

# APPLE INC

## FORM 10-K (Annual Report)

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

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

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FORM 10-K

(MARK ONE)

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

FOR THE FISCAL YEAR ENDED SEPTEMBER 25, 1999

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

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APPLE COMPUTER, INC.

(Exact name of Registrant as specified in its charter)

CALIFORNIA  
(State or other jurisdiction  
of incorporation or organization)

942404110  
(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

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

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, no par value  
Common Share Purchase Rights  
(Titles of classes)

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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

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

The aggregate market value of voting stock held by nonaffiliates of the Registrant was approximately \$16,599,375,661 as of December 10, 1999, based upon the closing price on the Nasdaq National Market reported for such date. Shares of Common Stock held by each executive officer and director and by each person who beneficially owns more than 5% of the outstanding Common Stock have been excluded in that such persons may under certain circumstances be deemed to be affiliates. This determination of executive officer or affiliate status is not necessarily a conclusive determination for other purposes.

161,158,987 shares of Common Stock Issued and Outstanding as of December 10,

1999

## PART I

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

### ITEM 1. BUSINESS

#### GENERAL

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

The Company designs, manufactures and markets personal computers and related personal computing and communicating solutions for sale primarily to education, creative, consumer, and business customers. Substantially all of the Company's net sales to date have been derived from the sale of personal computers from its Apple Macintosh-Registered Trademark- line of computers and related software and peripherals. The Company manages its business primarily on a geographic basis. The Company's geographic segments include the Americas, Europe, Japan, and Asia Pacific. The Americas segment includes both North and South America. The European segment includes European countries as well as the Middle East and Africa. The Japan segment includes only Japan, while the Asia Pacific segment includes Australia and Asia except for Japan. Each geographic operating segment provides similar hardware and software products and similar services. Further information regarding the Company's operating segments may be found in Part II, Item 7 of this Form 10-K under the heading "Net Sales," and in Part II, Item 8 on this Form 10-K in the Notes to Consolidated Financial Statements at Note 9, "Segment Information and Geographic Data," which information is hereby incorporated by reference.

During 1998, the Company continued and essentially completed a restructuring plan commenced in 1996 aimed at reducing its cost structure, improving its competitiveness, and restoring sustainable profitability. The Company's restructuring actions included the termination of employees, closure of facilities, and cancellation of contracts. Further information regarding these restructuring actions may be found in Part II, Item 8 on this Form 10-K in the Notes to Consolidated Financial Statements at Note 4, "Special Charges," which information is hereby incorporated by reference.

#### PRINCIPAL HARDWARE PRODUCTS

Apple Macintosh personal computers were first introduced in 1984, and are characterized by their intuitive ease of use, innovative industrial designs and applications base, and built-in networking, graphics, and multimedia capabilities. The Company offers a wide range of personal computing products, including personal computers, related peripherals, software, and networking and connectivity products. All of the Company's Macintosh products employ PowerPC-Registered Trademark- RISC-based microprocessors.

#### POWER MACINTOSH-Registered Trademark-

The Power Macintosh line of high-performance personal computers is targeted at business and professional users and is designed to meet the speed, expansion and networking needs of the most demanding Macintosh user. The Company's current line of Power Macintosh systems was introduced in August 1999 and is equipped with PowerPC G4 processors. With the addition of Apple networking software, Power Macintosh systems can be used as workgroup servers.

#### POWERBOOK-Registered Trademark- G3

The PowerBook G3 family of portable computer products is specifically designed to meet the mobile computing needs of professionals and advanced personal users. Incorporating powerful PowerPC G3

processors, large active-matrix displays, long battery lives, and software designed to enhance mobile computing, the Company's PowerBook G3 family is intended to provide professional desktop performance in a notebook computer.

#### iMAC-Registered Trademark-

Originally announced in May 1998, the iMac computer is targeted at the education and consumer markets. With an innovative industrial design, easy Internet access, and a powerful PowerPC G3 processor, iMac is suitable for a wide range of education and consumer applications. A completely redesigned iMac was introduced in October 1999 and is available in three models: iMac, iMac DV-Registered Trademark- (Digital Video), and iMac DV Special Edition. Both DV models feature Firewire ports, DVD drives, and the Company's simple-to-use iMovie-TM- digital video editing software.

#### iBOOK-TM-

The iBook computer, intended to be the "iMac to Go," was introduced in July 1999. Designed specifically for the portable computing needs of education and consumer users, the iBook features a large active-matrix display, long battery life, a PowerPC G3 processor, Internet-ready hardware and software configurations, and built-in antennas for optional AirPort-TM- wireless networking capability.

### **PERIPHERAL PRODUCTS**

The Company sells certain associated computer peripherals, including a range of high quality precision color monitors and AirPort wireless networking base stations and add-in cards. Over the past three years, the Company eliminated all of its Apple-branded printers and significantly reduced the number of its monitor products. The Company also discontinued its MessagePad-Registered Trademark- and eMate-Registered Trademark- product lines. The discontinuance of these peripheral products and portable computing products was part of the overall strategy by the Company to simplify and focus its efforts on those products perceived as critical to the Company's future success.

### **PRINCIPAL SOFTWARE PRODUCTS**

#### **OPERATING SYSTEM SOFTWARE AND APPLICATION SOFTWARE**

The Company's operating system software, Mac-Registered Trademark- OS, provides Macintosh computers with an easy, consistent user interface. The current version, Mac OS 9-Registered Trademark-, began shipping in October 1999 and delivers Sherlock-TM- 2, the updated version of the Company's advanced Internet search engine. Mac OS 9 includes over 50 new features, including features for faster and more efficient Internet usage, enhanced system and network security, and auto-updating of Apple software over the Internet. The Company plans to continue to introduce upgrades to Mac OS 9 and later to introduce the client version of a new operating system, Mac OS X. Mac OS X Client is expected to offer advanced functionality based on software technologies of Apple and those in-process technologies of NeXT-Registered Trademark- Software, Inc. (NeXT), which the Company acquired in 1997.

In March 1999, the Company introduced Mac OS X Server, which combines the strength of UNIX-Registered Trademark- and simplicity of the Macintosh. Mac OS X Server is based on the Mach 2.5 microkernel and the BSD-Registered Trademark- 4.4 operating system. It provides performance and stability through full preemptive multitasking, protected memory, and advanced virtual memory. NetBoot is a Mac OS X server feature allowing a network of Macs to be booted and configured from a single server. In March 1999, the Company also introduced Darwin, the Open Source release of the Mac OS X server foundation.

The Company has two primary digital video authoring/editing software titles. Final Cut Pro-TM-, introduced in April 1999, is video authoring software that combines professional-quality video editing, compositing, and special effects in one package. iMovie, introduced in October 1999, makes it easy to create home and classroom movies. iMovie software comes pre-installed on all iMac DV and iMac DV Special Edition models.

The Company also develops and distributes extensions to the Macintosh system software, such as utilities, languages, and developer tools. The Company continues to develop QuickTime-Registered Trademark-, its market-leading cross platform digital media technology. WebObjects-Registered Trademark-, a leading software product in the emerging application server market, is also part of Apple's software portfolio. Targeted at Windows NT-Registered Trademark- and UNIX platforms, future versions will also run on Apple hardware. FileMaker-Registered Trademark- Corporation (formerly Claris-Registered Trademark- Corporation), a wholly owned subsidiary of the Company, develops, publishes, and distributes database management application software for Mac OS and Windows-based systems. Further, the Company has developed and currently markets AppleWorks-Registered Trademark- 5, formerly ClarisWorks-Registered Trademark-, an integrated suite of software applications that combines word processing, database, spreadsheet, drawing and communications capabilities in a single software package for both Mac OS and Windows.

## **INTERNET INTEGRATION**

Apple's Internet strategy is focused on delivering seamless integration with and access to the Internet throughout the Company's product lines. In addition to Sherlock 2, an easy Internet Setup Assistant is an integral part of Mac OS 9, the current version of the Macintosh operating system.

## **THIRD PARTY SOFTWARE DEVELOPERS**

Over the past two years, particularly since the announcement of the iMac in May 1998, software developers have demonstrated renewed interest in the Macintosh platform. Since iMac was announced, approximately 5,000 new or revised software titles have been announced for the Macintosh platform. Additionally, Microsoft delivered a new version of their productivity software--Office 98: Macintosh Edition--in early 1998.

The Company previously entered into agreements to license its Mac OS to other personal computer vendors (the Clone Vendors) as part of an effort to increase the installed base for the Macintosh platform. In fiscal 1997, the Company determined the benefits of licensing the Mac OS to the Clone Vendors under these agreements were more than offset by the impact and costs of the licensing program. As a result, the Company discontinued the Mac OS licensing program and acquired certain assets of Power Computing Corporation (PCC), a Clone Vendor, including PCC's license to distribute the Mac OS. The Company does not currently plan general licensing of the Mac OS.

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

## **MARKETS AND DISTRIBUTION**

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

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

The United States represents the Company's largest geographic marketplace. The United States is part of the Company's Americas operating segment, which has responsibility for the Company's sales, marketing, and support efforts in North and South America. Approximately 45% of the Company's net sales in fiscal 1999 came from its international operations. Final assembly of products sold by the Company is conducted

in the Company's manufacturing facilities in California, Singapore, and Cork, Ireland, and by external vendors in Taiwan, Korea, Mexico, and the United Kingdom.

The Company distributes its products through wholesalers, resellers, national and regional retailers and cataloguers, and directly to education institutions for resale (collectively referred to as "resellers"). The Company also sells many of its products in most of its major markets directly to end users through its on-line store. Throughout fiscal 1998, the Company revised its distribution channel model and related policies. As a result, the Company significantly reduced the number of its distributors, authorized resellers, and national retail channel partners, particularly in the United States. The Company also revised its distribution channel policies including decreasing the price protection and stock return privileges of its remaining distributors and resellers.

## **RAW MATERIALS**

Although certain components essential to the Company's business are generally available from multiple sources, other key components (including microprocessors and application-specific integrated circuits (ASICs)) are currently obtained by the Company from single or limited sources. Some other key components (including without limitation DRAM and TFT-LCD flat-panel displays), while currently available to the Company from multiple sources, are at times subject to industry wide availability and pricing pressures. Any availability limitations, interruption in supplies, or price increases relative to these and other components could adversely affect the Company's business and financial results. In addition, new products introduced by the Company often initially utilize custom components obtained from only one source until the Company has evaluated whether there is a need for and subsequently qualifies additional suppliers. In situations where a component or product utilizes new technologies, initial capacity constraints may exist until such time as the suppliers' yields have matured. Components are normally acquired through purchase orders, as is common in the industry, typically covering the Company's requirements for periods from 60 to 120 days. However, the Company continues to evaluate the need for a supply contract in each situation.

If the supply of a key component to the Company were to be delayed or curtailed or in the event a key manufacturing vendor delays shipment of completed products to the Company, the Company's ability to ship products in desired quantities and in a timely manner could be adversely affected. The Company's business and financial performance could also be adversely affected, depending on the time required to obtain sufficient quantities from the original source or, if possible, to identify and obtain sufficient quantities from an alternative source. In addition to its current suppliers of DRAM and TFT-LCD flat-panel displays, the Company believes the component suppliers and manufacturing vendors whose loss to the Company could have a material adverse effect upon the Company's business and financial position include, at this time: Alpha-Top Corporation, Ambit Microsystems Corporation, ATI Technologies, Inc., Canon, Inc., Darfon Electronics Corporation, IBM Corporation, LG Electronics, Matsushita, Motorola, Inc., NatSteel Electronics PTE Ltd., Philips Semiconductors, Quanta Computer, Inc., and Samsung Electronics. The Company attempts to mitigate these potential risks by working closely with these and other key suppliers on product introduction plans, strategic inventories, coordinated product introductions, and internal and external manufacturing schedules and levels. The Company believes many of its single-source suppliers, including most of the foregoing companies, are reliable multinational corporations. The Company also believes most of these suppliers manufacture the relevant components in multiple plants. The Company further believes its long-standing business relationships with many of these and other key suppliers are strong and mutually beneficial in nature.

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

Further discussion relating to availability and supply of components and product may be found in Part II, Item 7 of this Form 10-K under the subheading "Inventory and Supply" included under the heading

"Factors That May Affect Future Results and Financial Condition," and in

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

Statements at Note 8 under the subheading "Concentrations in the Available Sources of Supply of Materials and Product," which information is hereby incorporated by reference.

## **PATENTS, TRADEMARKS, COPYRIGHTS AND LICENSES**

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

Because of technological changes in the computer industry, current extensive patent coverage, and the rapid rate of issuance of new patents, it is possible certain components of the Company's products may unknowingly infringe existing patents of others. The Company believes the resolution of any claim of infringements would not have a material adverse effect on its financial condition and results of operations as reported in the accompanying consolidated financial statements. The Company has from time to time entered into cross-licensing agreements with other companies.

## **SEASONAL BUSINESS**

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

## **WARRANTY**

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

## **SIGNIFICANT CUSTOMERS**

No customer accounted for more than 10% of the Company's net sales in 1999, 1998, or 1997.

## **BACKLOG**

In the Company's experience, the actual amount of product backlog at any particular time is not a meaningful indication of its future business prospects. In particular, backlog often increases in anticipation of or immediately following new product introductions because of over ordering by dealers anticipating shortages. Backlog often is reduced once dealers and customers believe they can obtain sufficient supply. Because of the foregoing, backlog should not be considered a reliable indicator of the Company's ability to achieve any particular level of revenue or financial performance.

## **COMPETITION**

The market for the design, manufacture, and sale of personal computers and related software and peripheral products is highly competitive. It continues to be characterized by rapid technological advances



in both hardware and software development, which have substantially increased the capabilities and applications of these products, and has resulted in the frequent introduction of new products. The principal competitive factors in this market are relative price/performance, product quality and reliability, design innovation, availability of software, product features, marketing and distribution capability, service and support, availability of hardware peripherals, and corporate reputation. 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 are substantially dependent on its ability to continue to develop improvements to the Macintosh platform in order to maintain perceived functional and design advantages over competing platforms.

Further discussion relating to the competitive conditions of the personal computing industry and the Company's competitive position in the marketplace may be found in Part II, Item 7 of this Form 10-K under the subheading "Competition," included under the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

## **RESEARCH AND DEVELOPMENT**

Because the personal computer industry is characterized by rapid technological advances, the Company's ability to compete successfully is heavily dependent upon its ability to ensure a continuing and timely flow of competitive products and technology to the marketplace. The Company continues to develop new products and technologies and to enhance existing products in the areas of hardware and peripherals, system software, networking and communications, and the Internet. The Company's research and development expenditures, before charges for in-process research and development, totaled \$314 million, \$303 million, and \$485 million in 1999, 1998, and 1997, respectively. The declines in total expenditures for research and development in 1999 and 1998 as compared to 1997 were principally due to restructuring actions taken by the Company intended to focus the Company's research and development efforts on those projects perceived as critical to the Company's future success.

## **ENVIRONMENTAL LAWS**

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

## **EMPLOYEES**

As of September 25, 1999, Apple and its subsidiaries worldwide had 6,960 regular employees, and an additional 2,776 temporary or part-time employees and contractors.

## **FOREIGN AND DOMESTIC OPERATIONS AND GEOGRAPHIC DATA**

Information regarding financial data by geographic segment and the risks associated with international operations is set forth in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements at Note 9, "Segment Information and Geographic Data," and in Part II, Item 7 of this Form 10-K under the subheading "Global Market Risks," included under the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

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

## **ITEM 2. PROPERTIES**

The Company's headquarters are located in Cupertino, California. The Company has manufacturing facilities in Sacramento, California, Cork, Ireland, and Singapore. As of September 25, 1999, the Company leased approximately 3 million square feet of space, primarily in the United States, and to a lesser extent, in Europe and the Asia Pacific region. Leases are generally for terms of five to ten years, and usually provide renewal options for terms of up to five additional years.

The Company owns its manufacturing facilities in Cork, Ireland, and Singapore, which total approximately 785,000 square feet. The Company also owns a 748,000 square-foot facility in Sacramento, California, which is used as a manufacturing, warehousing and distribution center. The Sacramento facility also houses a customer call center. In addition, the Company owns 930,000 square feet of facilities located in Cupertino, California, used for research and development and corporate functions. Outside the United States, the Company owns additional facilities totaling approximately 347,000 square feet.

The Company believes its existing facilities and equipment are well maintained and in good operating condition. The Company has invested in internal capacity and strategic relationships with outside manufacturing vendors, and therefore believes it has adequate manufacturing capacity for the foreseeable future. The Company continues to make investments in capital equipment as needed to meet anticipated demand for its products.

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

## **ITEM 3. LEGAL PROCEEDINGS**

Information regarding legal proceedings is set forth in Part II, Item 8 of this Form 10-K in the Notes to Consolidated Financial Statements at Note 8 under the subheading "Litigation," which information is hereby incorporated by reference.

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

No matters were submitted to a vote of security holders during the fourth quarter of the Company's fiscal year ended September 25, 1999.

## PART II

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

The Company's common stock is traded on the over-the-counter market and is quoted on the Nasdaq National Market under the symbol AAPL, on the Tokyo Stock Exchange under the symbol APPLE, and on the Frankfurt Stock Exchange under the symbol APCD. As of December 10, 1999, there were 25,279 shareholders of record.

The Company did not pay cash dividends in either fiscal 1999 or 1998. The Company anticipates that, for the foreseeable future, it will retain any earnings for use in the operation of its business.

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

	FOURTH QUARTER	THIRD QUARTER	SECOND QUARTER	FIRST QUARTER
	-----	-----	-----	-----
Fiscal 1999 price range per common share.....	\$80.13-\$42.38	\$50.00-\$33.44	\$47.31-\$32.00	\$41.31-\$28.50
Fiscal 1998 price range per common share.....	\$43.75-\$28.06	\$31.63-\$24.69	\$28.00-\$12.75	\$24.75-\$12.94

### ITEM 6. SELECTED FINANCIAL DATA

The following selected financial information has been derived from the audited consolidated financial statements. The information set forth below is not necessarily indicative of results of future operations, and should be read in conjunction with Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and related notes thereto included in Item 8 of this Form 10-K in order to fully understand factors that may affect the comparability of the information presented below.

FIVE FISCAL YEARS ENDED SEPTEMBER 25, 1999 (In millions, except share and per share amounts)	1999	1998	1997	1996	1995
	-----	-----	-----	-----	-----
Net sales.....	\$ 6,134	\$ 5,941	\$ 7,081	\$ 9,833	\$ 11,062
Net income (loss).....	\$ 601	\$ 309	\$ (1,045)	\$ (816)	\$ 424
Earnings (loss) per common share:					
Basic.....	\$ 4.20	\$ 2.34	\$ (8.29)	\$ (6.59)	\$ 3.50
Diluted.....	\$ 3.61	\$ 2.10	\$ (8.29)	\$ (6.59)	\$ 3.45
Cash dividends declared per common share.....	\$ --	\$ --	\$ --	\$ 0.12	\$ 0.48
Shares used in computing earnings (loss) per share (in thousands):					
Basic.....	143,157	131,974	126,062	123,734	121,192
Diluted.....	174,164	167,917	126,062	123,734	123,047
Cash, cash equivalents, and short-term investments.....	\$ 3,226	\$ 2,300	\$ 1,459	\$ 1,745	\$ 952
Total assets.....	\$ 5,161	\$ 4,289	\$ 4,233	\$ 5,364	\$ 6,231
Long-term debt.....	\$ 300	\$ 954	\$ 951	\$ 949	\$ 303
Shareholders' equity.....	\$ 3,104	\$ 1,642	\$ 1,200	\$ 2,058	\$ 2,901

Net gains before taxes resulting from sales of an equity investment of \$230 million and \$40 million were recognized in 1999 and 1998, respectively. Net charges related to Company restructuring actions of \$27 million, \$217 million and \$179 million were recognized in 1999, 1997, and 1996, respectively. In fiscal 1997, the Company acquired NeXT, resulting in the allocation to in-process research and development of a charge of \$375 million for acquired in-process technologies with no alternative future use.

