

# APPLE INC

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 12/23/99

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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Fiscal Year	09/30

**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

**Form S-8**

**REGISTRATION STATEMENT**  
under  
**THE SECURITIES ACT OF 1933**

**APPLE COMPUTER, INC.**

(Exact name of registrant as specified in its charter)

CALIFORNIA  
(State of other jurisdiction of  
Incorporation or Organization)

94-2404110  
(I.R.S. Employer Identification No.)

One Infinite Loop  
Cupertino, California 95014  
(Address, including zip code, of principal executive offices)

**1997 Employee Stock Option Plan**  
(Full title of the plan)

Michael C. Wyatt, Esq.  
Associate General Counsel  
Apple Computer, Inc.  
One Infinite Loop, M/S 301-4CL  
Cupertino, California 95014  
(408) 996-1010  
(Name, address, including zip code, and telephone number,  
including area code, of agent for service)

## CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered (1)	Proposed Maximum Average Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (3)	Amount of Registration Fee (3)
Common Stock, no par value				
-Newly reserved under 1997 Employee Stock Option Plan	8,000,000 shares	\$96.1875	\$769,500,000	\$203,148

(1) Pursuant to Rule 429 promulgated under the Securities Act of 1933, as amended (the "Securities Act"), the prospectus relating to this Registration statement also relates to shares registered under Form S-8 Registration Statements Nos. 2-70449, 2-85095, 33-866, 33-23650, 33-31075, 33-47596, 33-53895, 333-07437, 333-6045 and 333-82603. A total of 10,000,000 shares issuable under the 1997 Employee Stock Option Plan have been previously registered under the Securities Act.

(2) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the filing fee on the basis of \$96.1875 per share, which represents the average of the high and low prices of the Common Stock reported on the NASDAQ National Market for December 16, 1999.

(3) Estimated pursuant to Rule 457 solely for purposes of calculating the registration fee. Amount of the Registration Fee was calculated pursuant to Section 6(b) of the Securities Act of 1933, as amended, and was determined by multiplying the aggregate offering amount by .000264.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

There are hereby incorporated by reference into this Registration Statement the following documents and information heretofore filed with the Securities and Exchange Commission (the "Commission"):

- (a) The Registrant's annual report on Form 10-K for the fiscal year ended September 25, 1999;
- (b) All other reports filed by the Registrant pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), since September 25, 1999; and

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, also shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents.

#### Item 4. Description of Securities.

Not Applicable.

#### Item 5. Interests of Named Experts and Counsel.

Not Applicable.

#### Item 6. Indemnification of Directors and Officers.

Section 317 of the California General Corporations Law (the "CGCL") authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers who are parties or are threatened to be made parties to any proceeding (with certain exceptions) by reason of the fact

that the person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding if that person acted in good faith and in a manner the person reasonably believed to be in the best interests of the corporation. Section 204 of the CGCL provides that this limitation on liability has no effect on a director's liability if (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the corporation or its shareholders or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard for the director's duty to the corporation or its shareholders in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director's duties, of a risk of a serious injury to the corporation or its shareholders, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation or its shareholders, (vi) under Section 310 of the CGCL

(concerning contracts or transactions between the corporation and a director)

or (vii) under Section 316 of the CGCL (directors' liability for improper dividends, loans and guarantees). Section 317 does not extend to acts or omissions of a director in his capacity as an officer. Further, Section 317 has no effect on claims arising under federal or state securities laws and does not affect the availability of injunctions and other equitable remedies available to the Company's shareholders for any violation of a director's fiduciary duty to the Company or its shareholders.

In accordance with Section 317, the Restated Articles of Incorporation, as amended (the "Articles"), of the Company limit the liability of a director to the Company or its shareholders for monetary damages to the fullest extent permissible under California law. The Articles further authorize the Company to provide indemnification to its agents (including officers and directors), subject to the limitations set forth above. The Articles and the Company's By-Laws further provide for indemnification of corporate agents to the maximum extent permitted by the CGCL.

