (ii) the Indemnifying Party shall have elected not to assume the defense of such claim and employ counsel. Without the consent of the Indemnified Party, the Indemnifying Party shall have no right to settle or compromise on any non-monetary matter.

8.3 Limitation of Liability. The obligation of either party (the "Indemnifying Party") hereunder to indemnify the other party (the "Indemnified Party") against any damages or claims with respect to the matters set forth in this Agreement shall be subject to all of the following limitations:

A. No indemnification shall be required to be made by the Indemnifying Party under this Section 8 or otherwise under this Agreement for any damages or claims in an amount less than One Thousand Dollars ($1,000) for each such claim, unless and until the aggregate of all such claims exceeds Twenty-Five Thousand Dollars ($25,000).

B. The Indemnifying Party shall be obligated to indemnify the Indemnified Party only for those damages and claims as to which the Indemnified Party has given the Indemnifying Party written notice thereof on or prior to that date which is five (5) years after the Closing Date (whether or not such damages or claims have then actually been sustained or incurred); provided, however, that with respect to any claims for indemnification under Section 3.13, the period shall be ten (10) years after the Closing Date; and, provided, further, that with respect to any claims for indemnification under Section 1.5, Section 2.7.B and Section 3.8, the period shall be five (5) years or such later date on which the statute of limitations for any Taxes covered thereby has expired. Any written notice delivered by the Indemnified Party to the Indemnifying Party pursuant to this Section 8.3.B shall set forth the basis of the claim for damages (including, without limitation, reference to the specific warranty or representation alleged to have been breached) and, if then determinable by the Indemnified Party, a reasonable estimate of the amount thereof (or, if the Indemnified Party's good faith opinion, no such reasonable estimate can then be made, the maximum potential damages that in the Indemnified Party's good faith opinion might be sustained in connection with such claim).

C. All damages shall be computed net of any actual income tax benefit resulting therefrom to the Indemnified Party or any insurance coverage with respect thereto which reduces or may reduce the damages that would otherwise be sustained.
D. In no event shall the Indemnifying Party's aggregate obligation to indemnify the Indemnified Party for damages exceed an amount equal to twenty percent (20%) of that portion of the Purchase Price allocated to the Real Property and the Personal Property (that is, net of the portion of the Purchase Price allocated to the Initial Inventory); provided, however, that such limitation shall not apply to any claims for indemnification with regard to any party's obligations with respect to Taxes, as in Section 1.5, Section 2.7.B and Section 3.8 of this Agreement.

E. Anything in this Agreement to the contrary notwithstanding, no director, officer or employee of any party shall have any personal liability to any other party as a result of such party's breach of any warranty or representation hereunder.

9. CERTAIN OTHER COVENANTS AND AGREEMENTS.

9.1 Further Assurances.

A. Upon the request of any of NEWCO, SCI or Apple, any other party will execute and deliver to the requesting party, or such party's nominee, all such instruments and documents of further assurance or otherwise, and will do any and all such acts and things, as may reasonably be required to carry out the obligations of such party hereunder and to more effectively consummate the Transaction, including obtaining all consents and approvals from foreign governmental authorities and from third parties under leases and other contracts, agreements or obligations with respect to the Assets.

B. After the Closing, NEWCO, SCI and Apple shall from time to time, at the request of any other party, and without further cost or expense to the requesting party, execute and deliver such other instruments of conveyance and transfer and take such other actions as the requesting party may reasonably require, in order to more effectively consummate the Transaction, including without limitation any reasonably necessary or appropriate to vest in NEWCO good and marketable title to the Assets to be transferred hereunder, and to effect the assumption by NEWCO of the Assigned Contracts, and any reasonably necessary or appropriate to transfer or assign to NEWCO any of the Assigned Permits, or to vest in SCI title to the Shares.

