

APPLE INC

FORM 10-Q (Quarterly Report)

Filed 08/12/96 for the Period Ending 06/28/96

Address	ONE INFINITE LOOP CUPERTINO, CA 95014
Telephone	(408) 996-1010
CIK	0000320193
Symbol	AAPL
SIC Code	3571 - Electronic Computers
Industry	Computer Hardware
Sector	Technology
Fiscal Year	09/27

APPLE COMPUTER INC

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

Form 10-Q

(Mark One)

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

For the quarterly period ended June 28, 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
[State or other jurisdiction
of incorporation or organization]

94-2404110
[I.R.S. Employer Identification No.]

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

95014
[Zip Code]

Registrant'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 No

124,478,256 shares of Common Stock Issued and Outstanding as of August 9, 1996

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

APPLE COMPUTER, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)
(Dollars in millions, except per share amounts)

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	June 28, 1996	June 30, 1995	June 28, 1996	June 30, 1995
Net sales	\$2,179	\$2,575	\$7,512	\$8,059
Costs and expenses:				
Cost of sales	1,776	1,847	7,055	5,822
Research and development	155	168	458	443
Selling, general and administrative	364	404	1,209	1,205
Restructuring costs	--	(6)	207	(23)
	2,295	2,413	(8,929)	7,447
Operating income (loss)	(116)	162	(1,417)	612
Interest and other income (expense), net	65	2	82	(33)
Income (loss) before provision (benefit) for income taxes	(51)	164	(1,335)	579
Provision (benefit) for income taxes	(19)	61	(494)	215
Net income (loss)	\$ (32)	\$ 103	\$ (841)	\$ 364
Earnings (loss) per common and common equivalent share	\$(0.26)	\$ 0.84	\$(6.81)	\$ 2.97
Cash dividends paid per common share	\$ --	\$.12	\$.12	\$ 0.36
Common and common equivalent shares used in the calculations of earnings (loss) per share (in thousands)	123,735	123,203	123,463	122,482

See accompanying notes.

APPLE COMPUTER, INC.

CONSOLIDATED BALANCE SHEETS

ASSETS
(In millions)

	June 28, 1996 (Unaudited)	September 29, 1995
Current assets:		
Cash and cash equivalents	\$1,359	\$ 756
Short-term investments	--	196
Accounts receivable, net of allowance for doubtful accounts of \$96 (\$87 at September 29, 1995)	1,292	1,931
Inventories:		
Purchased parts	387	841
Work in process	59	291
Finished goods	615	643
	1,061	1,775
Deferred tax assets	401	251
Other current assets	341	315
Total current assets	4,454	5,224
Property, plant, and equipment:		
Land and buildings	506	504
Machinery and equipment	573	638
Office furniture and equipment	138	145
Leasehold improvements	189	205
	1,406	1,492
Accumulated depreciation and amortization	(791)	(781)
Net property, plant, and equipment	615	711
Other assets	276	296
	\$5,345	\$6,231

See accompanying notes.

APPLE COMPUTER, INC.

CONSOLIDATED BALANCE SHEETS (Continued)

LIABILITIES AND SHAREHOLDERS' EQUITY

(Dollars in millions)

	June 28, 1996 (Unaudited)	September 29, 1995
Current liabilities:		
Short-term borrowings	\$ 187	\$ 461
Accounts payable	762	1,165
Accrued compensation and employee benefits	125	131
Accrued marketing and distribution	208	206
Accrued restructuring costs	159	--
Other current liabilities	485	362
Total current liabilities	1,926	2,325
Long-term debt	949	303
Deferred tax liabilities	450	702
Shareholders' equity:		
Common stock, no par value; 320,000,000 shares authorized; 123,785,350 shares issued and outstanding at June 28, 1996 (122,921,601 shares at September 29, 1995)	423	398
Retained earnings	1,609	2,464
Accumulated translation adjustment and other	(12)	39
Total shareholders' equity	2,020	2,901
	\$5,345	\$6,231

See accompanying notes.

APPLE COMPUTER, INC.

APPLE COMPUTER, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)

(In millions)

	NINE MONTHS ENDED	
	June 28, 1996	June 30, 1995
Cash and cash equivalents, beginning of the period	\$ 756	\$1,203
Operations:		
Net income (loss)	(841)	364
Adjustments to reconcile net income (loss) to cash generated by operations:		
Depreciation and amortization	110	104
Net book value of property, plant, and equipment retirements	43	1
Changes in assets and liabilities:		
Accounts receivable	639	28
Inventories	714	(279)
Deferred tax assets	(150)	7
Other current assets	(26)	(53)
Accounts payable	(403)	167
Accrued restructuring costs	159	(43)
Other current liabilities	119	5
Deferred tax liabilities	(252)	132
Cash generated by operations	112	433
Investments:		
Purchase of short-term investments	(244)	(1,558)
Proceeds from sale of short-term investments	440	1,105
Purchase of property, plant, and equipment	(55)	(110)
Other	(33)	(23)
Cash generated by (used for) investment activities	108	(586)
Financing:		
Increase (decrease) in short-term borrowings	(274)	114
Increase (decrease) in long-term borrowings	646	(4)
Increases in common stock, net of related tax benefits	25	51
Cash dividends	(14)	(43)
Cash generated by financing activities	383	118
Total cash generated (used)	603	(35)
Cash and cash equivalents, end of the period	\$1,359	\$1,168

See accompanying notes.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

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 third quarter of 1996, the Company issued \$661 million aggregate principal amount of 6% unsecured convertible subordinated notes (the "Notes") to certain qualified parties in a private placement. The Notes were sold at 100% of par. The Notes pay interest semi-annually and mature on June 1, 2001. The Notes are convertible by their holders at any time after September 5, 1996 at a conversion price of \$29.205 per share subject to adjustments as defined in the Note agreement. The Notes are redeemable by the Company at 102.4% of the principal amount, plus accrued interest, for the 12-month period beginning June 1, 1999, and at 101.2% of the principal amount, plus accrued interest, for the 12-month period beginning June 1, 2000. The Notes are subordinated to all present and future senior indebtedness of the Company as defined in the Note agreement. In addition, the Company incurred approximately \$15 million of costs associated with the issuance of the Notes. These costs are accounted for as a deduction from the face amount of the Notes and will be amortized over the life of the Notes.

3. 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 were hired by SCI Systems, Inc., the purchaser of the Company's Fountain, Colorado manufacturing facility), 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 eWorld(trademark), Apple's on-line service. These actions have resulted in a charge of \$207 million, including cash expenditures of \$44 million and non-cash asset write-downs of \$4 million, through the third quarter. The Company expects that the remaining \$159 million accrued balance at June 28, 1996 will result in cash expenditures of \$103 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 and continued short-term borrowings. In addition, in connection with the sale of its Fountain, Colorado manufacturing facility, the Company is obligated to purchase certain percentages of its total annual volumes of CPUs and logic boards from SCI Systems, Inc. over each of the next three years. The Company believes that it will meet these obligations.

The following table depicts the restructuring activity through the third quarter of 1996: (In millions)

Category	Total Restructuring		Balance at June 28, 1996
	Charge	Spending	
Payments to employees involuntarily terminated (C)	\$115	\$39	\$76
Payments on canceled or vacated facility leases (C)	26	3	23
Write-down of operating assets to be sold (N)	48	4	44
Payments on canceled contracts (C)	18	2	16

C: Cash; N: Noncash

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

(In millions)

	Three Months Ended		Nine Months Ended	
	June 28, 1996	June 30, 1995	June 28, 1996	June 30, 1995
Interest income	\$10	\$32	\$38	\$76
Interest expense	(12)	(16)	(42)	(33)
Foreign currency gain (loss)	1	4	29	(40)
Net premiums and discounts paid on foreign exchange instruments	(3)	(17)	(13)	(34)
Other income (expense), net	69	(1)	70	(2)

5. 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 consisted 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 \$173 million pledged as collateral to support letters of credit primarily associated with the Company's purchase commitments under the terms of the sale of the Company's Fountain, Colorado manufacturing facility to SCI Systems, Inc.

The adjustments recorded to shareholders' equity for unrealized holding gains (losses) on available-for-sale cash equivalents and marketable equity securities were not material, either individually or in the aggregate, at June 28, 1996. The gross realized gains recorded to earnings on sales of available-for-sale securities were \$69 million and \$71 million for the three and nine months ended June 28, 1996, respectively.

6. U.S. income taxes have not been provided on a cumulative total of \$395 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 in 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.

7. 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.

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

9. No dividend has been declared for the third 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.

10. The information set forth in Item 1 of Part II hereof is hereby incorporated by reference.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

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 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

	Third Quarter			Nine Months		
	1996	1995	Change	1996	1995	Change
Net sales	\$2,179	\$2,575	(15.4%)	\$7,512	\$8,059	(6.8%)
Gross margin	\$403	\$728	(44.6%)	\$457	\$2,237	(79.6%)
Percentage of net sales	18.5%	28.3%		6.1%	27.8%	
Operating expenses	\$519	\$566	(8.3%)	\$1,874	\$1,625	15.3%
Percentage of net sales	23.8%	22.0%		24.9%	20.2%	
Restructuring costs	--	\$(6)	NM	\$207	\$(23)	NM
Percentage of net sales	--	(0.2%)		2.8%	(0.3%)	
Interest and other income (expense), net	\$65	\$2	3,150%	\$82	\$(33)	NM
Net income (loss)	(\$32)	\$103	(131.1%)	(\$841)	\$364	(331.0%)
Earnings (loss) per share	(\$.26)	\$0.84	(131.0%)	(\$6.81)	\$2.97	(329.3%)

NM: Not meaningful

Overview

Over the last six months the Company has experienced a significant decline in net sales, units shipped and share of the personal computer market. For the quarter ended June 28, 1996, the number of the Company's Macintosh computers shipped worldwide declined by 16% when compared with the corresponding quarter of 1995. Moreover, according to an industry source, in the third quarter of 1996 as compared to the third quarter of 1995, the Company's share of the worldwide and U.S. personal computer markets declined to 5.3% from 7.4%, and to 7.4% from 10.6%, respectively. This decline in demand, coupled with intense price competition throughout the industry, has resulted in the Company's decision to develop and 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.

Net Sales

Net sales for the third quarter of 1996 decreased when compared with the corresponding quarter of 1995, resulting from a decrease in Macintosh (registered trademark) computer net sales and in net sales of peripheral products such as displays and printers. Total Macintosh computer unit sales decreased 16% in the third 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, and as a result of delays in the shipment of certain Powerbook products due to quality problems. The average aggregate revenue per Macintosh computer unit decreased 8% in the third quarter when compared with the corresponding quarter of 1995, primarily due to pricing actions across all product lines in order to stimulate demand, partially 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 nine months of 1996 decreased when compared with the first nine months of 1995, resulting from a decrease in Macintosh computer net sales and in net sales of peripheral products such as displays and printers. Total Macintosh computer unit sales decreased 5% in the first nine months of 1996, when compared with the corresponding period of 1995. Unit sales increased in the first quarter of 1996 when compared with the corresponding quarter of 1995, but were more than offset by unit sales decreases in the second and third quarters of 1996 when compared with the corresponding quarters of 1995. The average aggregate revenue per Macintosh computer unit did not change in the first nine 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, offset by pricing actions across all product lines in order to stimulate demand.

International net sales decreased 9% in the third quarter and did not change in the first nine months of 1996, respectively, when compared with the corresponding periods of 1995. The decrease in the third quarter was 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. The decrease in the third quarter was also attributable to a decrease in net sales in Japan due to a decrease in the average aggregate revenue per Macintosh computer unit, partially offset by an increase in total Macintosh computer unit sales. The flat net sales in the first nine months primarily reflects strong net sales growth in Japan and certain countries within Europe during the first quarter of 1996, offset by decreases in net sales in the second and third quarters. International net sales represented 52% and 53% of total net sales for the third quarter and first nine months of 1996, respectively, compared with 49% and 50% for the corresponding periods of 1995. Domestic net sales decreased by approximately 21% and 13% in the third quarter and first nine 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 to approximately \$468 million at August 2, 1996, from approximately \$369 million at May 3, 1996. This increase in backlog is primarily the result of an increase in orders due to certain new product introductions. The Company estimates that product backlog would have been approximately \$430 million at August 2, 1996 if certain quality problems with certain Powerbook products 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 at least 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 18.5% and 6.1% during the third quarter and first nine months of 1996, respectively, when compared with the corresponding periods of 1995. The decrease in the third quarter of 1996 as compared to the corresponding quarter of 1995 is due to the Company's response to extreme competitive actions by other companies attempting to gain market share, which included pricing actions in the U.S., Japan and Europe across most product lines, partially offset by a decrease in the cost of certain product components. The decrease in gross margin in the first nine months of 1996 as compared with the first nine months of 1995 is primarily 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 \$77 million in charges in the second and third quarters that reflect 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, particularly severe 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 third quarter and first nine 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 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.

Research and Development	Third Quarter			Nine Months		
	1996	1995	Change	1996	1995	Change
Research and development	\$155	\$168	(7.7%)	\$458	\$443	3.4%
Percentage of net sales	7.1%	6.5%		6.1%	5.5%	

Research and development expenditures for the third quarter of 1996 decreased when compared with the corresponding quarter of 1995 as a result of the termination of certain third party joint development efforts. The increase in the first nine months is primarily due to higher project and headcount related spending in the first six months of 1996 as compared to the first six months of 1995, partially offset by a decrease in certain research and development expenditures in the third quarter of 1996 as compared to the third quarter of 1995 as previously discussed. The increase as a percentage of net sales in the third quarter of 1996 when compared with the corresponding quarter of 1995 was 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 after significant portions of the restructuring plan have been completed. 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	Third Quarter			Nine Months		
	1996	1995	Change	1996	1995	Change
Selling, general and administrative	\$364	\$404	(9.9%)	\$1,209	\$1,205	0.3%
Percentage of net sales	16.7%	15.7%		16.1%	15.0%	

Selling, general and administrative expenses decreased in the third quarter and remained essentially flat in the first nine months of 1996 when compared with the corresponding periods of 1995. The decrease in the third quarter of 1996 as compared with the same quarter of 1995 was primarily due to reduced advertising expenditures, while for the first nine months of 1996 as compared with the first nine months of 1995 the spending related to marketing and advertising programs was unchanged. The increase as a percentage of net sales in the third quarter when compared with the corresponding quarter of 1995 was primarily a result of the reduced overall 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.

Restructuring Costs	Third Quarter			Nine Months		
	1996	1995	Change	1996	1995	Change
Restructuring costs	--	(\$6)	NM	\$207	(\$23)	NM
Percentage of net sales	--	0%		2.8%	0%	

For information regarding the Company's restructuring actions initiated in the second quarter of 1996, refer to Note 3 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 and third quarters 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 and \$6 million, respectively.

Interest and Other Income (Expense), Net	Third Quarter			Nine Months		
	1996	1995	Change	1996	1995	Change
Interest and other income (expense), net	\$65	\$2	3,150%	\$82	(\$33)	NM

Interest and other income (expense), net, increased in the third quarter and increased from expense to income in the first nine months of 1996 when compared to the corresponding periods in 1995, primarily due to realized gains on sales of available-for-sale securities of \$69 million in the third quarter of 1996, and 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 related primarily to lower average cash balances and lower interest earnings rates. The Company's cost of funds has increased as a result of the downgrading from January 1996 through May 1996 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 B1 and B+ by Moody's Investor Services and Standard and Poor's Rating Agency, respectively.

Provision (Benefit) for Income Taxes	Third Quarter			Nine Months		
	1996	1995	Change	1996	1995	Change
Provision (benefit) for income taxes	(\$19)	\$61	(131.1%)	(\$494)	\$215	329.8%
Effective tax rate	37%	37%		37%	37%	

The Company's balance sheet at June 28, 1996, contains a total deferred tax asset of \$401 million. A substantial portion of this asset is realizable based on the ability to offset existing deferred tax liabilities. Realization of approximately \$100 million of the asset is dependent upon the Company's ability to generate approximately \$285 million of future U.S. taxable income. Management believes that it is more likely than not that the asset will be realized based upon forecasted income. However, there can be no assurance that the Company will meet its expectations of future income. The Company will continue to evaluate the realizability of the deferred tax assets quarterly by assessing the need for a valuation allowance.

For additional information regarding the Company's Income Tax Provision (Benefit), refer to Note 6 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 ability of the Company to make timely delivery to the marketplace of successful technological innovations; the effects of significant adverse publicity; the Company's ability to supply product in certain categories; the impact of uncertainties concerning the Company's strategic direction and financial condition on revenue and liquidity; the effect of degradation in the Company's liquidity; and the effect of restructuring actions.

The Company expects to continue to incur operating losses throughout at least the remainder of 1996, if not longer.

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 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 has begun 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 3 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 nine 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 overall demand for personal computers and general customer preferences for one platform over another or one set of product features over another.