Pursuant to the authority provided in the Articles, the Company has entered into indemnification agreements with each of its executive officers and directors, indemnifying them against certain potential liabilities that may arise as a result of their service to the Company, and providing for certain other protection.

The Company also maintains insurance policies which insure its officers and directors against certain liabilities.

The foregoing summaries are necessarily subject to the complete text of the statute, the Articles, the By-Laws and the agreements referred to above and are qualified in their entirety by reference thereto.

**Item 7. Exemption from Registration Claimed.**

Not Applicable.

**Item 8. Exhibits.**

The following exhibits are filed as part of this Registration Statement:

Exhibit No.	Description
4.11	Form of Option Agreement
5.1	Opinion of counsel as to the legality of the securities being registered hereby.
10.A.49	1997 Employee Stock Option Plan, as amended through October 1999
23.1	Consent of counsel (included in Exhibit 5.1).
23.3	Consent of KPMG LLP, independent auditors, with respect to the consolidated financial statements of the Registrant.
24.1	Power of Attorney (included on page 8).

**Item 9. Undertakings.**

(a) The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act, and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cupertino, County of Santa Clara, State of California, on the 22nd day of December, 1999.

### APPLE COMPUTER, INC.

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

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Steven P. Jobs, Fred D. Anderson, Nancy R. Heinen and Michael C. Wyatt, and each of them individually and without the others, his attorneys-in-fact, each with the power of substitution, for him in any and all capacities to sign any amendments to the Registration Statement, and to file the same, with exhibits thereto and other documents in connection therewith, with the Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his or her substitute or substitutes, may do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<i>Signature</i>	<i>Title</i>	<i>Date</i>
<i>/s/Steven P. Jobs Steven P. Jobs</i>	<i>Interim Chief Executive Officer and Director (Principal Executive Officer)</i>	<i>December 22, 1999</i>
<i>/s/Fred D. Anderson Fred D. Anderson</i>	<i>Executive Vice President and Chief Financial Officer (Principal Financial Officer)</i>	<i>December 22, 1999</i>
<i>/s/Gareth C.C. Chang Gareth C. C Chang</i>	<i>Director</i>	<i>December 22, 1999</i>
<i>/s/William V. Campbell William V. Campbell</i>	<i>Director</i>	<i>December 22, 1999</i>
<i>/s/Millard S. Drexler Millard S. Drexler</i>	<i>Director</i>	<i>December 22, 1999</i>
<i>/s/Lawrence J. Ellison Lawrence J. Ellison</i>	<i>Director</i>	<i>December 22, 1999</i>
<i>/s/Jerome B. York Jerome B. York</i>	<i>Director</i>	<i>December 22, 1999</i>
<i>/s/Edgar S. Woolard, Jr. Edgar S. Woolard, Jr.</i>	<i>Director</i>	<i>December 22, 1999</i>

## EXHIBIT INDEX

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10.A.49	1997 Employee Stock Option Plan, as amended through October 1999	13
23.1	Consent of Counsel (included in Exhibit 5.1)	
23.3	Consent of KPMG LLP, independent auditors, with respect to the consolidated financial statements of the Registrant.	25
24.1	Power of Attorney (Included on page 8)	

## Exhibit 4.11

### NON-STATUTORY STOCK OPTION AGREEMENT RE: 1997 Employee Stock Option Plan

On the Date of Grant shown above, Apple Computer, Inc. (the "Company"), a California corporation, granted to you (the "Optionee") an option to purchase shares of Common Stock, no par value, of the Company, in the number and at the price as shown above, and in all respects subject to the terms, definitions and provisions of the 1997 Employee Stock Option Plan, as amended (the "Plan") of the Company, which is incorporated herein by reference, as follows:

1. NATURE OF THE OPTION. This option is intended to be a non-statutory option and NOT an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the Code).
2. OPTION PRICE. The Option price indicated above for each share of Common Stock, is not less than the fair market value per share of Common Stock on the date of grant of this option, as determined by the Administrator in accordance with Section 8(a) of the Plan.
3. EXERCISE OF OPTION. This option shall be exercisable in accordance with Section 10 of the Plan as follows:
  - (i) RIGHT TO EXERCISE. This option shall be exercisable, cumulatively, as follows:

#### **Number of Shares Can be Exercised On Must be Exercised Before**

(ii) METHOD OF EXERCISE. This option shall be exercisable by the submission of a Notice of Exercise form which may be obtained from the Company and shall state the election to exercise this option, the number of shares in respect of which this option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such shares of Common Stock as may be required by the Company. Such Notice of Exercise form shall be signed by the Optionee and shall be delivered in person or by mail or by facsimile to the Company. When exercising an option, the Notice of Exercise form shall be accompanied by payment of the purchase price. Payment of the purchase price shall be by cash, check, or other means as determined by the Administrator pursuant to Section 8(b) of the Plan. When executing a same-day-sale, the Notice of Exercise form must be submitted to Shareholder Relations by 3:00 PM the next business day following the day of sale. The certificate or certificates for shares of Common Stock as to which this option shall be exercised shall be registered in the name of the Optionee.

(iii) **RESTRICTIONS ON EXERCISE.** This option may not be exercised if the issuance of such shares upon such exercise would constitute a violation of any applicable federal or state securities law or other law or regulation. As a condition to the exercise of this option, the Company may require the Optionee to make such representations, and warranties to the Company as may be required by any applicable law or regulation, including the execution and delivery of a representation letter at the time of exercise of this option.

4. **NON-TRANSFERABILITY OF OPTION.** This option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution or pursuant to a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act or the rules thereunder. This option may be exercised during the lifetime of the Optionee only by the Optionee. The terms of this option shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

5. **TERMINATION OF EMPLOYMENT** - Except as expressly provided in the Plan, this Option shall terminate 90 days following the date of termination of employment and may be exercised during such 90-day period only to the extent vested and exercisable as of the date of termination of employment.

6. **MISCELLANEOUS.** This Option (a) shall be binding upon and inure to the benefit of any successor of the Company, (b) shall be governed by the laws of the State of California, and any applicable laws of the United States, and (c) may not be amended except in writing. No contract or right of employment shall be implied by this Agreement, nor shall this Agreement in any way interfere with Optionee's right or the Company's or, where applicable, a Subsidiary's or Affiliated Company's right to terminate Optionee's employment at any time.

</DOCUMENT

**Exhibit 5.1**

December 22, 1999

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

RE: Registration Statement on Form S-8 for the 1997 Employee Stock Option Plan

Ladies and Gentlemen:

I have examined the Registration Statement on Form S-8 to be filed with the Securities and Exchange Commission on or about December 22, 1999 (the "Registration Statement") in connection with the registration under the Securities Act of 1933, as amended, of 8,000,000 additional shares of Apple Computer, Inc.'s Common Stock, no par value, authorized for issuance under the 1997 Employee Stock Option Plan, as amended (the "Employee Plan"). The shares of Apple Common Stock to be registered under the Registration Statement are hereinafter referred to as the "Shares". As counsel in connection with this transaction, I have examined the actions taken, and I am familiar with the actions proposed to be taken, in connection with the issuance and sale of the Shares pursuant to the Employee Plan.

It is my opinion that, when issued and sold in the manner described in the Employee Plan and pursuant to the agreements which accompany each grant, the Shares will be legally and validly issued, fully paid and nonassessable.

I consent to the use of this opinion as an exhibit to the Registration Statement, and further consent to the use of my name wherever appearing in the Registration Statement.

Very truly yours,

*/s/ Nancy R. Heinen*  
*Nancy R. Heinen*  
*General Counsel*

**APPLE COMPUTER, INC.**  
**1997 EMPLOYEE STOCK OPTION PLAN**  
(as amended through 10/06/99)

1. Purposes of the Plan. The purposes of this 1997 Employee Stock Option Plan are to assist the Company in attracting and retaining high quality personnel, to provide additional incentive to Employees who are not Directors or Officers of the Company and to promote the success of the Company's business. Options granted under the Plan shall be Nonstatutory Stock Options. SARs granted under the Plan may be granted in connection with Options or independently of Options.