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

THIS SECTION AND OTHER PARTS OF THIS FORM 10-K CONTAIN FORWARD-LOOKING STATEMENTS THAT INVOLVE RISKS AND UNCERTAINTIES. THE COMPANY'S ACTUAL RESULTS MAY DIFFER SIGNIFICANTLY FROM THE RESULTS DISCUSSED IN THE FORWARD-LOOKING STATEMENTS. FACTORS THAT MIGHT CAUSE SUCH DIFFERENCES INCLUDE, BUT ARE NOT LIMITED TO, THOSE DISCUSSED IN THE SUBSECTION ENTITLED "FACTORS THAT MAY AFFECT FUTURE RESULTS AND FINANCIAL CONDITION" BELOW. THE FOLLOWING DISCUSSION SHOULD BE READ IN CONJUNCTION WITH THE CONSOLIDATED FINANCIAL STATEMENTS AND NOTES THERETO INCLUDED IN ITEM 8 OF THIS FORM 10-K. ALL INFORMATION IS BASED ON THE COMPANY'S FISCAL CALENDAR.

### RESULTS OF OPERATIONS

The following table sets forth annual results of operations for fiscal years 1999, 1998, and 1997 (in millions, except unit shipment and per share amounts):

	1999	CHANGE	1998	CHANGE	1997
	-----	-----	-----	-----	-----
Net sales.....	\$6,134	3%	\$5,941	(16)%	\$ 7,081
Macintosh CPU unit sales (in thousands).....	3,448	25%	2,763	(4)%	2,874
Gross margin.....	\$1,696	15%	\$1,479	8%	\$ 1,368
Percentage of net sales.....	28%		25%		19%
Research and development.....	\$ 314	4%	\$ 303	(38)%	\$ 485
Percentage of net sales.....	5%		5%		7%
Selling, general and administrative.....	\$ 996	10%	\$ 908	(29)%	\$ 1,286
Percentage of net sales.....	16%		15%		18%
Special charges:					
In-process research and development.....	\$ --		\$ 7		\$ 375
Restructuring costs.....	\$ 27		\$ --		\$ 217
Termination of license agreement.....	\$ --		\$ --		\$ 75
Gains from sales of investment.....	\$ 230		\$ 40		\$ --
Interest and other income, net.....	\$ 87	211%	\$ 28	12%	\$ 25
Provision for income taxes.....	\$ 75	275%	\$ 20		\$ --
Net income (loss).....	\$ 601	95%	\$ 309	130%	\$ (1,045)
Earnings (loss) per common share:					
Basic.....	\$ 4.20	79%	\$ 2.34	128%	\$ (8.29)
Diluted.....	\$ 3.61	72%	\$ 2.10	125%	\$ (8.29)

The following table sets forth quarterly results of operations for fiscal 1999 and 1998 (in millions, except unit shipment and per share amounts):

	YEAR ENDED SEPTEMBER 25, 1999				YEAR ENDED SEPTEMBER 25, 1998			
	FOURTH QUARTER	THIRD QUARTER	SECOND QUARTER	FIRST QUARTER	FOURTH QUARTER	THIRD QUARTER	SECOND QUARTER	FIRST QUARTER
Net sales.....	\$1,336	\$1,558	\$1,530	\$1,710	\$1,556	\$1,402	\$1,405	\$1,578
Macintosh CPU unit sales (in thousands).....	772	905	827	944	834	644	650	635
Gross margin.....	\$ 384	\$ 427	\$ 403	\$ 482	\$ 417	\$ 360	\$ 349	\$ 353
Gross margin percentage...	29%	27%	26%	28%	27%	26%	25%	22%
Operating expenses.....	\$ 317	\$ 323	\$ 315	\$ 355	\$ 308	\$ 292	\$ 298	\$ 313
Special charges.....	18	--	9	--	--	7	--	--
Operating margin.....	49	104	79	127	109	61	51	40
Operating margin percentage.....	4%	7%	5%	7%	7%	4%	4%	3%
Gains from sales of investment.....	\$ 42	\$ 101	\$ 55	\$ 32	--	\$ 40	--	--
Interest and other income, net.....	\$ 34	\$ 24	\$ 19	\$ 10	\$ 5	\$ 8	\$ 8	\$ 7
Provision for income taxes.....	14	26	18	17	8	8	4	--
Net income.....	\$ 111	\$ 203	\$ 135	\$ 152	\$ 106	\$ 101	\$ 55	\$ 47
Earnings per common share:								
Basic.....	\$ 0.69	\$ 1.41	\$ 0.99	\$ 1.12	\$ 0.79	\$ 0.76	\$ 0.42	\$ 0.37
Diluted.....	\$ 0.63	\$ 1.20	\$ 0.84	\$ 0.95	\$ 0.68	\$ 0.65	\$ 0.38	\$ 0.33

## OVERVIEW

During 1999, the Company experienced a 25% rise in Macintosh unit sales. This increase is primarily attributable to the success of iMac, the Company's moderately priced desktop Macintosh system designed for the education and consumer markets. The Company sold approximately 1.8 million iMac units in 1999, an increase of approximately 730,000 units or 68% over unit sales of similar products in 1998. Growth in unit sales was strong in all of the Company's geographic operating segments, particularly in Japan and Asia Pacific due to strong acceptance of iMac in those regions and the general economic improvements experienced in much of Asia during the year. The Company also experienced improved profitability in 1999. Operating income before special charges rose 44% or \$118 million to \$386 million in 1999 from \$268 million in 1998. Contributing to the improvement in operating margin in 1999 was a rise in gross margin as a percentage of net sales to 28% as compared to 25% in 1998. The impact of improved gross margins was partially offset by planned increases in recurring operating expenses during 1999 of 8% to a total of \$1.337 billion.

Despite improved unit sales and improved profitability, the Company's net sales rose only 3% in 1999 to \$6.134 billion. Growth in net sales was negatively impacted during the year by declines in the average revenue per Macintosh system for both Power Macintosh and iMac systems and by a shift in unit mix towards the lower priced iMac systems. Net sales were also negatively impacted during the fourth quarter of 1999 due to lower than planned deliveries of PowerPC G4 processors from Motorola. The primary focus of the Company during fiscal 2000 remains achieving meaningful year-over-year growth in both unit sales and net sales.

The Company's future operating results and financial condition are dependent upon the Company's ability to successfully develop, manufacture, and market technologically innovative products in order to meet the dynamic conditions within the highly competitive market for personal computers. Potential risks and uncertainties that could affect the Company's future operating results and financial condition are discussed

throughout this Item 7, including the discussion under the heading "Factors That May Affect Future Results and Financial Condition."

## NET SALES

Net sales for geographic segments and Macintosh unit sales by geographic segment and by product follow (net sales in millions and Macintosh unit sales in thousands):

	1999	CHANGE	1998	CHANGE	1997
Americas net sales.....	\$3,527	2 %	\$3,468	(5)%	\$3,668
Europe net sales.....	\$1,317	2 %	\$1,295	(16)%	\$1,536
Japan net sales.....	\$ 858	17 %	\$ 731	(33)%	\$1,098
Asia Pacific net sales.....	\$ 306	4 %	\$ 293	(38)%	\$ 472
Americas Macintosh unit sales.....	2,021	22 %	1,655	6 %	1,568
Europe Macintosh unit sales.....	724	23 %	588	(2)%	601
Japan Macintosh unit sales.....	524	35 %	389	(25)%	516
Asia Pacific Macintosh unit sales.....	179	37 %	131	(31)%	189
Total Macintosh unit sales.....	3,448	25 %	2,763	(4)%	2,874
	=====		=====		=====
Power Macintosh unit sales.....	1,296	2 %	1,266	29 %	981
PowerBook unit sales.....	344	(19)%	427	2 %	417
iMac unit sales(a).....	1,802	68 %	1,070	(28)%	1,476
iBook unit sales.....	6	--	--	--	--
Total Macintosh unit sales.....	3,448	25 %	2,763	(4)%	2,874
	=====		=====		=====

(a) Unit sales figures for iMac in 1998 and 1997 include sales of the Company's previous consumer and education oriented Macintosh products.

Net sales increased \$193 million or 3% to \$6.134 billion in 1999 compared to 1998. The primary source of this growth was an overall 25% increase in Macintosh unit sales, which was reflective of strong unit growth in all of the Company's geographic operating segments. Offsetting the rise in unit shipments was a decline in the average revenue per Macintosh system, a function of total net sales generated by hardware shipments and total Macintosh CPU unit sales, which fell 17% to \$1,739 from \$2,095 in 1998. The decline during 1999 in the average revenue per Macintosh system is attributable to lower pricing for both iMac and Power Macintosh products, which reflects the continuing overall industry trend towards lower pricing. The decline is also attributable to the shift in the Company's unit mix toward lower-priced consumer products such that iMac units and comparable products comprised 52% of total Macintosh unit sales in 1999 versus 39% in 1998.

Net sales declined sequentially during the fourth quarter of 1999 compared to the third quarter by \$222 million or 14%, and declined \$220 million or 14% compared to the same period in 1998. Similarly, Macintosh unit sales declined 15% and 7% during the fourth quarter of 1999 compared to the third quarter of 1999 and the same period in 1998, respectively. The primary causes for these declines in both net sales and unit sales were lower than planned deliveries of PowerPC G4 processors from Motorola and production interruptions at vendors supplying PowerBooks and iBooks experienced during the last week of the fourth quarter of 1999 as a result of the earthquake in Taiwan on September 20, 1999. The shortage of G4 processors reduced net sales by approximately \$200 million during the fourth quarter of 1999.

Net sales decreased \$1.140 billion, or 16%, to \$5.941 billion in 1998 compared to 1997. The decline during 1998 in net sales is attributable to several factors. The Company experienced a \$454 million decrease in net sales of peripheral products during 1998 compared to 1997 principally due to the discontinuance by the

Company of certain imaging and display products. The average revenue per Macintosh system fell 11% during 1998 as compared to 1997 from \$2,375 to \$2,095, reflecting the effect of aggressive pricing of the Company's Power Macintosh G3 systems introduced in the first quarter of fiscal 1998, the decline in net sales from the phase out of certain peripheral products, the overall industry trend toward lower priced products, and the Company's reentry during the fourth quarter of 1998 into the lower-priced consumer market. Lastly, overall Macintosh CPU unit sales for 1998 declined approximately 4% from 1997. International net sales were particularly affected by these factors and by the economic conditions existing in Asia during 1998.

## **SEGMENT OPERATING PERFORMANCE**

The Company manages its business primarily on a geographic basis. The Company's geographic segments include the Americas, Europe, Japan, and Asia Pacific. The Americas segment includes both North and South America. The European segment includes European countries as well as the Middle East and Africa. The Japan segment includes only Japan, while the Asia Pacific segment includes Australia and Asia except for Japan. Each geographic operating segment provides similar hardware and software products and similar services. Further information regarding the Company's operating segments may be found in Part II, Item 8 on this Form 10-K in the Notes to Consolidated Financial Statements at Note 9, "Segment Information and Geographic Data," which information is hereby incorporated by reference.

### **AMERICAS**

Net sales in the Americas segment increased 2% to \$3.527 billion during 1999 as compared to 1998, while Macintosh unit sales increased 22%. This followed a 5% decline in net sales in the Americas between 1998 and 1997. During 1999, the Americas segment represented approximately 57% and 59% of the Company's total net sales and total Macintosh unit sales, respectively. The results experienced by this segment in 1999 reflect the overall trends experienced by the Company of growing Macintosh unit sales offset by declines in the average revenue per Macintosh system.

### **EUROPE**

Net sales in the Europe segment increased 2% to \$1.317 billion during 1999 as compared to 1998, while Macintosh unit sales increased 23%. This followed a 16% decline in net sales in the Europe segment between 1998 and 1997. Like the Americas segment, Europe's results in 1999 as compared to 1998 are indicative of strong growth in Macintosh unit sales offset by declines in the average revenue per Macintosh system.

### **JAPAN AND ASIA PACIFIC**

Macintosh unit sales and net sales in Asia, particularly in Japan, recovered during 1999 from the declines experienced in 1998. Net sales in the Japan segment increased 17% or \$127 million to a total of \$858 million in 1999 as compared to 1998. Macintosh unit sales in Japan increased 35% during 1999 compared to 1998 while Macintosh unit sales in the Asia Pacific segment increased 37%. The increases in net sales and Macintosh unit sales in both Japan and Asia Pacific are the result of strong iMac sales experienced by these operating segments, strong growth in Japanese consumer sales, and the general economic recovery experienced in the region.

### **BACKLOG**

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

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

## **GROSS MARGIN**

Gross margin increased as a percentage of net sales during 1999 to 28% as compared to 25% in 1998. This increase was primarily attributable to declines in the cost of various components of the Company's products, improvements in manufacturing efficiencies brought about by selective outsourcing of final assembly of certain of the Company's products, improved design of products leading to lower manufacturing and warranty costs, and relatively stable pricing of the Company's products over the last six months of 1999. During 1999, the Company was also able to fully realize the benefits of actions taken primarily in 1998 and 1997 that led to improved inventory management and a more efficient distribution model for its products. These improvements are discussed below.

Gross margin increased as a percentage of net sales during 1998 to 25% compared to 19% in 1997. This increase was primarily the result of a shift in revenue mix toward the Company's higher margin Power Macintosh G3 systems and newer PowerBook G3 systems, the low volume of lower margin consumer products shipped during the first three quarters of 1998, and the declining cost of various components of the Company's products, particularly those sourced from Asia. Improvements in the Company's inventory management also contributed to the increase in gross margins. During 1998, the Company simplified its product line, moving from approximately 15 separate individual products to three main product families. Further, the Company attempted to use as many industry standard parts in its newer products as possible, expanded the use of supplier hubs at manufacturing sites, and outsourced the manufacture of printed circuit boards and some systems assembly. These changes have allowed the Company to more accurately forecast demand, reduce inventory carrying levels and related costs, lessen the financial exposure resulting from inventory obsolescence and excess inventory levels, and reduce the component cost of obtaining certain standardized parts. The Company also made changes to its distribution model during 1998 and 1997 that contributed to the increase in gross margins in 1998. The Company significantly reduced the number of locations where it stages finished goods, generally holding inventory on a regional basis rather than in each country. Also, the Company significantly reduced the number of its distributors, authorized resellers, and national retail channel partners, particularly in the United States. These changes allowed the Company to reduce inventory and related financial exposures and reduced the inventory and related financial exposure associated with inventory held in the Company's distribution channels. The Company has also revised its distribution channel policies by decreasing the price protection and stock return privileges of its distributors and resellers.

The Company anticipates that as lower priced consumer products become a larger share of net sales and the overall industry trend toward lower-priced products continues, gross margins will decline during fiscal 2000. The foregoing statement is forward-looking. The Company's actual results could differ because of several factors, including those set forth in the following paragraph and below in the subsection entitled "Factors That May Affect Future Results and Financial Condition."

There can be no assurance targeted gross margin levels will be achieved or current margins on existing individual products will be maintained. In general, gross margins and margins on individual products will remain under significant downward pressure due to a variety of factors, including continued industry wide global pricing pressures, increased competition, compressed product life cycles, potential increases in the cost and availability of raw material and outside manufacturing services, and potential changes to the Company's product mix, including higher unit sales of consumer products with lower average selling prices and lower gross margins. In response to these downward pressures, the Company expects it will continue to take pricing actions with respect to its products. Gross margins could also be affected by the Company's ability to effectively manage quality problems and warranty costs and to stimulate demand for certain of its products. The Company's operating strategy and pricing take into account anticipated changes in foreign



currency exchange rates over time; however, the Company's results of operations can be significantly affected in the short term by fluctuations in exchange rates.

## **RESEARCH AND DEVELOPMENT**

The Company recognizes focused investments in research and development are critical to its future growth and competitive position in the marketplace and are directly related to timely development of new and enhanced products that are central to the Company's core business strategy. Expenditures on research and development increased 4% or \$11 million to \$314 million in 1999 as compared to 1998. This followed a \$182 million or 38% decline in 1998 as compared to 1997. The overall decline in spending on research and development over the last two years is principally due to restructuring actions taken in 1996, 1997, and 1998 intended to focus the Company's research and development efforts on those projects perceived as critical to the Company's future success. These restructuring actions led to significant reductions in research and development related headcount and the cancellation of many research and development projects.

## **SELLING, GENERAL, AND ADMINISTRATIVE**

Selling, general, and administrative expenditures increased 10% to \$996 million in 1999 as compared to 1998 and increased to 16% of net sales in 1999 from 15% in 1998. These increases are primarily the result of increased spending on marketing and promotional activities throughout 1999 and a 12% increase in combined sales, marketing, and general and administrative headcount from the end of 1998 to the end of 1999.

Selling, general, and administrative expenditures declined \$378 million or 29% in 1998 compared to 1997 and declined to 15% of net sales in 1998 from 18% of net sales in 1997. These decreases were primarily the result of restructuring actions taken in 1996, 1997, and 1998, which resulted in reductions in headcount, closing of facilities, and write-down and disposal of operating assets during 1996, 1997, and 1998. Additionally, changes during 1998 in the Company's distribution channel policies and business model, including contraction and focus of the Company's product line and simplification of the Company's internal and external distribution channels, led to a reduction in selling expenses during 1998.

## **SPECIAL CHARGES**

### **1996 AND 1997 RESTRUCTURING ACTIONS**

In the second quarter of 1996, the Company announced and began to implement a restructuring plan designed to reduce costs and return the Company to profitability. The restructuring plan was necessitated by decreased demand for the Company's products and the Company's adoption of a new strategic direction. These actions resulted in a charge during 1996 of \$179 million. During 1997, the Company announced and began to implement supplemental restructuring actions to meet the foregoing objectives of the plan. The Company recognized a \$217 million charge during 1997 for the estimated incremental costs of those actions. All material restructuring actions contemplated under the plan were essentially complete at the end of fiscal 1998. The combined 1996 and 1997 restructuring actions consisted of terminating approximately 4,200 full-time employees; canceling or vacating certain facility leases as a result of those employee terminations; writing down certain land, buildings, and equipment to be sold as a result of downsizing operations and outsourcing various operational functions; and canceling contracts for projects and technologies that were not critical to the Company's core business strategy. The restructuring actions under the plan resulted in cash expenditures of \$293 million and noncash asset write-downs of \$95 million from the second quarter of 1996 through September 25, 1999. Of the combined 1996 and 1997 restructuring charges of \$396 million, approximately \$3 million was determined to be excess during the fourth quarter of 1999. The remaining balance of \$5 million as of September 25, 1999, in accrued restructuring costs for the 1996 and 1997 restructuring actions is comprised of payments over the next two years on leases and contracts that had been terminated prior to fiscal 1999. The Company expects the remaining accrual will result in cash expenditures of \$5 million over the next two years.