The Company is currently the primary maker of hardware that uses the 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(trademark) 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. The Company recently announced a new strategy with respect to updating its operating system. Rather than introduce a comprehensive new operating system in a single release, the Company intends to issue periodic releases consisting of discrete operating system components. The Company expects that this will enable it to introduce some new functionality for the operating system sooner than it would be able to introduce a complete new operating system. 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. During the third quarter of 1996 the Company began shipment of 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.

Depending on customer demand, the Company may supply customers who purchase Cross-Platform Products with Windows operating system software under licensing agreements with Microsoft. However, in order to do so, the Company will need to enter into one or more agreements with certain Microsoft distributors.

On November 7, 1994, the Company reached an agreement with International Business Machines Corporation ("IBM") and Motorola, Inc. on a new hardware reference platform for the PowerPC microprocessor that is intended to deliver a much wider range of operating system and application choices for computer customers. As a result of this agreement, the Company is moving forward with its efforts to make the Macintosh operating system available on the common platform. In line with its efforts, on November 13, 1995, the Company, IBM, and Motorola, Inc. announced the availability of the "PowerPC Platform" specifications, which define a "unified" personal computer architecture in order to give access to both the Power Macintosh platform and the PC environment. 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.

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 intends to integrate Internet capabilities into its new and existing hardware and software platforms. There can be no assurance that the Company will be able to successfully integrate Internet capabilities into its products. In addition, the Internet market is rapidly evolving and is characterized by an increasing number of market entrants who have introduced or developed products addressing access to, or authoring or communication over, the Internet. Some of these competitors have a significant lead over the Company in developing products for the Internet or have significantly greater financial, marketing, manufacturing and technological resources than the Company, or both.

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 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 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 the Company's 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 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 third 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

The Company's financial position with respect to cash, cash equivalents, and short-term investments, net of short-term borrowings, increased to \$1,172 million at June 28, 1996, from \$491 million at September 29, 1995. The Company's financial position with respect to cash, cash equivalents, and short-term investments increased to \$1,359 million at June 28, 1996, from \$952 million at September 29, 1995. The Company's cash and cash equivalent balance includes \$173 million pledged as collateral to support letters of credit primarily associated with the Company's purchase commitments under the terms of the sale of the Company's Fountain, Colorado manufacturing facility to SCI Systems, Inc., and at September 29, 1995 includes \$90 million pledged as collateral to support short-term borrowings.

Cash generated by operations during the first nine months of 1996 totaled \$112 million. Cash generated by operations was primarily the result of decreases in accounts receivable and inventories, partially offset by a decrease in accounts payable. Cash generated during the first nine months of 1996 from the sale of certain equity investments and the sale of the Fountain manufacturing facility to SCI Systems, Inc. totaled \$120 million.

Net cash used for the purchase of property, plant, and equipment totaled \$55 million in the first nine months of 1996, and consisted primarily of increases in manufacturing machinery and equipment. The Company expects that capital expenditures in 1996 will remain below 1995 levels.

Short-term borrowings at June 28, 1996, were approximately \$274 million lower than at September 29, 1995. During the third quarter, an outstanding loan to Apple Computer B.V., a subsidiary of the Company, in the amount of \$200 million was repaid in full. At June 28, 1996, Apple Japan, Inc., a subsidiary of the Company, held \$187 million of short-term borrowings from several banks, with maturity dates ranging from September 1996 to December 1996. The majority of these loans are guaranteed by the Company.

The Company's balance of long-term debt increased during the first nine months of 1996 due to the issuance of \$661 million aggregate principal amount of 6% unsecured convertible subordinated notes to certain qualified parties in a private placement. These notes were sold at 100% of par. These notes pay interest semi-annually and mature on June 1, 2001. For more information regarding the Company's unsecured convertible subordinated notes, refer to Note 2 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. The remainder of long-term borrowings consists of \$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. 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.

As noted on page 13 under the subheading "Interest and other income (expense), net", the Company's cost of funds has increased as a result of the downgrading from January 1996 through May 1996 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 B1 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 letters of credit and to agree to more stringent covenants than in the past. The Company believes that its balances of cash and cash equivalents, together with continued short-term borrowings and the sale of certain assets and other investments, 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 short-term borrowings can be continued, 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 such financing, its liquidity, results of operations and financial condition will be materially adversely affected.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Reference is made to Item 1 of Part II of the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 29, 1996 for a discussion of certain purported shareholder class action suits filed in January 1996 and March 1996. In August 1996, the Company's demurrer to the complaint in the action styled Abraham and Evelyn Kostick Trust v. Peter Crisp, et al. was sustained on a variety of grounds. The court granted the plaintiffs sixty days to amend their complaint. In June 1996, a purported class action complaint naming the Company and certain current and former officers, directors and employees was filed in the California Superior Court for Alameda County, styled as LS Men's Clothing Defined Benefit Pension Plan v. Spindler, et al., No. CV 767971. The complaint, which seeks damages, generally alleges that the defendants misrepresented or omitted material facts about the Company's operations and financial results which plaintiff contends artificially inflated the Company's stock price. None of the defendants has yet responded to the complaint.

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. These suits are similar to those filed against other major suppliers of personal computers. Ultimate resolution of the litigation against the Company may depend on progress in resolving this type of litigation in the industry overall.

In August 1995, the Company was named, along with forty-one other entities, including computer manufacturers and computer monitor vendors, in a putative nationwide class action filed in the California Superior Court for Orange County, styled Keith Long, et al. v. AAmazing Technologies Corp., et al. The complaint alleges that each of the defendants engaged in false or misleading advertising with respect to the size of computer monitor screens. Also in August 1995, the Company was named as the sole defendant in a purported class action alleging similar claims filed in the New Jersey Superior Court for Camden County, entitled Mahendri Shah v. Apple Computer, Inc. Subsequently, in November 1995, the Company, along with 26 other entities, was named in a purported class action alleging similar claims filed in the New Jersey Superior Court for Essex County, entitled Maizes & Maizes v. Apple Computer, Inc., et al. Similar punitive class actions have been filed in other California counties in which the Company was not named as a defendant. The complaints in all of these cases seek restitution in the form of refunds or product exchange, damages, punitive damages and attorneys fees. In December 1995, the California Judicial Council ordered all of the California actions, including Long, coordinated for purposes of pre-trial proceedings and trial before a single judge, the Honorable William Cahill, sitting in the County of San Francisco. All of the California actions were subsequently coordinated under the name In re Computer Monitor Litigation and a master consolidated complaint filed superseding all of the individual complaints in those actions. On July 3, 1996, Judge Cahill ordered all of the California cases dismissed without leave to amend as to plaintiffs residing in California on the ground that a stipulated judgment entered in September 1995 in a prior action brought by the California Attorney General alleging the same cause of action was res judicata as to the plaintiffs in the consolidated California class action suits. Both the New Jersey cases and the consolidated California cases are at a preliminary stage, with no discovery having taken place.

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

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

Item 6. Exhibits and Reports on Form 8-K

a) Exhibits

Exhibit Number	Description
10.A.32	Employment Agreement dated June 13, 1996, between Registrant and Robert M. Calderoni.
10.A.33	Employment Agreement dated June 25, 1996, between Registrant and Ellen M. Hancock.
10.A.34	Retention Agreement dated June 25, 1996, between Registrant and Ellen M. Hancock.
10.A.35	Retention Agreement dated June 27, 1996, between Registrant and George M. Scalise.
10.A.36	Airplane Use Agreement dated June 27, 1996, among Registrant, Gilbert F. Amelio and Aero Ventures.
10.A.37	Letter Agreement dated May 1, 1996, between Registrant and Jeanne Seeley.
10.A.38	Separation Agreement effective March 28, 1996, between Registrant and Michael H. Spindler.
10.A.39	Letter Agreement dated June 3, 1996, between Registrant and James J. Buckley.
10.B.16	Fountain Manufacturing Agreement dated May 31, 1996 between Registrant and SCI Systems, Inc.
11	Computation of per share earnings
27	Financial Data Schedule

b) Reports on Form 8-K

A Current Report on Form 8-K dated June 14, 1996 was filed by Registrant with the Securities and Exchange Commission to report under Item 5 thereof the press releases issued to the public on June 3, 1996, June 4, 1996 and June 10, 1996, respectively, and the Registrant's private placement of convertible subordinated debentures described therein.

SIGNATURE

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: August 12, 1996

BY /s/ Fred D. Anderson

*Fred D. Anderson
Executive Vice President and
Chief Financial Officer*

DATE: August 12, 1996

BY /s/ Jeanne Seeley

*Jeanne Seeley
Vice President, Finance and
Corporate Controller*

APPLE COMPUTER, INC.

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Exhibit 10.A.32

June 13, 1996

Mr. Robert M. Calderoni
19670 Scotland Road
Saratoga, California 95070

Employment Agreement

Dear Mr. Calderoni:

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 6 of this Agreement.

1. Commencement of Employment. Your employment under this Agreement shall commence on July 8, 1996 (the "Effective Date").
2. Position. You shall be employed as Senior Vice President, Finance and Operations Controller of the Company and shall report directly to the Chief Financial 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 two hundred seventy five thousand dollars (\$275,000) 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 remainder of the Company's Fiscal Year 1996 only, you shall be guaranteed a bonus payout at the end of Q4 in the amount of thirty five thousand dollars (\$35,000). During the Company's Fiscal Year 1997 only, your target annual bonus will be one hundred fifty thousand dollars (\$150,000). During the Company's Fiscal Year 1997 only, you shall be guaranteed a minimum bonus payout of at least seventy five thousand dollars (\$75,000) payable at the end of the Company's Fiscal Year 1997. 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 and 1997, 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 one hundred twenty five thousand dollars (\$125,000). It shall be paid to you within 5 days after the Effective Date of this Agreement.

(d) Stock Options. In consideration of this Agreement, we will recommend to the Apple Computer, Inc. Board of Directors an initial stock option grant of 75,000 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 Apple Computer, Inc. 1990 Stock Option Plan, as amended, and any successor plans thereto ("1990 Stock Plan").

(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 first twelve (12) months 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. In addition, you shall be eligible for participation in Apple's Executive Severance Plan ("ESP"). Under the current terms and conditions of the ESP, you would remain an active employee, receiving full salary and benefits, for a period up to ninety (90) days after your date of termination, and be eligible to receive a severance benefit equal to four (4) month's pay. In addition, you will be entitled to receive the following amounts:

50% of FY 97 target bonus
as guaranteed (\$75,000)

or

The actual prorated bonus amount payable under the ESP

There shall be no other payments or benefits on termination during the first twelve (12) months following the Effective Date.

(c) Although the terms and conditions of the ESP would govern your participation, the following highlights some of the material terms and conditions in the event of a Change in Control, as defined in and provided for under the June 9, 1995 Supplement to the ESP:

COVERAGE: Employees of the Company who are otherwise Eligible Employees under the Executive Severance Plan, other than those who have employment or retention agreements.

TERM: The Supplement is effective for two years, beginning on the Change in Control Date. Change in Control Date generally means the date of the Change in Control or the date of the approval of an agreement which will result in a Change in Control.

SEVERANCE: The Supplement to the Executive Severance Plan provides for the following enhanced severance benefits:

-The regular severance payment schedule for such employees is doubled, with a minimum of 8 months of severance and a maximum of 24 months.

-The regular benefit continuation period is also doubled.

-Employees who are terminated in the two-year period following the Change in Control Date receive a special bonus equal to 1 times target bonus in lieu of the prorated bonus provided under the normal plan provisions.

-Employees can resign for "Good Reason" and collect the foregoing amounts if their principal place of employment is relocated to a location which is more than 50 miles from their current place of employment or if their job duties are significantly changed (i.e., a drop of two grade levels or a required pay reduction).

Severance payments are contingent upon the signing a release in favor of the Company in substantially the form of the release contemplated under the current terms of the Executive Severance Plan.

GROSS-UP: All payments and benefits to eligible employees are "grossed-up" to eliminate the effects of the 20% excise tax under the "golden parachute" rules. These gross-up provisions are intended to place the employees in the same after-tax position they would have enjoyed had the excise tax not applied. These provisions apply to all pay and benefits subject to the excise tax. The provisions also apply whether or not a termination of employment has occurred because the Company's equity plans confer benefits which could trigger the excise tax provisions even if employment is not terminated. No gross-up is payable if the payments to an eligible employee are not subject to the golden parachute excise tax.

CHANGE IN CONTROL:

The definition includes a change in the majority of the Board of Directors not otherwise approved by the Incumbent Directors, the acquisition of 30% or more of the voting stock of Apple by a third party, or a merger, consolidation or other corporate transaction if the stockholders of Apple before the transaction do not own, immediately after the transaction, more than 50% of the combined voting power of the resulting corporation.

AMENDMENT: The Executive Severance Plan cannot be amended after the Change in Control Date to eliminate or reduce benefits. No amendment reducing benefits will be effective if made within the 1-year period prior to the Change in Control Date.

executive relocation benefits up to a maximum amount of seventy five thousand dollars (\$75,000) in accordance with the Company's Relocation Policy for executives. Any relocation expenses and benefits must be submitted for reimbursement or payment by you before the eighteen (18) months following the Effective Date. Any additional relocation items or arrangements will be determined in writing as authorized by the Company's Senior Vice President of Human Resources.

6. 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.

7. 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.: Fred Anderson, Chief Financial 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.

8. Miscellaneous.

(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.

(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/ Fred D. Anderson
Fred D. Anderson*

Agreed to as of this 18th day of June, 1996.

*/s/ Robert M. Calderoni
Robert M. Calderoni*

Exhibit 10.A.33

June 25, 1996

Ms. Ellen Hancock
165 Altura Vista
Los Gatos, CA 95030

Employment Agreement

Dear Ellen:

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 July 8, 1996 (the "Effective Date").
2. Position. You shall be employed as Executive Vice President of the Company's Research and Development and Chief Technology 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 four hundred eighty thousand dollars (\$480,000) 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 1997 only, your target annual bonus will be three hundred sixty thousand dollars (\$360,000). The amount of your target annual bonus thereafter shall be reviewed annually by the Company. Each annual bonus, if any, 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 two hundred thousand dollars (\$200,000) within 5 days after the Effective Date.

(d) Stock Options. In consideration of this Agreement, we will recommend to the Apple Computer, Inc. Board of Directors an initial stock option grant of 300,000 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 Apple Computer, Inc. 1990 Stock Option Plan ("1990 Stock Plan").

(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 three (3) 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:

Termination Date	Amount
During 1-year period following Effective Date	100% of annual base salary (\$480,000) 100% of target bonus (\$360,000)
Following first anniversary of Effective Date	100% of annual base salary 100% of target annual bonus

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 and unauthorized 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.

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 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.

7. Miscellaneous.

(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 dated June 25, 1996 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) 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/ Gilbert F. Amelio
Gilbert F. Amelio
Chairman and C.E.O.*

Agreed to as of this 30th day of June, 1996.

*/s/ Ellen M. Hancock
Ellen Hancock*

June 25, 1996

Ms. Ellen Hancock
165 Altura Vista
Los Gatos, CA 95030

Retention Agreement

Dear Ellen:

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 rates¹ 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-swing 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 \$0. 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 than the terms and provisions of such awards in effect on the date hereof.

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

7. Successors; Binding Agreement.

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

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

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

"Accounting Firm" shall mean 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.

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

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

(i) A meaningful and detrimental alteration in your position, your titles, or the nature or status of your responsibilities (including your reporting responsibilities) from those in effect immediately prior to the Change in Control Date;

(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/ Gilbert F. Amelio*
Name: *Gilbert F. Amelio*
Title: *Chief Executive Officer*

Agreed to as of this 30th day of June, 1996.

_/s/ Ellen M. Hancock
Ellen Hancock

Exhibit 10.A.35

June 27, 1996
Mr. George M. Scalise
26055 Newbridge Road
Los Altos Hills, California 94022

Retention Agreement

Dear George:

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 rates¹ 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. ¹ To be expressed in up to three decimal places. For example, a combined federal, state and local marginal rate of 56% would be expressed as .560.

(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-swing 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 \$0.00. 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 than the terms and provisions of such awards in effect on the date hereof.

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

7. Successors; Binding Agreement.

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

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

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

"Accounting Firm" shall mean 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.

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

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

(i) A meaningful and detrimental alteration in your position, your titles, or the nature or status of your responsibilities (including your reporting responsibilities) from those in effect immediately prior to the Change in Control Date;

(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 including but not limited to the Letter Agreement between you and the Company dated February 26, 1996; provided, however, that, except as expressly set forth herein, this Agreement shall not supersede the terms of Equity Awards previously granted to you.

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

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

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

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

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

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

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

* * * *

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

Sincerely,

APPLE COMPUTER, INC.

By /s/ Gilbert F. Amelio
Name: Gilbert F. Amelio
Title: Chairman and Chief
Executive Officer

Agreed to as of this 28th day of June, 1996.