2. Definitions. As used herein, the following definitions shall apply:

"Administrator" means the Board or any of its Committees, as shall be administering the Plan from time to time pursuant to Section 4 of the Plan.

"Affiliated Company" means a corporation which is not a Subsidiary but with respect to which the Company owns, directly or indirectly through one or more Subsidiaries, at least twenty percent of the total voting power, unless the Administrator determines in its discretion that such corporation is not an Affiliated Company.

"Applicable Laws" shall have the meaning set forth in Section 4 of the Plan.

"Board" means the Board of Directors of the Company.

"Change in Control" shall have the meaning set forth in Section 10 of the Plan.

"Change in Control Price" shall have the meaning set forth in Section 12 of the Plan.

"Common Stock" means the common stock, no par value, of the Company.

"Company" means Apple Computer, Inc., a California corporation, or its successor.

"Committee" means a Committee, if any, appointed by the Board in accordance with Section 4(a) of the Plan.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

"Continuous Status as an Employee" means the absence of any interruption or termination of the employment relationship with the Company or any Subsidiary or Affiliated Company. Continuous Status as an Employee shall not be considered interrupted in the case of (i) medical leave, military leave, family leave, or any other leave of absence approved by the Administrator, provided, in each case, that such leave does not result in termination of the employment relationship with the Company or any Subsidiary or Affiliated Company, as the case may be, under the terms of the respective Company policy for such leave; however, vesting may be tolled while an employee is on an approved leave of absence under the terms of the respective Company policy for such leave; or (ii) in the case of transfers between locations of the Company or between the Company, its Subsidiaries, its successor or its Affiliated Companies.

"Director" means a member of the Board.

"Employee" means any person, employed by and on the payroll of the Company, any Subsidiary or any Affiliated Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Fair Market Value" means the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system (including without limitation the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation ("NASDAQ") System), its Fair Market Value shall be the closing sales price for such stock or the closing bid if no sales were reported, as quoted on such system or exchange (or the exchange with the greatest volume of trading in the Common Stock) for the date of determination or, if the date of determination is not a trading day, the immediately preceding trading day, as reported in The Wall Street Journal or such other source as the Administrator deems reliable.

(ii) If the Common Stock is regularly quoted on the NASDAQ System (but not on the National Market System) or quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high and low asked prices for the Common Stock on the date of determination or, if there are no quoted prices on the date of determination, on the last day on which there are quoted prices prior to the date of determination.

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Administrator.

"Nonstatutory Stock Option" means an Option that is not intended to be an incentive stock option within the meaning of Section 422 of the Code.

"Officer" means any individual designated by the Board as an elected officer of the Company.

"Option" means an option granted pursuant to the Plan.

"Optioned Stock" means the Common Stock subject to an Option or SAR.

"Optionee" means an Employee who receives an Option or SAR.

"Parent" corporation shall have the meaning defined in Section 424(e) of the Code.

"Plan" means this Apple Computer, Inc. 1997 Employee Stock Option Plan.

"SAR" means a stock appreciation right granted pursuant to Section 9 below.

"Section 3 Limit" shall have the meaning set forth in Section 3 of the Plan.

"Share" means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.

"Sixty-Day Period" shall have the meaning set forth in Section 12(f) of the Plan.

"Subsidiary" corporation has the meaning defined in Section 424(f) of the Code.

"Tax Date" shall have the meaning set forth in Section 9 of the Plan.

### 3. Stock Subject to the Plan.

(a) **Limit.** Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan or for which SARs may be granted and exercised is 18,000,000 Shares (the "Section 3 Limit"). The Shares may be authorized but unissued or reacquired Common Stock. In the discretion of the Administrator, any or all of the Shares authorized under the Plan may be subject to SARs issued pursuant to the Plan.