## **1999 RESTRUCTURING ACTIONS**

During the fourth quarter of 1999, the Company initiated restructuring actions resulting in a charge to operations of \$21 million. The net restructuring charge of \$18 million recognized during the fourth quarter of 1999 reflects the \$3 million of excess reserves related to the 1996 and 1997 restructuring actions. The total cost of these actions of \$21 million is comprised of \$11 million for contract cancellation charges associated with the closure of the Company's outsourced data center and \$10 million for contract cancellation charges related to supply and development agreements previously discontinued. The Company expects these actions to result in cash expenditures of \$21 million over the next year.

During the second quarter of 1999, the Company took certain actions to improve the flexibility and efficiency of its manufacturing operations by moving final assembly of certain of its products to third-party manufacturers. These restructuring actions resulted in the Company recognizing a charge to operations of approximately \$9 million during the second quarter of 1999, which was comprised of \$6 million for severance benefits to be paid to employees involuntarily terminated, \$2 million for the write-down of operating assets to be disposed of, and \$1 million for payments on canceled contracts. These actions resulted in the termination of approximately 580 employees and are substantially complete as of September 25, 1999.

## **IN-PROCESS RESEARCH AND DEVELOPMENT**

In May 1998, the Company acquired certain technology that was under development and had no alternative future use. The acquisition resulted in the recognition of \$7 million of purchased in-process research and development, which was charged to operations upon acquisition.

In February 1997, the Company acquired all of the outstanding shares of NeXT Software, Inc. (NeXT). NeXT had developed, marketed, and supported software enabling customers to implement business applications on the Internet/World Wide Web, intranets and enterprise-wide client/server networks. Of the total purchase price of \$427 million, \$375 million was allocated to purchased in-process research and development and \$52 million was allocated to goodwill and other intangible assets. The purchased in-process research and development was charged to operations upon acquisition, and the goodwill and other intangible assets are being amortized on a straight-line basis over two to three years.

## **TERMINATION OF LICENSE AGREEMENT**

In August 1997, the Company agreed to acquire certain assets of Power Computing Corporation (PCC), a licensed distributor of the Mac OS operating system, including PCC's customer database and its license to distribute the Mac OS. The agreement with PCC also included a release of claims between the parties. On January 28, 1998, the Company completed its acquisition of certain assets from PCC. The total purchase price was approximately \$110 million, of which \$75 million was expensed in the fourth quarter of 1997 as "termination of license agreement" and \$35 million was recorded as goodwill in the second quarter of 1998. The goodwill is being amortized over three years.

## **INTEREST AND OTHER INCOME (EXPENSE), NET**

Interest and other income and expense (net) increased \$59 million or 211% to \$87 million during 1999 as compared to 1998. This increase is attributable to two primary factors. First, the Company's cash, cash equivalents, and short-term investments increased \$926 million or 40% during 1999 resulting in an increase in interest income during 1999 of \$44 million. Second, interest expense declined \$15 million during 1999, primarily as a result of the conversion of approximately \$661 million of the Company's convertible subordinated notes to common stock during the third quarter of 1999. During 1998, the Company experienced a \$27 million increase in interest income net of interest expense, the result of higher cash and investment balances and lower average short-term borrowings, offset by decreased foreign exchange gains and increased other expense.

## **GAINS FROM SALES OF INVESTMENT**

As of September 26, 1997, the Company owned 42.3% of the outstanding stock of ARM Holdings plc (ARM), a privately held company in the United Kingdom involved in the design of high performance microprocessors and related technology. The Company had accounted for this investment using the equity method through September 25, 1998. On April 17, 1998, ARM completed an initial public offering of its stock on the London Stock Exchange and the NASDAQ National Market. The Company sold 18.9% of its shares in the offering for a gain before foreign taxes of approximately \$24 million, which was recognized as other income. Foreign tax recognized on this gain was approximately \$7 million.

At the time an equity method investee sells existing or newly issued common stock to unrelated parties in excess of its book value, the equity method requires the net book value of the investment be adjusted to reflect the investor's share of the change in the investee's shareholders' equity resulting from the sale. It is the Company's policy to record an adjustment reflecting its share of the change in the investee's shareholders' equity resulting from such a sale as a gain or loss in other income. Consequently, the Company also recognized in the third quarter of 1998 other income of approximately \$16 million to reflect its remaining 25.9% ownership interest in the increased net book value of ARM following its initial public offering. As of September 25, 1998, the carrying value of the Company's investment in ARM carried in other assets in the consolidated balance sheet was approximately \$22 million. On October 14, 1998, the Company sold 11.6 million shares (split adjusted) of ARM stock. As a result of this sale, the Company's ownership interest in ARM fell to 19.7%. Consequently, beginning in the first quarter of fiscal 1999, the Company ceased accounting for its remaining investment in ARM using the equity method and categorized its remaining shares as available-for-sale requiring the shares be carried at fair value, with unrealized gains and losses net of taxes reported as a component of accumulated other comprehensive income.

During fiscal 1999, the Company sold approximately 32.6 million shares (split adjusted) of ARM stock for net proceeds of approximately \$245 million, recorded a gain before taxes of approximately \$230 million, and recognized related income tax of approximately \$25 million. As of September 25, 1999, the Company's remaining 16 million shares of ARM stock are valued at \$226 million. The fair value of the Company's investment in ARM is reflected in other assets as of September 25, 1999, with an offsetting amount net of \$84 million of related deferred income taxes recognized in accumulated other comprehensive income.

## **PROVISION (BENEFIT) FOR INCOME TAXES**

As of September 25, 1999, the Company had deferred tax assets arising from deductible temporary differences, tax losses, and tax credits of \$613 million before being offset against certain deferred tax liabilities for presentation on the Company's balance sheet. A substantial portion of this asset is realizable based on the ability to offset existing deferred tax liabilities. As of September 25, 1999, a valuation allowance of \$60 million was recorded against the deferred tax asset for the benefits of tax losses that may not be realized. The valuation allowance relates to the operating loss carryforwards acquired from NeXT and to tax benefits in certain foreign jurisdictions. The Company will continue to evaluate the realizability of the deferred tax assets quarterly by assessing the need for and amount of the valuation allowance. The Company's effective tax rate for fiscal 1999 was 11% compared to the higher statutory rate due primarily to the reversal of a portion of the previously established valuation allowance and certain undistributed foreign earnings for which no U.S. taxes were provided.

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

The Company anticipates its effective tax rate for fiscal 2000 will be approximately 25%. The foregoing statement is forward-looking. The Company's actual results could differ because of several factors, including those set forth below in the subsection entitled "Factors That May Affect Future Results and Financial Condition." Additionally, the actual future tax rate will be significantly impacted by the amount of and jurisdiction in which the Company's foreign profits are earned.

## LIQUIDITY AND CAPITAL RESOURCES

The following table presents selected financial information and statistics for each of the last three fiscal years (dollars in millions):

	1999	1998	1997
Cash, cash equivalents, and short-term investments.....	\$3,226	\$2,300	\$1,459
Accounts receivable, net.....	\$ 681	\$ 955	\$1,035
Inventory.....	\$ 20	\$ 78	\$ 437
Working capital.....	\$2,736	\$2,178	\$1,606
Days sales in accounts receivable(a).....	46	56	58
Days of supply in inventory(b).....	2	6	31
Operating cash flow.....	\$ 798	\$ 775	\$ 154

(a) Based on ending net trade receivables and most recent quarterly net sales for each period.

(b) Based on ending inventory and most recent quarterly cost of sales for each period.

As of September 25, 1999, the Company had \$3.226 billion in cash, cash equivalents, and short-term investments, an increase of \$926 million or 40% over the same balances at the end of fiscal 1998. During fiscal 1999, the Company's primary source of cash was \$798 million in cash flows from operating activities. Cash generated by operations was primarily from net income, declines in accounts receivables and inventory resulting from improved asset management, and an increase in accounts payable. The Company's cash and cash equivalent balances as of September 25, 1999 and 1998, include \$4 million and \$56 million, respectively, pledged as collateral to support letters of credit.

In addition to the net purchase of short-term investments of \$1.081 billion, net cash used by investing activities included \$112 million for the purchase of investments in Samsung and Akamai discussed below and \$47 million for the purchase of fixed assets. These uses of cash were partially offset by proceeds from the sale of ARM stock of \$245 million and proceeds from the sale of equipment of \$23 million. The Company expects the level of capital expenditures in 2000 will increase moderately from 1999.

In July 1999, the Company's Board of Directors authorized a plan for the Company to repurchase up to \$500 million of its common stock. This repurchase plan does not obligate the Company to acquire any specific number of shares or acquire shares over any specified period of time. As of September 25, 1999, the Company had repurchased a total of 1.25 million shares of its common stock at a cost of \$75 million.

On November 18, 1999, the Company entered into a \$100 million revolving credit agreement with Bank of America. Loans under the agreement pay interest at LIBOR plus 1%, and the Company is required to pay a commitment fee of 0.2% of the unused portion of the credit facility. No advances have been made against this credit facility. This revolving credit agreement is intended to provide the Company with an additional source of liquidity and to provide additional support to the Company's capital position in the event of short-term liquidity disturbances in worldwide financial markets associated with the Year 2000 crossover.

The Company believes its balances of cash, cash equivalents, and short-term investments will be sufficient to meet its cash requirements over the next twelve months, including any cash utilized by its stock repurchase plan. However, given the Company's current non-investment grade debt ratings, if the Company should need to obtain short-term borrowings, there can no assurance such borrowings could be

obtained at favorable rates. The inability to obtain such borrowings at favorable rates could materially adversely affect the Company's results of operations, financial condition, and liquidity.

## **OTHER LONG-TERM INVESTMENTS**

As discussed above, the Company has categorized its shares in ARM as available-for-sale requiring the shares be carried at fair value, with unrealized gains and losses net of taxes reported as a component of accumulated other comprehensive income. As of September 25, 1999, the Company held 16 million shares of ARM stock valued at \$226 million. During the first quarter of fiscal 2000 through December 17, 1999, the Company sold an additional 5.1 million shares of ARM stock for net proceeds of approximately \$136 million and gains before taxes of approximately \$134 million. As of December 17, 1999, the Company holds 10.9 million shares of ARM stock valued at approximately \$690 million.

During the fourth quarter of 1999, the Company invested \$100 million in Samsung Electronics Co., Ltd (Samsung) to assist in the further expansion of Samsung's TFT-LCD flat-panel display production capacity. The investment, in the form of three year unsecured bonds, is convertible into approximately 550,000 shares of Samsung common stock beginning in June 2000. The bonds carry an annual coupon rate of 2% and pay a total yield to maturity of 5% if redeemed at their maturity.

In June 1999, the Company invested \$12.5 million in Akamai Technologies, Inc. (Akamai), a global Internet content delivery service. The investment was in the form of convertible preferred stock that converted into 4.1 million shares of Akamai common stock (adjusted for subsequent stock splits) at the time of Akamai's initial public offering in October 1999. The Company is restricted from selling more than 25% of its shares within one year after the date of the closing of a public offering of Akamai's stock. Beginning in the first quarter of fiscal 2000, the Company has categorized its shares in Akamai as available-for-sale requiring they be carried at fair value with unrealized gains and losses net of taxes reported as a component of accumulated other comprehensive income. As of December 17, 1999, the fair value of the Company's investment in Akamai was approximately \$1.2 billion. Because Akamai is a newly public company and its stock price has experienced significant volatility, the fair value of the Company's investment in Akamai may fluctuate significantly in the future.

## **YEAR 2000 COMPLIANCE**

THE INFORMATION PRESENTED BELOW RELATED TO YEAR 2000 (Y2K) COMPLIANCE CONTAINS FORWARD-LOOKING STATEMENTS THAT ARE SUBJECT TO RISKS AND UNCERTAINTIES. THE COMPANY'S ACTUAL RESULTS MAY DIFFER SIGNIFICANTLY FROM THOSE DISCUSSED BELOW AND ELSEWHERE IN THIS FORM 10-K REGARDING Y2K COMPLIANCE.

### **YEAR 2000**

The Year 2000 (Y2K) issue is the result of certain computer hardware, operating system software and software application programs having been developed using two digits rather than four to define a year. For example, the clock circuit in the hardware may be incapable of holding a date beyond the year 1999; some operating systems may recognize a date using "00" as the year 1900 rather than 2000 and certain applications may have limited date processing capabilities. These problems could result in the failure of major systems or miscalculations, which could have a material impact on companies through business interruption or shutdown, financial loss, damage to reputation, and legal liability to third parties.

### **Y2K PLAN**

The Company's Information Systems and Technology department (IS&T) began addressing the Y2K issue in 1996 as part of its Next Generation strategy, which addressed the need for ongoing enhancement and replacement of the Company's various disparate legacy information technology (IT) Systems. In 1998, the Company established a Year 2000 Executive Steering Committee (Steering Committee) comprised of senior executives of the Company and the Company's Year 2000 Project Management Office (PMO). The PMO reports to the Executive Vice President and Chief Financial Officer, the Steering Committee, and the Audit and Finance Committee of the Board of Directors.

The PMO developed and manages the Company's worldwide Y2K strategic plan (Y2K Plan) to address the potential impact of Y2K on the Company's operations and business processes. In particular, the Y2K Plan addresses four principal areas that may be impacted by the Y2K issue: Apple Branded Products; Third Party Relationships; Non-IT Business Systems; and IT Systems. With respect to the IT Systems and Non-IT Business Systems, the Y2K Plan consists of four separate but overlapping phases: Phase I--Inventory and Risk Assessment; Phase II--Remediation Cost Estimation; Phase III--Remediation; and Phase IV--Remediation Testing. In addition, the Company has an ongoing Y2K Awareness Program designed to keep employees informed about Y2K issues. The discussion below reflects management's estimate of the current status of the four principal areas of the Company's Y2K Plan. Regardless of the current status, all areas of the Y2K Plan remain under review and subject to modification as deemed necessary throughout the remainder of calendar 1999 through the date rollover and into January 2000.

## **APPLE BRANDED PRODUCTS**

The Company designs and manufactures personal computers, related peripherals, operating system software and application software, including Macintosh personal computers and the Mac OS, which are marketed under the "Apple" brand (collectively "Apple Branded Products"). The Company tested certain Apple Branded Products to determine Y2K compliance, although such testing did not include third party products bundled with Apple Branded Products and certain Apple Branded Products no longer distributed and/or supported by the Company. For purposes of this discussion, Y2K compliant means a product will not produce errors processing date data in connection with the year change from December 31, 1999, to January 1, 2000, when used with accurate date data in accordance with its documentation, provided all other products (including other software, firmware and hardware) used with it properly exchange date data with it. A Y2K compliant product will recognize the Year 2000 as a leap year. Information about testing and Y2K compliance of Apple Branded Products is available on the Apple corporate web site under the heading "Year 2000 Readiness Disclosure", at [www.apple.com/about/year/](http://www.apple.com/about/year/). Such information, which is updated on an ongoing basis, is not to be considered part of this annual report. Because the Company does not control the design of non-Apple Branded Products or third party products that are bundled with Apple Branded Products, it cannot assure such products are Y2K compliant.

Some Apple Branded Products installed at customer sites may require upgrades or other remediation. While the Company believes its customers are responsible for the Y2K readiness of their IT and business environments, the Company has taken steps to assist customers in achieving their readiness goals. Apple is issuing software updates (at no additional charge) for most, but not all, known issues in certain Apple Branded Products.

## **THIRD PARTY RELATIONSHIPS**

The Company's business operations are heavily dependent on third party corporate service vendors, materials suppliers, outsourced operations partners, distributors and others. The Company is working with key external parties to identify and attempt to mitigate the potential risks to it of Y2K. The failure of external parties to resolve their own Y2K issues in a timely manner could result in a material financial risk to the Company. As part of its Y2K Plan and to establish the state of readiness of certain third parties, the Company is actively communicating on an ongoing basis with certain third parties whose lack of Y2K compliance would present a high degree of risk to the Company. Based on information obtained from various sources, the Company believes it is reasonably possible there will be interruptions around the world in critical services such as air traffic control, airfreight transportation, customs clearance, telecommunications, and power utilities early in calendar year 2000 that could result in shipping delays of raw material and finished goods. The Company also believes it is reasonably possible that worldwide financial markets could exhibit unusual short-term volatility and liquidity disturbances at the end of calendar 1999 and at the beginning of calendar 2000. Such events could result in material adverse effects on the Company's results of operations and financial position. See further discussion regarding this issue below under the heading "Contingency Plans." The Company has substantially completed its review of certain third parties as of the

end of the fourth quarter of fiscal 1999. Although numerous third parties have advised the Company they are addressing their Y2K issues, the readiness of third parties overall varies widely. Because the Company's Y2K compliance is dependent on the timely Y2K compliance of third parties, there can be no assurances the Company's efforts alone will resolve all Y2K issues. The Company continues to communicate with and monitor the compliance efforts of key third parties. The Company will continue these efforts with key third parties through the date rollover and into January 2000.

## **IT SYSTEMS AND NON-IT BUSINESS SYSTEMS**

### **Phase I--Inventory and Risk Assessment:**

This Phase requires an inventory and assessment of the Non-IT Business Systems used by the Company, including systems with embedded technology, building access systems, and health and safety systems. This Phase also includes inventory and assessment of IT Systems used by the Company, including large IS&T systems, desktop hardware and software, and network hardware and software. Each system is evaluated and the business risk is quantified as being High, Medium or Low Risk to the Company's business. Systems that are High Risk are those, which if uncorrected, would cause an interruption of or complete failure to conduct the Company's business. Medium Risks are those that would negatively impact the business but complete cessation could be avoided with some inconvenience. Low Risks are those where the risk to business interruption or cessation are remote. The Company intends that High and Medium Risk items will be remediated or replaced, and Low Risk items will likely not be addressed prior to the Year 2000. The status of the Company's remediation efforts is discussed below. The Company had substantially completed the Inventory and Risk Assessment Phase for both IT Systems and Non-IT Systems by the end of the third quarter of fiscal 1999. However, the Company has and will continue to review information developed as the result of its Y2K Plan, which could result in additional items being added to its Y2K inventory.

### **Phase II--Remediation Cost Estimation:**

This Phase involves the analysis of each High and Medium Risk to determine how such risks may be remediated and the cost of such remediation. The Company has substantially completed this Phase for both IT and Non-IT Business Systems.

### **Phase III--Remediation:**

This Phase includes the replacement or correction of the High and Medium Risk Non-IT Business Systems and IT Systems. The Company substantially completed this Phase for both IT and Non-IT Business Systems during the fourth quarter of fiscal 1999.

### **Phase IV--Remediation Testing:**

This Phase includes the future date testing of the remediation efforts made in Phase III to confirm that the changes made bring the affected systems into compliance, no new problems have arisen as a result of the remediation, and new systems that replaced noncompliant systems are Y2K compliant. The Company substantially completed this Phase for both IT and Non-IT Business Systems during the first quarter of fiscal 2000.