/s/ George M. Scalise
George M. Scalise

**AIRPLANE USE AGREEMENT
C98-96-00012**

This Airplane Use Agreement ("Agreement") is entered into as of the 27th day of June, 1996, by and between Apple Computer, Inc., a California corporation, having its principal place of business at 1 Infinite Loop, Cupertino, CA 95014 ("Apple"), Gilbert F. Amelio, 13416 Middle Fork Lane, Los Altos Hills, CA 94022 ("Amelio"), and Aero Ventures, 13416 Middle Fork Lane, Los Altos Hills, CA 94022 ("Aero Ventures").

INTRODUCTION

Amelio owns and Aero Ventures manages an airplane (N55OAV) which will be used for Apple business-related travel.

AGREEMENT

1. Ownership

Amelio represents and warrants that he is the sole owner of the aircraft described in Exhibit A ("the Airplane"). Amelio must inform Apple immediately upon any change in his ownership status of the Airplane.

2. Apple's Rights and Responsibilities

2.1 Authorized Business Use. Apple shall use the Airplane for travel on Apple business when such use is appropriate and is specified on a Travel Authorization Form approved prior to the commencement of travel in accordance with Apple's applicable Corporate and Finance policies ("Authorized Business Use").

2.2 Apple's Lease of the Airplane. Apple shall lease the Airplane from Amelio for Authorized Business Use at the Apple Lease Rate, as described below. Such leased use shall include travel for Authorized Business Uses. Apple will pay the pilot and/or co-pilot directly for piloting fees.

2.3 Costs Paid By Apple. In addition to the payments described in Section 2.2 above, Apple will reimburse Amelio for (1) costs actually incurred by Amelio to maintain currency and proficiency as a pilot, such as flight medical expenses and simulator training; and (2) the costs of food, beverages, other personal items, parking fees, landing fees, and fuel incurred during Authorized Business Use by Apple.

2.4 Apple Lease Rate. Apple will pay to Amelio an hourly rate for lease of the Airplane based on actual flying time as recorded on the Airplane's log book. This Apple Lease Rate is determined to be the fair market value of such leased use, and as such will be subject to annual review and if necessary, adjustment. The initial Apple Lease Rate shall be \$700.00 per hour for all usage. If Amelio upgrades to a more capable airplane, there will be no adjustment without prior Apple approval.

2.5 Apple Advance. Apple will pay to Amelio a non-refundable, monthly advance on lease payments in the amount of \$6,000. This monthly advance amount shall be applied against lease payments payable by Apple to Amelio for Authorized Business Use of the Airplane. Apple may carry forward any unused monthly advance payments as credits toward lease payments due in subsequent months. However, such carried-forward monthly advance payments shall not affect Apple's obligation to pay the full, monthly advance on lease payments.

2.6 Apple's Insurance. Amelio will maintain \$20 million of liability insurance. Apple shall be responsible for any liability insurance coverage in excess of \$20 million.

2.7 No Other Obligations. The payments and reimbursements specified in this section shall constitute the extent of Apple's obligation to pay Amelio for the costs of maintenance, depreciation, insurance, and any and all other expenses related to maintaining the Airplane in flightworthy condition.

3. Amelio's Responsibilities

3.1 Amelio's Use Of The Airplane. Amelio's use of the Airplane in connection with his performance of services for Apple shall be limited to Authorized Business Use.

3.2 Amelio's Costs. Amelio shall be responsible for payment of all costs not specifically charged to Apple in this Agreement.

3.3 Amelio's Pilot Training And License. Amelio is responsible for arranging for and undertaking instruction and flying time to maintain currency and proficiency as a pilot of the Airplane. Amelio must notify Apple of any change or lapse in his pilot license status.

3.4 Amelio's Operation Of The Airplane. When operating the Airplane on Apple Business Use, Amelio will maintain and operate the Airplane at all times in compliance with all Federal, state or local laws and regulations applicable to the operation of the Airplane or private aircraft in general. In addition, Amelio agrees to comply with any and all restrictions and limitations imposed by Apple's insurance policies related to Amelio's use of the Airplane.

3.5 Passengers. Amelio understands and agrees that as a general policy, he will not carry as passengers on Authorized Business Use any persons who are not Apple employees, officers or directors. To the extent there are legitimate business purposes for exceptions, Amelio will carry such non-Apple passengers only if they have each executed and filed with Apple a release, in form and substance approved in writing by Apple, releasing Apple from any and all liability arising out of such passenger accompanying Amelio on the Airplane in connection with an Authorized Business Use.

3.6 Indemnity And Insurance.

(a) Indemnity. Amelio hereby agrees to indemnify and hold harmless Apple, its directors, officers, employees and other agents (collectively, "the Indemnitees") against and from any and all liabilities, claims, demands, losses, costs and expenses of any kind or nature whatsoever which may be asserted against or suffered or incurred by the Indemnitees or any of them arising out of or in connection with Amelio's ownership, operation or use of the Airplane whether for Authorized Business Use or any other purpose and whether in accordance with or in breach of this Agreement. The foregoing indemnity is specifically intended to apply whether or not any such liability, claim, demand, loss, cost or expense may to any extent have arisen out of or been based upon the negligence or claimed negligence of Amelio or any of the Indemnitees.

(b) Insurance. Amelio will carry Comprehensive General Liability insurance from USAIG, AAU, CIGNA or another insurer suitable to Apple with limits not less than \$20,000,000 combined single limit per occurrence and with a worldwide coverage territory. Before operating the Airplane on any Authorized Business Use, Amelio will deliver to Apple a Certificate of Insurance which shows the coverage specified above, which names Apple as an additional insured, and which provides a 30-day notice period for cancellation or reduction in coverage or limits.

4. Term and Termination

4.1 Term. This Agreement will become effective upon execution by Apple, and after approval by the Board of Directors of Apple. The Agreement is retroactive in its effect to the beginning of Amelio's employment by Apple, and will continue in effect until terminated as provided below.

4.2 Termination.

(a) This Agreement may be canceled by Apple or Amelio upon thirty days written notice to the other party.

(b) This Agreement will terminate upon the termination of Amelio's employment with Apple.

4.3 Effect Of Termination. Upon any termination of this Agreement, each party will be released from all obligations and liabilities to the other occurring or arising after the date of such termination, except that the provisions of Sections 3.6(a), 4.3 and 6, and any liability arising from breach of this Agreement will survive termination of this Agreement. Neither party will be liable to the other for damages of any sort solely as a result of terminating this Agreement in accordance with its terms, except as specifically provided above. Termination of this Agreement will be without prejudice to any other right or remedy of either party.

5. Upgrade

It is Amelio's intention to upgrade the Airplane to a more capable airplane within the next 12 months. Upon such upgrade, the lease rate will not be adjusted to reflect the fair market value for the new aircraft without prior Apple approval.

6. General

6.1 Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within California between California residents.

6.2 Jurisdiction and Venue. The parties hereby submit to the jurisdiction of, and waive any venue objections against, the United States District Court for the Northern District of California, the Superior Court of the State of California for the County of Santa Clara, the Santa Clara Municipal Court, and any mutually agreed to alternative dispute resolution proceeding taking place in Santa Clara County, California, in any litigation arising out of the Agreement.

6.3 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

6.4 No Waiver. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

6.5 No Rights in Third Parties. This Agreement is made for the benefit of Amelio and Apple and their respective subsidiaries and affiliates, if any, and not for the benefit of any third parties.

6.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument.

6.7 Headings and References. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.8 Construction. This Agreement has been negotiated by the parties and their respective counsel. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

6.9 Complete Agreement. This Agreement, including all exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of both parties.

6.10 Consent Of Spouse. Charlene Amelio, wife of Gilbert F. Amelio, consents and agrees to the terms and conditions contained herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Apple:
APPLE COMPUTER, INC.
BY: /s/ George M. Scalise
NAME: George M. Scalise
TITLE: Executive Vice President and
Chief Administrative Officer
DATE:

Amelio:
GILBERT F. AMELIO
BY: /s/ Gilbert F. Amelio
NAME: Gilbert F. Amelio

DATE:

BY: Charlene Amelio
NAME: /s/ Charlene Amelio
DATE:

Aero Ventures:
AERO VENTURES
BY: /s/ Gilbert F. Amelio
NAME: Gilbert F. Amelio
TITLE: owner

DATE:

Exhibit 10.A.37

May 1, 1996

Jeanne Seeley
27501 Black Mountain Road
Los Altos Hills, CA 94022

Re: Employment

Dear Jeanne:

The following sets forth our agreement ("Letter Agreement") regarding the terms and conditions of your employment, participation in Apple's Executive Severance Plan ("Plan") and special bonus upon the termination of your employment in accordance with this Letter Agreement. This Letter Agreement supersedes the previous Letter Agreement in its entirety dated on or about January 12, 1996 between you and Apple.

Subject to the conditions of this Letter Agreement, Apple shall designate you for participation in the Apple Computer, Inc. Executive Severance Plan on or about August 25, 1996 provided that Apple's Q3 books are closed and provided further that (1) you have not obtained or been offered another comparable position with the Apple or its affiliates, and (2) the termination of your employment was not the result of your voluntary resignation, except for a resignation for 'good cause' under the terms of the Plan, and (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 Financial Officer. To the extent practical, you agree to use accrued vacation time during the month of August. Separate and apart from any benefits to which you

may be entitled under Apple's Executive Severance Plan, and subject to the employment termination conditions of this paragraph, Apple shall pay you a special bonus in the amount of one-hundred fifty thousand dollars (\$150,000), ninety thousand dollars (\$90,000) of which shall be paid to you on or before May 10, 1996, and the balance of sixty thousand dollars (\$60,000) to be paid to you at the end of your employment with Apple.

The terms and conditions of Apple's Executive Severance Plan in effect at the time you are designated for participation in the Plan shall govern with respect to your eligibility for and level of benefits under the Plan.

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

Sincerely,

APPLE COMPUTER, INC.

*By /s/ Fred Anderson
Fred Anderson
Executive Vice President
Chief Financial Officer*

*By /s/ Kevin Sullivan
Kevin Sullivan
Senior Vice President
Human Resources*

Agreed to as of this 2nd day of May, 1996

*/s/ Jeanne Seeley
Jeanne Seeley*

Separation Agreement

In consideration of the mutual agreements set forth below, Michael H. Spindler ("Spindler") and Apple Computer, Inc. ("Apple") agree to the following terms and conditions of this Separation Agreement (the "Agreement"):

1. Nature of Business. Apple is in the business of designing, developing, producing, selling and marketing computer systems, related products and services. The business practices of Apple and the market conditions in which Apple operates change rapidly and these changes have necessitated prompt changes in management, and/or managers' responsibilities. These changes are needed from time to time in the high level management positions such as those for which Spindler has been employed.

2. Resignation from Board, Termination of Employment and Rescission of Retention Agreement. Spindler has resigned from his position on Apple's Board of Directors effective as of February 2, 1996 and has been terminated from his position as Chief Executive Officer effective as of February 2, 1996. Spindler also hereby resigns from all other positions he holds on behalf of Apple, its subsidiaries and affiliates (except for his position as an employee), which positions are set forth at Exhibit A hereto. Spindler agrees to sign at Apple's request all appropriate mutually agreeable documentation prepared by Apple to facilitate these resignations and termination.

Spindler and Apple agree that in exchange for the terms and conditions of this Agreement, the June 9, 1995 Retention Agreement between Spindler and Apple, a copy of which is attached hereto as Exhibit B, is hereby rescinded and that neither party has any further rights or obligations under the Retention Agreement.

3. Employment Status/Termination. During the period February 2, 1996 through March 31, 1996 ("Termination Date"), Spindler will remain an employee of Apple as provided in this paragraph reporting to Gilbert F. Amelio ("Amelio") and shall be available to assist Amelio as may be mutually agreed to between Spindler and Amelio. Spindler shall

be on sabbatical from February 15, 1996 through Termination Date. Until Termination Date, Spindler will continue to receive his regular salary and full executive level medical insurance benefits. Termination shall be accomplished by the return of Spindler's Apple Identification Badge to Edward B. Stead. Beyond the return of Spindler's Apple Identification Badge, Spindler represents that all other Apple property has been returned to Apple and there are no further actions required to be taken by Spindler prior to Termination Date. To the extent this Agreement varies from the terms and conditions of any Apple employee benefit plan, program or policy, or any other agreement, written or oral, this Agreement shall govern.

4. Compensation and Benefits Upon Termination. Within five (5) days of Termination Date, Apple will pay the following:

a. Severance Payments. Spindler shall receive the full amount of his accrued but unpaid base salary earned through Termination Date plus a cash payment (calculated on the basis of Spindler's base salary then in effect) for all accrued but unused vacation as of Termination Date. In addition, Apple shall also pay Spindler a lump sum payment of three million, seven hundred twelve thousand, five hundred dollars (\$3,712,500). Apple shall continue to pay for and provide Spindler with health insurance benefits in accordance with terms and provisions of such plans and arrangements in effect on the Termination Date for a period of two (2) years from Termination Date.

Apple's Board of Directors (the "Board") previously granted Spindler options to purchase shares of Apple Common Stock under Apple's 1981 and 1990 Stock Option Plans (the "1981 and 1990 Plans") and options to purchase shares of stock under Apple's 1987 Executive Long Term Stock Option Plan ("ELTSOP"). Except as expressly provided below, nothing in this Agreement shall alter the terms and conditions of such options and such options shall continue to vest and be exercisable in accordance with the terms of the grant agreement issued to Spindler with respect to such grants, and the terms of the 1981 and 1990 Stock Option Plans and the ELTSOP administered by the Board. As of Termination Date, (a) all stock option grants previously awarded to Spindler under the ELTSOP shall continue to vest for a period of one (1) year from Termination Date and shall be exercisable for a period of two (2) years from Termination Date provided, however, that all such options shall be subject to the 10-year expiration provisions of the ELTSOP, and (b) all stock option grants previously awarded to Spindler under the 1981 and 1990 Plans shall continue to vest during, and be exercisable for, a period of ninety (90) days from Termination Date.

The payment outlined in this Paragraph 4(a) shall constitute full satisfaction of all Apple's obligations to pay severance benefits to Spindler under Apple's Executive Severance Plan, as amended by the June 9, 1995 Supplement, Apple's Senior/Executive Incentive Bonus, and any and all other written or oral agreements between Spindler and Apple including but not limited to, the employment agreement dated April 12, 1991, a copy of which is attached hereto as Exhibit C. Except as provided for in Paragraph 3 above and in Paragraph 4(b) below, there shall be no other payments to Spindler except as stated in this Paragraph 4(a).

b. Relocation and House Repurchase. Apple shall pay Spindler, in full satisfaction of any and all obligations to pay moving expenses for Spindler and his family under any Apple policy, plan or program a lump sum payment in the amount of fifty thousand dollars (\$50,000). In addition, Apple shall pay Spindler one hundred fifty thousand dollars (\$150,000) in full satisfaction of any and all obligations Apple may have had to purchase Spindler's Atherton, California house under any Apple plan, program, policy, or agreement, both oral and in writing.

c Receipt of Documentation. Spindler acknowledges that he has previously received from Apple copies of pertinent portions of Apple's Executive Severance Plan, as amended by the June 9, 1995 Supplement, Apple's Senior/Executive Bonus Program, Apple's 1981 and 1990 Stock Option Plans, Apple's ELTSOP, Apple's Vacation and Holiday Policies, and Apple's Benefit Plans relating to health care, life insurance, accidental death and disability, short and long term disability and Savings Plans. Spindler understands and agrees to be bound by the written terms and conditions of these various plans, policies or programs, unless expressly provided for otherwise under this Agreement or in the Plan, and agrees that Apple has reserved the right and option, in its sole discretion, to change, interpret, modify or terminate these and all other plans, policies or programs at any time without Spindler's consent so long as such action does not conflict with or reduce Spindler's rights under this Agreement.

d. No Other Benefits. Spindler will not be entitled to receive any other compensation, bonus or benefits provided by, through or on behalf of Apple, its affiliates or subsidiaries, other than benefits that are vested as of Termination Date and that are payable in accordance with the terms of any applicable Benefit Plan, or otherwise provided for herein.

5. Confidentiality. The terms of this Agreement are confidential. Neither Spindler nor Apple will at any time disclose to any third party the terms of this Agreement, except as authorized by this agreement or as required by law. Spindler may also make such disclosure to his spouse, tax advisor and/or lawyer, all of whom shall be instructed to keep the information disclosed to them confidential; any disclosure by any such party shall be deemed a disclosure by Spindler. Apple and Spindler shall not disparage each other in their communications in response to all inquiries from the press, public media or any other third parties regarding this Agreement or Spindler's employment termination. If Apple makes a press statement which disparages Spindler, then Spindler may invoke the procedures outlined in Paragraph 21 of this Agreement. If Spindler makes a press statement which disparages Apple, then Apple may invoke the procedures outlined in Paragraph 21 of this Agreement.