(b) **Rules Applicable to the Calculation of the Section 3 Limit.** In calculating the number of Shares available for issuance under the Plan, the following rules shall apply:

(i) The Section 3 Limit shall be reduced by the number of Shares of Optioned Stock subject to each outstanding Option or freestanding SAR.

(ii) The Section 3 Limit shall be increased by the number of Shares of Optioned Stock subject to the portion of an Option or SAR that expires unexercised or is forfeited for any reason.

(iii) The Section 3 Limit shall be increased by the number of Shares tendered to pay the exercise price of an Option or the number of Shares of Optioned Stock withheld to satisfy an Optionee's tax liability in connection with the exercise of an Option or SAR.

(iv) Option Stock subject to both an outstanding Option and SAR granted in connection with the Option shall be counted only once in calculating the Section 3 Limit.

#### 4. Administration of the Plan.

(a) Composition of Administrator. The Plan may be administered by (i) the Board or (ii) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the applicable securities laws, California corporate law and the Code (collectively, "Applicable Laws").

Once a Committee has been appointed pursuant to this Section 4(a), such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of the Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan and, in the case of the Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion: (i) to determine the Fair Market Value of the Common Stock in accordance with the Plan; (ii) to determine, in accordance with Section 8(a) of the Plan, the exercise price per Share of Options and SARs to be granted; (iii) to determine the Employees to whom, and the time or times at which, Options and SARs shall be granted and the number of Shares to be represented by each Option or SAR (including, without limitation, whether or not a corporation shall be excluded from the definition of Affiliated Company); (iv) to construe and interpret the provisions of the Plan and any agreements or certificates issued under or in connection with the Plan; (v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Option or SAR granted hereunder (including, but not limited to, any restriction or limitation, or any vesting acceleration or waiver of forfeiture restrictions regarding any Option or SAR or the Shares relating thereto, based in each case on such factors as the Administrator shall determine, in its sole discretion); (vi) to approve forms of agreement for use under the Plan; (vii) to prescribe, amend and rescind rules and regulations relating to the Plan; (viii) to modify or amend each Option or SAR or accelerate the exercise date of any Option or SAR; (ix) to reduce the exercise price of any Option or SAR to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option or SAR shall have declined since the date the Option or SAR was granted; (x) to authorize any person to execute on behalf of the Company any instrument required to effectuate the grant of an Option or SAR previously granted by the Administrator; and (xi) to make all other determinations deemed necessary or advisable for the administration of the Plan.

(c) Effect of Decisions by the Administrator. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Optionees and any other holders of any Options.

5. Eligibility. The Administrator may grant Options and SARs only to individuals who are Employees or who are consultants to the Company, or a Subsidiary or Affiliated Company. In no event may an Option or SAR be granted to any individual who, at the time of grant, is an Officer or Director. An Employee who has been granted an Option or SAR may, if he or she is otherwise eligible, be granted an additional Option or Options, SAR or SARs. Each Option shall be evidenced by a written Option agreement, which shall be in such form and contain such provisions as the Administrator shall from time to time deem appropriate. Without limiting the foregoing, the Administrator may, at any time, or from time to time, authorize the Company, with the consent of the respective recipients, to issue new Options or Options in exchange for the surrender and cancellation of any or all outstanding Options, other options, SARs or other stock appreciation rights.

Neither the Plan nor any Option or SAR agreement shall confer upon any Optionee any right with respect to continuation of employment by the Company (or any Parent, Subsidiary or Affiliated Company), nor shall it interfere in any way with the Optionee's right or the right of the Company (or any Parent, Subsidiary or Affiliated Company) to terminate the Optionee's employment at any time or for any reason.

If an Option or SAR is granted to an individual who is a consultant to the Company or any Subsidiary or Affiliate, all references in the Plan to "Employee" shall be deemed to include the term "consultant" and all references in the Plan to "employment," "Continuous Status as an Employee" and "termination of employment" shall be deemed to refer to the individual's consultancy or status as a consultant.

6. Term of Plan. The Plan shall become effective upon its adoption by the Board. It shall continue in effect for a term of ten years unless sooner terminated under Section 14 of the Plan.