## **COSTS TO ADDRESS Y2K**

The costs of the Y2K program are primarily costs associated with the utilization of existing internal resources and incremental external spending. The Company's current estimate of total incremental external spending over the life of its Y2K plan to address those risks identified as High or Medium is approximately \$10 million of which approximately \$9 million had been spent as of September 25, 1999. As the Company's Y2K Plan continues, the actual future incremental spending may prove to be higher. Also, this estimate does not include the costs that could be incurred by the Company if one or more of its significant third party vendors fails to achieve Y2K compliance. The Company is not separately identifying

and including in these estimates the Y2K costs incurred that are the result of utilization of the Company's existing internal resources.

## **CONTINGENCY PLANS**

Under the guidance and management of the PMO, the Company is in the final stages of developing, implementing, and testing Y2K contingency plans for critical business operations. The Company's contingency plans, which are based in part on the assessment of the magnitude and probability of potential risks, primarily focus on proactive steps to prevent Y2K failures from occurring, or if they should occur, to detect them quickly, minimize their impact and expedite their remediation. The Y2K contingency plans will supplement existing disaster recovery and business continuity plans.

As part of its contingency plans, the Company has developed a global Incident Management Team (IMT) to identify, escalate, and mitigate the potential impact of various Y2K failures. The IMT is comprised of personnel from the PMO as well as key areas of the Company's operations. The IMT will begin to monitor the date rollover commencing with Sydney, Australia and will "follow the sun" through the time change in the Pacific Standard Time zone. The Company's contingency planning efforts were approximately 85% complete at the end of the fourth quarter of fiscal 1999 and are expected to be substantially completed during the first quarter of fiscal 2000.

The Company believes it is reasonably possible there will be interruptions in air traffic control, airfreight transportation, customs clearance, telecommunications, and power utilities early in calendar year 2000 that could result in shipping delays of raw material and finished goods and other business interruptions. The Company has developed and implemented contingency plans to mitigate the effects of a short-term interruption in such services. However, if the interruption in these services last for an extended period of time, or if alternative Y2K compliant services are not readily available at reasonable cost, there could be material adverse effects on the Company's results of operations and financial position.

The Company also believes it is reasonably possible worldwide financial markets could exhibit unusual short-term volatility and liquidity disturbances at the end of calendar 1999 and at the beginning of calendar 2000. The Company has developed and implemented contingency plans to mitigate some of the potential short-term effects of such disturbances. However, if these disturbances in the financial markets last for an extended period of time, or if alternative mitigating actions are not readily available at reasonable cost, there could be material adverse effects on the Company's results of operations and financial position.

## **RISK FACTORS ASSOCIATED WITH Y2K ISSUES**

The Company has substantially completed its initial assessment of reasonably likely worst case scenarios of Non-IT Business Systems and/or IT Systems failures and related consequences. Based on current information, the Company believes the most likely worst case scenario is it will experience minor malfunctions and failures of its IT Systems and Non-IT Business Systems at the beginning of the Year 2000 not previously detected during the Company's inventory and risk assessment and remediation activities. The Company currently believes these malfunctions and failures will not have a material impact on its results of operations or financial condition. However, there can be no assurance the Y2K remediation by the Company or third parties will be properly and timely completed, and the failure to do so could have a material adverse effect on the Company, its business, its results of operations, and its financial condition.

In particular, the Company believes a lack of Y2K readiness by its significant third party vendors could cause material interruptions in the Company's operations. The identification of additional issues with respect to the Y2K compliance of key third parties could have a material adverse effect on the Company's results of operations. In addition, important factors that could cause results to differ materially include, but are not limited to, the ability of the Company to successfully identify systems and vendors that have a Y2K issue, the nature and amount of remediation effort required to fix the affected systems, the adequacy of such remediation efforts, the production-related contingency plans of competitors with the Company's



third party suppliers, and the costs and availability of labor and resources to successfully address the Y2K issues and/or to execute on any required contingency plans.

## **FACTORS THAT MAY AFFECT FUTURE RESULTS AND FINANCIAL CONDITION**

### **COMPETITION**

The personal computer industry is highly competitive and is characterized by aggressive pricing practices, downward pressure on gross margins, frequent introduction of new products, short product life cycles, continual improvement in product price/performance characteristics, price sensitivity on the part of consumers, and a large number of competitors. The Company's results of operations and financial condition have been, and in the future may continue to be, adversely affected by industry wide pricing pressures and downward pressures on gross margins. The industry has also been characterized by rapid technological advances in software functionality, hardware performance, and features based on existing or emerging industry standards. Several competitors of the Company have either targeted or announced their intention to target certain of the Company's key market segments, including consumer, education and publishing. Additionally, several of the Company's competitors have introduced or announced plans to introduce products that mimic many of the unique design and technical features of the Company's products. Many of the Company's competitors have greater financial, marketing, manufacturing, and technological resources, as well as broader product lines and larger installed customer bases than those of the Company. Additionally, 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 only maker of hardware using the Mac OS. The Mac OS has a minority market share in the personal computer market, which is dominated by makers of computers utilizing Microsoft Windows operating systems. The Company believes the innovative industrial design of its products, the unique set of features its products currently provide, the perceived advantages of the Mac OS over Windows, and the general reluctance of the Macintosh installed base to incur the costs of switching platforms, have been driving forces behind sales of the Company's personal computer hardware in recent years. 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 are substantially dependent on its ability to continue to develop improvements to the Macintosh platform in order to maintain perceived design and functional advantages over competing platforms.

### **PRODUCT INTRODUCTIONS AND TRANSITIONS**

Due to the highly volatile nature of the personal computer industry, which is characterized by dynamic customer demand patterns and rapid technological advances, the Company must continually introduce new products and technologies and enhance existing products in order to remain competitive. The success of new product introductions is dependent on a number of factors, including market acceptance, the Company's ability to manage the risks associated with product transitions, the availability of application software for new products, the effective management of inventory levels in line with anticipated product demand, the availability of products in appropriate quantities to meet anticipated demand, and the risk that new products may have quality or other defects in the early stages of introduction. Accordingly, the Company cannot determine the ultimate effect that new products will have on its sales or results of operations.

The Company plans to continue to introduce upgrades to the current Mac OS, Mac OS 9, and later introduce a new operating system, Mac OS X Client, which is expected to offer advanced functionality based on Apple and NeXT software technologies. It is uncertain whether Mac OS X will gain developer support and market acceptance. Inability to successfully develop and make timely delivery of a substantially backward-compatible Mac OS X or of planned enhancements to the current Mac OS, or to gain

developer support and market acceptance for those operating systems, may have an adverse impact on the Company's operating results and financial condition.

## **INVENTORY AND SUPPLY**

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

The Company must order components for its products and build inventory in advance of product shipments. Because the Company's markets are volatile and subject to rapid technology and price changes, there is a risk the Company will forecast incorrectly and produce excess or insufficient inventories of particular products. The Company's operating results and financial condition have been in the past and may in the future be materially adversely affected by the Company's ability to manage its inventory levels and respond to short-term shifts in customer demand patterns.

Many of the Company's products are manufactured in whole or in part by third-party manufacturers. In addition, the Company has outsourced much of its transportation and logistics management. While outsourcing arrangements may lower the fixed cost of operations, they also reduce the Company's direct control over production and distribution. It is uncertain what effect such diminished control will have on the quality or quantity of the products manufactured, or the flexibility of the Company to respond to changing market conditions. 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.

Although certain components essential to the Company's business are generally available from multiple sources, other key components (including microprocessors and application specific integrated circuits ("ASICs")) are currently obtained by the Company from single or limited sources. Some other key components (including without limitation DRAM and TFT-LCD flat-panel displays), while currently available to the Company from multiple sources, are at times subject to industry wide availability and pricing pressures. If the supply of a key component were to be delayed or constrained, the Company's business and financial performance could be adversely affected, depending on the time required to obtain sufficient quantities from the original source, or, if possible, to identify and obtain sufficient quantities from an alternate source. The Company and other producers in the personal computer industry also compete for other semiconductor products with other industries that have experienced increased demand for such products, due to either increased consumer demand or increased use of semiconductors in their products (such as the cellular phone and automotive industries). Finally, the Company uses some components that are not common to the rest of the personal computer industry (including certain microprocessors and ASICs). Continued availability of these components may be affected if producers were to decide to concentrate on the production of components other than those customized to meet the Company's requirements. Such product supply constraints and corresponding increased costs could decrease the Company's net sales and adversely affect the Company's operating results and financial condition.

The Company's ability to produce and market competitive products is also dependent on the ability and desire of IBM and Motorola, the sole suppliers of the PowerPC RISC-based microprocessor for the Company's Macintosh computers, to provide the Company with a sufficient supply of microprocessors with

price/performance features that compare favorably to those supplied to the Company's competitors by Intel Corporation, and other developers and producers of microprocessors used by personal computers using the Windows operating systems.

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

## **MARKETING AND DISTRIBUTION**

The Company distributes its products through wholesalers, resellers, national and regional retailers and cataloguers, and directly to education institutions for resale (collectively referred to as "resellers"). In addition, the Company also sells many of its products in most of its major markets directly to end users through its on-line store. Many of the Company's significant resellers operate on narrow product margins. Most such resellers also distribute products from competing manufacturers. The Company's business and financial results could be adversely affected if the financial condition of these resellers weakened, if resellers within consumer channels were to cease distribution of the Company's products, or if uncertainty regarding demand for the Company's products causes resellers to reduce their ordering and marketing of the Company's products.

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

## **GLOBAL MARKET RISKS**

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

Countries in the Asia Pacific region, including Japan, have recently experienced weaknesses in their currency, banking and equity markets. These weaknesses have adversely affected and may continue to adversely affect consumer demand for the Company's products, the U.S. dollar value of the Company's foreign currency denominated sales, the availability and cost of product components to the Company, and consequently the Company's results of operations.

Further information related to the Company's global market risks may be found in Part II, Item 7A of this Form 10-K under the subheading "Foreign Currency Risk" and may be found in Part II, Item 8 of this Form 10-K at Notes 1 and 2 of Notes to Consolidated Financial Statements, which information is hereby incorporated by reference.

## **SUPPORT FROM THIRD-PARTY SOFTWARE DEVELOPERS**

Decisions by customers to purchase the Company's personal computers, as opposed to Windows-based systems, are often based on the availability of third-party software for particular applications. The Company believes the availability of third-party application software for the Company's hardware products depends in part on third-party developers' perception and analysis of the relative benefits of developing, maintaining, and upgrading such software for the Company's products versus software for the larger Windows market. This analysis is based on factors such as the perceived strength of the Company and its products, the anticipated potential revenue that may be generated, and the costs of developing such software products. To the extent the Company's financial losses in prior years and declining demand for the Company's products, as well as the Company's decision to end its Mac OS licensing program, have caused

software developers to question the Company's prospects in the personal computer market, developers could be less inclined to develop new application software or upgrade existing software for the Company's products and more inclined to devote their resources to developing and upgrading software for the larger Windows market. Moreover, the Company's current plan to introduce Mac OS X could cause software developers to stop developing software for the current Mac OS. In addition, there can be no assurance software developers will decide to develop software for the new operating system on a timely basis or at all.

In August 1997, the Company and Microsoft entered into patent cross licensing and technology agreements. In addition, for a period of five years from August 1997, as subject to certain limitations related to the number of Macintosh computers sold by the Company, Microsoft will make future versions of its Microsoft Office and Internet Explorer products for the Mac OS. The Company will bundle the Internet Explorer product with Mac OS system software releases and make that product the default Internet browser for such releases. While the Company believes its relationship with Microsoft has been and will continue to be beneficial to the Company and to its efforts to increase the installed base for the Mac OS, the Microsoft relationship is for a limited term and does not cover many of the areas in which the Company competes with Microsoft, including the Windows platform. Accordingly, Microsoft's interest in producing application software for the Mac OS not covered by the relationship or following expiration of the agreements may be influenced by Microsoft's perception of its interests as the vendor of the Windows operating system. In addition, the Microsoft relationship may have an adverse effect on, among other things, the Company's relationship with other partners. There can be no assurance the benefits to the Company of the Microsoft relationship will not be offset by the disadvantages.

## **EURO CONVERSION**

On January 1, 1999, eleven of the fifteen member countries of the European Union adopted the Euro as their common legal currency and established fixed conversion rates between their existing sovereign currencies and the Euro. The Euro is now traded on currency exchanges and is available for non-cash transactions. A three year transition period began during which transactions can be made in the old currencies.

The Company has taken steps to evaluate internal system capabilities, review the ability of financial institution vendors to support Euro transactions, and examine current marketing and pricing policies and strategies in light of the Euro conversion. The cost of this effort is not expected to have a material adverse effect on the Company's results of operations or financial condition. There can be no assurance, however, all issues related to the Euro conversion have been identified and that any additional issues would not have a material effect on the Company's results of operations or financial condition. The conversion to the Euro may have competitive implications on the Company's pricing and marketing strategies, the impact of which are not known at this time. Additionally, the Company is at risk to the extent its principal European suppliers and customers are unable to deal effectively with the impact of the Euro conversion.

## **OTHER FACTORS**

The potential risks associated with the Company's Y2K Plan are discussed above under the heading "Year 2000 Compliance."

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

Production and marketing of products in certain states and countries may subject the Company to environmental and other regulations including, 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. Although the Company does not anticipate any material adverse effects in the future based on the nature of its operations and the thrust of such laws, no assurance can be given such laws, or any future laws enacted for the protection of the environment, will not have a material adverse effect on the Company.

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.

## **ITEM 7A. DISCLOSURES ABOUT MARKET RISK**

### **INTEREST RATE AND FOREIGN CURRENCY RISK MANAGEMENT**

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

### **INTEREST RATE RISK**

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

The Company's exposure to market risk for changes in interest rates relates primarily to the Company's investments and long-term debt obligations and related derivative financial instruments. The Company places its investments with high credit quality issuers and, by policy, limits the amount of credit exposure to any one issuer. The Company's general policy is to limit the risk of principal loss and ensure the safety of invested funds by limiting market and credit risk. All highly liquid investments with a maturity of three months or less at the date of purchase are considered to be cash equivalents; investments with maturities between three and twelve months are considered to be short-term investments. As of September 25, 1999, substantially all of the Company's investments have maturities less than 12 months.

During 1996, the Company issued \$661 million aggregate principal amount of 6% unsecured convertible subordinated notes (the Notes) to certain qualified parties in a private placement. The Notes were sold at 100% of par. The Notes paid interest semiannually and matured, if not converted earlier, on June 1, 2001. The Notes were convertible by their holders at any time after September 5, 1996, at a conversion price of \$29.205 per share subject to adjustments as defined in the Note agreement. No Notes had been converted as of September 25, 1998. The Notes were 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. In addition, the Company incurred approximately \$15 million of costs associated with the issuance of the Notes. These costs were accounted for as a deduction from the face amount of the Notes and were being amortized over the life of the Notes.

On April 14, 1999, the Company called for redemption the Notes. Not including approximately \$7 million of unamortized debt issuance costs, debentures in an aggregate principal amount outstanding totaled approximately \$661 million as of March 27, 1999. During the third quarter of 1999, debenture holders

chose to convert virtually all of the outstanding debentures to common stock at a rate of \$29.205 per share resulting in the issuance of approximately 22.6 million shares of the Company's common stock.

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

The following table presents the principal (or notional) amounts and related weighted-average interest rates for the Company's investment portfolio and its long-term debt obligations. The long-term debt is comprised of \$300 million of unsecured notes described above, which mature in February 2004. The Company's U.S. corporate securities include commercial paper, loan participations, certificates of deposit, time deposits and corporate debt securities. Foreign securities include foreign commercial paper, loan participation, certificates of deposit and time deposits with foreign institutions, most of which are denominated in U.S. dollars. The Company's cash equivalents and short-term investments have generally been held until maturity. Gross unrealized gains and losses were negligible as of September 25, 1999 and 1998.

In millions, except weighted-average interest rates

	SEPTEMBER 25, 1999		SEPTEMBER 25, 1998	
	CARRYING AMOUNT	WEIGHTED- AVERAGE INTEREST RATE	CARRYING AMOUNT	WEIGHTED- AVERAGE INTEREST RATE
Assets:				
Cash equivalents:				
U.S. Treasury and Agency securities.....	\$ 3	5.00%	\$ 10	5.45%
U.S. corporate securities.....	517	5.16%	785	5.55%
Foreign securities.....	636	4.94%	613	5.55%
Total cash equivalents.....	1,156	5.04%	1,408	5.55%
Short-term investments:				
U.S. Treasury and Agency securities.....	\$ 298	5.57%	\$ 0	N/A
U.S. corporate securities.....	780	5.72%	163	5.56%
Foreign securities.....	822	5.39%	656	5.54%
Total short-term investments.....	1,900	5.55%	819	5.54%
Total investment securities.....	\$3,056	5.36%	\$2,227	5.55%
Debt:				
Fixed rate.....	\$ 300	5.98%	\$ 954	6.07%

Purchased floors are options limiting the Company's exposure to falling interest rates on its cash equivalents and short-term investments by locking in a minimum interest rate. The Company receives a payment when interest rates fall below a predetermined level. A purchased floor generally qualifies for hedge accounting treatment and is reported on the balance sheet at its premium cost, which is amortized over the life of the floor. The purchased floors are generally designated and effective as hedges against interest rate risk on the Company's securities classified as available-for-sale and are carried at fair value in other current liabilities with the unrealized gains and losses recorded as a component of accumulated other comprehensive income. Purchased floors outstanding as of September 25, 1998, provided the Company with the option of a weighted-average interest rate of 5.15% on the notional amount of \$525 million. There were no purchased floors outstanding as of September 25, 1999. Gains and losses are recognized in income as a component of interest and other income (expense), net in the same period as the hedged transaction. Unrealized gains and losses on such contracts were immaterial as of September 25, 1998.

During the last two years, the Company has entered into interest rate derivative transactions, including interest rate swaps and floors, with financial institutions in order to better match the Company's floating-rate interest income on its cash equivalents and short-term investments with its fixed-rate interest expense on its long-term debt, and/or to diversify a portion of the Company's exposure away from fluctuations in short-term U.S. interest rates. The Company may also enter into interest rate contracts that are intended to reduce the cost of the interest rate risk management program. The Company does not hold or transact in such financial instruments for purposes other than risk management.

The interest rate swaps qualifying as accounting hedges generally require the Company to pay a floating interest rate based on the three- or six-month U.S. dollar LIBOR and receive a fixed rate of interest without exchanges of the underlying notional amounts. These swaps effectively convert the Company's fixed-rate 10 year debt to floating-rate debt and convert the floating rate investments to fixed rate. The maturity date for \$25 million of the asset swaps is October 1999 with the remaining debt and asset swaps maturing in February and September of 2001. As of September 25, 1999 and 1998, interest rate debt swaps had a weighted-average receive rate of 6.04%. The weighted-average pay rate on the debt swaps was 5.45% and 5.73% as of September 25, 1999 and 1998, respectively. As of September 25, 1999, interest rate asset swaps had a weighted-average receive rate of 5.53% and a weighted-average pay rate of 5.24%. The unrealized gains and losses on these swaps are deferred and recognized in income as a component of interest and other income (expense), net in the same period as the hedged transaction. Deferred losses on such contracts totaled approximately \$5 million as of September 25, 1999, while deferred gains on such contracts totaled \$7 million as of September 25, 1998.

## **FOREIGN CURRENCY RISK**

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 net sales and gross margins as expressed in U.S. dollars.