6. Trade Secrets, Proprietary and Confidential Information. Spindler agrees to comply with Apple's "Proprietary Rights and Information Agreement" which is attached hereto as Exhibit D to this Agreement.

In addition, Spindler agrees to continue to abide by the principles and guidelines in Apple's Global Ethics brochure, the terms of which are incorporated herein to the extent it applies to employee through Termination Date and to former employees thereafter.

On or before Termination Date, Spindler agrees to promptly return to Apple or its records retention designee, all Apple proprietary and confidential information, including but not limited to all inventions, discoveries, improvements, computer programs, designs, documentation, notes, plans, drawings and copies thereof to Apple. Spindler shall be entitled to keep as his own personal property the equipment listed at Exhibit E together with manuals and product data information associated with such equipment.

Spindler and Apple agree that this section regarding Trade Secrets, Proprietary and Confidential Information shall survive the termination of this Agreement.

7. Non-Solicitation. Spindler further recognizes that Apple's work force constitutes an important and vital aspect of its business.

Spindler agrees, therefore, that he shall not solicit others employed by Apple, or any of its subsidiaries or affiliates, to become employed by any firm, company or other business enterprise through March 31, 1997. Spindler further represents that he has no time prior to this Agreement solicited any employee to leave Apple. Nothing in this Agreement will prevent Spindler from providing favorable recommendations or favorable references on behalf of persons who previously worked with Spindler.

Spindler and Apple also agree, that upon a breach or violation or threatened breach or violation of any confidentiality, trade secrets, or non-solicitation agreement by Spindler contained herein, or if any provision of Sections 5, 6, or 7 of this Agreement, Apple, in addition to all other remedies which might be available to it including rescission of the Agreement and repayment of the consideration paid to Spindler for the covenants or promises breached, shall be entitled as a matter of right to equitable relief in any court of competent jurisdiction, including the right to obtain injunctive relief or specific performance. Spindler and Apple agree that the remedies at law for any such breach or violation are not fully adequate and that the injuries to Apple as a result of the continuation of any breach or violation are incapable of full calculation in monetary terms and therefore constitute irreparable harm. This Paragraph 7 shall survive the termination of this Agreement.

8. Indemnification. All rights of indemnification previously provided by Apple to Spindler by Apple's By-Laws and/or by the Indemnification Agreement dated January 27, 1988 shall continue in full force and effect in accordance with their terms, following the date of this Agreement. A copy of Spindler's Indemnification Agreement is attached hereto as Exhibit F to this Agreement.

9. Successors. Apple will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of Apple to expressly assume and agree to perform this Agreement in the manner and to the same extent that Apple would be required to perform it if no such succession had taken place. Failure of Apple to obtain such assumption and agreement prior to the effectiveness of any such succession shall entitle Spindler to the benefits listed in Paragraphs 3 and 4 of this Agreement, subject to the terms and conditions therein.

10. Governing Law. The validity, interpretation, effect, and enforcement of this Agreement shall be governed by the laws of the State of California without regard to its choice of law principles.

11. Entire Agreement. This Agreement, and Exhibits A, B, C, D, E & F to this Agreement, set forth the entire Agreement and understanding between Spindler and Apple, and supersede any other negotiations, written agreements, understandings, oral agreements, representations or past or future practices, whether written or oral, by Apple, including but not limited to, the employment agreement between Apple and Spindler dated April 12, 1991, the July 26, 1995 letter employment agreement, and the June 9, 1995 Retention Agreement. This Agreement may be amended only by written agreement, signed by the parties to be bound by the amendment. Parol evidence will be inadmissible to show agreement by and between the parties to any term or condition contrary to or in addition to the terms and conditions contained in this Agreement.

Each Apple plan or policy referred to herein directly or by implication (except the 1981 and 1990 Stock Option Plans and the ELTSOP) is incorporated herein only insofar as it does not contradict this Agreement. If any inconsistencies exist between this Agreement and any such plan or policy, this Agreement shall control. If any inconsistencies exist between this Agreement and the 1981 and 1990 Stock Option Plans or the ELTSOP, with the exception of the terms and conditions of Paragraph 4 above, those stock plans shall control.

12. Right to Advice of Counsel. Spindler understands that he has the right to have this Agreement reviewed by his lawyer and acknowledges that Apple has encouraged him to consult with his lawyer so that he is fully aware of his rights and obligations under this Agreement. Spindler acknowledges that he has done so.

13. Modification. This Agreement may not be amended, modified, changed or discharged in any respect except as agreed in writing and signed by Spindler and the Chief Executive Officer of Apple Computer, Inc.

14. Severability and Interpretation. In the event that any provision or any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such provision or portion thereof shall be considered separate and apart from the remainder of this Agreement and the other provisions shall remain fully valid and enforceable, provided that, if Paragraph 2, 5, 6, 7, 19 or 21 is held to be invalid or unenforceable in response to a motion, argument or other act by Spindler, then Apple, at its sole discretion, may rescind the Agreement and recover all consideration paid to Spindler under the Agreement.

15. Notices. All notices required by this Agreement shall be given in writing either by personal delivery or by first class mail, return receipt requested. Notices shall be addressed as follows:

To Apple:	Apple Computer, Inc. 1 Infinite Loop, Mail Stop 75- 8A Cupertino, California 95014 Attention: General Counsel
To Spindler :	67 Orchard Hill Atherton, CA 94027

or in each case to such other address as Spindler or Apple shall notify the other. Notice given by mail shall be deemed given five (5) days following the date of mailing.

16. Miscellaneous. The rights and obligations of Apple under this Agreement shall inure to the benefit of and shall be binding upon the present and future subsidiaries of Apple, any and all subsidiaries of a subsidiary, all affiliated corporations, and successors and assigns of Apple. No assignment of this Agreement by Apple will relieve Apple of its obligations. Spindler shall not assign any of his rights and/or obligations under this Agreement and any such attempted assignment will be void. This Agreement shall be binding upon and inure to the benefit of Spindler's heirs, executors, administrators, or other legal representatives and their legal assigns.

17. Damage Limitation. At Termination Date, Spindler shall not be entitled to recover any compensation, benefits or damages except as specifically described in this Agreement. This damage waiver provides that no damages (including without limitation, special, consequential, general, liquidated or punitive damages or attorneys fees or costs) shall be sought or due from Apple.

18. Waiver. A waiver by either party of any of the terms or conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party.

19. Release. Spindler hereby completely releases and forever discharges Apple, its Board of Directors, officers, directors, agents, employees, attorneys, insurers, subsidiaries and affiliates ("Apple Parties") from, and covenants not to sue any Apple Party with respect to, all claims, rights, demands, actions, obligations, debts, sums of money, damages (including but not limited to general, special, punitive, liquidated and compensatory damages) and causes of action of every kind, nature and character, known and unknown, in law or equity, connected with Spindler's employment relationship with the Apple Parties, or any other act or omission of any Apple Party which may have occurred prior to the date this Agreement is signed. Spindler further agrees that by his acceptance and negotiation of the payment provided for in Paragraph 4 of this Agreement, he thereby completely releases and forever discharges the Apple Parties from, and covenants not to sue any Apple Party with respect to, all claims, rights, demands, actions, obligations, debts, sums of money, damages (including but not limited to general, special, punitive, liquidated and compensatory damages) and causes of action of every kind, nature and character, known and unknown, in law or equity, connected with Spindler's employment relationship with the Apple Parties, or the termination of such relationship, or any other act or omission of any Apple Party which may have occurred prior to Termination Date. This release and discharge includes, but is not limited to, all "wrongful discharge" claims; all claims relating to any contracts of employment, express or implied; any covenant of good faith and fair dealing, express or implied; any tort of any nature: any federal, state, or municipal statute or ordinance; any claims under the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 1981, and any other laws and regulations relating to employment discrimination and any and all claims for attorney's fees and costs. Spindler specifically acknowledges that the foregoing release includes a complete release and discharge of all Apple Parties from any and all claims, damages of any kind, and claims for attorneys fees and costs, under the Age Discrimination in Employment Act of 1967 ("ADEA") as amended by the Older Worker Benefit Protection Act ("OWBPA"). Spindler and Apple agree that part of the consideration payable to Spindler under this Agreement is consideration that Spindler would not otherwise be entitled to and is in consideration for Spindler's release of claims under the ADEA as amended by the OWBPA.

Spindler acknowledges that he understands the protections provided by the OWBPA and that the provisions of the OWBPA have been met by the terms of this Agreement. Spindler states that he knowingly and voluntarily enters into this Agreement. Spindler acknowledges that this Agreement is written in a manner calculated to be understood by him. Spindler further acknowledges that this Agreement refers without limitation to rights under the Age Discrimination in Employment Act. Spindler understands that by this Agreement, he does not waive rights or claims that may arise after the date the Agreement is executed. Spindler acknowledges that he is entering this Agreement in exchange for consideration in addition to anything of value to which he already is entitled due to his employment with Apple. Further, Spindler acknowledges that this release of claims under the OWBPA is not requested in connection with an exit incentive program or other employment termination program offered to a group or class of employees within the meaning of OWBPA. Notwithstanding this provision, Spindler acknowledges that he has been allowed up to forty five (45) days from the date that he received this Agreement to accept its terms. Spindler acknowledges he has consulted with an attorney about the Agreement. Spindler acknowledges that after he signs the Agreement, he will then be given seven (7) days following the date on which he signs the Agreement to revoke it and that this Agreement will only become effective after this seven (7) day period has lapsed. Any such revocation must be in writing signed by Spindler and immediately delivered to Apple's General Counsel.

Spindler has read and expressly waives Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

This waiver is not a mere recital, but is a known waiver of rights and benefits. This is a bargained-for provision of this Agreement and is further consideration for the covenants and conditions contained herein.

The Apple Parties hereby release and forever discharge Spindler, his agents and attorneys from, and covenant not to sue Spindler, his

agents and attorneys with respect to, all claims, rights, demands, actions, obligations, debts, sums of money, damages, and causes of action ("claims") arising from his employment relationship with Apple to the extent permitted by law and public policy, except for any claims arising from any intentional acts of misconduct, or any other act taken in bad faith or without a reasonable belief that it was in the best interests of the Apple Parties.

20. Cooperation. Spindler agrees that he will make himself available at reasonable times and intervals to participate in the conduct of and preparation for any pending or future litigation to which Apple is a party and in which his experience or knowledge may be relevant. Spindler shall be reimbursed for his reasonable travel and out-of-pocket expenses incurred by virtue of his cooperation as described in this Paragraph. In no respect shall this provision be deemed to pertain to or affect the nature or substance of Spindler testimony at deposition or trial or in any other truthful testimony at deposition or trial or in any other circumstances.

21. Remedies in Event of Future Dispute.

a. Except as provided in sub Paragraph (b) below, in the event of any future dispute, controversy or claim between the parties arising from or relating to this Agreement, its breach, any matter addressed by this Agreement, and/or Spindler's employment with Apple through Termination Date, 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 California Employment Dispute Resolution Rules, and judgment upon the award rendered by the Arbitrator(s) may be entered by any court having jurisdiction of the matter. The prevailing party in such arbitration shall be entitled to recover 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.

b. In the event that a dispute arises concerning compliance with this Agreement, either party will be entitled to obtain

from a court with jurisdiction over the parties preliminary and permanent injunctive relief to enjoin or restrict the other party from such breach or to enjoin or restrict a third party from inducing any such breach, and other appropriate relief, including money damages. In seeking any such relief, however, the moving party will retain the right to have any remaining portion of the controversy resolved by binding confidential arbitration in accordance with sub paragraph (a) above.

By signing the below, the parties agree to the terms hereof, including the Exhibits hereto, and agree that this document, and Exhibits A, B, C, D, E & F hereto, set forth their entire agreement, except as otherwise expressly provided herein.

APPLE COMPUTER, INC.

February 13, 1996
Date

By /s/ Gilbert F. Amelio
Gilbert F. Amelio
Chief Executive Officer,
Chairman, Board of Directors
Apple Computer, Inc.

I have read, understand, and agree to the foregoing:

February 12, 1996
Date

By /s/ Michael H. Spindler
Michael H. Spindler

Exhibit 10.A.39

June 3, 1996

James Buckley
124 Bridgton Court
Los Altos, CA 94022

Re: Additional Benefits Beyond Executive Severance Plan

Dear Jim:

In addition to the benefits available to you under Apple's Executive Severance Plan, Apple has agreed to provide you with additional benefits. In exchange for your agreement to waive your right to move back east and seek reimbursement from Apple for moving expenses, Apple will agree to waive its right to collect mortgage assistance prepayments paid to you. In addition, you may keep as your personal property the Apple equipment currently in your possession at home. Please provide me a list of this equipment as soon as possible.

If you have any questions about this supplemental letter, please give me a call. Otherwise, please return to me a signed original of this letter.

Sincerely,

Apple Computer, Inc.

/s/ Kevin Sullivan

*Kevin Sullivan
Senior Vice President, Human Resources
Agreed to as of this 30th day of June, 1996.*

*/s/ James J. Buckley
James J. Buckley*

Supplemental Information to Letter Agreement dated June 3, 1996 between Apple Computer, Inc. and James J. Buckley (the "1996 Agreement")

1. Pursuant to the terms of a letter agreement dated January 17, 1995 (the "1995 Agreement"), between Mr. Buckley and Apple Computer, Inc. ("Apple"), Apple had agreed to relocate Mr. Buckley and his family to any city within the continental United States in accordance with Apple's standard relocation package in the event of Mr. Buckley's termination (other than for Business Reasons as defined in the 1995 Agreement) on or before January 16, 1997. Pursuant to the terms of the 1996 Agreement, Mr. Buckley has waived his right of relocation under the 1995 Agreement.

2. In consideration for Mr. Buckley's waiver of his right of relocation under the 1995 Agreement, Apple has agreed to waive its right to collect a pro rata portion (\$31,250) of the mortgage assistance prepayment made to Mr. Buckley for calendar year 1996 in the amount of \$75,000.

3. Apple has agreed to let Mr. Buckley keep as his personal property Apple equipment as set forth below:

Macintosh Duo 2300

Duo Dock

Personal Laserwriter 320 printer Hewlett-Packard Fax 700

Compact Disc Player

FOUNTAIN MANUFACTURING AGREEMENT

between
APPLE COMPUTER, INC.
and
SCI SYSTEMS, INC.

This Fountain Manufacturing Agreement (the "Agreement") by and between Apple Computer Inc., a California corporation, with its principal place of business at 1 Infinite Loop, Cupertino, California 95014 ("Apple"), and SCI Systems Colorado, Inc., a Colorado corporation having its principal place of business at 702 Bandley Drive, Fountain, Colorado 80817 is entered into on May 31, 1996 and effective as of the Closing Date, defined below.

PURPOSE

Apple and SCI entered into a Stock Purchase Agreement on April 4, 1996 (the "Stock Purchase Agreement") pursuant to which SCI will purchase Apple's manufacturing facility located at 702 Bandley Drive, Fountain, Colorado ("Fountain") and certain related assets.

The parties desire that Apple engage SCI to assemble, test and package certain Products, Service Units and Spare Parts, as defined below, on a turnkey basis at Fountain on the terms and conditions of this Agreement.

This Agreement defines the general terms and conditions governing all transactions between them for Products, Service Units and Spare Parts manufactured at Fountain. Individual "Product Plans" attached as Addenda to this Agreement, and incorporated herein by reference, define the specific terms and conditions for each Product, Service Unit and/or Spare Part. The initial Product Plans are attached to Exhibit A and numbered A-1 through A-11. Additional Products and Product Plans may be added to this Agreement by addenda to Exhibit A signed by both parties. Such addenda will be numbered sequentially, A-12, A-13 and so on.

In consideration of the above and the mutual promises contained herein, Apple and SCI agree as follows:

AGREEMENT

1. DEFINITIONS Whenever capitalized in this Agreement:

"Additional Apple Inventory" has the meaning set forth in Section 7.1.

"Americas" means all countries in North, South, and Central America and the Caribbean.

"Apple Authorized Vendor" means: (i) Apple; (ii) third parties selected, approved and qualified by Apple in writing; and (iii) with Apple's prior written approval, third parties selected by SCI.

"Applicable Labor Hours" has the meaning set forth in Exhibit B, Schedule 1.

"Apple Proprietary Components" means materials and components that are proprietary to Apple or contain Apple proprietary technology, including all copyrights, patent rights, trademarks, trade secrets and other intellectual property rights embodied therein.

"Base Factory Load" or "BFL" has the meaning set forth in Exhibit B, Schedules 1 and 2.

"Base Load Commitment" or "BLC" has the meanings set forth in Exhibit B, Schedules 1 and 2.

"Closing" and "Closing Date" have the meanings set forth in Section 2.1, below.