7. Term of Option. The term of each Option shall be ten (10) years from the date of grant thereof or such shorter term as may be provided in the Option agreement.

8. Exercise Price and Consideration.

(a) Exercise Price. The per Share exercise price for the Shares issuable pursuant to an Option shall be such price as is determined by the Administrator, but shall in no event be less than 100% of the Fair Market Value of Common Stock, determined as of the date of grant of the Option. In the event that the Administrator shall reduce the exercise price, the exercise price shall be no less than 100% of the Fair Market Value as of the date of that reduction.

(b) Method of Payment. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator and may consist of (i) cash, (ii) check, (iii) promissory note, (iv) other Shares which have a Fair Market Value on

the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised, (v) delivery of a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company the amount of sale or loan proceeds required to pay the exercise price, or (vi) any combination of the foregoing methods of payment and/or any other consideration or method of payment as shall be permitted under applicable corporate law.

#### 9. Stock Appreciation Rights.

(a) **Granted in Connection with Options.** At the sole discretion of the Administrator, SARs may be granted in connection with all or any part of an Option, either concurrently with the grant of the Option or at any time thereafter during the term of the Option. The following provisions apply to SARs that are granted in connection with Options:

(i) The SAR shall entitle the Optionee to exercise the SAR by surrendering to the Company unexercised a portion of the related Option. The Optionee shall receive in exchange from the Company an amount equal to the excess of (x) the Fair Market Value on the date of exercise of the SAR of the Common Stock covered by the surrendered portion of the related Option over (y) the exercise price of the Common Stock covered by the surrendered portion of the related Option. Notwithstanding the foregoing, the Administrator may place limits on the amount that may be paid upon exercise of an SAR; provided, however, that such limit shall not restrict the exercisability of the related Option.

(ii) When an SAR is exercised, the related Option, to the extent surrendered, shall no longer be exercisable.

(iii) An SAR shall be exercisable only when and to the extent that the related Option is exercisable and shall expire no later than the date on which the related Option expires.

(iv) An SAR may only be exercised at a time when the Fair Market Value of the Common Stock covered by the related Option exceeds the exercise price of the Common Stock covered by the related Option.

(b) **Independent SARs.** At the sole discretion of the Administrator, SARs may be granted without related Options. The following provisions apply to SARs that are not granted in connection with Options:

(i) The SAR shall entitle the Optionee, by exercising the SAR, to receive from the Company an amount equal to the excess of (x) the Fair Market Value of the Common Stock covered by exercised portion of the SAR, as of the date of such exercise, over (y) the Fair Market Value of the Common Stock covered by the exercised portion of the SAR, as of the date on which the SAR was granted; provided, however, that the Administrator may place limits on the amount that may be paid upon exercise of an SAR.

(ii) SARs shall be exercisable, in whole or in part, at such times as the Administrator shall specify in the Optionee's SAR agreement.

(c) Form of Payment. The Company's obligation arising upon the exercise of an SAR may be paid in Common Stock or in cash, or in any combination of Common Stock and cash, as the Administrator, in its sole discretion, may determine. Shares issued upon the exercise of an SAR shall be valued at their Fair Market Value as of the date of exercise.

#### 10. Method of Exercise.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option or SAR granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator and as shall be permissible under the terms of the Plan.

An Option or SAR shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option or SAR by the person entitled to exercise the Option or SAR and full payment for the Shares with respect to which the Option is exercised has been received by the Company. Full payment may, as authorized by the Administrator and permitted by the Option agreement, consist of any consideration and method of payment allowable under Section 8(b) of the Plan. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 12 of the Plan. An Option or SAR may not be exercised with respect to a fraction of a Share.

(b) Termination of Continuous Employment. Upon termination of an Optionee's Continuous Status as Employee (other than termination by reason of the Optionee's death), the Optionee may, but only within ninety days after the date of such termination, exercise his or her Option or SAR to the extent that it was exercisable at the date of such termination. Notwithstanding the foregoing, however, an Option or SAR may not be exercised after the date the Option or SAR would otherwise expire by its terms due to the passage of time from the date of grant.