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

Probable but not firmly committed transactions comprise sales of the Company's products and purchases of raw material, sub-assemblies, and assembled finished goods in currencies other than the functional currency. A majority of these transactions are made through the Company's subsidiaries in Europe, Asia (particularly Japan), Canada, and Australia. The Company purchases foreign exchange option contracts to hedge the currency exchange risks associated with these probable but not firmly committed transactions. The Company also sells foreign exchange option contracts, in order to partially finance the purchase of these foreign exchange option contracts. The term of the Company's foreign exchange hedging instruments, whether for firmly committed transactions, probable but not firmly committed transactions, or to partially finance the foreign risk management program, currently does not extend beyond six months.

Gains and losses on accounting hedges of existing assets or liabilities are generally recorded in income or shareholders' equity against the losses and gains on the hedged transactions. Gains and losses related to qualifying accounting hedges of firmly committed or probable but not firmly committed transactions are deferred and recognized in income in the same period as the hedged transactions. Gains and losses on

accounting hedges realized before the settlement date of the related hedged transaction are also generally deferred and recognized in income in the same period as the hedged transactions.

Gains and losses on interest rate and foreign exchange instruments not accounted for as hedges are recorded in income as a component of interest and other income (expense), net. Sold interest rate and foreign exchange instruments do not qualify as accounting hedges. Premiums associated with sold foreign exchange option contracts are marked to market through earnings.

The following table provides information about the Company's foreign currency derivative financial instruments outstanding as of September 25, 1999 and 1998. The information is provided in U.S. dollar amounts, as presented in the Company's consolidated financial statements. For foreign currency exchange contracts, the table presents the notional amount (at contract exchange rates) and the weighted-average contractual foreign currency exchange rates. The combined increase in Yen denominated forward contracts and options is the result of increasing net sales in Japan and the substantial appreciation in the Yen



during 1999. Generally, all instruments mature within 6 months. Miscellaneous other currencies consist primarily of the Canadian and Australian dollars.

	1999		1998	
	NOTIONAL AMOUNT	WEIGHTED-AVERAGE CONTRACT RATE OR STRIKE PRICE	NOTIONAL AMOUNT	WEIGHTED-AVERAGE CONTRACT RATE OR STRIKE PRICE
	In millions, except average contract rates and strike prices			
Foreign currency spot/forward contracts:				
Japanese Yen.....	\$ 590	105.70	\$ 98	139.45
British Pound Sterling.....	86	1.62	10	1.68
Euro/German Marks.....	177	1.05	138	1.72
Miscellaneous other currencies.....	62		49	
Total currency spot/forward contracts.....	\$ 915		\$ 295	
Estimated fair value.....	\$ (9)		\$ (8)	
Foreign currency purchased call options:				
Japanese Yen.....	\$ 250	104.80	\$ 255	130.22
British Pound Sterling.....	0	0	75	1.68
Euro/German Marks.....	105	1.14	180	1.71
Miscellaneous other currencies.....	55		85	
Total purchased call options.....	\$ 410		\$ 595	
Foreign currency purchased put options:				
Japanese Yen.....	\$ 860	118.31	\$ 525	139.05
British Pound Sterling.....	75	1.59	205	1.64
Euro/German Marks.....	505	1.00	450	1.79
Miscellaneous other currencies.....	100		105	
Total purchased put options.....	\$1,540		\$1,285	
Total foreign currency purchased options....	\$1,950		\$1,880	
Estimated fair value.....	\$ 12		\$ 22	
Foreign currency sold call options:				
Japanese Yen.....	\$ 290	106.18	\$ 240	128.08
British Pound Sterling.....	25	1.69	150	1.70
Euro/German Marks.....	120	1.09	110	1.71
Miscellaneous other currencies.....	50		180	
Total sold call options.....	485		680	
Foreign currency sold put options:				
Japanese Yen.....	0	0	\$ 135	145.46
Euro/German Marks.....	\$ 75	1.00	\$ 25	1.80
Miscellaneous other currencies.....	25		40	
Total sold put options.....	100		200	
Total foreign currency sold options.....	\$ 585		\$ 880	
Estimated fair value.....	\$ (17)		\$ (15)	

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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

## REPORT OF INDEPENDENT AUDITORS

The Board of Directors  
Apple Computer, Inc.:

We have audited the accompanying 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. In connection with our audits of the consolidated financial statements, we have also audited the accompanying financial statement schedule. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Apple Computer, Inc. and subsidiaries as of September 25, 1999 and September 25, 1998, and the results of their operations and their cash flows for each of the years in the three-year period ended September 25, 1999, in conformity with generally accepted accounting principles. Also in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

*/s/ KPMG LLP*

*Mountain View, California  
October 11, 1999*

## CONSOLIDATED BALANCE SHEETS

(IN MILLIONS, EXCEPT SHARE AMOUNTS)

	SEPTEMBER 25, 1999	SEPTEMBER 25, 1998
ASSETS:		
Current assets:		
Cash and cash equivalents.....	\$1,326	\$1,481
Short-term investments.....	1,900	819
Accounts receivable, less allowances of \$68 and \$81, respectively.....	681	955
Inventories.....	20	78
Deferred tax assets.....	143	182
Other current assets.....	215	183
	-----	-----
Total current assets.....	4,285	3,698
Property, plant, and equipment, net.....	318	348
Other assets.....	558	243
	-----	-----
Total assets.....	\$5,161	\$4,289
	=====	=====
LIABILITIES AND SHAREHOLDERS' EQUITY:		
Current liabilities:		
Accounts payable.....	\$ 812	\$ 719
Accrued expenses.....	737	801
	-----	-----
Total current liabilities.....	1,549	1,520
Long-term debt.....	300	954
Deferred tax liabilities.....	208	173
	-----	-----
Total liabilities.....	2,057	2,647
	=====	=====
Commitments and contingencies		
Shareholders' equity:		
Series A nonvoting convertible preferred stock, no par value; 150,000 shares authorized, issued and outstanding.....	150	150
Common stock, no par value; 320,000,000 shares authorized; 160,799,061 and 135,192,769 shares issued and outstanding, respectively.....	1,349	633
Retained earnings.....	1,499	898
Accumulated other comprehensive income (loss).....	106	(39)
	-----	-----
Total shareholders' equity.....	3,104	1,642
	-----	-----
Total liabilities and shareholders' equity.....	\$5,161	\$4,289
	=====	=====

See accompanying notes to consolidated financial statements.

## CONSOLIDATED STATEMENTS OF OPERATIONS

(IN MILLIONS, EXCEPT SHARE AND PER SHARE AMOUNTS)

THREE FISCAL YEARS ENDED SEPTEMBER 25, 1999	1999	1998	1997
Net sales.....	\$ 6,134	\$ 5,941	\$ 7,081
Cost of sales.....	4,438	4,462	5,713
Gross margin.....	1,696	1,479	1,368
Operating expenses:			
Research and development.....	314	303	485
Selling, general, and administrative.....	996	908	1,286
Special charges:			
In-process research and development.....	--	7	375
Restructuring costs.....	27	--	217
Termination of license agreement.....	--	--	75
Total operating expenses.....	1,337	1,218	2,438
Operating income (loss).....	359	261	(1,070)
Gains from sales of investment.....	230	40	--
Interest and other income, net.....	87	28	25
Total interest and other income, net.....	317	68	25
Income (loss) before provision for income taxes.....	676	329	(1,045)
Provision for income taxes.....	75	20	--
Net income (loss).....	\$ 601	\$ 309	\$ (1,045)
Earnings (loss) per common share:			
Basic.....	\$ 4.20	\$ 2.34	\$ (8.29)
Diluted.....	\$ 3.61	\$ 2.10	\$ (8.29)
Shares used in computing earnings (loss) per share (in thousands):			
Basic.....	143,157	131,974	126,062
Diluted.....	174,164	167,917	126,062

See accompanying notes to consolidated financial statements.

**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**

(IN MILLIONS, EXCEPT SHARE AND PER SHARE AMOUNTS)

	PREFERRED STOCK		COMMON STOCK		RETAINED EARNINGS	ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)	TOTAL SHAREHOLDERS' EQUITY
	SHARES	AMOUNT	SHARES	AMOUNT			
	(IN THOUSANDS)		(IN THOUSANDS)				
Balances as of September 27, 1996.....	--	\$ --	124,497	\$ 439	\$ 1,634	\$ (15)	\$ 2,058
Components of comprehensive income (loss):							
Net loss.....	--	--	--	--	(1,045)	--	(1,045)
Foreign currency translation.....	--	--	--	--	--	(22)	(22)
Total comprehensive income (loss).....							(1,067)
Common stock issued under stock option and purchase plans and in connection with the acquisition of NeXT... Series A non-voting convertible preferred stock issued.....	--	--	3,452	59	--	--	59
	150	150	--	--	--	--	150
Balances as of September 26, 1997.....	150	150	127,949	498	589	(37)	1,200
Components of comprehensive income (loss):							
Net income.....	--	--	--	--	309	--	309
Foreign currency translation.....	--	--	--	--	--	(2)	(2)
Total comprehensive income (loss).....							307
Common stock issued under stock option and purchase plans.....	--	--	3,085	41	--	--	41
Common stock issued in connection with the acquisition of certain assets of PCC.....	--	--	4,159	80	--	--	80
Tax benefit related to disqualifying dispositions of stock options.....	--	--	--	14	--	--	14
Balances as of September 25, 1998.....	150	150	135,193	633	898	(39)	1,642
Components of comprehensive income (loss):							
Net income.....	--	--	--	--	601	--	601
Foreign currency translation.....	--	--	--	--	--	3	3
Unrealized gain on available-for-sale securities, net of tax.....	--	--	--	--	--	318	318
Reclassification adjustment for gains on available-for-sale securities included in net income.....	--	--	--	--	--	(176)	(176)
Total comprehensive income (loss)...							746
Common stock issued under stock option and purchase plans.....	--	--	4,214	86	--	--	86
Common stock issued in connection with the Company's redemption of long-term debt.....	--	--	22,642	654	--	--	654
Common stock repurchased.....	--	--	(1,250)	(75)	--	--	(75)
Tax benefit related to disqualifying dispositions of stock options.....	--	--	--	51	--	--	51
Balances as of September 25, 1999.....	150	\$150	160,799	\$1,349	\$ 1,499	\$ 106	\$ 3,104



## CONSOLIDATED STATEMENTS OF CASH FLOWS

(IN MILLIONS)

THREE FISCAL YEARS ENDED SEPTEMBER 25, 1999	1999	1998	1997
Cash and cash equivalents, beginning of the year.....	\$1,481	\$1,230	\$1,552
Operating:			
Net income (loss).....	601	309	(1,045)
Adjustments to reconcile net income (loss) to cash generated by operating activities:			
Depreciation and amortization.....	85	111	118
Provision for deferred income taxes.....	(35)	1	(50)
Loss on sale of property, plant, and equipment.....	--	--	37
Gains from sales of investment.....	(230)	(40)	--
In-process research and development.....	--	7	375
Changes in operating assets and liabilities, net of effects of the acquisition of NeXT:			
Accounts receivable.....	274	72	469
Inventories.....	58	359	225
Other current assets.....	(32)	31	36
Other assets.....	(3)	83	(4)
Accounts payable.....	93	34	(107)
Accrued restructuring costs.....	2	(107)	109
Other current liabilities.....	(15)	(85)	(9)
Cash generated by operating activities.....	798	775	154
Investing:			
Purchase of short-term investments.....	(4,236)	(2,313)	(999)
Proceeds from sales and maturities of short-term investments.....	3,155	1,723	963
Purchases of long-term investments.....	(112)	--	--
Proceeds from property, plant and equipment retirements....	23	89	47
Purchase of property, plant, and equipment.....	(47)	(46)	(53)
Cash used for acquisition of technology.....	--	(10)	(384)
Proceeds from sales of investment.....	245	24	--
Other.....	8	(10)	(73)
Cash used for investing activities.....	(964)	(543)	(499)
Financing:			
Decrease in notes payable to banks.....	--	(22)	(161)
Proceeds from issuance of preferred stock.....	--	--	150
Proceeds from issuance of common stock.....	86	41	34
Cash used for repurchase of common stock.....	(75)	--	--
Cash generated by financing activities.....	11	19	23
Total cash generated by (used for).....	(155)	251	(322)
Cash and cash equivalents, end of the year.....	\$1,326	\$1,481	\$1,230
Supplemental cash flow disclosures:			
Cash paid during the year for interest.....	\$ 58	\$ 59	\$ 61
Cash paid (received) for income taxes, net.....	\$ 33	\$ (15)	\$ (11)
Noncash transactions:			
Issuance of common stock for redemption of long-term debt.....	\$ 654	--	--
Issuance of common stock for acquisition of PCC assets.....	--	\$ 80	--
Issuance of common stock for acquisition of NeXT.....	--	--	\$ 25

See accompanying notes to consolidated financial statements.



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### NOTE 1--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Apple Computer, Inc. and its subsidiaries (the Company) designs, manufactures, and markets personal computers and related software and peripherals for sale primarily to education, creative, consumer, and business customers.

#### BASIS OF PRESENTATION AND PREPARATION

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

During the first quarter of 1999, the Company amended its by-laws to provide that beginning in 1999 its fiscal year would end on the last Saturday in September rather than the last Friday. Likewise, beginning with the first fiscal quarter of 1999 each of the Company's fiscal quarters now also end on Saturday rather than Friday. Accordingly, one day was added to the first quarter of 1999 so that the quarter ended on Saturday, December 26, 1998. These changes did not have a material effect on the Company's revenue or results of operations for any quarter during fiscal 1999. Fiscal years 1999, 1998 and 1997, each 52-week years, ended on September 25, 25, and 26, respectively. Approximately every six years, the Company reports a 53-week fiscal year to align its fiscal quarters with calendar quarters by adding a week to its first fiscal quarter. The next 53-week year is fiscal 2000.

#### FINANCIAL INSTRUMENTS

The carrying amounts of cash and cash equivalents, short-term investments, accounts receivable, accounts payable, and accrued liabilities approximate their fair value due to the short maturities of those instruments.

#### INVESTMENTS

All highly liquid investments with a maturity of three months or less at the date of purchase are considered to be cash equivalents. Investments with maturities between three and twelve months are considered to be short-term investments. Investments with maturities greater than twelve months are classified as long-term assets. Management determines the appropriate classification of its investments in debt and marketable equity securities at the time of purchase and reevaluates such designation as of each balance sheet date. The Company's debt and marketable equity securities have been classified and accounted for as available-for-sale. These securities are carried at fair value, with the unrealized gains and losses, net of taxes, reported as a component of shareholders' equity. These unrealized gains or losses include any unrealized losses and gains on interest rate contracts accounted for as hedges against the available-for-sale securities. The cost of securities sold is based upon the specific identification method.

#### FINANCIAL INSTRUMENTS WITH OFF-BALANCE-SHEET RISK

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

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### NOTE 1--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

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

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

Probable but not firmly committed transactions comprise sales of the Company's products and purchases of raw material, subassemblies, and assembled finished goods in currencies other than the functional currency. A majority of these transactions are made through the Company's subsidiaries in Europe, Asia (particularly Japan), Canada, and Australia. The Company purchases foreign exchange option contracts to hedge the currency exchange risks associated with these probable but not firmly committed transactions. The Company also sells foreign exchange option contracts, in order to partially finance the purchase of these foreign exchange option contracts. The term of the Company's foreign exchange hedging instruments, whether for firmly committed transactions, probable but not firmly committed transactions, or to partially finance the foreign exchange risk management program currently does not extend beyond six months.

In addition, the Company has entered into foreign exchange forward contracts to hedge certain intercompany loan transactions. These forward contracts effectively change certain foreign currency denominated debt into U.S. dollar denominated debt, which better matches against the Company's U.S. dollar denominated cash equivalents and short-term investments.

Interest rate and foreign exchange instruments generally qualify as accounting hedges if their maturity dates are the same as the hedged transactions and if the hedged transactions meet certain requirements. The Company monitors its interest rate and foreign exchange positions on a regular basis based on applicable and commonly used pricing models. The correlation between the changes in the fair value of hedging instruments and the changes in the underlying hedged items is assessed periodically over the life of the hedged instrument. In the event it is determined a hedge is ineffective, including if and when the hedged transactions no longer exists, the Company recognizes in income the change in market value of the instrument beginning on the date it was no longer an effective hedge.

Gains and losses on accounting hedges of existing assets or liabilities are generally recorded in income or shareholders' equity against the losses and gains on the hedged transactions. Gains and losses related to qualifying accounting hedges of firmly committed or probable but not firmly committed transactions are deferred and recognized in income in the same period as the hedged transactions. Gains and losses on accounting hedges realized before the settlement date of the related hedged transaction are also generally deferred and recognized in income in the same period as the hedged transactions.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### NOTE 1--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Gains and losses on interest rate and foreign exchange instruments not accounted for as hedges are recorded in income as a component of interest and other income (expense), net. Sold interest rate and foreign exchange instruments do not qualify as accounting hedges. Premiums associated with sold foreign exchange option contracts are marked to market through earnings.

#### INVENTORIES

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

#### PROPERTY, PLANT, AND EQUIPMENT

Property, plant, and equipment are stated at cost. Depreciation and amortization are computed by use of the declining balance and straight-line methods over the estimated useful lives of the assets, which are 30 years for buildings, from 2 to 5 years for equipment, and the shorter of lease terms or estimated useful lives for leasehold improvements.

#### LONG-LIVED ASSETS

The Company reviews property, plant, and equipment and certain identifiable intangibles for impairment whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Recoverability of these assets is measured by comparison of its carrying amount, including the unamortized portion of any allocated goodwill, to future undiscounted cash flows the assets are expected to generate. If property, plant, and equipment and certain identifiable intangibles are considered to be impaired, the impairment to be recognized equals the amount by which the carrying value of the assets, including any allocated goodwill, exceeds its fair market value. The recoverability of enterprise level goodwill is assessed whenever the facts and circumstances suggest the asset may be impaired. The Company assesses the recoverability of enterprise level goodwill by determining whether the unamortized goodwill balance can be recovered through undiscounted future cash flows. For the three years ended September 25, 1999, the Company has made no adjustments to its long-lived assets except those made in connection with the restructuring actions described in Note 4.

#### STOCK-BASED COMPENSATION

The Company measures compensation expense for its employee stock-based compensation plans using the intrinsic value method and has provided in Note 7 pro forma disclosures of the effect on net income (loss) and earnings (loss) per share as if the fair value-based method had been applied in measuring compensation expense.

#### FOREIGN CURRENCY TRANSLATION

The Company translates the assets and liabilities of its foreign sales subsidiaries at year-end exchange rates. Gains and losses from these translations are credited or charged to "accumulated translation adjustment" included in "accumulated other comprehensive income (loss)" in shareholders' equity. The Company's foreign manufacturing subsidiaries and certain other entities use the U.S. dollar as the functional currency and translate monetary assets and liabilities at year-end exchange rates, and inventories, property, and nonmonetary assets and liabilities at historical rates. Gains and losses from these translations are included in the Company's results of operations and were not significant in 1999, 1998 or 1997.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### NOTE 1--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

#### REVENUE RECOGNITION

The Company recognizes revenue at the time products are shipped. Provisions are made currently for estimated product returns, price protection, rebates, and other sales programs. Historically, actual amounts recorded for product returns and price protection have not varied significantly from estimated amounts. During 1999, the Company adopted the American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) 97-2, "Software Revenue Recognition," as modified by SOP 98-9, "Modification of SOP 97-2 With Respect to Certain Transactions". SOP 97-2 establishes standards relating to the recognition of software revenue. SOP 97-2 was effective for transactions entered into by the Company beginning in the first quarter of fiscal 1999. The adoption of SOP 97-2 did not have a material impact on the Company's results of operations.