9.2 Access and Inspection.

A. Prior to Closing. At all times after the execution of this Agreement and up to and including the Closing Date, Apple shall give SCI, and its authorized representatives, reasonable access, during normal business hours, to the Assets, and Apple's employees, books, contracts, commitments and records as they relate to the Assets, for the purpose of enabling SCI to make such investigation of the Assets as SCI may desire, including, without limitation, having surveys and tests made of the Real Property, all as more particularly set forth in Section 5.1 above.
B. After the Closing. For a period of five (5) years following the Closing, and upon reasonable request from Apple, SCI shall provide, and/or shall cause NEWCO to provide, to the officers, agents, and employees of Apple, reasonable access during normal business hours to the books and records of Apple transferred to NEWCO hereunder (if any); provided, however, that with respect to any such books and records applicable to the matters covered by Section 3.13, SCI agrees that it shall retain or shall cause NEWCO to retain all such books and records for a period of ten (10) years following the Closing Date. SCI agrees not to destroy nor to permit NEWCO to destroy any such books or records without prior written notice to Apple and a reasonable opportunity for Apple, at Apple's expense, to take custody thereof. Any access and inspection rights of Apple pursuant to this Section 9.2.B shall in no way be in derogation of or supersede or be deemed to be in conflict with any rights Apple may have under the Manufacturing Agreement or any of the other Related Agreements with respect to access and inspection.

9.3 Notification of Certain Matters. Each party shall provide the other with prompt notice of (i) any communication alleging that the consent of a Person is or may be required in connection with the Transaction, (ii) any communication from any governmental regulatory agency or authority in connection with the Transaction, and (iii) any Proceeding commenced or threatened which would have been required to be disclosed by either party in connection with such party's warranties and representations as set forth in this Agreement.

9.4 Amendment of Agreement; Modification of Exhibits.

A. To the extent that any of the exhibits attached hereto are not completely filled in at the time this Agreement is executed by the parties, such exhibits shall be completed as promptly as possible thereafter, and in no event any later than the Closing.

B. If either party discovers, at any time prior to the Closing Date, any information which would make the warranties and representations of such party, as set forth in this Agreement, untrue or incomplete to a material extent, or make the exhibits as attached hereto incorrect or misleading in any material manner, or which is needed to accurately reflect the rights and obligations of either party under this Agreement, then such party shall promptly inform the other party, and the relevant portion of this Agreement and/or the relevant exhibit(s) shall be amended or modified as appropriate to incorporate such new or additional information.

9.5 Confidentiality. All information disclosed by one party to the other in connection with the Transaction, including all information generated by SCI during the performance of its Due Diligence, shall be held by the receiving party in strict confidence, and neither party shall reveal to any third party any confidential information of the other party received by it in connection with the Transaction, including without limitation all Apple Confidential Information, as that term is defined in the Confidentiality Agreement. In addition, if the Transaction is not consummated, then each party shall return to the other all documents and other written information furnished by either party to the other in connection with the Transaction.
9.6 Rights of NEWCO. From and after the Closing, every right granted to SCI under this Agreement may be exercised by NEWCO, and every obligation of SCI under this Agreement may be performed or discharged by NEWCO (provided, however, that SCI shall in no event be relieved of any obligation or liability it may have under this Agreement except by the full performance thereof by NEWCO, and SCI, by its execution of this Agreement, unconditionally and irrevocably guarantees such performance by NEWCO), and every covenant, obligation and liability undertaken by Apple under this Agreement and every representation and warranty made by Apple under this Agreement to or for the benefit of SCI shall be deemed to also have been made to and for the benefit of NEWCO.

10. BROKERS; FINDERS.

Each of Apple and SCI represents and warrants to the other that it dealt with no broker, finder or similar person, firm, corporation or other entity entitled to a fee or commission in connection with the Transaction. Apple and SCI agree, each with the other, that each will indemnify and hold harmless the other, in accordance with the provisions of Section 8.2, against any claim (including reasonable attorneys' fees) by any Person claiming through the indemnifying party to be entitled to a fee or commission in connection with the Transaction.

11. TERMINATION OF AGREEMENT.

11.1 Termination of Agreement. This Agreement may be terminated, and the Transaction may be terminated and/or abandoned, at any time but not later than the Closing Date, as follows:

A. By mutual written agreement of SCI and Apple; or

B. By SCI if any of the conditions provided for in Section 5 of this Agreement shall not have been met or waived in writing by SCI prior to the required date therefor; or

C. By Apple if any of the conditions provided for in Section 6 of this Agreement shall not have been met or waived in writing by Apple prior to the required date therefor; or

D. By either party if a court of competent jurisdiction or any governmental, regulatory or administrative agency or commission shall have issued any order, decree or ruling, or taken any other action, in any case having the effect of permanently restraining, enjoining or otherwise prohibiting the Transaction, which order, decree or ruling is final and not appealable; or

E. By either party if a Material Adverse Event occurs with respect to such party or the other party.

F. The right of termination set forth in Section 11.1.B or Section 11.1.C shall not be available to a party having breached this Agreement if such breach shall have resulted in the non-occurrence of the Closing.
11.2 Procedure Upon Termination. In the event of termination and abandonment by SCI or by Apple, or by both, pursuant to Section 11.1 hereof, written notice thereof shall forthwith be given to the other party and the Transaction shall be terminated and/or abandoned, without further action by SCI or Apple.