"Confidential Information" means: (a) for Apple, all Apple custom and proprietary components supplied to SCI by Apple or an Apple Authorized Vendor, the Specifications, the Quality Requirements, the Products, any test software, equipment or fixtures developed by or for Apple, and any trade secrets related to any of the foregoing; (b) for SCI, the Service Documentation, any test software, equipment or fixtures developed by or for SCI, and any trade secrets related to any of the foregoing; (c) any information, including but not limited to any information relating to Apple's product plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how, that is designated by the disclosing party as confidential in writing or, if disclosed orally, reduced to writing and designated as confidential within thirty (30) days; and (d) the terms, conditions and existence of this Agreement; provided, however that "Confidential Information" will not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (ii) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; (iii) is independently developed by the receiving party; (iv) is lawfully obtained from a third party who has the right to make such disclosure; or (v) is released for publication by the disclosing party in writing.

"DPM" means Defective Units Per Million.

"Delivery" or "Deliver" means delivery of or to deliver the quantity of Product ordered by Apple in a particular Purchase Order to the Delivery Point.

"Delivery Point" means FOB for PCBA Products shipped to Apple's Sacramento facility FOB destination and for all other Products SCI's dock, unless otherwise agreed in the Product Plan for a particular Product, Service Unit and/or Spare Part. If FOB destination, Apple will pay for freight and insurance in transit to such destination.

"Direct Labor Cost" means Standard Labor Hours for a Product multiplied by the Labor Rate for such Product.

"Epidemic Failure" means Product failures at or above mutually agreed upon rates set forth in the Product Plan for such Product resulting from defects in material, workmanship, manufacturing process and/or design deficiencies attributable to SCI (or its subcontractors), including but not limited to use of components with inherent or latent defects, or consistent misadjustments during manufacture. There are two types of Epidemic Failures: (a) product failure(s) attributable to a single root cause; or (b) a product failure attributable to multiple root causes.

"Fountain" means the manufacturing facility located 702 Bandle Drive, Fountain, Colorado 80817.

"Initial Inventory" means the parts inventory purchased by SCI pursuant to the Stock Purchase Agreement.

"IP License" means the Intellectual Property License Agreement between the parties granting SCI a non-exclusive license to use certain manufacturing technology and information systems at Fountain.

"Labor Rate" for a Product means the rate SCI may charge Apple for each Standard Labor Hour required to manufacture such Product determined as set forth in Exhibit B, Schedule 1.

"Lead Time" means the amount of time in advance of Delivery Apple must issue a Purchase Order, as specified in the Product Plan for a particular Product, Service Unit or Spare Part.

"Long Lead-Time Components" means components and/or materials that SCI must order from a supplier at least ninety (90) days before the requested delivery date.

"Other Cost Adders" for a Product means the percentage markup, determined as set forth in Exhibit B, Schedule 2, that SCI may add to the Procured Material Cost for such Product to cover SCI's overhead costs including, without limitation, freight, scrap, duty, attrition, rework and cost of money.

"Percentage Volume Commitment" has the meaning set forth in Section 3.1.

"Preferred Carrier(s)" means the carrier(s) specified by Apple from time to time.

"Pre-Production Deliverables" means the pre-production deliverables specified in the Product Plans.

"Price Schedule" means the schedule used to determine the unit price of a Product as set forth in the Product Plan for such Product.

"Procured Materials" means the materials purchased by SCI to manufacture the Products for Apple under this Agreement, including the Initial Inventory.

"Procured Materials Cost" means the amount SCI may charge Apple for Procured Materials in a Product determined in accordance with Section 10.4 (Procured Material Cost).

"Product" means a printed circuit board assembly (PCBA) or final assembled and tested product (FATP) to be assembled and tested by SCI under this Agreement.

"Product Plan" means the Specifications, Quality Requirements, Price Schedule, Epidemic Failure Rate and other unique terms related to a particular Product as set forth in an attachment or addendum to Exhibit A.

"Product Warranty" means the warranty on workmanship and materials that Apple may purchase for any or all Products pursuant to Section 15.3.

"Profit" for each Product means the percentage of Direct Labor Cost and Procured Material Cost, determined in accordance with Exhibit B, Schedule 2, that SCI may charge Apple as profit.

"Purchase Orders" means written or electronically transmitted purchase orders for the Products issued by Apple to SCI.

"Quality Requirements" means: (i) the quality requirements for each Product as specified in the Product Plan for such Product; and (ii) the Supplier Quality Business Requirements reference set forth in Exhibit E.

"Service Documentation" means and may include some or all of the following as specified in the Product Plan, in English and in reproducible format, for the Products and associated Service Units and Spare Parts, including assemblies and cable harnesses as applicable:

- (a) Product Specification;
- (b) Schematic, block, and component layout diagrams, and drawings with reference designators where appropriate;
- (c) Complete bill of materials, with reference designators to the schematics and vendor part numbers, of all levels within the Product, including two samples of each part submitted;
- (d) Test and inspection procedures and assembly and disassembly instructions, trouble-shooting procedures, alignment and calibration procedures and safety procedures; and
- (e) Specifications (data sheets) for commercially available components with sources of supply, cross-referenced to the schematics and vendor part number.

"Service Software" means software necessary for the testing and inspection of the Product and/or Service Units.

"Service Units" means serviceable modules and/or field replaceable service units of each respective Product, as separately identified in the Product Plan for such Product. Service Units are a subset of the Spare Parts for a particular Product.

"Spare Parts" means spare parts associated with each respective Product, as separately identified in the Product Plan for such Product.

"Specifications" means the specifications for a Product and associated Pre-Production Deliverables as set forth in the Product Plan for such Product. Specifications may be amended from time to time by documented engineering change orders in accordance with Section 8, below.

"Standard Apple Hours" has the meaning set forth in Exhibit B, Schedule 1.

"Standard Cost" of a component means the actual price paid by such party for such component as adjusted by such party from time to time to reflect changing prices.

"Standard Labor Hours" for a Product means the number of standard SCI labor hours required to assemble and test such Product, determined using the methodology set forth in Exhibit B. Standard Labor Hours for a third party means the number of standard SCI labor hours expended for such third party.

"Standard Third Party Hours" has the meaning set forth in Exhibit B, Schedule 1.

"Stock Purchase Agreement" means the agreement between the parties entitled "Stock Purchase Agreement" dated April 4, 1996.

"Term" means the term of this Agreement, including the Initial Term and any Renewal Terms, as defined in Section 2 of this Agreement.

"Tooling" means the manufacturing tooling and inspection equipment used in manufacture and assembly of a particular Product, Service Units and/or Spare Parts as specified in the relevant Addendum.

"Unique Components" means components purchased by SCI on behalf of Apple that are non-cancelable, non-returnable and unusable in manufacturing products for SCI's other customers.

2. TERM OF AGREEMENT

2.1 Closing Date. The rights and obligations of the parties under this Agreement are conditioned upon and subject to close of the Stock Purchase Agreement and related agreements between Apple and SCI (the "Closing"). The Closing will occur on May 31, 1996 or such other date as the parties agree (the "Closing Date").

2.2 Initial Term. This Agreement will commence on the Closing Date and remain in effect until July 1, 1999 (the "Initial Term"), unless earlier terminated pursuant to Section 18 (Termination) or renewed pursuant to Section 2.3 (Renewal Terms), below.

2.3 Renewal Terms. This Agreement will renew automatically for successive one (1) year renewal terms (the "Renewal Terms") unless one party provides the other written notice of its intent not to renew the Agreement at least ninety (90) days before the end of the Initial Term or any Renewal Term thereafter. The provisions of Section 3 (Percentage Volume Commitments) will not apply in any Renewal Term.

3. PERCENTAGE VOLUME COMMITMENTS

3.1 Percentage of Apple's Volumes Committed to SCI. Apple commits to purchase from SCI, and SCI agrees to manufacture and deliver to Apple, in each year of the Initial Term, the following percentages of Apple's total annual volumes of Apple-labeled personal computer systems and of main logic boards for such systems, excluding OEM and ODM boards or systems, that are manufactured for sale in the Americas during such year ("Percentage Volume Commitment"):

	Year 1 (7/1/96-6/30/97)	Year 2 (7/1/97-6/30/98)	Year 3 (7/1/98-6/30/99)
Main Logic Boards	60%	50%	40%
Computer Systems	40%	40%	30%

3.2 Conditions. Apple's Percentage Volume Commitment is conditioned upon and subject to:

- (i) SCI offering and delivering Products with comparable quality, and with competitive pricing, Lead Time and flexibility terms, when compared with other suppliers located in the United States who provide a comparable range of contract manufacturing and engineering services similar to those SCI provides in connection with Products;
- (ii) SCI allocating adequate capacity at Fountain or with Apple's prior written approval, at other SCI Systems, Inc. facilities to deliver such volumes to Apple; and
- (iii) SCI's performance of its obligations under this Agreement.

To the extent SCI fails to do so, Apple may, without prejudice to any other rights or remedies available to it, apply volumes manufactured elsewhere, by Apple or any third party, to its satisfaction of the Percentage Volume Commitment.

3.3 Volumes Manufactured at Another SCI Facility. Apple will have the option to move volumes above SCI's Base Factory Load (as defined in Exhibit B, Schedules 1 and 2) to any other SCI facility to achieve more competitive pricing, better service, better quality or for any other reason. All such volumes will be credited against Apple's Percentage Volume Commitment.

3.4 Failure to Meet Percentage Volume Commitment. If Apple does not meet its Percentage Volume Commitment in Year 1, Year 2 or Year 3 of the Initial Term for any reason other than SCI's breach of this Agreement, failure to allocate adequate capacity to Apple, or failure to offer competitive product on competitive terms and conditions, as required above, Apple may remedy its obligations under this Agreement in one of two ways; either by:

(i) adding the shortfall (the number of units Apple was committed to purchase less the number it actually purchased from SCI during that year) to Apple's commitment for the following year (except a shortfall in year 3); or

(ii) paying SCI the profit that SCI would have enjoyed had Apple purchased the shortfall. The profit will be calculated by multiplying:

- the shortfall (the number of units Apple was committed to purchase less the number it actually purchased from SCI during that year);

- the average unit cost (excluding profit) of product in the category in which there was a shortfall (i.e. boards or systems); and

- the percentage profit that would have applied to the shortfall per the Pricing Formula set forth in Exhibit A.

Apple's failure to do so within three (3) months after the end of the year in which the shortfall occurred will constitute a breach of the Agreement.

4. PRODUCT PLANS

4.1 Generally. Apple and SCI will establish a Product Plan, in the format and containing the information set forth in Exhibit A, for each Product to be manufactured under this Agreement. On or before June 21, 1996, Apple will provide and the parties will execute Product Plans for the initial Products that SCI will manufacture and attach such Product Plans as addenda A1-A11 to Exhibit A. The parties may add new Products to

this Agreement after the Closing Date by adding Product Plans for such Products, executed by both parties and in the format and containing the information set forth in Exhibit A, as addenda to Exhibit A. SCI will have no obligation to perform the pre-production or manufacturing services under a Product Plan until Apple has issued a Purchase Order or Letter of Authorization for such services.

4.2 Pricing for New Products. SCI will provide Apple a price quote for each new Product proposed by Apple. Such price quotes will be consistent with the pricing formula and Standard Labor Hour methodology set forth in Exhibit B and will include the following information:

- (a) NRE and Tooling costs, if any;
- (b) Direct Labor Cost; and
- (c) Actual cost of Procured Material (i.e. the actual price quoted by the vendor for each component, including any related rebates or discounts or leveraged volumes) by line item;
- (d) Other Cost Adders;
- (e) Packaging costs;
- (f) Product Warranty cost, if any; and
- (g) SCI's profit.

The agreed upon price and projected annual volumes for each new Product will be set forth in the Product Plan.

4.3 Other Documents in Product Plan. Unless otherwise agreed, Apple will be solely responsible for the identification of Products, Service Units and Spare Parts, Apple part numbers, Specifications, Quality Requirements, and Unique Components included in each new Product Plan. The parties will be jointly responsible for the identification of Pre-Production Services, the Pre-Production Delivery and Payment Schedule, Lead Time, Service Related Terms, Manufacturing Technology, Equipment, Labor, Materials and Facilities, Test Equipment and Fixtures, Tooling and other Product Specific Terms and Conditions.

5. PRE-PRODUCTION SERVICES

5.1 Scope of Work. SCI's pre-production services will be specified in the Product Plan for each Product, and may include, without limitation, development of assembly and test processes; development of test programs and/or fixtures; and production of prototype and/or validation units. SCI will perform such services and deliver any Pre-Production Deliverables to Apple in accordance with the Pre-Production Delivery and Payment Schedule and Purchase Order(s). Unless otherwise agreed in the Product Plan or in the IP License, SCI will provide all test and manufacturing technology, equipment, labor, materials and facilities necessary to perform the scope of work under this Agreement.

5.2 Test Engineering. Unless otherwise agreed in the Product Plan or in the IP License, SCI will provide and maintain all test systems, testers, tools and fixtures required to perform the scope of work under this Agreement. Apple will provide SCI test vectors and other

information Apple deems necessary to develop test programs and fixtures for the Products, Service Units and/or Spare Parts. SCI will name a test engineer, or more than one if Apple deems necessary and as mutually agreed, who will interface with Apple's test engineering group as needed to timely develop and/or support, as specified in the relevant Product Plan, Test Programs and Test Fixtures for use in manufacturing such Product for Apple. Upon Apple's request, SCI will locate such test engineer(s) at Apple's engineering facilities. Test engineers on Apple's premises will be subject to the provisions of Section 22.3 (Personnel), below.

5.3 Progress Reports. At Apple's request, SCI will provide Apple with regular written progress reports, such reports to include the following:

- (a) status of progress toward next scheduled milestone;
- (b) short description of problems, if any, in meeting such milestone;
- (c) recovery method proposed in order to meet the next milestone, if needed;
- (d) any changes in the estimated Price of the Product;
- (e) any other information related to the pre-production services reasonably requested by Apple.

5.4 Pre-Production Review. Apple may conduct periodic reviews to ensure its satisfaction with SCI's pre-production services under each Product Plan. Upon reasonable notice, SCI will allow Apple, during SCI's normal business hours, to visit its facility to discuss and inspect the status of pre-production. Apple personnel on SCI's premises will be subject to the provisions of Section 22.3 (Personnel), below.

5.5 Acceptance of Pre-Production Deliverables.

- (a) Apple, with such assistance from SCI, as specified in the Product Plan, will examine and test each Pre-Production Deliverable to determine whether it conforms to the Specifications for such Deliverable set forth in the Product Plan within ten (10) working days after delivery to Apple. Apple will either: (i) accept the Pre-Production Deliverable and so inform SCI in writing; or (ii) reject the Pre-Production Deliverable and provide SCI with a written detailed statement of errors. Notwithstanding the Pre-Production Schedule, Apple will not be obligated to pay for any Pre-Production Deliverable for which Apple has submitted to SCI a detailed statement of errors until such time as SCI has corrected such errors to Apple's reasonable satisfaction.
- (b) If Apple provides SCI a statement of errors: (i) SCI will, at its earliest convenience, correct all errors set forth in the statement of errors and redeliver the Pre-Production Deliverable to Apple within ten (10) working days after receipt of the statement of errors; or (ii) the parties will, within ten (10) working days after SCI's receipt of the statement of errors, negotiate in good faith the time permitted for such

correction. Apple will, within ten (10) working days after any redelivery of a Pre-Production Deliverable, accept or reject the redelivery in accordance with Subsection 5.5(a) above. This process will be repeated until Apple either accepts the Pre-Production Deliverable or terminates this Agreement in accordance with Section 18 (Termination), below.

(c) If Apple fails to give a statement of errors within such ten (10) working day period, SCI may notify Apple that Apple must provide such a statement within ten (10) working days after Apple's receipt of SCI's notice. The Pre-Production Deliverables must be particularly described in any such notification. If Apple does not accept the Pre-Production Deliverable or provide SCI a statement of errors within such ten (10) day period, Apple will be deemed to have accepted the Pre-Production Deliverable.

5.6 Notice of Qualification. After completing its Pre-Production Review and accepting all Pre-Production Deliverables with respect to a Product, Apple will give SCI a written notice of qualification, attaching to the notice any modifications to the Specifications or any additions thereto, as agreed between Apple and SCI. Such modifications and/or additions will be made part of the final Specification for such Product. SCI will not implement any change to the final Specification without Apple's prior written consent. Upon receipt of Apple's notice of qualification, SCI will be authorized to begin producing such Product for sale to Apple pursuant to the terms of this Agreement.

6. MANUFACTURING SERVICES

SCI will accept Purchase Orders for Products, Service Units and/or Spare Parts issued in accordance with Section 11 (Forecasts, Orders & Adjustments), purchase materials for, assemble, test and package such Products, Service Units and/or Spare Parts on a turnkey basis in accordance with Apple's Specifications and Quality Requirements, and Deliver them to Apple in accordance with the terms of this Agreement. SCI will use only ISO 9002 manufacturing sites to perform services under this Agreement and will not subcontract assembly, testing or packaging services, or provide such services at any location other than Fountain, without Apple's prior written approval. Unless otherwise agreed in the Product Plan or in the IP License, SCI will provide all manufacturing technology, equipment, labor, materials and facilities necessary to perform the scope of work.