#### WARRANTY EXPENSE

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

#### ADVERTISING COSTS

Advertising costs are charged to expense the first time the advertising takes place. Advertising expense was \$208 million, \$152 million, and \$143 million for 1999, 1998, and 1997, respectively.

#### RESEARCH AND DEVELOPMENT

Research and development costs are expensed as incurred. Statement of Financial Accounting Standards (SFAS) No. 86, "Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed," has not materially affected the Company.

#### EMPLOYEE SAVINGS PLAN

The Company has an employee savings plan (the Savings Plan) qualifying as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the Savings Plan, participating U.S. employees may defer a portion of their pre-tax earnings, up to the Internal Revenue Service annual contribution limit (\$10,000 for calendar year 1999). The Company matches 50% to 100% of each employee's contributions, depending on length of service, up to a maximum 6% of the employee's earnings. The Company's matching contributions to the Savings Plan were approximately \$13 million, \$14 million, and \$19 million in 1999, 1998, and 1997, respectively.

#### EARNINGS (LOSS) PER SHARE

Basic earnings (loss) per common share is computed by dividing income available to common shareholders by the weighted-average number of shares of common stock outstanding during the period. Diluted earnings (loss) per common share is computed by dividing income available to common shareholders by the weighted-average number of shares of common stock outstanding during the period increased to include the number of additional shares of common stock that would have been outstanding if the dilutive potential shares of common stock had been issued. The dilutive effect of outstanding options is reflected in diluted earnings per share by application of the treasury stock method. The dilutive effect of convertible securities is reflected using the if-converted method.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 1--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

The following table sets forth the computation of basic and diluted earnings (loss) per share (in thousands, except net income (loss) and per share amounts):

FOR THE YEARS ENDED -----	SEPTEMBER 25, 1999 -----	SEPTEMBER 25, 1998 -----	SEPTEMBER 26, 1997 -----
Numerator (in millions):			
Numerator for basic earnings (loss) per share--net income (loss).....	\$ 601	\$ 309	\$ (1,045)
Interest expense on convertible debt.....	28	43	--
	-----	-----	-----
Numerator for diluted earnings (loss) per share--adjusted net income (loss).....	\$ 629	\$ 352	\$ (1,045)
	-----	-----	-----
Denominator:			
Denominator for basic earnings (loss) per share--weighted-average shares outstanding.....	143,157	131,974	126,062
Effect of dilutive securities:			
Convertible preferred stock.....	9,091	9,091	--
Dilutive options.....	5,819	4,210	--
Convertible debt.....	16,097	22,642	--
	-----	-----	-----
Dilutive potential common shares.....	31,007	35,943	--
	-----	-----	-----
Denominator for diluted earnings (loss) per share--adjusted weighted-average shares and assumed conversions.....	174,164	167,917	126,062
	=====	=====	=====
Basic earnings (loss) per share.....	\$ 4.20	\$ 2.34	\$ (8.29)
	=====	=====	=====
Diluted earnings (loss) per share.....	\$ 3.61	\$ 2.10	\$ (8.29)
	=====	=====	=====

Options to purchase 1.2 million and 6.7 million shares of common stock were outstanding at the end of 1999 and 1998, respectively, that were not included in the computation of diluted earnings per share because the options' exercise price was greater than the average market price of the Company's common shares for those years and, therefore, the effect would be antidilutive. No options outstanding were included in the calculation of diluted earnings per share for 1997 because the Company had a net loss and to do so would have been antidilutive.

**COMPREHENSIVE INCOME**

The Company adopted SFAS No. 130, "Reporting Comprehensive Income," beginning with the Company's first quarter of 1999. SFAS No. 130 separates comprehensive income into two components, net income and other comprehensive income. Other comprehensive income refers to revenue, expenses, gains and losses that under generally accepted accounting principles are recorded as an element of shareholders' equity but are excluded from net income. While SFAS No. 130 establishes new rules for the reporting and display of comprehensive income, it has no impact on the Company's net income (loss) or total shareholders' equity. The Company's other comprehensive income is comprised of foreign currency translation adjustments from those subsidiaries not using the U.S. dollar as their functional currency and from unrealized gains and losses on marketable securities categorized as available-for-sale.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### NOTE 1--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

#### SEGMENT INFORMATION

During 1999, the Company adopted SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information." SFAS No. 131 supersedes SFAS No. 14, "Financial Reporting for Segments of a Business Enterprise," replacing the "industry segment" approach with the "management" approach. The management approach designates the internal reporting used by management for making decisions and assessing performance as the source of the Company's reportable segments. SFAS No. 131 also requires disclosures about products, major customers, and geographic areas on a company-wide basis. The adoption of SFAS No. 131 did not affect results of operations or the financial position of the Company but did affect the disclosure of segment information.

#### RECENT ACCOUNTING PRONOUNCEMENTS

In June 1998, SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," was issued. SFAS No. 133 establishes accounting and reporting standards for derivative instruments, hedging activities, and exposure definition. SFAS No. 133 requires an entity to recognize all derivatives as either assets or liabilities in the statement of financial position and measure those instruments at fair value. Derivatives that are not hedges must be adjusted to fair value through income. If the derivative is a hedge, depending on the nature of the hedge, changes in fair value will either be offset against the change in fair value of the hedged assets, liabilities, or firm commitments through earnings, or recognized in other comprehensive income until the hedged item is recognized in earnings. In June 1999, SFAS No. 137, "Accounting for Derivative Instruments and Hedging Activities--Deferral of the Effective Date of FASB Statement No. 133," was issued. The statement defers the effective date of SFAS No. 133 until the first quarter of fiscal 2001. Although the Company continues to review the effect of the implementation of SFAS No. 133, the Company does not currently believe its adoption will have a material impact on its financial position or overall trends in results of operations and does not believe adoption will result in significant changes to its financial risk management practices. However, the impact of adoption of SFAS No. 133 on the Company's results of operations is dependent upon the fair values of the Company's derivatives and related financial instruments at the date of adoption.

In March 1998, the AICPA issued SOP 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use," which provides guidance on accounting for the costs of developing computer software intended for internal use. SOP 98-1 must be adopted by the Company effective as of fiscal 2000 and is not expected to have a material impact on the Company's results of operations or financial position.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 2--FINANCIAL INSTRUMENTS**

**INVESTMENTS**

The following table summarizes the Company's available-for-sale securities at amortized cost, which approximates fair value, recorded as cash and cash equivalents or short-term investments as of September 25, 1999, and September 25, 1998 (in millions):

	SEPTEMBER 25, 1999 AMORTIZED COST	SEPTEMBER 25, 1998 AMORTIZED COST
	-----	-----
U.S. Treasury securities.....	\$ 3	\$ 10
U.S. corporate securities.....	517	785
Foreign securities.....	636	613
	-----	-----
Total included in cash and cash equivalents.....	1,156	1,408
U.S. Treasury securities.....	298	--
U.S. corporate securities.....	780	163
Foreign securities.....	822	656
	-----	-----
Total included in short-term investments.....	1,900	819
	-----	-----
Total.....	\$3,056	\$2,227
	=====	=====

As of September 25, 1999 and 1998, substantially all of the Company's investments had maturities less than twelve months. The Company's U.S. corporate securities include commercial paper and corporate debt securities. Foreign securities include foreign commercial paper, loan participation and certificates of deposit with foreign institutions, most of which are denominated in U.S. dollars. The Company's cash equivalents and short-term investments have generally been held until maturity. Gross unrealized gains and losses were negligible as of September 25, 1999 and 1998. The Company's cash and cash equivalent balances as of September 25, 1999 and 1998, include \$4 million and \$56 million, respectively, pledged primarily as collateral to support letters of credit.

**TRADE RECEIVABLES**

The Company distributes its products principally through third-party computer resellers and various education and consumer channels. The Company generally does not require collateral from its customers. However, when possible the Company does attempt to limit credit risk on trade receivables through the use of flooring arrangements for selected customers with third-party financing companies and credit insurance for certain customers in Latin America and Asia. Although none of the Company's customers accounted for more than 10% of net sales in any of the last three fiscal years, at times considerable trade receivables, which are not covered by collateral, are outstanding with the Company's distribution and retail channel partners.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 2--FINANCIAL INSTRUMENTS (CONTINUED)**

**INTEREST RATE DERIVATIVES AND FOREIGN CURRENCY INSTRUMENTS**

The following table shows the notional principal, fair value, and credit risk amounts of the Company's interest rate derivative and foreign currency instruments as of September 25, 1999 and 1998 (in millions).

	SEPTEMBER 25, 1999			SEPTEMBER 25, 1998		
	NOTIONAL PRINCIPAL	FAIR VALUE	CREDIT RISK AMOUNTS	NOTIONAL PRINCIPAL	FAIR VALUE	CREDIT RISK AMOUNTS
Transactions qualifying as accounting hedges:						
Interest rate instruments:						
Swaps.....	\$ 790	\$ (5)	\$ --	\$ 340	\$ 7	\$ 1
Purchased floors.....	\$ --	\$ --	\$ --	\$ 525	\$ 1	\$ 1
Foreign exchange instruments:						
Spot/Forward contracts.....	\$ 730	\$ (8)	\$ 4	\$ 295	\$ (8)	\$ --
Purchased options.....	\$1,305	\$ 4	\$ --	\$1,045	\$ 14	\$ 14
Transactions other than accounting hedges:						
Foreign exchange instruments:						
Spot/Forward contracts.....	\$ 185	\$ (1)	\$ --	\$ --	\$ --	\$ --
Purchased options.....	\$ 645	\$ 8	\$ 8	\$ 835	\$ 8	\$ 8
Sold options.....	\$ 585	\$ (17)	\$ --	\$ 880	\$ (15)	\$ --

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

The estimates of fair value are based on applicable and commonly used pricing models using prevailing financial market information as of September 25, 1999 and 1998. In certain instances where judgment is required in estimating fair value, price quotes were obtained from several of the Company's counterparty financial institutions. Although the table above reflects the notional principal, fair value, and credit risk amounts of the Company's interest rate and foreign exchange instruments, it does not reflect the gains or losses associated with the exposures and transactions that the interest rate and foreign exchange instruments are intended to hedge. The amounts ultimately realized upon settlement of these financial instruments, together with the gains and losses on the underlying exposures, will depend on actual market conditions during the remaining life of the instruments.

The interest rate swaps, which qualify as accounting hedges, generally require the Company to pay a floating interest rate based on the three- or six-month U.S. dollar LIBOR and receive a fixed rate of interest without exchanges of the underlying notional amounts. These swaps effectively convert the Company's fixed-rate 10 year debt to floating-rate debt and convert the floating rate investments to fixed rate. The maturity date for \$25 million of the asset swaps is October 1999 with the remaining debt and asset swaps maturing in February and September of 2001. As of September 25, 1999 and 1998, interest rate debt swaps had a weighted-average receive rate of 6.04%. The weighted-average pay rate on the debt swaps was 5.45% and 5.73% as of September 25, 1999 and 1998, respectively. As of September 25, 1999, interest rate asset swaps had a weighted-average receive rate of 5.53% and a weighted-average pay rate of 5.24%. The unrealized gains and losses on these swaps are deferred and recognized in income as a



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### NOTE 2--FINANCIAL INSTRUMENTS (CONTINUED)

component of interest and other income (expense), net in the same period as the hedged transaction. Deferred losses on such contracts totaled approximately \$5 million as of September 25, 1999, while deferred gains on such contracts totaled \$7 million as of September 25, 1998.

Purchased floors are options that limit the Company's exposure to falling interest rates on its cash equivalents and short-term investments by locking in a minimum interest rate. The Company receives a payment when interest rates fall below a predetermined level. A purchased floor generally qualifies for hedge accounting treatment and is reported on the balance sheet at its premium cost, which is amortized over the life of the floor. The purchased floors are generally designated and effective as hedges against interest rate risk on the Company's securities classified as available-for-sale and are carried at fair value in other current liabilities with the unrealized gains and losses recorded as a component of accumulated other comprehensive income. Purchased floors outstanding as of September 25, 1998, provided the Company with the option of a weighted-average interest rate of 5.15% on the notional amount of \$525 million. Gains and losses are recognized in income as a component of interest and other income (expense), net in the same period as the hedged transaction. Unrealized gains and losses on such contracts were immaterial as of September 25, 1999 and 1998.

The foreign exchange forward contracts not accounted for as hedges are carried at fair value in other current liabilities with the gains and losses recorded currently in income as a component of interest and other income (expense), net. The foreign exchange forward contracts that are designated and effective as hedges are also carried at fair value in other current liabilities with gains and losses recorded currently in income as a component of interest and other income (expense), net, against the losses and gains on the hedged transactions. As of September 25, 1999, all foreign exchange forward contracts held by the Company mature within three months.

If the option contract is designated and effective as a hedge of a firmly committed transaction, or a probable but not firmly committed transaction, then any gain or loss is deferred until the occurrence of the hedged transaction. Deferred gains and losses on such contracts were not significant as of September 25, 1999 and 1998. If the option contract is used to hedge an asset or liability, then the option is carried at fair value in other current liabilities with the gains and losses recorded currently in income as a component of interest and other income (expense), net, against the losses and gains on the hedged transaction. As of September 25, 1999, maturity dates for purchased foreign exchange option contracts and sold option contracts ranged from one to four months.

The counterparties to the agreements relating to the Company's investments and foreign exchange and interest rate instruments consist of a number of major international financial institutions. To date, no such counterparty has failed to meet its financial obligations to the Company. The Company does not believe there is significant risk of nonperformance by these counterparties because the Company continually monitors its positions and the credit ratings of such counterparties, and limits the financial exposure and the number of agreements and contracts it enters into with any one party. The Company generally does not require collateral from counterparties, except for margin agreements associated with the ten-year interest rate swaps on the Company's ten-year unsecured notes. To mitigate the credit risk associated with these ten-year swap transactions, which mature in 2004, the Company entered into margining agreements with its third-party bank counterparties. These agreements require the Company or the counterparty to post margin only if certain credit risk thresholds are exceeded. The amounts held in margin accounts were not significant as of September 25, 1999.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 2--FINANCIAL INSTRUMENTS (CONTINUED)**

**LONG-TERM DEBT**

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

	SEPTEMBER 25, 1999		SEPTEMBER 25, 1998	
	CARRYING AMOUNT	FAIR VALUE	CARRYING AMOUNT	FAIR VALUE
Ten-year unsecured notes(a).....	\$300	\$280	\$300	\$266
Convertible subordinated notes(b).....	\$ --	\$ --	\$661	\$887

(a) The fair value of the ten-year unsecured notes is based on their listed market values as of September 25, 1999 and 1998.

(b) The carrying amount of the convertible subordinated notes is prior to consideration of the related issuance costs. Their fair value is reflective of the underlying conversion feature of the Notes.

**CONVERTIBLE NOTES**

During 1996, the Company issued \$661 million aggregate principal amount of 6% unsecured convertible subordinated notes (the Notes) to certain qualified parties in a private placement. The Notes were sold at 100% of par, paid interest semiannually, and matured on June 1, 2001 if not converted earlier. The Notes were convertible by their holders at any time after September 5, 1996, at a conversion price of \$29.205 per share subject to adjustments as defined in the Note agreement. No Notes had been converted as of September 25, 1998. The Notes were redeemable by the Company at 102.4% of the principal amount, plus accrued interest, for the twelve month period beginning June 1, 1999, and at 101.2% of the principal amount, plus accrued interest, for the twelve month period beginning June 1, 2000. The Notes were 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 were accounted for as a deduction from the face amount of the Notes and were being amortized over the life of the Notes. In October 1996, the Company registered with the Securities and Exchange Commission (SEC) \$569 million of the aggregate principal amount of the Notes, including the related shares of common stock issuable upon conversion of these Notes.

On April 14, 1999, the Company called for redemption of the Notes. Not including approximately \$7 million of unamortized debt issuance costs, debentures in an aggregate principal amount outstanding totaled approximately \$661 million as of March 27, 1999. During the third quarter of 1999, debenture holders chose to convert virtually all of the outstanding debentures to common stock at a rate of \$29.205 per share resulting in the issuance of approximately 22.6 million shares of the Company's common stock.

**UNSECURED NOTES**

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

**EQUITY INVESTMENT AND RELATED GAINS**

As of September 26, 1997, the Company owned 42.3% of the outstanding stock of ARM Holdings plc (ARM), a privately held company in the United Kingdom involved in the design of high performance microprocessors and related technology. The Company had accounted for this investment using the equity

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### NOTE 2--FINANCIAL INSTRUMENTS (CONTINUED)

method through September 25, 1998. On April 17, 1998, ARM completed an initial public offering of its stock on the London Stock Exchange and the NASDAQ National Market. The Company sold 18.9% of its shares in the offering for a gain before foreign taxes of approximately \$24 million, which was recognized as other income. Foreign tax recognized on this gain was approximately \$7 million.

At the time an equity method investee sells existing or newly issued common stock to unrelated parties in excess of its book value, the equity method requires the net book value of the investment be adjusted to reflect the investor's share of the change in the investee's shareholders' equity resulting from the sale. It is the Company's policy to record an adjustment reflecting its share of the change in the investee's shareholders' equity resulting from such a sale as a gain or loss in other income. Consequently, the Company also recognized in the third quarter of 1998 other income of approximately \$16 million to reflect its remaining 25.9% ownership interest in the increased net book value of ARM following its initial public offering. As of September 25, 1998, the carrying value of the Company's investment in ARM carried in other assets in the consolidated balance sheet was approximately \$22 million. On October 14, 1998, the Company sold 11.6 million shares (split adjusted) of ARM stock. As a result of this sale, the Company's ownership interest in ARM fell to 19.7%. Consequently, beginning in the first quarter of fiscal 1999, the Company ceased accounting for its remaining investment in ARM using the equity method and categorized its remaining shares as available-for-sale requiring the shares be carried at fair value, with unrealized gains and losses net of taxes reported as a component of accumulated other comprehensive income.

During fiscal 1999, the Company sold a total of approximately 32.6 million shares (split adjusted) of ARM stock for net proceeds of approximately \$245 million, recorded a gain before taxes of approximately \$230 million, and recognized related income tax of approximately \$25 million. As of September 25, 1999, the Company holds 16 million shares of ARM stock valued at \$226 million. The fair value of the Company's investment in ARM is reflected in other assets as of September 25, 1999, with an offsetting amount net of \$84 million of related deferred taxes recognized in accumulated other comprehensive income.

### OTHER LONG-TERM INVESTMENTS

During the fourth quarter of 1999, the Company invested \$100 million in Samsung Electronics Co., Ltd (Samsung) to assist in the further expansion of Samsung's TFT-LCD flat-panel display production capacity. The investment is in the form of three year unsecured bonds, which is convertible into approximately 550,000 shares of Samsung common stock beginning in June 2000. The bonds carry an annual coupon rate of 2% and pay a total yield to maturity of 5% if redeemed at their maturity.