12. DEFINITIONS

12.1 "Apple" shall mean Apple Computer, Inc., a California corporation, whose address is 1 Infinite Loop, Cupertino, California; and, if the context so requires, all Apple Affiliates.

12.2 "Apple Affiliates" shall mean all entities controlled by Apple, including all wholly-owned subsidiaries and all entities in which Apple owns, directly or indirectly, a controlling interest.

12.3 "Apple Product(s)" shall mean a product(s) sold by Apple under the Apple Macintosh brand, the Apple Newton brand, or any successor or addition thereto, or any replacement thereof.

12.4 "Closing" shall have the meaning set forth in Section 1.3.

12.5 "Confidentiality Agreement" shall mean that certain "Apple Computer, Inc. Confidentiality Agreement (Mutual)" executed by Apple and SCI on or about February 15, 1996, with respect to the Transaction.

12.6 "Manufacturing Agreement" shall mean that certain written agreement to be entered into by and between the parties prior to the Closing Date, to be effective as of the Closing Date, with respect to the respective rights and obligations of the parties regarding the manufacture of certain products for Apple at the Fountain Facility, substantially on the terms and conditions set forth in the term sheet denominated, "Fountain Manufacturing Agreement -- Terms and Conditions (Revision 5 - 4/3/96)", as such terms and conditions may be mutually amended or modified by the parties.

12.7 "Material Adverse Effect" or "Material Adverse Event" shall mean, as the context may require, any change, event or effect that is materially adverse to the business, assets (including intangible assets), financial condition or results of operations of the entity to whom the phrase applies with respect to its business as it affects or impacts the Transaction, including without limitation the operation of the Fountain Facility as contemplated by this Agreement, either by Apple or NEWCO prior to the Closing or by SCI or NEWCO following the Closing.

12.8 "Person" shall mean any natural person, trust, corporation, limited liability company, partnership, joint venture or other entity having the ability to conduct business under the laws applicable to the Transaction.
12.9 "Related Agreements" shall mean all agreements entered into by the parties with respect to the Transaction, excepting this Agreement, including without limitation the Manufacturing Agreement, and all ancillary agreements which may be identified in either this Agreement or in the Manufacturing Agreement, including all license agreements with respect to any intellectual property owned or licensed by Apple and used in the operation of the Assets. All such Related Agreements shall be listed in Exhibit J attached hereto.

12.10 "SCI" shall mean SCI Systems, Inc., a Delaware corporation, whose address is: c/o SCI Systems (Alabama), Inc., 2101 West Clinton Avenue, P.O. Box 1000, Huntsville, Alabama.

12.11 "Transaction" shall mean the entire series of transactions between the parties, as described in this Agreement, and the Manufacturing Agreement, together with all Related Agreements.

13. MISCELLANEOUS.

13.1 Notices. All notices, approvals or other communications provided for herein to be sent or given to either party hereunder shall be deemed validly and properly given or made if in writing and delivered by hand or by certified mail, return receipt requested, or by overnight commercial delivery service, or sent via telefacsimile (receipt confirmed) and addressed to the parties at the following addresses:

If to Apple:

Apple Computer, Inc.
1 Infinite Loop
Cupertino, California 95014

Attention: Kwok Lau, MS 36-PL
Vice President, Operations
Telephone: (408) 974-0295
Fax: (408) 974-3222

With a copy to:

Apple Computer, Inc.
1 Infinite Loop
Cupertino, California 95014
Attention: General Counsel/esm
If to SCI:

SCI Systems, Inc.
c/o SCI Systems (Alabama), Inc.
2101 West Clinton Avenue
P.O. Box 1000
Huntsville, Alabama 35807

Attention: A.E. Sapp, Jr., President & COO
Telephone: (205) 882-4640
Fax: (205) 882-4466

With a copy to:

SCI Systems, Inc.
c/o SCI Systems (Alabama), Inc.
2101 West Clinton Avenue
P.O. Box 1000
Huntsville, Alabama 35807
Attention: Michael M. Sullivan, Secretary and Corporate Counsel

Either of the parties hereto may give notice to the other at any time by the methods specified above of a change in the address at which, or the persons to whom, notices addressed to it are to be delivered in the future, and such notice shall be deemed to amend this Section 13.1 until superseded by a later notice of the same type. Any notice given by personal delivery or by telefacsimile shall be deemed given on actual receipt, and any notice given by certified mail or overnight commercial courier shall be conclusively deemed to have been given when accepted or rejected as shown on the receipt therefor.