7. MATERIALS MANAGEMENT

7.1 Initial Inventory of Materials and Components.

(a) Generally. As part of the Stock Purchase Agreement, SCI will purchase from Apple, at Apple's Standard Cost, certain materials and components for consumption in Products forecasted for the first six months of the Initial Term (the "Initial Inventory"). Provided space is available at Fountain, any additional inventory owned by Apple and on-hand at Fountain on the Closing Date ("Additional Apple Inventory") will be kept

in a separate cage at Fountain without charge to Apple, or at Apple's option at an offsite location, and purchased by SCI as required on a just-in-time basis until such inventory is either consumed in Products or redeployed by Apple.

(b) Use of Initial Inventory and Additional Apple Inventory. SCI will use the Initial Inventory and any Additional Apple Inventory before any materials or components purchased by SCI from any other source. SCI will provide Apple regular transactional reports showing its use of the SCI Purchased Inventory and Additional Apple Inventory. Apple will invoice SCI for Additional Apple Inventory used by SCI.

(c) Warranty. Apple warrants that the Initial Inventory and Additional Apple Inventory purchased by SCI will meet the requirements of Apple's specifications for such materials and/or components for a period of twelve (12) months after SCI's purchase thereof. Apple will replace, or at Apple's option, refund the purchase price, of any Initial Inventory or Additional Apple Inventory purchased by SCI and found by SCI to be defective by SCI, provided that: (i) SCI gives Apple prompt written notice of such defect and returns the defective unit(s) to Apple using Apple's RMA procedure; and (ii) Apple will not replace or refund the purchase price of any Initial Inventory or Additional Apple Inventory that has been abused, damaged, altered or misused by someone other than Apple or that is defective as a result of external causes not caused by Apple.

(d) Apple's Obligation to Repurchase.

Six (6) months after the Closing Date, Apple will repurchase, at the original purchase price without markup or carrying charges, any Initial Inventory that SCI has not already consumed in components or finished goods and that it will not consume in forecasted purchases during the next six (6) months of the Initial Term.

Twelve (12) months after the Closing Date, Apple will repurchase, at the original purchase price without markup or carrying charges, any remaining Initial Inventory not consumed in components or finished goods. The parties will mutually agree upon a disposition plan for any Additional Apple Inventory remaining at the end of such twelve (12) month period, provided that Apple may, in its sole discretion, redeploy the material for any other purpose.

7.2 Open Vendor Purchase Orders. On the Closing Date, Apple will assign to SCI and SCI will assume any open purchase orders that Apple has issued to vendors for materials and components matching the Bill of Materials for Products and quantities on Apple's Initial Purchase Order, including purchase orders for Long Lead-Time Components, taking into consideration the quantity of such materials included in the Initial Inventory and Additional Apple Inventory.

7.3 Procurement of Materials. To the extent the Initial Inventory, the Additional Apple Inventory do not contain sufficient quantities of materials and components to fulfill Apple's Purchase Orders, SCI will

purchase such materials and components directly from vendors authorized by Apple as set forth in Section 7.4, below. The terms and conditions of SCI's purchase of such materials and components will be determined by agreement between SCI and the Apple Authorized Vendors. Apple will not be a party to these purchase transactions and SCI will be solely responsible for all payments for Procured Materials. To the extent provided in Apple's agreements with its Apple Authorized Vendors, SCI will receive the benefit of any third party provisions therein which are intended to apply to it and SCI will comply with such provisions. Apple agrees to provide SCI with advance notice in writing of such provisions.

SCI will purchase Procured Materials using standard purchasing practices including, but not limited to, Economic Order Quantities, ABC Order Policies and long lead time component management.

SCI will manage its inventory of Procured Materials in a manner:

(i) consistent with standard industry inventory management practices, including but not be limited to the use of Economic Order Quantities, ABC buy policies, and long lead-time component management; and

(ii) that will ensure that SCI can fill Apple Purchase Orders on a turnkey basis according to the agreed upon Lead Times and flexibility terms and obtain competitive prices for such materials and components.

7.4 Apple Authorized Vendors. SCI will procure materials only from Apple Authorized Vendors. Apple will provide SCI with an Approved Vendor List/Preferred Vendor List for each phase of Product manufacture. All suppliers of Procured Materials will be considered tier two suppliers to Apple. SCI will not change vendors without Apple's advance written approval. Apple's specification of vendors will not release SCI from any of its obligations for meeting the standards of workmanship or any other obligations it has under this Agreement.

7.5 Long Lead-Time Components. Apple and SCI will identify any Long Lead- Time Components in writing in the Product Plan or at any time during the production of a Product. SCI will not purchase Long Lead-Time Components except as expressly approved by Apple in a letter of authorization which will be as binding as a Purchase Order for such Long Lead-Time Components.

7.6 Use of Proprietary Components. SCI agrees to use Proprietary Components for the sole purpose of producing the Products, Service Units and Spare Parts for Apple and not for any other purpose. SCI agrees not to engage in, nor will it authorize others to engage in, the reverse engineering, disassembly or the decompilation of any Proprietary Components.

7.7 Reports. Upon request, SCI agrees to provide Apple written reports on Procured Materials, current inventory and scheduling in the format specified by Apple. SCI will also authorize its suppliers to provide Apple information regarding the Procured Materials.

7.8. Packaging And Printed Materials. All packaging, product graphics, instructional materials and other Apple-specified related print matter will be created, developed and produced in accordance with Apple's requirements as outlined in the Product Plan.

7.9 Operations Manager. Each company will name a person to be a single point of contact to handle operational matters related to the day to day administration of this Agreement. The current operational contacts for each party are shown in Exhibit F.

8. DESIGN, MATERIAL AND PROCESS CHANGES

8.1 At SCI's Request. SCI will not change any Product, including any component, material or process used in manufacturing such Product, without obtaining Apple's prior written consent utilizing the process set forth in the Apple Vendor Request for Action Information Guide (P/N 080-0504-A). SCI's request will include any cost, schedule or other impact of such change. If Apple requests, SCI will also provide sample units of the modified Product for Apple's evaluation. Apple will approve or disapprove SCI's request within thirty (30) days after receipt.

8.2 At Apple's Request. Should Apple desire modifications in the design of a Product, Apple will submit a written Engineering Change Order ("ECO") to SCI. Within one (1) week after SCI's receipt of the ECO, SCI will advise Apple of any cost, schedule or other impact of such change, and will not implement any such change unless and until Apple has approved such impact writing.

8.3 Emergency Changes. If Apple submits an emergency ECO clearly identified as such, SCI will implement such ECO as soon as possible; provided that SCI has advised Apple of and Apple has approved in writing any cost or other impact of such change.

8.4 Impact on Open Purchase Orders. Unless Apple specifies otherwise in its written approval of changes pursuant to this Section, such changes will not impact any units already scheduled for Delivery as of the date of Apple's approval.

9. QUALITY AND INSPECTION

9.1 Quality Requirements. SCI will manufacture the Products in accordance with the Quality Requirements, including the Product-specific quality requirements set forth in the Product Plan and the Supplier Quality Requirements set forth in Exhibit C. SCI will provide Apple regular reports and analysis of its yields, DPM and PPM. SCI will also provide Apple, for Apple's review and approval, its corrective action procedures, defect containment plan, recall risks, repair capabilities and costs, business risk insurance, and known liabilities.

9.2 Incoming Inspection. Apple may inspect Product Delivered under this Agreement for deficiencies in workmanship or material either at the Delivery Point and/or at its destination. Apple may return defective or non-conforming Products to SCI at SCI's cost (using SCI's selected carrier) within thirty (30) days after Delivery in accordance with the agreed RMA procedure set forth in the Product Plan.

9.3 Ship to Stock/Ship to Distribution. This Agreement and the Pricing Schedules are based on the assumption that SCI can produce the Products at quality levels suitable for shipment directly to Apple's distribution system. SCI's inability to achieve certification status as defined in Exhibit E, will create a significant increase in costs to Apple. SCI will develop a plan to meet such requirements and understands that failure to achieve certification status within a reasonable time frame may result in disqualification as an approved Apple supplier.

9.4 On-Site Inspections. SCI acknowledges that it is essential for Apple to have periodic access to SCI's premises for the purpose of conducting inspections and/or audits under this Agreement, including, without limitation, audits of SCI's compliance with the Quality Requirements and with export and environmental laws. Upon reasonable notice, SCI will allow Apple, during SCI's normal business hours, to visit its facility to discuss and inspect its manufacturing processes, test the Products, review SCI's records, etc. Such inspections/audits and any testing done by Apple during them, will not relieve SCI of liability for Products later found to be defective or for SCI's failure to meet its obligations under this Agreement.

9.5 Agency Approvals. Unless the parties agree otherwise in the Product Plan, Apple will be responsible for obtaining agency and regulatory approvals; provided, however, that SCI will provide Apple all information and assistance reasonably requested by Apple for the purpose of obtaining such approvals. If recertification is required due to changes to a Product requested by SCI, SCI may be required obtain and bear the cost of such recertification.

10. PRICING

- 10.1 The Pricing Formula. The unit price of each Product manufactured at Fountain will be determined using the pricing formula set forth in Exhibit B. SCI will provide Apple a price quote for each new Product proposed by Apple as set forth in Section 4.2, above. The unit price agreed upon by the parties will be set forth in the Pricing Schedule for such Product; provided, however, that such prices may vary in accordance with Section 10.2, below.
- 10.2 Labor Rates and Other Cost Adders. The Labor Rate and Other Cost Adder components of the pricing formula are variable depending on the actual load at Fountain in each quarter of the Term, as follows:

The Labor Rate (for the Initial Products and any new Products) will be determined as set forth in Schedule 1 to Exhibit B based on the total number of "Applicable Labor Hours" during the quarter. "Applicable Labor Hours" is defined in Schedule 1 to Exhibit B.

The Other Cost Adders (for the Initial Products and any new Products) will be determined as set forth in Schedule 2 to Exhibit B depending on the total number of "Applicable Units" manufactured by SCI during the quarter. "Applicable Units" is defined in Schedule 2 to Exhibit B.

For purposes of pricing in Years 2 and 3 of the Initial Term of this Agreement, SCI will be responsible for a portion of the factory load if Apple's load falls below a hypothetical "Base Factory Load" defined in Schedules 1 and 2 to Exhibit B. This Base Factory Load is for pricing purposes only and does not represent a purchase commitment of any kind.

Both the Labor Rates and Other Cost Adders for a given calendar quarter will be determined prospectively based on Apple's forecasts for upcoming quarter. At the end of the quarter, the Labor Rate and Other Cost Adders will be adjusted retrospectively to reflect the actual number of units manufactured by SCI and Standard Labor Hours expended by SCI during that quarter. Within ten (10) business days after the end of each calendar quarter, SCI will:

- (a) provide Apple written verification of the actual volumes manufactured by SCI during the quarter, including: the number of units manufactured for Apple under the Agreement; the number of units manufactured at Fountain for Mac OS Licensees; the Apple Standard Hours (as defined in Schedule 1 to Exhibit B); and the Third Party Standard Hours (as defined in Schedule 1 to Exhibit B); and
- (b) identify to Apple any overpayment or any underpayment resulting from a difference between Apple's forecasts and actual volumes during the quarter which shall be paid to either party, as appropriate, within thirty (30) days.

10.3 Standard Labor Hours. When determining the number of hours required to assemble and test each new Product, SCI will use a methodology consistent with that used in quoting the Initial Product prices. This methodology is set forth in Exhibit B.

10.4 Procured Material Cost. The Procured Material Cost for Initial Products will be based on the cost of materials purchased from Apple (Initial Inventory or Additional Apple Inventory) on a dollar for dollar basis. Thereafter, SCI will adjust the Procured Material Cost to the lowest prices available from its vendors according to the following schedule:

For Category A items: immediately (will be credited retroactively at end of month) For Category B items: monthly
For Category C items: quarterly

Where:

Category A = hard drives, CD-ROM drives, RAM, flat panel displays, MPUs and other strategic components added to Category A by agreement of the parties;
Category B = system sub-assemblies and ASICs;
Category C = all other components and materials.

Upon repricing, a net adjustment will be made, by invoice to the appropriate party, to revalue on-hand inventory. Where, despite SCI's efforts, a supplier refuses to revalue on-order inventory effective immediately, the net adjustment will include those on-order units as well.

Upon request, SCI will provide Apple the actual cost of specified materials used in its Products. With advance notice to SCI, Apple may renegotiate the price of any component or material, and/or delivery or other terms, with suppliers at any time. SCI will pass through to Apple, according to the above schedule, any cost reductions, including any rebates, discounts or other value received by SCI in connection with any component purchased for use in Apple's products or by leveraging Apple's volumes. Failure to do so will constitute a material breach and grounds for immediate termination, except for de minimus or accidental errors which are promptly remedied with interest (not to exceed 1% per month on all amounts not remedied within 15 days).

- 10.5 Tooling and NRE Costs. SCI will quote tooling, NRE, and other one time costs separately, and will not incur any such cost without Apple's prior written approval. Apple will pay only those tooling costs and NRE actually incurred by SCI, without markup, and will have the option to amortize its payments over a reasonable period of time or number of units to be agreed by the parties. SCI will substantiate all such costs, which will not exceed the initial agreed estimate unless due to changes requested by Apple.
- 10.6 Product Cost Reviews.
- (a) Apple and SCI will agree upon cost reduction goals with stair step costs reductions to be implemented over an agreed upon period of time. These goals will be set forth in the Product Plan.
- (b) SCI will meet with Apple every three (3) months during the Term to review the existing Product cost and establish a plan to pursue all reasonable cost reduction opportunities.
- 10.7 Most Favored Customer Pricing. SCI hereby warrants that at no time will the prices charged Apple for any Product under this Agreement exceed the prices offered other customers on similar terms and conditions.

- 10.8 Taxes. The prices set forth in the Price Schedules are exclusive of state or local sales, use, excise or similar taxes, which, if applicable, will be paid by Apple.
- 10.9 Reports. SCI will provide Apple monthly reports within ten (10) business days after the end of each month, and quarterly reports within ten (10) business days after the end of each of calendar quarter showing: (i) the number of Standard Labor Hours actually expended at Fountain for third parties during such month or quarter; and (ii) the number of Mac OS Systems and boards for Mac OS Systems manufactured at Fountain for third parties during such month or quarter.
- 10.10 Royalties. Unless stated otherwise in a Product Plan, SCI will have no obligation to collect and pay separate royalties to any third party (except those royalties contained within a vendor's product price).
11. FORECASTS, ORDERS & ADJUSTMENTS
- 11.1 Forecasts. Apple will provide SCI, every calendar month during the Term, a forecast covering the period of six (6) calendar months beginning with the month in which such forecast is provided. Such forecast will specify the number of units of the Products which Apple anticipates purchasing during such six (6) month period. Such forecasts will be non-binding and will not be regarded as a commitment to purchase by either party.
- 11.2 Purchase Orders. Apple will order Products by issuing monthly Purchase Orders to SCI on a rolling four month basis, in writing or by electronic means, in accordance with the applicable Lead Time(s). To be effective, all Purchase Orders must reference this Agreement and contain the following terms, summary of initial P.O. attached as Exhibit _____.
- (a) description of the Products to be purchased, including Apple's part number;

(b) quantity to be purchased;

(c) delivery instructions, including routing, delivery schedule and destination; and

(d) confirmation of price.

SCI will accept Apple Purchase Orders within five (5) working days after it receives them. Failure to deliver an acknowledgment to Apple within such five (5) day period will be deemed acceptance. Only terms

(a) - (d), above, and the terms of this Agreement will apply to orders for Products, even if Apple's Purchase Order and/or SCI's acknowledgment form contains other terms and conditions. In the case of conflict between this Agreement and any Purchase Order, the terms of this Agreement will prevail. Any remedies at law or equity not specifically disclaimed or modified by this Agreement remain available to both parties.

11.3 Authorized Purchasing Locations. SCI agrees to accept and act upon only those Purchase Orders received from the following authorized purchasing locations:

Apple Computer, Inc.
One Infinite Loop
Cupertino, CA 95014

Apple Computer Limited
Holly Hill Industrial Estate
Cork City, Ireland

Apple Computer Limited
7 Ang Mo Kio Street 64
Singapore 569086

Apple Computer B.V.
P.O. Box 600
7300 AP, Apeldoorn,
The Netherlands

Apple Computer, Inc.
2911 Laguna Blvd.
Elk Grove, CA 95832

Apple Computer, Inc.
20400 Stevens Creek Blvd.
Cupertino, CA 95014

Apple Computer, Inc..
900 E. Hamilton Avenue
Campbell, CA 95008

The above list of authorized purchasing locations may revised by Apple from time to time by written notice to SCI.