In June 1999, the Company invested \$12.5 million in Akamai Technologies, Inc. (Akamai), a global Internet content delivery service. The investment, in the form of convertible preferred stock, is convertible into 4.1 million shares of Akamai common stock (adjusted for subsequent stock splits). The Company is restricted from selling more than 25% of its shares within one year after the date of the closing of a public offering of Akamai's stock.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 3--CONSOLIDATED FINANCIAL STATEMENT DETAILS**

**INVENTORIES (in millions)**

	1999	1998
	-----	-----
Purchased parts.....	\$ 4	\$32
Work in process.....	3	5
Finished goods.....	13	41
	---	---
Total inventories.....	\$20	\$78
	===	===

**PROPERTY, PLANT, AND EQUIPMENT (in millions)**

	1999	1998
	-----	-----
Land and buildings.....	\$323	\$338
Machinery and equipment.....	220	277
Office furniture and equipment.....	61	80
Leasehold improvements.....	125	129
	---	---
	729	824
Accumulated depreciation and amortization.....	(411)	(476)
	---	---
Net property, plant, and equipment.....	\$318	\$348
	====	====

**ACCRUED EXPENSES (in millions)**

	1999	1998
	-----	-----
Accrued compensation and employee benefits.....	\$ 84	\$ 99
Accrued marketing and distribution.....	170	205
Accrued warranty and related costs.....	105	132
Other current liabilities.....	378	365
	---	---
Total accrued expenses.....	\$737	\$801
	====	====

**INTEREST AND OTHER INCOME (EXPENSE) (in millions)**

	1999	1998	1997
	-----	-----	-----
Interest income.....	\$144	\$100	\$82
Interest expense.....	(47)	(62)	(71)
Foreign currency gain (loss).....	(4)	(2)	13
Net premiums and discounts on foreign exchange instruments.....	(4)	(1)	(4)
Other income (expense), net.....	(2)	(7)	5
	---	---	---
	\$ 87	\$ 28	\$25
	====	====	===

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 4--SPECIAL CHARGES**

**RESTRUCTURING OF OPERATIONS**

**1996 AND 1997 RESTRUCTURING ACTIONS**

In the second quarter of 1996, the Company announced and began to implement a restructuring plan designed to reduce costs and return the Company to profitability. The restructuring plan was necessitated by decreased demand for the Company's products and the Company's adoption of a new strategic direction. These actions resulted in a charge during 1996 of \$179 million. During 1997, the Company announced and began to implement supplemental restructuring actions to meet the foregoing objectives of the plan. The Company recognized a \$217 million charge during 1997 for the estimated incremental costs of those actions. All material restructuring actions contemplated under the plan were essentially complete at the end of fiscal 1998. The combined 1996 and 1997 restructuring actions consisted of terminating approximately 4,200 full-time employees; canceling or vacating certain facility leases as a result of those employee terminations; writing down certain land, buildings, and equipment to be sold as a result of downsizing operations and outsourcing various operational functions; and canceling contracts for projects and technologies that were not critical to the Company's core business strategy. The restructuring actions under the plan resulted in cash expenditures of \$293 million and noncash asset write-downs of \$95 million from the second quarter of 1996 through September 25, 1999. Of the combined 1996 and 1997 restructuring charges of \$396 million, approximately \$3 million was determined to be excess during the fourth quarter of 1999 and was reversed. The remaining balance of \$5 million as of September 25, 1999 is comprised of payments over the next two years on leases and contracts that had been terminated prior to fiscal 1999. The Company expects the remaining accrual will result in cash expenditures of \$5 million over the next two years.

The following table depicts the restructuring activity through September 25, 1999, associated with the 1996 and 1997 restructuring actions described above (in millions):

	PAYMENTS TO EMPLOYEES INVOLUNTARILY TERMINATED(A)	PAYMENTS ON CANCELED FACILITY LEASES (A)	WRITE-DOWN OF OPERATING ASSETS TO BE SOLD (B)	PAYMENTS ON CANCELED CONTRACTS (A)	TOTAL
Net Additions during 1996.....	\$ 81	\$ 19	\$ 54	\$ 25	\$ 179
Spending during 1996.....	(48)	(4)	(7)	(3)	(62)
Balances as of September 27, 1996.....	33	15	47	22	117
Net Additions during 1997.....	131	19	38	29	217
Spending during 1997.....	(88)	(9)	(46)	(11)	(154)
Balances as of September 26, 1997.....	76	25	39	40	180
Adjustments during 1998.....	6	4	3	(13)	--
Spending during 1998.....	(72)	(15)	(42)	(20)	(149)
Balances as of September 25, 1998.....	10	14	--	7	31
Adjustments during 1999.....	(2)	(2)	--	1	(3)
Spending during 1999.....	(8)	(8)	--	(7)	(23)
Balances as of September 25, 1999.....	\$ --	\$ 4	\$ --	\$ 1	\$ 5
	====	====	====	====	====

(a): Cash;

(b): Noncash.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### NOTE 4--SPECIAL CHARGES (CONTINUED)

#### 1999 RESTRUCTURING ACTIONS

During the fourth quarter of 1999, the Company initiated restructuring actions resulting in a charge to operations of \$21 million. The net restructuring charge of \$18 million recognized during the fourth quarter of 1999 reflects the \$3 million of excess reserves related to the 1996 and 1997 restructuring actions. The total cost of these actions of \$21 million, which is comprised of \$11 million for contract cancellation charges associated with the closure of the Company's outsourced data center and \$10 million for contract cancellation charges related to supply and development agreements previously discontinued. The Company expects these actions to result in cash expenditures of \$21 million over the next year.

During the second quarter of 1999, the Company took certain actions to improve the flexibility and efficiency of its manufacturing operations by moving final assembly of certain of its products to third-party manufacturers. These restructuring actions resulted in the Company recognizing a charge to operations of approximately \$9 million during the second quarter of 1999, which was comprised of \$6 million for severance benefits to be paid to employees involuntarily terminated, \$2 million for the write-down of operating assets to be disposed of, and \$1 million for payments on canceled contracts. These actions resulted in the termination of approximately 580 employees and are substantially complete as of September 25, 1999.

#### TECHNOLOGY ACQUISITION

In May 1998, the Company acquired certain technology that was under development and had no alternative future use. The acquisition resulted in the recognition of \$7 million of purchased in-process research and development, which was charged to operations upon acquisition.

#### TERMINATION OF LICENSE AGREEMENT

In August 1997, the Company agreed to acquire certain assets of Power Computing Corporation (PCC), a licensed distributor of the Mac OS operating system, including PCC's customer database and its license to distribute the Mac OS. The agreement with PCC also included a release of claims between the parties.

On January 28, 1998, the Company completed its acquisition of certain assets from PCC. The total purchase price was approximately \$110 million, of which \$75 million was expensed in the fourth quarter of 1997 as "termination of license agreement" and \$35 million was recorded as goodwill in the second quarter of 1998. The goodwill is being amortized over three years. The purchase price was comprised of approximately 4.2 million shares of the Company's common stock valued at \$80 million, forgiveness of \$28 million of receivables due from PCC, and assumption by the Company of \$2 million of certain customer support liabilities of PCC.

#### NEXT ACQUISITION

On February 4, 1997, the Company acquired all of the outstanding shares of NeXT Software, Inc. (NeXT). NeXT, headquartered in Redwood City, California, had developed, marketed and supported software enabling customers to implement business applications on the Internet/World Wide Web, intranets and enterprise-wide client/server networks. The total purchase price was \$427 million and was comprised of cash payments of \$319 million and the issuance of 1.5 million shares of the Company's common stock to the NeXT shareholders valued at approximately \$25 million according to the terms of the purchase agreement; the issuance of approximately 1.9 million options to purchase the Company's common stock to the NeXT optionholders valued at approximately \$16 million; cash payments of \$56 million to the NeXT debtholders; cash payments of \$9 million for closing and related costs, and \$2 million of net liabilities assumed. The acquisition was accounted for as a purchase; and, accordingly, the operating results

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 4--SPECIAL CHARGES (CONTINUED)**

pertaining to NeXT subsequent to the date of acquisition have been included in the Company's operating results. The total purchase price was allocated to purchased in-process research and development (\$375 million) and to goodwill and other intangible assets (\$52 million). The purchased in-process research and development was charged to operations upon acquisition, and the goodwill and other intangible assets are being amortized on a straight-line basis over two to three years.

**NOTE 5--INCOME TAXES**

The provision for income taxes consisted of the following (in millions):

	1999	1998	1997
	-----	-----	-----
Federal:			
Current.....	\$ 4	\$ --	\$ --
Deferred.....	30	--	--
	---	-----	-----
	34	--	--
	---	-----	-----
State:			
Current.....	--	--	--
Deferred.....	11	--	--
	---	-----	-----
	11	--	--
	---	-----	-----
Foreign:			
Current.....	33	11	--
Deferred.....	(3)	9	--
	---	-----	-----
	30	20	--
	---	-----	-----
Provision for income taxes.....	\$75	\$ 20	\$ --
	===	=====	=====

The foreign provision for income taxes is based on foreign pretax earnings (loss) of approximately \$612 million, \$315 million, and \$(265) million in 1999, 1998, and 1997, respectively. A substantial portion of the Company's cash, cash equivalents, and short-term investments is held by foreign subsidiaries and is generally based in U.S. dollar-denominated holdings. Amounts held by foreign subsidiaries would be subject to U.S. income taxation on repatriation to the United States. The Company's consolidated financial statements fully provide for any related tax liability on amounts that may be repatriated, aside from undistributed earnings of certain of the Company's foreign subsidiaries that are intended to be indefinitely reinvested in operations outside the United States. U.S. income taxes have not been provided on a cumulative total of \$520 million of such earnings. It is not practicable to determine the income tax liability that might be incurred if these earnings were to be distributed. Except for such indefinitely reinvested earnings, the Company provides for federal and state income taxes currently on undistributed earnings of foreign subsidiaries.

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

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 5--INCOME TAXES (CONTINUED)**

As of September 25, 1999 and 1998, the significant components of the Company's deferred tax assets and liabilities were (in millions):

	1999	1998
	-----	-----
Deferred tax assets:		
Accounts receivable and inventory reserves.....	\$ 31	\$ 87
Accrued liabilities and other reserves.....	77	83
Basis of capital assets and investments.....	67	71
Tax losses and credits.....	438	447
	----	----
Total deferred tax assets.....	613	688
Less valuation allowance.....	60	213
	----	----
Net deferred tax assets.....	553	475
	----	----
Deferred tax liabilities:		
Unremitted earnings of subsidiaries.....	442	390
Available-for-sale securities.....	84	--
Other.....	12	20
	----	----
Total deferred tax liabilities.....	538	410
	----	----
Net deferred tax asset.....	\$ 15	\$ 65
	====	====

As of September 25, 1999, the Company had operating loss carryforwards for federal tax purposes of approximately \$414 million, which expire principally in 2011 and 2012. This does not include approximately \$102 million of remaining operating loss carryforwards acquired from NeXT, which expire in 2008 - 2012, and the utilization of which is subject to certain limitations imposed by the Internal Revenue Code. The Company also has various state and foreign tax loss and credit carryforwards, the tax effect of which is approximately \$90 million and which expire between 2001 and 2014. Most of the remaining benefits from tax losses and credits do not expire. As of September 25, 1999, a valuation allowance of \$60 million was recorded against the deferred tax asset for the benefits of tax losses that may not be realized. The valuation allowance relates to the operating loss carryforwards acquired from NeXT and to tax benefits in certain foreign jurisdictions. The net change in the total valuation allowance in 1999 was a decrease of \$153 million. Management believes it is more likely than not forecasted income, including income that may be generated as a result of certain tax planning strategies, will be sufficient to fully recover the remaining net deferred tax assets.



**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 5--INCOME TAXES (CONTINUED)**

A reconciliation of the provision for income taxes, with the amount computed by applying the statutory federal income tax rate (35% in 1999, 1998, and 1997) to income (loss) before provision for income taxes, is as follows (in millions):

	1999	1998	1997
	-----	-----	-----
Computed expected tax (benefit).....	\$ 236	\$115	\$(366)
State taxes, net of federal effect.....	12	10	(3)
Indefinitely invested earnings of foreign subsidiaries.....	(29)	(15)	--
Purchase accounting and asset acquisitions.....	7	8	158
Valuation allowance.....	(153)	(97)	208
Other individually immaterial items.....	2	(1)	3
	-----	-----	-----
Provision for income taxes.....	\$ 75	\$ 20	\$ --
	=====	=====	=====
Effective tax rate.....	11%	6%	0%

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

**NOTE 6--SHAREHOLDERS' EQUITY**

**STOCK REPURCHASE PLAN**

In July 1999, the Company's Board of Directors authorized a plan for the Company to repurchase up to \$500 million of its common stock. This repurchase plan does not obligate the Company to acquire any specific number of shares or acquire shares over any specified period of time. As of September 25, 1999, the Company had repurchased a total of 1.25 million shares of its common stock at a cost of \$75 million.

**PREFERRED STOCK**

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

**NOTE 6--SHAREHOLDERS' EQUITY (CONTINUED)**

**1998 EXECUTIVE OFFICER STOCK PLAN**

The Company has in effect a 1998 Executive Officer Stock Plan (the 1998 Plan), which replaced the 1990 Stock Option Plan terminated in April 1998, the 1981 Stock Option Plan terminated in October 1990, and the 1987 Executive Long Term Stock Option Plan terminated in July 1995. Options granted before these plans' termination dates remain outstanding in accordance with their terms. Options may be granted under the 1998 Plan to the Chairman of the Board of Directors, executive officers of the Company at the level of Senior Vice President and above, and other key employees. These options generally become exercisable over a period of 4 years, based on continued employment, and generally expire 10 years after the grant date. The 1998 Plan permits the granting of incentive stock options, nonstatutory stock options, stock appreciation rights, and stock purchase rights. A total of 17,000,000 shares have been authorized for issuance under the 1998 Plan, of which 12,038,390 shares are reserved for future issuance as of September 25, 1999.

**1997 EMPLOYEE STOCK OPTION PLAN**

In August 1997, the Company's Board of Directors approved the 1997 Employee Stock Option Plan (the 1997 Plan), for grants of stock options to employees who are not officers of the Company. Options may be granted under the 1997 Plan to employees at not less than the fair market value on the date of grant. These options generally become exercisable over a period of 4 years, based on continued employment, and generally expire 10 years after the grant date. A total of 18,000,000 shares have been authorized for issuance under the 1997 Plan, of which 8,605,065 shares are reserved for future issuance as of September 25, 1999.

**1997 DIRECTOR STOCK OPTION PLAN**

In August 1997, the Company's Board of Directors approved a Director Stock Option Plan (DSOP), for which directors of the Company are eligible. Options granted under the DSOP vest in three equal installments, on each of the first through third anniversaries of the date of grant. A total of 400,000 shares have been authorized for issuance under the DSOP, of which 220,000 shares remain reserved for future issuance. Supplementally and separate from the DSOP, 30,000 options had been granted in total to two members of the Company's Board of Directors, and were outstanding as of September 25, 1999.

**EMPLOYEE STOCK PURCHASE PLAN**

The Company has an employee stock purchase plan (the Purchase Plan), under which substantially all employees may purchase common stock through payroll deductions at a price equal to 85% of the lower of the fair market values as of the beginning and end of the six-month offering period. Stock purchases under the Purchase Plan are limited to 10% of an employee's compensation, up to a maximum of \$25,000 in any calendar year. During 1999 and 1998, 540,000 and 1.1 million shares, respectively, were issued under the Purchase Plan. As of September 25, 1999, approximately 2.96 million shares were reserved for future issuance under the Purchase Plan.

**SENIOR OFFICERS RESTRICTED PERFORMANCE SHARE PLAN**

In November 1997, the Company's Board of Directors issued approximately 24,000 fully vested shares and cash in settlement of shares to certain officers of the Company under the Senior Officers Restricted Performance Share Plan (the PSP) based upon the achievement of certain performance goals established in advance by the Compensation Committee of the Board. Immediately after these shares were issued, the Company's Board of Directors terminated the PSP.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 6--SHAREHOLDERS' EQUITY (CONTINUED)**

**SHAREHOLDER RIGHTS PLAN**

In May 1989, the Company adopted a shareholder rights plan and distributed a dividend of one right to purchase one share of common stock (a Right) for each outstanding share of common stock of the Company. The Rights would have become exercisable in certain limited circumstances involving a potential business combination transaction of the Company and would have become initially exercisable at a price of \$200 per share. Following certain other events after the Rights had become exercisable, each Right would have entitled its holder to purchase for \$200 an amount of common stock of the Company, or, in certain circumstances, securities of the acquiror, having a then-current market value of two times the exercise price of the Right. The Rights expired on April 19, 1999.

**STOCK OPTION ACTIVITY**

A summary of the Company's stock option activity and related information for the years ended September 25, 1999 and 1998, and September 26, 1997, follows (option amounts are presented in thousands):

	YEAR ENDED SEPTEMBER 25, 1999		YEAR ENDED SEPTEMBER 25, 1998		YEAR ENDED SEPTEMBER 26, 1997	
	NUMBER OF OPTIONS	WEIGHTED- AVERAGE EXERCISE PRICE	NUMBER OF OPTIONS	WEIGHTED- AVERAGE EXERCISE PRICE	NUMBER OF OPTIONS	WEIGHTED- AVERAGE EXERCISE PRICE
Options outstanding--beginning of year.....	18,694	\$20.47	18,649	\$17.24	14,112	\$27.23
Granted (price equals FMV).....	5,955	\$38.87	13,879	\$23.11	20,629	\$16.91
Granted (price less than FMV).....	--	\$ --	--	\$ --	1,853	\$ 6.54
Exercised.....	(3,674)	\$16.71	(1,882)	\$14.35	(1,049)	\$13.71
Forfeited.....	(2,571)	\$26.02	(11,952)	\$19.40	(16,896)	\$24.19
Options outstanding--end of year....	18,404	\$26.39	18,694	\$20.47	18,649	\$17.24
Options exercisable at end of year.....	2,733	\$19.15	1,435	\$15.01	1,996	\$22.02

The options granted in fiscal 1997 at a price less than fair market value were to existing NeXT optionholders as part of the total purchase price paid for NeXT (see Note 4).

The options outstanding as of September 25, 1999, have been segregated into five ranges for additional disclosure as follows (option amounts are presented in thousands):

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
	OPTIONS OUTSTANDING AS OF SEPTEMBER 25, 1999	WEIGHTED- AVERAGE REMAINING CONTRACTUAL LIFE IN YEARS	WEIGHTED AVERAGE EXERCISE PRICE	OPTIONS EXERCISABLE AS OF SEPTEMBER 25, 1999	WEIGHTED AVERAGE EXERCISE PRICE
\$1.66-\$13.25.....	3,296	7.68	\$12.54	1,324	\$12.16
\$13.26-\$19.75.....	4,449	8.20	\$14.95	477	\$16.31
\$19.76-\$31.19.....	3,446	8.79	\$30.07	705	\$28.99
\$31.20-\$34.63.....	4,149	9.23	\$34.41	81	\$34.18
\$34.64-\$79.06.....	3,064	9.48	\$42.92	146	\$36.01
\$1.66-\$79.06.....	18,404	8.66	\$26.39	2,733	\$19.15

As of September 25, 1999, approximately 20.9 million options were reserved for future grant under the Company's stock option plans.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 6--SHAREHOLDERS' EQUITY (CONTINUED)**

In December 1997, the Board of Directors approved an option exchange program allowing employees to exchange all (but not less than all) of their existing options (vested and unvested) with an exercise price greater than \$13.6875, on a one-for-one basis for new options with an exercise price of \$13.6875, the fair market value of the Company's common stock on December 19, 1997, and a new four year vesting schedule beginning in December 1997. A total of 4.7 million options with a weighted-average exercise price of \$19.90 per share were exchanged for new options as a result of this program.