13.2 Dispute Resolution. In the event of any controversy or dispute between Apple and SCI arising out of or in connection with this Agreement, the parties shall attempt, promptly and in good faith, to resolve any such dispute. If the parties are unable to resolve any such dispute within a reasonable time (not to exceed ninety (90) days), then either party may submit such controversy or dispute to mediation under the then applicable rules of the American Arbitration Association (the "AAA") or any successor organization. If the dispute cannot be resolved through mediation, then such dispute shall be resolved by arbitration conducted in the Northern District of California, in accordance with the then applicable commercial arbitration rules of the AAA; provided, however, that the provisions of California Code of Civil Procedure 1283.05 (as enacted on the Effective Date) shall be applicable to such arbitration. Any judgment rendered by the arbitrators pursuant to this Section 13.2 shall be final, and judgment may be entered upon it in accordance with applicable law, in any court having jurisdiction.
13.3 Time of the Essence. Time is of the essence with respect to each and every term or provision of this Agreement where time is an element of performance.

13.4 Force Majeure. Subject to the express provisions of Section 11 (regarding termination of this Agreement), neither party will be deemed in default of this Agreement, to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any event beyond the reasonable control of such party, including any act of God, fire, earthquake, natural disaster, accident, act of government, or any other act or circumstance that is beyond the reasonable control of either party, provided that such party gives the other party written notice thereof promptly and, in any event, within five (5) business days of discovery thereof and uses its best efforts to continue to so perform or cure. In the event of such a force majeure event, the time for performance or cure will be extended for a period equal to the duration of the force majeure event, but in no event more than thirty (30) days.

13.5 Waiver of Compliance. Any failure of Apple, on the one hand, or SCI, on the other, to comply with any obligation, covenant, agreement or condition herein may be expressly waived in writing by an authorized officer of SCI or Apple, respectively, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

13.6 Expenses. Whether or not the Transaction is consummated, Apple agrees that all fees and expenses incurred by it in connection with this Agreement shall be borne by it, and SCI agrees that all fees and expenses incurred by it in connection with this Agreement shall be borne by it, including, without limitation as to Apple or SCI, all fees of counsel, attorneys and accountants.

13.7 Headings; Number and Gender; Construction. The headings of the Sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement. Where the context so requires, the use of the singular form herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include any and all genders. This Agreement shall be construed, interpreted and enforced in accordance with its plain terms, regardless of the party which drafted any of such terms and conditions, and any rule of construction, interpretation or application to the contrary shall not apply hereeto.

13.8 Definition of Knowledge. The words "known", "to the knowledge of", "to the best knowledge of", "aware" or words of similar import used in this Agreement with reference to either party or to any individual shall be conclusively presumed to mean that the person or entity has made reasonable and diligent efforts, under the circumstances, to become knowledgeable; in the case of any Person other than a natural person, the "knowledge" of such Person shall be deemed to be the knowledge of its executive officers, and/or those individuals within each entity with functional responsibility for the matter addressed.
13.9 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that none of such parties shall assign this Agreement or its rights hereunder without the written consent of the other, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, both parties expressly agree that their respective rights and obligations under this Agreement may be assigned, at any time prior to the Closing, to a wholly-owned subsidiary of such party; provided, however, that the party so assigning shall give prompt written notice of such assignment to the other party, and provided further that no such assignment shall relieve the assigning party of any obligations hereunder.

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

13.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof. Each of the parties hereto irrevocably consents to the exclusive jurisdiction of any state or federal court within the State of California, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of California for such persons, and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction and such process. Notwithstanding the foregoing, the parties agree that Colorado law shall govern with respect to any dispute between the parties arising out of the transfer of the Real Property and any warranties under the Deed.