(c) Death of Optionee. In the event of the death of an Optionee:

(i) Who is at the time of death an Employee and who shall have been in Continuous Status as an Employee since the date of grant of the Option, the Option or SAR may be exercised at any time within six (6) months (or such other period of time not exceeding twelve (12) months as determined by the Administrator) following the date of death by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or

inheritance, but only to the extent of the right to exercise that would have accrued had the Optionee continued living and terminated his or her employment six (6) months (or such other period of time not exceeding twelve (12) months as determined by the Administrator) after the date of death; or

(ii) Within ninety days after the termination of Continuous Status as an Employee, the Option or SAR may be exercised, at any time within six (6) months (or such other period of time not exceeding twelve (12) months as determined by the Administrator) following the date of death by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent of the right to exercise that had accrued at the date of termination.

Notwithstanding the foregoing, however, an Option or SAR may not be exercised after the date the Option or SAR would otherwise expire by its terms due to the passage of time from the date of grant.

(d) Stock Withholding to Satisfy Withholding Tax Obligations. When an Optionee incurs tax liability in connection with the exercise of an Option or SAR, which tax liability is subject to tax withholding under applicable tax laws, and the Optionee is obligated to pay the Company an amount required to be withheld under applicable tax laws, the Optionee may satisfy the withholding tax obligation (including, at the election of the Optionee, any additional amount which the Optionee desires to have withheld in order to satisfy in whole or in part the Optionee's full estimated tax in connection with the exercise) by electing to have the Company withhold from the Shares to be issued upon exercise of the Option, or the Shares to be issued upon exercise of the SAR, if any, that number of Shares having a Fair Market Value equal to the amount required to be withheld (and any additional amount desired to be withheld, as aforesaid). The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined (the "Tax Date").

All elections by an Optionee to have Shares withheld for this purpose shall be made in writing in a form acceptable to the Administrator and shall be subject to the following restrictions:

(i) the election must be made on or prior to the applicable Tax Date; and

(ii) all elections shall be subject to the consent or disapproval of the Administrator.

11. Non-Transferability of Options. Options and SARs may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution or pursuant to a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act, or the rules thereunder; provided, however, that the Administrator may grant Nonstatutory Stock Options that are freely transferable. The designation of a beneficiary by an Optionee or

holder of an SAR does not constitute a transfer. An Option or an SAR may be exercised, during the lifetime of the Optionee or SAR holder, only by the Optionee or SAR holder or by a transferee permitted by this Section 11.

## 12. Adjustments Upon Changes in Capitalization or Merger.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of Shares covered by each outstanding Option and SAR, and the number of Shares which have been authorized for issuance under the Plan but as to which no Options or SARs have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option or SAR, as well as the price per Share covered by each such outstanding Option or SAR, shall be proportionately adjusted for any increase or decrease in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the aggregate number of issued Shares effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Option or SAR.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, all outstanding Options and SARs will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Administrator. The Administrator may, in the exercise of its sole discretion in such instances, declare that any Option or SAR shall terminate as of a date fixed by the Administrator and give each Optionee the right to exercise his or her Option or SAR as to all or any part of the Optioned Stock or SAR, including Shares as to which the Option or SAR would not otherwise be exercisable.

(c) Sale of Assets or Merger. Subject to the provisions of Section 12(d), in the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, each outstanding Option and SAR shall be assumed or an equivalent option or stock appreciation right shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation, unless the Administrator determines, in the exercise of its sole discretion and in lieu of such assumption or substitution, that the Optionee shall have the right to exercise the Option or SAR as to all of the Optioned Stock, including Shares as to which the Option or SAR would not otherwise be exercisable. If the Administrator makes an Option or SAR fully exercisable in lieu of assumption or substitution in the event of a merger or sale of assets, the Company shall notify the Optionee that the Option or SAR shall be fully exercisable for a period of thirty (30) days from the date of such notice, and the Option or SAR