11.4

Order Adjustments.

Apple may increase, decrease or reschedule the number of units under a particular purchase order as follows:

For PCBA Orders:

Adjustments Made	Permissible Adjustment*
Within 30 Days*	up to 25%
31 to 45 Days	up to 50%
46 to 60 Days	up to 75%
60+ Days	up to 100%+

For FATP Orders:		
Adjustments Made		Permissible Adjustment**
Within 7 Days*:		negotiated
8 to 14 Days		up to 25%
15 to 21 Days		up to 50%
22+ Days		up to 100%+

* "Days" means the number of calendar days between Apple's order adjustment and the scheduled Delivery date.

** "Adjustment" means the percentage of units ordered for Delivery on such Delivery Date that Apple may add to the order, delete from the order or reschedule for later delivery.

Contingent on availability of materials and labor, SCI will supply increased units on the originally scheduled Delivery date.

If Apple reschedules the Delivery date under a particular Purchase Order more than sixty (60) days after the original Delivery date, Apple will pay SCI an inventory carrying charge equal to 1% of the actual cost of affected inventory held by SCI on the last day of each month thereafter, provided that SCI will use every effort to mitigate such carrying charges to Apple by, without limitation, canceling or delaying orders, returning components and utilizing components in other products currently produced by SCI at any of its sites.

Apple will be responsible for:

- (i) any overtime charges required to meet Apple's needs where Apple requires greater flexibility than is permitted above; and
- (ii) any vendor premiums required to meet Apple's flexibility needs,

provided that such premiums are incurred due to circumstances beyond SCI's control; provided that SCI will use every effort to minimize such charges or premiums and will advise Apple of any such charges or premiums in advance so that Apple may choose whether to incur the additional cost in order to achieve the desired flexibility.

- 11.5 Configuration Changes. Subject to availability of materials, Apple may change the configuration of quantities under a particular Purchase Order at any time without penalty; provided that SCI may adjust the cost of such quantities pursuant to the terms of Section 10, above.

- 11.6 Cancellation of Purchase Orders. Apple may cancel any Purchase Order(s), in whole or in part, on thirty (30) days notice to SCI, provided that Apple will reimburse SCI for costs actually and reasonably incurred by SCI, including the actual cost of materials and components for the ordered quantity and material adders therefore (as set forth in Exhibit B "Other Cost Adders"), as the result of such cancellation, but not profit or opportunity cost. Both parties will undertake reasonable measures to mitigate the costs of termination.
- 11.7 Lead Time Reduction Program. SCI and Apple will meet periodically to discuss options to effect reductions in Lead Times to allow improved flexibility in ordering and delivery. The agenda for each meeting will include identification of such options, schedules for determination of associated cost and schedules for implementation.
12. DELIVERY, TITLE, CARRIER & RISK OF LOSS
- 12.1 Delivery. SCI will Deliver the total number of units ordered in a particular Purchase Order to the Delivery Point on or before the date specified in such Purchase Order, subject to the provisions of Section 11.4 above.
- 12.2 Carrier; Risk of Loss. SCI will use Apple's Preferred Carrier(s) for Delivery, provided that if Apple does not designate a preferred carrier, SCI may select a common carrier at its discretion. All shipments will be FOB point of shipment, with title and risk of loss or damage passing to Apple upon Delivery to the Delivery Point.
- 12.3 Failure to Meet Delivery Date.

In addition, and without prejudice to any other rights or remedies available to Apple under law or otherwise:

- (a) If a Delivery is or will be late by one or more days, provided late delivery was not caused by Apple, SCI will pay the incremental cost associated with air freighting the order to Apple.
- (b) If SCI fails to Deliver all or part of any order within five (5) days after the Delivery date specified in the Purchase Order, Apple may, without prejudice to any other rights or remedies available to Apple under law or otherwise, terminate the late portion of the Purchase Order without cancellation charges. The canceled units will be credited against Apple's Percentage Volume Commitment. With respect to the portion of a Purchase Order not terminated, if any, the unit price will not change and SCI will otherwise continue performance under this Agreement.
- (c) If SCI fails to deliver all or part of an order within thirty (30) days after the Delivery date specified in the Purchase Order, Apple may, without prejudice to any other rights or remedies available to Apple under law or otherwise, terminate

the Purchase Order without cancellation charges and purchase substitute products from another source; provided that, prior to such cancellation, Apple will provide SCI the opportunity to manufacture and deliver the Product within thirty (30) days from any other SCI facility or to subcontract the effort to another source approved by Apple for delivery within such thirty (30) day period. SCI will reimburse Apple for the difference between the price of the products and the price paid by Apple for substituted products. Any such substitute products will be credited against Apple's Percentage Volume Commitments. With respect to the portion of a Purchase Order not terminated, if any, the unit price will not change and SCI will otherwise continue performance under this Agreement.

13. PAYMENTS

Apple will pay SCI for quantities of Product Delivered to Apple net thirty (30) days from the date of SCI's invoice, provided that the date of the invoice will be no earlier than the Delivery date for such quantities. Apple's payment of SCI's invoice will not constitute final acceptance of the Product and is subject to adjustments for errors, shortages and defects. Unless otherwise agreed by the parties, payment will be made by telegraphic transfer to a bank account designated by SCI. Neither party will have the right of offset or set off. At its option, five (5) working days after written notice to Apple, SCI may impose a late payment fee of up to one percent (1%) per month on all amounts past due by more than fifteen (15) days. Both parties agree to work diligently to resolve any discrepancies involving invoices.

14. SERVICE UNITS, SPARE PARTS & SERVICE DOCUMENTATION

- 14.1 Purchase of Spare Parts and Service Units. Apple or its designee may purchase Service Units and Spare Parts during the period beginning at the Product's initial production and ending seven (7) years after SCI's last shipment of such Product to Apple (even if after expiration of the Agreement). Such purchases will be governed by the applicable terms and conditions of this Agreement. Lead Times for Service Units and Spare Parts during production will be no greater than the then prevailing Lead Time for the Product. In an emergency, SCI will, contingent on availability of labor and components, Deliver Service Units and Spare Parts for Products in production within three (3) days; provided that SCI will advise Apple of any cost, schedule or other impact of such short lead time in advance of Delivery and will not Deliver such Service Units or Spare Parts unless Apple approves such impact in writing. Apple acknowledges that after production, Lead Times for such Service Units and Spare Parts may increase, though they will at all times during such period be reasonable given the availability of materials and labor.
- 14.2 Allocation of Components. If SCI does not have sufficient inventory of Procured Materials to satisfy Apple's Purchase Orders for Service Units and Spare Parts and open Purchase Order for Products, Apple may divert components allocated for production of Products and Service Units to Spare Parts production. The extent such diversion of components causes additional actual labor cost to SCI and/or scheduled delivery delays, such impacts will be equitably negotiated between the parties.

- 14.3 Tear-Down of Completed Product. If after a reasonable attempt to re-allocate components pursuant to Section 14.2 above, Apple is required to tear down completed Product or Service Units to obtain Spare Parts to repair units in the field, SCI will accept return of the incomplete Products or Service Units, freight collect, to SCI's designated repair facilities, promptly repair the units and return the units to Apple freight prepaid. Apple will be obligated to pay SCI the reasonable costs incurred by SCI in making the repairs, including SCI's freight cost and profit as set forth in Exhibit B.
- 14.4 Packaging. Unless otherwise agreed by the parties, Service Units will be packaged with electronic static discharge protection and will be individually packaged in accordance with Apple's Packaging Specification (P/N 062-0087) attached as a part of Exhibit A. Unless otherwise agreed by the parties, all other Spare Parts will be packaged in bulk form with Apple's Spare Part description, part number, and quantity identification on the outside of a bulk container approved by Apple. SCI will provide one packing slip for each shipment of Service Units and Spare Parts on Purchase Orders submitted by Apple. This packing slip will be located on the outside of each shipping box and will list: (a) Apple's and SCI's part number and the quantity for each Service Unit and Spare Part shipped; and (b) the Purchase Order number. The Purchase Order number should also appear on the shipping label for each separate carton shipped, and all packages of individual Service Units and Spare Parts in a carton should be clearly indicated and marked with Apple's part number.
- 14.5 Service Documentation and Tools. SCI will provide Apple reasonably complete and accurate Service Documentation as specified in the Product Plan to assist Apple or an approved third party in the preparation of materials for servicing, repairing and inspecting the Products. SCI will also provide Apple any Service Software or other tools or fixtures specified by the parties in the Product Plan, provided that Apple may be required to pay for materials and components used in such tools or fixtures at prices set forth in such in such Product Plan.
15. WARRANTIES
- 15.1 Pass Through Warranties: SCI will purchase and pass through to Apple material and workmanship warranties on Procured Materials specified by Apple in the Product Plan, including without limitation product liability warranties, so that Apple may, at its option, take warranty claims directly to the vendors of such Procured Materials, rather than make such claims through SCI. If such action by Apple will impact SCI's cost or delivery schedule, such cost or schedule will be equitably adjusted. SCI will also establish a process permitting Apple to purchase components and materials and procure out-of-warranty repairs directly from such vendors. Such vendors will keep SCI apprised of Apple's returns and business requirements. Apple's direct relationship with any such vendor will not release SCI from any of its obligations under this Agreement.

15.2 Epidemic Failure Warranty. If a Product demonstrates an Epidemic Failure within three (3) years of the date of manufacture, SCI will promptly repair the affected Product or Service Unit, replace it with a functionally equivalent product or service unit, or credit Apple an amount equal to the purchase price. SCI will also (i) pay freight in and out; and (ii) reimburse Apple for reasonable direct costs associated with the Epidemic Failure, including without limitation labor costs associated with diagnostics, removal of Service Units and repair or replacement by Apple or Apple's service provider.

The Formula for determining when an Epidemic Failure is set forth in the Product Plan for each Product attached to Exhibit A.

Apple will notify SCI whenever an Epidemic Failure is identified or suspected and work with SCI to develop a recovery plan, which may include a preventative action plan if appropriate under the circumstances. The recovery plan actually implemented by Apple is in Apple's sole discretion; provided, however that (i) Apple and SCI will work together to minimize costs associated with Apple's recovery plan as much as possible without compromising Apple's ability to aggressively respond to its customer's needs; and (ii) SCI will reimburse Apple only for reasonable direct costs incurred by Apple in implementing that portion of the recovery plan associated with the Epidemic Failure. SCI shall not be responsible for Epidemic Failures caused by Apple's specifications, instructions, drawings, or designs.

15.3 Optional Product Warranty.

In addition to the Epidemic Failure warranty provided under Section 15.1, above, Apple will have the option to purchase a fifteen (15) month warranty of materials and workmanship (a "Product Warranty") for any or all Products under this Agreement at a price not to exceed one-half of one percent (.5%) of the unit price of the warranted Product. Apple may exercise its option to purchase a Product Warranty for a particular Product by giving notice to SCI at any time before such Product is shipped to Apple. The agreed price of the Product Warranty will be set forth in the Product Plan for such Product.

SCI represents and warrants to Apple that each Product for which Apple purchases a Product Warranty (a "Warranted Product") will be free from defects in workmanship and materials for fifteen (15) months from the date SCI shipped such Product to Apple. The Product Warranty will not apply to any Warranted Product that has been abused, damaged, altered or misused by someone other than SCI or that is defective as a result of causes external to the Product and not caused by SCI or caused by Apple supplied materials. A Warranted Product will be considered to be free from defects in workmanship if it was manufactured in accordance with SCI's manufacturing workmanship standards and conforms to the Specifications and Quality Requirements for such Warranted Product.

15.4 Repair Under Product Warranty. If SCI breaches the Product Warranty, Apple may return the defective subassembly/field replaceable unit to SCI for prompt repair or for replacement with a functionally equivalent

subassembly or field replacement unit, at SCI's option. SCI will issue a return authorization to Apple within two (2) days after receipt of Apple's warranty claim. Apple will return such Product, freight prepaid, to the factory or service center designated by SCI in its return authorization. SCI will promptly repair or replace such units at SCI's expense and deliver the repaired or replaced units to Apple FOB destination, freight prepaid by SCI. Repaired or replaced Product will carry the same Product Warranty for the balance of the original warranty period. If SCI is unable to repair or replace a unit within forty five (45) days of receipt, SCI will refund to Apple the purchase price for that unit unless Apple has approved a repair or replacement after such forty five (45) day period. SCI may sell any units repaired after such forty five (45) day period to Apple to fulfill Apple's P.O.'s for Service Units or Spare Parts.

- 15.5 Tracking Product and Epidemic Failure Warranties. SCI will (i) develop and maintain a system for tracking the date each unit of each Product was manufactured and shipped to Apple so that the parties may identify Product covered by the Product Warranty and the Epidemic Failure Warranty; and (ii) make such information available to Apple upon Apple's request. SCI's tracking system will be subject to Apple's approval and will be maintained at least one-hundred and twenty (120) days after termination or expiration of this Agreement.
- 15.6 Regulatory Compliance. SCI will comply with all applicable laws and regulations in performing its services under this Agreement.
- 15.7 Notice of Non Compliance. If SCI discovers or suspects that any Apple Product fails to comply with any applicable consumer product or electrical safety rule or contains a defect that could create a substantial product or electrical hazard, SCI will notify Apple immediately and supply Apple with information concerning the nature and extent of the defect involved and the nature and severity of injuries or potential injuries related to the particular Product. SCI will notify Apple immediately of any claim made or proceeding commenced against it arising out of its activities under this Agreement.
- 15.8 Limitation of Warranty.
- (a) All claims for breach of Product Warranty or Epidemic Failure Warranty must be received by SCI no later than thirty (30) days after the expiration of the warranty period;
 - (b) THE WARRANTIES IN THIS SECTION ARE THE ONLY WARRANTIES GIVEN BY SCI. SCI MAKES, AND APPLE RECEIVES, NO OTHER WARRANTY EITHER EXPRESS OR IMPLIED. ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE ARE EXPRESSLY DISCLAIMED AND EXCLUDED.
 - (c) UNLESS EXPRESSLY AGREED TO BY SCI IN WRITING, SCI MAKES NO WARRANTY THAT A PRODUCT WILL (I) MEET ANY SPECIFICATION NOT MAKE KNOWN TO SCI, OR (II) RECEIVE THE APPROVAL OF OR BE

CERTIFIED BY UNDERWRITERS LABORATORY, ANY FEDERAL, STATE, LOCAL OR FOREIGN GOVERNMENT AGENCY (INCLUDING WITHOUT LIMITATION THE FEDERAL COMMUNICATIONS COMMISSION) OR ANY OTHER PERSON OR ENTITY. COMPANY ASSUMES NO RESPONSIBILITY FOR OBTAINING SUCH APPROVALS OR CERTIFICATIONS, OR FOR MEETING ANY SPECIFICATIONS BEYOND THOSE INCLUDED IN APPLE'S SPECIFICATIONS.

- 15.9 No Waiver. Apple's approval or acceptance of any Products which do not meet the Specifications will not relieve SCI of its warranty obligations under this Section 15.
- 15.10 Apple warrants the accuracy and completeness of the drawings, specifications and documentation provided to SCI for the manufacture of components and products.
16. INDEMNIFICATION
- 16.1 Indemnity by SCI. SCI will, at SCI's expense, indemnify, hold harmless and, at Apple's request, defend Apple any of its subsidiaries, affiliates, directors, officers, employees, agents and independent contractors, from and against any and all loss, cost, liability or expense (including costs and reasonable fees of attorneys and other professionals) arising out of or in connection with a third party claim that: (i) a Product caused injury or damage to a person or property; or (ii) that a Product, material or component provided or procured by SCI, or SCI's manufacturing process infringes any patent, copyright, trade mark right, trade secret, mask work right or other proprietary right of any third party; provided, however, that SCI will have no liability under this Section 16.1 to the extent such infringement is attributable to the incorporation of designs or materials provided by Apple into the Product.
- 16.2 Indemnity by Apple. Apple will, at Apple's expense, indemnify, hold harmless and, at SCI's request, defend SCI any of its subsidiaries, affiliates, directors, officers, employees, agents and independent contractors, from and against any and all loss, cost, liability or expense (including costs and reasonable fees of attorneys and other professionals) arising out of or in connection with a third party claim that a Product infringes any patent, copyright, trade mark right, trade secret, mask work right or other proprietary right of any third party to the extent that such claim is attributable to SCI's incorporation of designs or materials provided by Apple into the Product.
- 16.3 Legal Compliance. Each party will defend, indemnify, and hold the other party harmless from any loss, cost, or expense directly resulting from the first party's violation of any law, rule, regulation or ordinance of the United States, any state, or any other governmental agency in the performance of this Agreement.
- 16.4 Conditions. A party's obligation to indemnify the other under this Section 16 is conditioned upon and subject to: (a) the indemnified party giving the indemnifying party reasonably prompt notice in writing of any such suit and permits the indemnifying party through counsel of its choice, to answer the charge of infringement and defend such claim or suit; (b) the indemnified party provides the indemnifying party

information, assistance and authority, at the indemnifying party's expense, to enable such party to defend the suit; and (c) the indemnifying party will not be responsible for any settlement made by indemnified party without its prior written consent. The indemnifying party agrees not to disclose or publicize the terms of any settlement of a suit against the indemnified party without first obtaining the such party's written permission.