13.12 Amendment and Modification. Any amendment, modification or supplement to this Agreement shall be in writing signed by the party or parties to be charged.

13.13 Other Remedies; Specific Performance. Except as otherwise expressly provided in this Agreement, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction to prevent any breach of this Agreement and to enforce specifically the terms and provisions hereof in any court having jurisdiction, in addition to any other remedy to which they are entitled at law or in equity.

13.14 Entire Agreement; Incorporation of Exhibits; Severability. This Agreement and the exhibits attached hereto (all of which are incorporated herein by this reference) and the other documents delivered pursuant hereto constitute the entire agreement of the parties in respect of the subject matter hereof and supersede all prior agreements, communications, representations, or warranties, whether oral or written, among the parties.
in respect to such subject matter. If any term or provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable, then such term or provision shall be deemed stricken from this Agreement, and the remaining terms and conditions hereof shall remain in full force and effect to the maximum extent possible, or such void or unenforceable term shall be replaced with a valid and enforceable provision that will achieve, to the extent possible, the purpose of such void or unenforceable provision.

13.15 Publicity. All press releases and other public announcements respecting the subject matter hereof shall be made only with the mutual agreement of the parties hereto; provided, however, that the parties understand that SCI and Apple are publicly held companies with shares traded on the New York and NASDAQ Exchanges and that the parties may make such announcements as may be necessary to comply with the rules and regulations of the said Exchanges and any and all applicable Federal and state securities laws. After having given notice to the other party hereto, SCI or Apple may make any such release or announcement which in the opinion of their respective counsel is necessary or appropriate to comply with applicable law. Each party hereto agrees that it will not unreasonably withhold or delay any such approval.

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

IN WITNESS WHEREOF, Apple and SCI have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

APPLE COMPUTER, INC., a California corporation

By /s/ G. Fred Forsyth
Its Senior V.P. Worldwide Operations

SCI SYSTEMS, INC., a Delaware corporation

By /s/ O.B. King
Its Chief Executive Officer
Parcel One

Lot 1, Block 1, COTTONWOOD PARK, COUNTY OF EL PASO, STATE OF COLORADO, EXCEPT THAT PARCEL OF LAND CONVEYED TO THE STATE DEPARTMENT OF HIGHWAYS BY DEED RECORDED NOVEMBER 18, 1987, IN BOOK 5446 AT PAGE 626.

Parcel Two

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 31 TOWNSHIP 15 SOUTH RANGE 65 WEST OF THE 6TH P.M., IN THE CITY OF FOUNTAIN, EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF “COTTONWOOD PARK” AS RECORDED IN PLAT BOOK Z3 AT PAGE 22 OF THE RECORDS OF SAID EL PASO COUNTY, SAID NORTHWEST CORNER BEING ALSO THE NORTHWEST CORNER OF SECTION 6 TOWNSHIP 16 SOUTH RANGE 65 WEST OF THE 6TH P.M. AND A POINT ON THE SOUTH LINE OF AFORESAID SECTION 31; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE OF SECTION 31 A DISTANCE OF 179.30 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 25; THENCE NORTHWESTERLY ALONG SAID EASTERLY LINE AND ON A CURVE TO THE RIGHT, WITH A RADIUS OF 5580.00 FEET, A CENTRAL ANGLE OF 02 DEGREES 05 MINUTES 40 SECONDS, THE LONG CHORD OF WHICH BEARS NORTH 14 DEGREES 52 MINUTES 01 SECONDS WEST 203.96 FEET, AN ARC DISTANCE OF 203.97 FEET; THENCE NORTHERLY ALONG THE EASTERLY LINE OF THE ROAD RIGHT-OF-WAY DEEDED TO THE CITY OF FOUNTAIN BY A DEED RECORDED IN BOOK 5546 AT PAGE 202 OF EL PASO COUNTY RECORDS, AND ON A CURVE TO THE RIGHT, WITH A RADIUS OF 703.82 FEET, A CENTRAL ANGLE OF 10 DEGREES 34 MINUTES 18 SECONDS, A LONG CHORD BEARING NORTH 02 DEGREES 42 MINUTES 44 SECONDS WEST 129.68 FEET, AN ARC DISTANCE OF 129.86 FEET TO A POINT OF REVERSE CURVE; THENCE CONTINUING ALONG EASTERLY LINE OF SAID RIGHT-OF-WAY AND ON A CURVE TO THE LEFT, WITH A RADIUS OF 1290.46 FEET, A CENTRAL ANGLE OF 12 DEGREES 00 MINUTES 39 SECONDS, A LONG CHORD BEARING NORTH 03 DEGREES 25 MINUTES 55 SECONDS WEST 270.02 FEET, AN ARC DISTANCE OF 270.52 FEET TO A POINT ON THE WISTERLY LINE OF AFORESAID SOUTHWEST QUARTER OF SECTION 31; THENCE NORTH 00 DEGREES 42 MINUTES 38 SECONDS WEST 724.79 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE SOUTH 89 DEGREES 55 MINUTES 05 SECONDS EAST ALONG THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER A DISTANCE OF 983.84 FEET TO THE NORTHWEST CORNER
OF THAT TRACT CONVEYED TO EL PASO COUNTY BY DEED RECORDED IN BOOK 5591 AT PAGE 1175 OF SAID EL PASO COUNTY RECORDS; THENCE SOUTHERLY AND EASTERLY ALONG THE WESTERLY LINE OF SAID TRACT THE FOLLOWING 6 COURSES:

(1) SOUTH 32 DEGREES 02 MINUTES 03 SECONDS EAST 43.52 FEET;
(2) SOUTH 62 DEGREES 59 MINUTES 37 SECONDS EAST 853.07 FEET;
(3) SOUTH 13 DEGREES 34 MINUTES 30 SECONDS EAST 309.39 FEET;
(4) SOUTH 14 DEGREES 07 MINUTES 12 SECONDS WEST 271.44 FEET;
(5) SOUTH 21 DEGREES 36 MINUTES 21 SECONDS WEST 225.45 FEET;
(6) SOUTH 00 DEGREES 00 MINUTES 21 SECONDS EAST 119.84 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 31, SAID POINT BEING ALSO ON THE NORTH LINE OF AFORESAID "COTTONWOOD PARK" AND THE NORTH LINE OF AFORESAID SECTION 6;

THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID LINE 1429.21 FEET TO THE POINT OF BEGINNING, EXCEPT THAT TRACT CONVEYED TO THE UNITED STATES GOVERNMENT BY A DEED RECORDED OCTOBER 29, 1976 IN BOOK 2870 AT PAGE 551 OF SAID EL PASO COUNTY RECORDS. TOGETHER WITH A BENEFICIAL EASEMENT FOR UTILITY AND DRAINAGE PURPOSES AS SET FORTH IN INSTRUMENT RECORDED JANUARY 3, 1989 IN BOOK 5592 AT PAGE 613.
Exhibit B

List of Personal Property (Including Spare Parts)

[To be inserted]

127
Exhibit C

List of Initial Inventory

[To be inserted]

128
Exhibit D

List of Assigned Permits

[To be inserted]

129
Exhibit E

List of Assigned Contracts

Vendor: Visiting Nurses Association, 1520 North Union Blvd., Colorado Springs, Colorado
Re: Occupational Health Nursing Services

Vendor: PRAXAIR, INC., 39 Old Ridgebury Road, Danbury, Connecticut 06810- 5113
Re: nitrogen gas (in cylinders) supplier

Vendor: RUST Environment & Infrastructure, Inc., 6143 South Willow Drive, Suite 200, Englewood, Colorado 80111-5123 Re: EH&S consulting services

Vendor: Marriott Corporation, 645 Carved Terrace, Colorado Springs, Colorado 80919
Re: Food services (cafeteria), vending machines

Vendor: Servicemaster All Cleaning, Inc., 2123 E. St. Vrain, Colorado Springs, Colorado 80909
Re: Janitorial supplies and janitorial services

Vendor: APS, 2121 Academy Circle, Suite 204, Colorado Springs, Colorado 80909
Re: Security services at site

Vendor: Perfection, Inc., 7646 Stampede Drive, Colorado Springs, Colorado 80920
Re: Landscape maintenance

130
## Exhibit F

### Allocation of Purchase Price

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131
Exhibit G

Form of Bill of Sale

[To be inserted]

132
Exhibit H

Form of Assignment and Assumption Agreement

[To be inserted]

133
Exhibit I

Schedule of Environmental/OSHA Matters

[To be inserted]

134
Exhibit J

List of Related Agreements

Manufacturing Agreement

Employee Agreement

Intellectual Property Agreement

Information Services Agreement

Transition Services Agreement

Letter of Credit Agreement

135
This is a Restructuring Agreement (hereinafter "Agreement") made effective November 16th, 1995, between Apple Computer, Inc. (hereinafter "Apple"), a California corporation having its principal place of business in Cupertino, California, and International Business Machines Corporation ("IBM") a New York corporation having its principal place of business in Armonk, New York.