will terminate upon the expiration of such period. For purposes of this paragraph, an Option granted under the Plan shall be deemed to be assumed if, following the sale of assets or merger, the Option confers the right to purchase, for each Share of Optioned Stock subject to the Option immediately prior to the sale of assets or merger, the consideration (whether stock, cash or other securities or property) received in the sale of assets or merger by holders of Common Stock for each Share held on the effective date of the transaction (and if such holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the sale of assets or merger was not solely Common Stock of the successor corporation or its parent, the Administrator may, with the consent of the successor corporation and the participant, provide for the per share consideration to be received upon exercise of the Option to be solely Common Stock of the successor corporation or its parent equal in Fair Market Value to the per share consideration received by holders of Common Stock in the sale of assets or merger.

(d) Change in Control. In the event of a "Change in Control" of the Company, as defined in Section 12(e), unless otherwise determined by the Administrator prior to the occurrence of such Change in Control, the following acceleration and valuation provisions shall apply:

(i) Any Options and SARs outstanding as of the date such Change in Control is determined to have occurred that are not yet exercisable and vested on such date shall become fully exercisable and vested; and

(ii) The value of all outstanding Options and SARs shall, unless otherwise determined by the Administrator at or after grant, be cashed-out. The amount at which such Options and SARs shall be cashed out shall be equal to the excess of (x) the Change in Control Price (as defined below) over (y) the exercise price of the Common Stock covered by the Option or SAR. The cash-out proceeds shall be paid to the Optionee or, in the event of death of an Optionee prior to payment, to the estate of the Optionee or to a person who acquired the right to exercise the Option or SAR by bequest or inheritance.

(e) "Definition of "Change in Control". For purposes of this Section 12, a "Change in Control" means the happening of any of the following:

( i ) When any "person", as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Company, a Subsidiary or a Company employee benefit plan, including any trustee of such plan acting as trustee) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities; or

(ii) The occurrence of a transaction requiring shareholder approval, and involving the sale of all or substantially all of the assets of the Company or the merger of the Company with or into another corporation.

(f) Change in Control Price. For purposes of this Section 12, "Change in Control Price" shall be, as determined by the Administrator, (i) the highest Fair Market Value at any time within the sixty-day period immediately preceding the date of determination of the Change in Control Price by the Administrator (the "Sixty-Day Period"), or (ii) the highest price paid or offered, as determined by the Administrator, in any bona fide transaction or bona fide offer related to the Change in Control of the Company, at any time within the Sixty-Day Period.

13. Time of Granting Options and SARs. The date of grant of an Option or SAR shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or SAR. Notice of the determination shall be given to each Employee to whom an Option or SAR is so granted within a reasonable time after the date of such grant.

14. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan, as it may deem advisable.

(b) Effect of Amendment or Termination. Any such amendment, alteration, suspension or termination of the Plan shall not impair the rights of any Optionee or SAR holder under any grant theretofore made without his or her consent. Such Options and SARs shall remain in full force and effect as if this Plan had not been amended or terminated.

15. Conditions Upon Issuance of Shares. Shares shall not be issued with respect to an Option or SAR unless the exercise of such Option or SAR and the issuance and delivery of such Shares pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an Option or SAR or the issuance of Shares upon exercise of an Option or SAR, the Company may require the person exercising such Option or SAR to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned relevant provisions of law.

Inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the non-issuance or sale of such Shares as to which such requisite authority shall not have been obtained.

16. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

**CONSENT OF INDEPENDENT AUDITORS**

The Board of Directors  
Apple Computer, Inc.:

We consent to incorporation by reference in the registration statement on Form S-8 of Apple Computer, Inc. of our report dated October 11, 1999, relating to the consolidated balance sheets of Apple Computer, Inc. and subsidiaries as of September 25, 1999 and September 25, 1998, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the years in the three-year period ended September 25, 1999, and the related schedule, which report appears in the September 25, 1999 annual report on Form 10-K of Apple Computer, Inc.

/s/ KPMG LLP

*Mountain View, California  
December 22, 1999*

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**End of Filing**

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