17. CONFIDENTIALITY

Each party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own like information, but at a minimum, with a reasonable degree of care. Neither party will use the other's Confidential Information for purposes other than those necessary to perform this Agreement and only employees of the receiving party who have a need to know such Confidential Information will have access thereto. Neither party will disclose to third parties the other's Confidential Information without the prior written consent of the other party.

18. TERMINATION

18.1 Termination for Cause.

- (a) Either party may terminate this Agreement effective immediately upon written notice to the other (i) for a material breach by such other party not cured within thirty (30) days after written notice of such breach; or (ii) if the other party admits in writing its insolvency or inability to pay its debts or perform its obligations as they mature or makes an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or a portion of the parties assets.
- (b) Apple may terminate this Agreement effective immediately upon written notice to SCI if SCI materially breaches its obligation of confidentiality under Section 17.

18.2 Termination Without Cause. After the Initial Term, but not during such Term, either party may terminate this Agreement without cause by giving the other ninety (90) days advance written notice.

18.3 Effect of Termination For Cause. Upon termination of this Agreement:

- (i) SCI will, to the extent and at times specified by Apple, stop all work on outstanding Purchase Orders, incur no further direct costs, and protect all property in which Apple has or may acquire an interest. Apple will have the option to request that SCI complete work in progress pursuant to any Purchase Orders open on the date of termination;
- (ii) Apple will compensate SCI for all Product delivered and accepted by Apple; and

(iii) SCI will deliver to Apple and Apple will purchase from SCI, at SCI's Standard Cost, any usable Unique Components in SCI's inventory of the date of termination that were purchased to fulfill firm Purchase Orders or pursuant to a Letter of Authorization from Apple.

(iv) Each party will return to the other, freight collect, all

materials that contain the other's Confidential Information, or if the other party gives written instructions to do so, destroy all such materials and provide the other a written certificate of destruction within thirty (30) days after such destruction;

Notwithstanding any termination of this Agreement, the obligations of the parties under Sections 1, 3.4, will remain in effect.

18.4 Inventory Indemnification.

18.4.1 Upon expiration of this Agreement or termination of this Agreement for cause by SCI or for convenience by Apple after the Initial Term, Apple will be responsible for:

- (i) all work-in-process at receipt of the notice of termination or intent not to renew; and
- (ii) all procured materials purchased to fill a Purchase Order or authorized by Apple in a letter of Authorization to be purchased by Customer which are on hand or on order at receipt of the notice of termination or intent not to renew. Items (i) and (ii) are referred to as the "Termination Inventory".

18.4.2 SCI will make every reasonable effort to use the Termination Inventory on other current customer programs, will cancel all outstanding material orders with vendors, and will attempt to return piece parts to vendors with Apple's prior approval. Apple will be responsible for costs, charges and fees actually incurred by SCI to cancel or return any portion of the Termination Inventory to vendors and, upon mutual agreement, the cost to modify the procured material for other programs.

18.4.3 With thirty (30) days from termination or cancellation, SCI will invoice, and Apple will purchase, the Termination Inventory remaining after vendor cancellations and returns and after other program use, as follows: (i) for Procured Material Inventory and authorized long lead time components, at SCI's standard cost, plus a reasonable handling charge; (ii) for WIP, at a reasonable pro rata percentage of the finished Product purchase price; and (iii) for finished Product, at the purchase price in effect at termination or cancellation. With Apple's prior approval, Apple will be responsible for any substantiated negative price differential between the price SCI paid for the Procured Material and authorized long lead time components and the price at which SCI was able to return and/or utilize the items on other programs. SCI will credit Customer for any positive price differentials.

18.5 Limited License to Manufacture and Distribute. See Section 7 of the IP License.

19. LIMITATION OF LIABILITY

EXCEPT PURSUANT TO SECTION 16 (INDEMNIFICATION), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, INCLUDING WITHOUT LIMITATION LOST PROFITS AND OPPORTUNITY DAMAGE TO ASSOCIATED EQUIPMENT, COST OF CAPITAL, FACILITIES, SERVICE, OR REPLACEMENT POWER, DOWNTIME COSTS, OR CLAIMS OF EITHER PARTY'S CUSTOMERS FOR SUCH DAMAGES, WHETHER OR NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

20. PROPERTY FURNISHED BY APPLE

Apple will retain title to and beneficial ownership of any tools, dies, molds, jigs, patterns, hobs, computer equipment, electrodes, punches, artwork, screens, tapes, templates, machinery, test equipment, fixtures, gauges, Apple Proprietary Technology, Specifications, drawings or other documents or data furnished, paid for or charged to Apple. While in SCI's possession, SCI will hold such property in trust for Apple and maintain and preserve such property for Apple's benefit for a period of seven (7) years following termination of this Agreement. SCI will clearly mark all of Apple's property its possession "Property of Apple Computer, Inc." (or substantially similar marking) and will not use such property for any purpose other than to perform the services under this Agreement without Apple's prior consent. SCI will keep an up to date inventory of all Apple property in its possession and provide a copy to Apple upon Apple's request. Apple may, on forty-eight (48) hours prior notice, require that SCI return some or all of such property and, if it does so, SCI will immediately deliver all such property to Apple or, in Apple's discretion, permit Apple to take possession of such property wherever it is situated. If Apple requires that SCI return of any Apple-owned property that is required to manufacture and deliver a Product, SCI will be relieved of its obligation to supply such Product to Apple.

21. EXPORT/IMPORT COMPLIANCE

21.1 Export Controlled Commodities, Technical Data and Software. This Agreement is subject to all laws, regulations, orders or other limitations on the export and re-export of commodities, technical data and software. The parties hereby agrees that they will not export, re-export, resell or transfer any export controlled commodity, technical data or software (i) in violation of such limitations imposed by the United States or any other appropriate national government authority, or (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals. SCI will make records of all export transactions available to Apple upon Apple's written request in order to permit Apple to confirm SCI's compliance with its obligations under this Section.

- 21.2 Exporter of Record. Unless the parties agree otherwise in the Product Plan for particular Product(s), Apple will be the Exporter of Record for all such Products manufactured at Fountain and Delivered to Apple or its designee outside of the United States. The Exporter of Record will be responsible for obtaining necessary export licenses and other government approvals required for export, and for preparing export documentation such as commercial invoices, shipper's export declarations, and international waybills. Each party agrees to comply fully with the export control laws of the United States and with the U.S. Export Administration Regulations and the U.S. Arms Export Control Act when acting as the Exporter of Record.
- 21.3 Certificates of Delivery. Upon Apple's request and at SCI's expense, SCI will provide Apple: (i) Certificates of Delivery to Apple for Products imported into the United States by SCI and Delivered to Apple in the United States as imported goods; and (ii) Certificates of Manufacture and Delivery for Products imported and then further manufactured by SCI and Delivered to Apple in the United States as imported goods. Each Certificate will describe the imported merchandise and reference both Apple's and SCI's Part Numbers. Apple will use the Certificates only for the purpose of obtaining duty drawbacks.
- 21.4 Country of Origin Marking. SCI certifies that articles manufactured by SCI, or repacked by SCI, will conform with the U.S. Customs Marking requirements as stated 19 U.S.C. 1304 and 19 CFR Part 134.
- 21.5 NAFTA. SCI agrees to review, upon Apple's request, North American Free Trade Agreement (NAFTA) eligibility of products or material shipped directly from SCI to NAFTA qualifying country (eg: U.S., Canada or Mexico). Apple agrees to cooperate in providing information reasonably required by SCI to evaluate NAFTA eligibility of Products. When products are shipped directly from SCI's facility to a qualifying NAFTA country, SCI will generate the supporting NAFTA certificate of origin for the importer in such qualifying country. In addition, SCI agrees maintain documentation in support of all NAFTA certificates issued. When goods are shipped to an Apple facility in the U.S., SCI agrees to supply Apple, upon Apple's request, with a statement of NAFTA qualification and maintain documentation in support of such statement.
22. GENERAL TERMS
- 22.1 Force Majeure. 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 act of God, fire, natural disaster, accident, act of government, or an act 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 fifteen (15) days of discovery thereof and uses its best efforts to continue to so perform or cure. In the event of such a Force Majeure, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure, but in no event more than thirty (30) days.

- 22.2 Relationship of the Parties. Each of the parties will at all times during the Term act as, and will represent itself to be, an independent contractor. Neither party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of the other party whether express, implied, by appearance or otherwise to bind the other party in any respect whatsoever.
- 22.3 Personnel: SCI's employees, consultants, contractors and agents will observe the working hours, working rules and holiday schedule of Apple while working on Apple's premises. Apple employee, et, consultants, contractors and agents will observe the working hours, working rules and holiday schedule of SCI while working on SCI's premises.
- 22.4 Assignment. The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective successors, executors and administrators, as the case may be; provided that, neither party may assign or delegate its obligations specified under this Agreement either in whole or in part, without the prior written consent of the other, which will not be unreasonably withheld. Any attempted assignment in violation of the provisions of this Section will be void.
- 22.5 Insurance. Before beginning the scope of work under this Agreement, SCI will deliver to Apple's Corporate Procurement Department, (1 Infinite Loop, M/S: 36PO, Cupertino, CA 95014-2084) a Certificate of Insurance which shows the coverage specified below, and which provides a thirty (30) day notice period for cancellation or reduction in coverage or limits, and will maintain such insurance throughout the Term:
- (a) Comprehensive General Liability, including Products/Completed Operations and Advertising Injury Liability, with limits not less than \$1,000,000 combined single limit per occurrence;
 - (b) Umbrella Liability, including Products/Completed Operations with limits not less than \$5,000,000 combined single limit per occurrence;
 - (c) Automobile Liability with limits not less than \$500,000 single limit of liability per occurrence bodily injury and property damage combined;
 - (d) Workers Compensation and Employers Liability in compliance with all statutory regulations in the state where the work is being done.
 - (e) Property Insurance covering (i) any Apple property in its possession or control, including but not limited to any equipment, software, tooling or materials, against all loss and damage (at replacement value); and (ii) any Apple product manufactured only by SCI against "all risk" including business interruption and extra expense; limit dependent on size of exposure to loss; contingency plan needs to be addressed.

- 22.6 Trademark Usage. SCI will not, without Apple's prior written consent, use any Apple trademarks, service marks, trade names, logos or other commercial or product designations, for any purpose, including, but not limited to, use in connection with any SCI products, promotions, advertisements or Exhibitions.
- 22.7 Publicity. Unless otherwise agreed by the parties in writing, no press releases, conferences, interviews or other public announcements, in whatever form, will be made or given by either party in relation to this Agreement.
- 22.8 No Third-Party Beneficiaries. This Agreement is for the sole benefit of Apple and SCI and their permitted assigns and nothing herein expressed or implied will give or be construed to give to any person, other than Apple and SCI and such assigns, any legal or equitable rights hereunder.
- 22.9 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement or portion thereof to be unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible to effect the intent of the parties and the remainder of this Agreement will continue in full force and effect.
- 22.10 No Waiver. All rights and remedies conferred under this Agreement or by any other instrument or law will be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.
- 22.11 Notices. All notices required or permitted under this Agreement will be in writing, will reference this Agreement and will be deemed given when: (i) delivered personally; (ii) when sent by confirmed telex or facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to addresses set forth below or such other address as may be designated by a given party by giving written notice to the other party pursuant to this Section.

<p>Apple: Sr. Vice President, Worldwide Operations Apple Computer, Inc. 1 Infinite Loop Mail Stop 75-6KC Cupertino, California 95014</p>	<p>SCI: President, Chief Operating Officer SCI Systems, Inc. 2101 W. Clinton Avenue Huntsville, AL 35807</p> <p>With a copy to: SCIVP, Plant Manager</p> <p>With a copy to General Counsel, Plant 22 at the same address, MS 75-8A</p>
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- 22.12 Governing Law. This Agreement will be governed by and construed according to the laws of the State of California as applied to agreements entered into and to be performed entirely within California between California residents, except for that body of law relating to

conflict of laws. Any litigation or other dispute resolution between the parties relating to this Agreement will take place in the Northern District of California. The parties consent to the personal jurisdiction of and venue in the state and federal courts within that District.

- 22.13 Interpretation. This Agreement has been negotiated by the parties and their respective counsel. This Agreement will be fairly interpreted according to its terms and without any strict construction in favor of or against either party. The headings and captions are included for reference purposes only and do not affect the interpretation of the provisions hereof.
- 22.14 Equitable Relief. Because SCI will have access to and become acquainted with Confidential Information of Apple, the unauthorized use or disclosure of which would cause irreparable harm and significant injury which would be difficult to ascertain and which would not be compensable by damages alone, both parties agree that, in addition to any other remedy available to Apple at law or in equity, the confidentiality provisions of this Agreement will be enforceable under the provisions of the California Uniform Trade Secrets Act, California Civil Code Section 3426, as amended.
- 22.15 Guarantee of Performance. SCI Systems, Inc. and Apple Computer, Inc. hereby absolutely and unconditionally guarantee the performance of their respective subsidiaries and affiliates under the terms of this Agreement, including without limitation the payment of all moneys due in a timely manner. Apple's and SCI Systems, Inc.'s overseas subsidiaries and affiliates shall either reference this Agreement on the face of the Purchase Orders or shall provide written acknowledgment that any Purchase Orders issued by the overseas subsidiary or affiliate shall be governed by this Agreement.
- 22.16 Complete Agreement. This Agreement, including all Exhibits, all Addenda thereto and Specifications and Quality Requirements identified therein, and all Purchase Orders issued hereunder, constitutes the entire Agreement between the parties in connection with the subject matter hereof, and terminates and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of both parties.

APPLE COMPUTER, INC.

SCI SYSTEMS, INC.

BY: /s/ G. Fred Forsyth
NAME: G. Fred Forsyth

BY: /s/ David F. Jenkins
NAME: David F. Jenkins

TITLE: Senior Vice President TITLE: Senior Vice President

EXHIBIT 11
APPLE COMPUTER, INC.

COMPUTATION OF EARNINGS (LOSS) PER COMMON SHARE
(In thousands, except per share amounts)

	Three Months Ended		Nine Months Ended	
	June 28, 1996	June 30, 1995	June 28, 1996	June 30, 1995
Primary Earnings Per Share				
Earnings (Loss)				
Net income (loss) applicable to common stock	(\$32,123)	\$103,019	(\$840,967)	\$364,122
Shares				
Weighted average number of common shares outstanding	123,735	121,379	123,463	120,681
Adjustment for dilutive effect of outstanding stock options	-	1,824	-	1,801
Weighted average number of common and common equivalent shares used for primary earnings per share	123,735	123,203	123,463	122,482
Primary earnings (loss) per common share	(\$ 0.26)	\$ 0.84	(\$ 6.81)	\$ 2.97
Fully Diluted Earnings Per Share				
Earnings (Loss)				
Net income (loss) applicable to common stock	(\$32,123)	\$103,019	(\$840,967)	\$364,122
Shares				
Weighted average number of common shares outstanding	123,735	121,379	123,463	120,681
Adjustment for dilutive effect of outstanding stock options	-	2,647	-	2,095
Weighted average number of common and common equivalent shares used for fully diluted earnings per share	123,735	124,026	123,463	122,776
Fully diluted earnings (loss) per common share	(\$ 0.26)	\$ 0.83	(\$ 6.81)	\$ 2.97

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

ARTICLE 5

MULTIPLIER: 1,000,000

PERIOD TYPE	9 MOS
FISCAL YEAR END	SEP 29 1996
PERIOD END	JUN 29 1996
CASH	1,359
SECURITIES	0
RECEIVABLES	1,292
ALLOWANCES	96
INVENTORY	1,061
CURRENT ASSETS	4,454
PP&E	1,406
DEPRECIATION	791
TOTAL ASSETS	5,345
CURRENT LIABILITIES	1,926
BONDS	949
COMMON	423
PREFERRED MANDATORY	0
PREFERRED	0
OTHER SE	1,597
TOTAL LIABILITY AND EQUITY	5,345
SALES	7,512
TOTAL REVENUES	7,512
CGS	7,055
TOTAL COSTS	7,055
OTHER EXPENSES	1,874
LOSS PROVISION	0
INTEREST EXPENSE	42
INCOME PRETAX	(1,335)
INCOME TAX	(494)
INCOME CONTINUING	(841)
DISCONTINUED	0
EXTRAORDINARY	0
CHANGES	0
NET INCOME	(841)
EPS PRIMARY	(6.81)
EPS DILUTED	(6.81)

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