1. GENERAL PLAN

1.1 Apple and IBM are the two principal shareholders in, and have in the past been the sole providers of funds to, Kaleida Labs, Inc. ("Kaleida"), a Delaware corporation having its principal place of business in Mountain View, California. The parties have decided to make fundamental changes in Kaleida (hereinafter called the "Restructuring"). Both parties intend to continue to use Kaleida's ScriptX technology, but to do so in a more efficient and cost effective manner. The parties have agreed that they will cause Kaleida to cease to exist as a separate operating entity, although Kaleida will continue as a legal entity. At some later date, the parties may decide to formally dissolve Kaleida, Kaleida employees, customers and the public will begin to be informed of the planned changes on approximately 11/16/95. Effective approximately 1/16/96, Kaleida will have no employees and will cease its operations.

1.2 Apple plans to hire a "Core Team" of approximately 10 to 15 Kaleida employees to continue maintenance and enhancements to ScriptX, which will be subject to a separate ScriptX Development and License Agreement ("SDLA") between Apple and IBM. The parties' obligations and rights relating to this continuing maintenance and enhancements to ScriptX will be as defined in that SDLA.

2. TRANSITION

2.1 It is anticipated that the phasing out of Kaleida's operations will extend from the current date until some uncertain period of time after Kaleida ceases its operations (hereinafter called the "Transition Period"). The parties will cause their representatives to oversee the termination of Kaleida employees, deal with customer claims and support issues, and in general manage all other aspects of the Restructuring. The parties will jointly manage the Restructuring during the Transition Period with a Transition Team comprised of people with financial, technical, legal, human resources and other necessary skills from each of the parties. Mr. David Nagel of Apple and Mr. Steven Mills of IBM, or their designees, will resolve any disagreements that the Transition Team cannot resolve. This Transition Team will develop and implement action plans to resolve all issues, will quickly respond to new issues, and will track all issues until resolved.
2.2 All costs of the Restructuring through the Transition Period are subject to approval by both parties, including such costs as separation payments to employees, customer and other third party claims, settlement of Toshiba's share for liquidation/dissolution value, administrative expenses, other Kaleida debts, legal and other fees, etc. Payment of such costs shall be initially made from Kaleida funds. If such funds are insufficient, the parties intend to provide such additional funds as are approved by the parties, split equally between Apple and IBM. The parties do not intend to make the 4th quarter 1995 payment to Kaleida according to the existing Funding Agreement. The parties will develop a process to compensate each other for a pro rata share of any agreed to restructuring costs that are expended directly by one party.

2.3 In addition, the parties may agree to retain the services of certain former Kaleida employees on a part time basis after 1/16/96 to assist in performing administrative and other work during the Transition Period. The parties will share equally the costs of retaining the services of such persons.

3. TOSHIBA

The parties will mutually determine a fair resolution of the value of Toshiba's share of Kaleida. An offer will be made to Toshiba in return for Toshiba's relinquishing its shares in Kaleida and releasing any claims against Kaleida, Apple and IBM.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 The parties agree that the best way to preserve the intellectual property ("IP") assets of Kaleida is to keep Kaleida as a non-operating corporation, which will own the IP assets only and have no employees. Following Toshiba's relinquishment of its shares, Kaleida will be owned 50% by each party. The parties will cause Kaleida to be jointly managed by representatives of the parties and the parties shall advance to Kaleida in equal amounts, all administrative and operating costs required in excess of Kaleida's resources. Necessary corporate documents will be modified to simplify the administration, requiring a single board member from each company and other changes. If and when the parties later formally dissolve Kaleida, they intend to agree at that time on ownership of IP assets and any additional licenses that may be needed.

4.2 Under the Multimedia License Agreement entered into among Kaleida, Apple, and IBM on May 5, 1992 ("MLA") each party has equivalent broad rights to Kaleida's IP assets on a worldwide, perpetual basis, including copyrighted ScriptX technology, COS, Malibu, ITV and any other Kaleida technologies. In complete satisfaction of the royalty obligations of each party, the parties will cause Kaleida to accept the cancellation of its pre-paid royalty obligations to each party and the licenses under the MLA will become pre-paid and royalty free. Promptly after completion of the process described in Section 4.3, the parties will cause Kaleida to deliver to each party a copy of all existing Company Materials and Development Environments, which will include the most current electronic and hardcopy versions of the code (source and object), all documentation, all training materials, etc., (hereinafter called "Transfer Event"). Each parties use
of the Company Materials will be subject to the license grant in Section 6.1 of the MLA, except that SubSections 6.1.1.2, 6.1.1.3, and 6.1.1.6 of that Section are deleted. Further, the parties agree that all Type I Code becomes Type II Code as of the date of this Agreement and that the Development Environments will be licensed according to the terms of Section 6.1, not Section 6.2. The parties also agree that the procedures in Section 4.2 of the MLA need not be followed. The parties will resolve later any rights to Kaleida trademarks they may require.

4.3 Notwithstanding the foregoing, the licenses from the Parents to Kaleida and from Kaleida to the Parents in the MLA will not include any Parent Materials that have not been incorporated into Company Materials or used as part of a Development Environment to create or maintain Company Materials (hereinafter called "Unused Parent Materials"). Prior to the Transfer Event, the parties will use best efforts to cause all Materials at Kaleida to be inventoried and to determine which of the Materials are Unused Parent Materials. Any copies of Unused Parent Materials found on Kaleida's premises will, at the contributing Parent's election, either be returned to the contributing Parent or destroyed. Once the Transfer Event has occurred, however, each party will have the complete rights as defined in Section 4.2 to use the Company Materials in accordance with the license in the MLA, even if such Company Materials inadvertently contain any Unused Parent Materials. The parties will enter into and will cause Kaleida to enter into an amendment to the MLA to effectuate the provisions of this Agreement.

4.4 This Agreement does not modify the Malibu Agreement between Apple and IBM, dated June 27, 1995.

5. KALEIDA PERSONNEL

The parties will cause Kaleida to provide its employees with 60 days written notice of termination and separation benefits approved by the parties. IBM and Apple may hire certain employees, in addition to the "Core Team" required for the SDLA. While the other party's permission or review will not be required for any hiring decisions, the requirements for the Core Team will first be identified. Neither party will interfere with the attempt by Apple to hire the necessary Kaleida employees into the Core Team.

6. OTHER KALEIDA ASSETS

The parties will cause Kaleida to inventory all its non-IP assets. The parties will agree on whether assets will be liquidated or distributed following the settlement with Toshiba. If assets are liquidated, the proceeds are to be distributed equally. The parties will agree on an equal distribution of all other non-liquidated assets, with appropriate requirements of the Core Team considered first.

7. OTHER

The parties will cause any necessary Kaleida corporate documents to be created or amended in order to effectuate any of the actions described above, including Board resolutions, amendments
to By-Laws, assignments, licenses, etc. This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns. This Agreement shall be governed by New York law. This Agreement shall be solely for the benefit of the parties hereto and is not intended nor shall it be construed as creating any rights in any third party (including without limitation Kaleida or its other shareholder or creditors). This Agreement may be amended or terminated only by written agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their Authorized Representatives.

INTERNATIONAL BUSINESS MACHINES CORPORATION

ACCEPTED AND AGREED TO:

By: /s/ Steven A. Mills

APPLE COMPUTER, INC.

ACCEPTED AND AGREED TO:

By: /s/ David C. Nagel

Name Steven A. Mills Name David C. Nagel

Title: General Manager, SWS Title: Senior V.P., Apple Computer, Inc.

Date November 16, 1995 Date November 17, 1995
## COMPUTATION OF EARNINGS (LOSS) PER COMMON SHARE

(In thousands, except per share amounts)

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<td>$.59</td>
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**Fully Diluted Earnings Per Share**

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<td>Net income (loss) applicable to common stock</td>
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<td>Shares</td>
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<td>$.59</td>
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EXHIBIT 27  
APPLE COMPUTER, INC.  
FINANCIAL DATA SCHEDULE  
(In millions, except per share amounts)  

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE CONSOLIDATED BALANCE SHEETS AND CONDENSED CONSOLIDATED STATEMENTS OF INCOME OF APPLE COMPUTER, INC. AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS  

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