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

**NOTE 7--STOCK-BASED COMPENSATION**

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

Pro forma information regarding net income (loss) per share is required by SFAS No. 123 and has been determined as if the Company had accounted for its employee stock options granted and employee stock purchase plan purchases subsequent to September 29, 1995, under the fair value method of that statement. The fair values for these options and stock purchases were estimated at the date of grant and beginning of the period, respectively, using a Black-Scholes option pricing model. The weighted-average fair value per share of options granted during 1998 and 1997 includes the excess value of the repriced options granted during those fiscal years less the value of the related forfeited options on the date the repriced options were granted. The assumptions used for each of the last three fiscal years and the resulting estimate of weighted-average fair value per share of options granted during those years are as follows:

	1999	1998	1997
	-----	-----	-----
Expected life of options.....	4 years	3.5 years	3 years
Expected life of stock purchases.....	6 months	6 months	6 months
Interest rate--stock options.....	5.02%	5.54%	6.3%
Interest rate--stock purchases.....	4.89%	5.37%	5.3%
Volatility--stock options.....	55%	78%	74%
Volatility--stock purchases.....	59%	56%	52%
Dividend yields.....	0	0	0
 Weighted-average fair value of options granted during the year.....	 \$19.22	 \$12.98	 \$7.49

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because the

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 7--STOCK-BASED COMPENSATION (CONTINUED)**

Company's employee stock options and employee stock purchase plan shares have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of the Company's employee stock options and employee stock purchase plan shares.

For purposes of pro forma disclosures, the estimated fair value of the options and shares are amortized to pro forma net income (loss) over the options' vesting period and the shares' plan period. The value of the options granted to NeXT optionholders in 1997 has been included in the total purchase price paid for NeXT and, therefore, is not included in the adjustment to arrive at the pro forma net loss. The Company's pro forma information for each of the last three fiscal years follows (in millions, except per share amounts):

	1999	1998	1997
	-----	-----	-----
Net income (loss)--as reported.....	\$ 601	\$ 309	\$ (1,045)
Net income (loss)--pro forma.....	\$ 528	\$ 266	\$ (1,082)
Net income (loss) per common share--as reported			
Basic.....	\$4.20	\$2.34	\$ (8.29)
Diluted.....	\$3.61	\$2.10	\$ (8.29)
Net income (loss) per common share--pro forma			
Basic.....	\$3.69	\$2.02	\$ (8.58)
Diluted.....	\$3.25	\$1.83	\$ (8.58)

As SFAS No. 123 is applicable only to options granted or shares issued subsequent to September 29, 1995, its pro forma effect was not fully reflected until 1999.

**NOTE 8--COMMITMENTS AND CONTINGENCIES**

**LEASE COMMITMENTS**

The Company leases various facilities and equipment under noncancelable operating lease arrangements. The major facilities leases are for terms of 5 to 10 years and generally provide renewal options for terms of up to 5 additional years. Rent expense under all operating leases was approximately \$61 million, \$63 million, and \$106 million in 1999, 1998, and 1997, respectively. Future minimum lease payments under noncancelable operating leases having remaining terms in excess of one year as of September 25, 1999, are as follows (in millions):

FISCAL YEARS	
-----	
2000.....	\$ 46
2001.....	41
2002.....	29
2003.....	19
2004.....	14
Later years.....	35
	----
Total minimum lease payments.....	\$184
	====

**NOTE 8--COMMITMENTS AND CONTINGENCIES (CONTINUED)**

**CONCENTRATIONS IN THE AVAILABLE SOURCES OF SUPPLY OF MATERIALS AND PRODUCT**

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

**LITIGATION**

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

In January 1996, a purported shareholder derivative action was filed in the California Superior Court for Santa Clara County naming the Company and its then directors as defendants, seeking injunctive relief and damages for alleged acts of mismanagement. Between February 1996 and October 1997, the complaint was amended several times as a result of the Courts' rulings upon various demurrers filed by the Company. The Third Amended Complaint was filed in October 1997, and eliminated the class action claims and restated claims against certain directors and former directors. In November 1997, the Company's Board of Directors appointed a special investigation committee and engaged independent counsel to assist in the investigation of the claims made in the Third Amended Complaint. This matter was settled during the fourth quarter of 1999 for an amount not material to the Company's financial position or results of operations.

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

In May 1996, an action was filed in the California Superior Court naming as defendants the Company and certain of its current and former officers and directors and seeking compensatory and punitive damages for alleged misrepresentation and omission of material facts about the Company's operations and financial results. Between May 1996 and November 1997, the complaint was has been amended several times as a result of the Court's rulings upon various demurrers of the Company. In January 1998, the Company and three individual defendants brought a motion to dismiss the third amended complaint, and, in March 1998, the Court granted the motion to dismiss the third amended complaint without leave to amend. The plaintiffs filed an appeal in the Sixth Appellate District in June 1998. The Court of Appeal heard oral argument in November 1999 and has not yet ruled.

**"REPETITIVE STRESS INJURY" LITIGATION**

The Company was named in approximately 60 lawsuits between 1991 to 1995, alleging plaintiffs incurred so-called "repetitive stress" injuries to their upper extremities as a result of using keyboards and/or mouse input devices sold by the Company. These actions are similar to those filed against other major suppliers of

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### NOTE 8--COMMITMENTS AND CONTINGENCIES (CONTINUED)

personal computers. All but three of the cases against the Company were dismissed by the end of fiscal 1998. During fiscal 1999, the remaining three cases were dismissed.

#### MONITOR-SIZE LITIGATION

In August 1995, the Company was named, along with 41 other entities, including computer manufacturers and computer monitor vendors, in a putative nationwide class action filed in the California Superior Court for Orange County, styled Keith Long et al. v. Amazing Technologies Corp. et al. The complaint alleges 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.. The complaints in all of these cases seek restitution in the form of refunds or product exchange, damages, punitive damages, and attorneys fees. In December 1995, the California Judicial Council ordered all of the California actions, including Long, coordinated for purposes of pretrial proceedings and trial before a single judge. These actions were subsequently coordinated under the name In re Computer Monitor Litigation. In July 1996, the Court ordered all of the California cases dismissed without leave to amend as to plaintiffs residing in California. In March 1998, the Court granted final approval of a settlement resolving all claims and all subsequent appeals have been dismissed.

#### EXPONENTIAL TECHNOLOGY INC. V. APPLE COMPUTER, INC.

Plaintiff, Exponential Technology, Inc. (Exponential), alleged the Company, which was an investor in Exponential, breached its fiduciary duty to Exponential by misusing confidential information and that the Company fraudulently misrepresented the facts about allowing Exponential to sell its processors to the Company's Mac OS licensees. The lawsuit was filed in California Superior Court for Santa Clara County. In November 1997, the Company filed a demurrer to portions of the complaint, which the Court granted in part. In January 1998, the plaintiff filed an Amended Complaint. In March 1998, the Company filed a cross-complaint for damages against Exponential alleging breach of contract, negligent misrepresentation, and violations of the California Corporations Code. This matter was settled during the fourth quarter of 1999 for an amount not material to the Company's financial position or results of operations.

#### FTC INQUIRY--PRADO V. APPLE COMPUTER, INC. (AND RELATED ACTIONS)

In October 1997, Apple began charging all U.S. noneducation customers for live telephone technical support beyond 90 days after purchase of Apple products. In late 1997, the Federal Trade Commission (FTC) commenced an investigation into customer complaints that Apple's change in technical support practices was either unfair or contrary to earlier representations to certain customers. Four purported class action lawsuits were filed against Apple related to this change. During the fourth quarter of 1999, the regional and national offices of the FTC approved a settlement with the Company, and a settlement was approved by the Court in three of the class action suits. In November 1999, two appeals were filed objecting to the settlement and therefore the settlement is stayed pending resolution of the appeals. Settlement of these matters was not material to the Company's financial position or results of operations.

#### MICROWARE SYSTEMS CORPORATION V. APPLE COMPUTER, INC.

Plaintiff, Microware Systems Corporation (Microware), filed this action against the Company on September 1, 1999, in the United States District Court for the Southern District of Iowa. Microware alleges that

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### NOTE 8--COMMITMENTS AND CONTINGENCIES (CONTINUED)

the Company's current release of its Mac OS operating system, Mac OS 9, infringes Microware's trademark for its real time operating system, OS-9. Microware asserts claims for trademark infringement, false designation of origin, dilution and common law trademark infringement and unfair competition. On October 14, 1999, Microware filed a motion for preliminary injunction seeking to enjoin the Company from using the designation "Mac OS 9" and to order the Company to cancel and withdraw all packaging and advertisements that mention "Mac OS 9." The Company has opposed the motion for preliminary injunction and has filed a motion for summary judgment against all of Microware's claims. The Court has not yet scheduled a hearing date for the motion.

### OTHER LITIGATION

The Company is also subject to certain other legal proceedings and claims that have arisen in the ordinary course of business and have not been fully adjudicated. The results of legal proceedings cannot be predicted with certainty; however, in the opinion of management, the Company does not have a potential liability related to any legal proceedings and claims that would have a material adverse effect on its financial condition or results of operations.

### NOTE 9--SEGMENT INFORMATION AND GEOGRAPHIC DATA

The Company manages its business primarily on a geographic basis. The Company's reportable segments are comprised of the Americas, Europe, and Japan. The Americas segment includes both North and South America. The European segment includes European countries as well as the Middle East and Africa. Other operating segments include Asia-Pacific, which includes Australia and Asia except for Japan, and the Company's subsidiary, Filemaker, Inc. Each reportable operating segment provides similar products and services, and the accounting policies of the various segments are the same as those described in the Summary of Significant Accounting Policies in Note 1.

The Company evaluates the performance of its operating segments based on net sales and operating income. Operating income for each segment includes revenue, cost of sales, and operating expenses directly attributable to the segment. Net sales are based on the location of the customers. Operating income for each segment excludes other income and expense and certain expenses that are managed outside the reportable segment. Costs excluded from segment operating income include various corporate expenses, income taxes, and nonrecurring charges for purchased in-process research and development, restructuring, and acquisition related costs. Corporate expenses include research and development, manufacturing expenses not included in segment cost of sales, corporate marketing expenses, and other separately managed general and administrative expenses. The Company does not include intercompany transfers between segments for management reporting purposes. Segment assets exclude corporate assets. Corporate assets include cash, short-term and long-term investments, manufacturing facilities, and intangible assets. Capital expenditures for long-lived assets are not reported to management by segment.



**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 9--SEGMENT INFORMATION AND GEOGRAPHIC DATA (CONTINUED)**

Summary information by segment follows (in millions):

	1999	1998	1997
	-----	-----	-----
Americas:			
Net Sales.....	\$3,527	\$3,468	\$3,668
Operating Income.....	\$ 493	\$ 345	\$ 57
Depreciation and Amortization.....	\$ 4	\$ 4	\$ 6
Segment Assets (a).....	\$ 468	\$ 671	\$ 793
Europe:			
Net Sales.....	\$1,317	\$1,295	\$1,536
Operating Income.....	\$ 156	\$ 69	\$ 0
Depreciation and Amortization.....	\$ 3	\$ 5	\$ 9
Segment Assets.....	\$ 169	\$ 262	\$ 371
Japan:			
Net Sales.....	\$ 858	\$ 731	\$1,098
Operating Income.....	\$ 173	\$ 97	\$ 70
Depreciation and Amortization.....	\$ 2	\$ 2	\$ 4
Segment Assets.....	\$ 94	\$ 178	\$ 284
Other Segments:			
Net Sales.....	\$ 432	\$ 447	\$ 779
Operating Income.....	\$ 82	\$ 59	\$ 143
Depreciation and Amortization.....	\$ 3	\$ 5	\$ 7
Segment Assets.....	\$ 104	\$ 82	\$ 236

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(a) The Americas asset figures do not include fixed assets held in the United States. Such fixed assets are not allocated specifically to the Americas segment and are included in the corporate assets figures below.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 9--SEGMENT INFORMATION AND GEOGRAPHIC DATA (CONTINUED)**

A reconciliation of the Company's segment operating income (loss), and assets to the consolidated financial statements follows (in millions):

	1999	1998	1997
	-----	-----	-----
Segment Operating Income.....	\$ 904	\$ 570	\$ 270
Corporate Expenses, net.....	(518)	(302)	(673)
In-process Research and Development.....	--	(7)	(375)
Restructuring.....	(27)	--	(217)
Termination of License Agreement.....	--	--	(75)
	-----	-----	-----
Total Operating Income (loss).....	\$ 359	\$ 261	\$ (1,070)
	=====	=====	=====
Segment Assets.....	\$ 835	\$1,193	\$ 1,684
Corporate Assets.....	4,326	3,096	2,549
	-----	-----	-----
Total Assets.....	\$5,161	\$4,289	\$ 4,233
	=====	=====	=====
Segment Depreciation and Amortization.....	\$ 12	\$ 16	\$ 26
Corporate Depreciation and Amortization.....	73	95	92
	-----	-----	-----
Total Depreciation and Amortization.....	\$ 85	\$ 111	\$ 118
	=====	=====	=====

A large portion of the Company's net sales is derived from its international operations. Also, a majority of the raw materials used in the Company's products is obtained from sources outside of the United States, and a majority of the products sold by the Company is assembled internationally in the Company's facilities in Cork, Ireland and Singapore or by third-party vendors in Taiwan, Korea, Mexico, and the United Kingdom. As a result, the Company is subject to risks associated with foreign operations, such as obtaining governmental permits and approvals, currency exchange fluctuations, currency restrictions, political instability, labor problems, trade restrictions, and changes in tariff and freight charges. No single customer accounted for more than 10% of net sales in 1999, 1998, or 1997. Net sales and long-lived assets related to operations in the United States, Japan, and other foreign countries are as follows (in millions):

	1999	1998	1997
	-----	-----	-----
Net Sales:			
United States.....	\$3,394	\$3,287	\$3,507
Japan.....	858	731	1,098
Other Foreign Countries.....	1,882	1,923	2,476
	-----	-----	-----
Total Net Sales.....	\$6,134	\$5,941	\$7,081
	=====	=====	=====
Long-Lived Assets:			
United States.....	\$ 335	\$ 336	\$ 474
Japan.....	7	5	11
Other Foreign Countries.....	62	94	188
	-----	-----	-----
Total Long-Lived Assets.....	\$ 404	\$ 435	\$ 673
	=====	=====	=====

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**NOTE 9--SEGMENT INFORMATION AND GEOGRAPHIC DATA (CONTINUED)**

Information regarding net sales by product is as follows (in millions):

	1999	1998	1997
	-----	-----	-----
Net Sales:			
Power Macintosh.....	\$2,345	\$2,421	\$2,341
PowerBook.....	823	913	1,172
iMac (a).....	1,905	1,528	2,158
iBook.....	9	--	--
Software, Service, and Other Net Sales.....	1,052	1,079	1,410
	-----	-----	-----
Total Net Sales.....	\$6,134	\$5,941	\$7,081
	=====	=====	=====

(a) Net sales figures for iMac in 1998 and 1997 include sales of the Company's previous consumer and education oriented Macintosh products.

**NOTE 10--SELECTED QUARTERLY FINANCIAL INFORMATION (UNAUDITED)**

	FOURTH QUARTER	THIRD QUARTER	SECOND QUARTER	FIRST QUARTER
	-----	-----	-----	-----
	(TABULAR AMOUNTS IN MILLIONS, EXCEPT PER SHARE AMOUNTS)			
1999				
Net sales.....	\$1,336	\$1,558	\$1,530	\$1,710
Gross margin.....	\$ 384	\$ 427	\$ 403	\$ 482
Net income.....	\$ 111	\$ 203	\$ 135	\$ 152
Earnings per common share:				
Basic.....	\$ 0.69	\$ 1.41	\$ 0.99	\$ 1.12
Diluted.....	\$ 0.63	\$ 1.20	\$ 0.84	\$ 0.95
1998				
Net sales.....	\$1,556	\$1,402	\$1,405	\$1,578
Gross margin.....	\$ 417	\$ 360	\$ 349	\$ 353
Net income.....	\$ 106	\$ 101	\$ 55	\$ 47
Earnings per common share:				
Basic.....	\$ 0.79	\$ 0.76	\$ 0.42	\$ 0.37
Diluted.....	\$ 0.68	\$ 0.65	\$ 0.38	\$ 0.33

Basic and diluted earnings per share are computed independently for each of the quarters presented. Therefore, the sum of quarterly basic and diluted per share information may not equal annual basic and diluted earnings per share.

Net income during the fourth, third, second, and first quarters of 1999 included after tax gains resulting from the sale of shares of the Company's investment in ARM of \$37 million, \$89 million, \$50 million, and \$29 million, respectively. Gains before tax on the sale of ARM shares are recognized as other income. Net income for the fourth quarter of 1999 included a net \$18 million restructuring charge for contract cancellation charges related to previously outsourced services and previously discontinued business. Net income for the second quarter of 1999 included a \$9 million restructuring charge resulting from actions by the Company to improve the flexibility and efficiency of its manufacturing operations, which included moving final assembly of certain of its products to third-party manufacturers.

Net income for the third quarter of 1998 included after tax gains resulting from the sale of shares of the Company's investment in ARM of \$33 million. The third quarter of 1998 also includes the recognition of

\$7 million of purchased in-process research and development charged to operations upon acquisition.

**SCHEDULE II****APPLE COMPUTER, INC.****VALUATION AND QUALIFYING ACCOUNTS AND RESERVES**

(IN MILLIONS)

ALLOWANCE FOR DOUBTFUL ACCOUNTS: -----	BEGINNING BALANCE -----	CHARGED TO COSTS AND EXPENSES -----	DEDUCTIONS (1) -----	ENDING BALANCE -----
Year Ended September 25, 1999.....	\$81	\$ 2	\$15	\$68
Year Ended September 25, 1998.....	\$99	\$11	\$29	\$81
Year Ended September 26, 1997.....	\$91	\$35	\$27	\$99

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

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

Not applicable.

### PART III

#### ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

##### DIRECTORS

Listed below are the Company's directors whose terms expire at the next annual meeting of shareholders.

NAME	POSITION WITH THE COMPANY	AGE	DIRECTOR SINCE
William V. Campbell.....	Director	58	1997
Gareth C.C. Chang.....	Director	55	1996
Millard S. Drexler.....	Director	55	1999
Lawrence J. Ellison.....	Director	54	1997
Steven P. Jobs.....	Director and interim Chief Executive Officer	43	1997
Edgar S. Woolard, Jr.....	Director	64	1996
Jerome B. York.....	Director	60	1997

WILLIAM V. CAMPBELL has been chairman of the Board of Directors of Intuit, Inc. ("INTUIT") since August 1998. Since September 1999, Mr. Campbell has been acting as Chief Executive Officer of Intuit. From April 1994 to August 1998, Mr. Campbell was President and Chief Executive Officer and a director of Intuit. From January 1991 to December 1993, Mr. Campbell was President and Chief Executive Officer of GO Corporation. Mr. Campbell also serves on the board of directors of SanDisk Corporation and Great Plains Software.

GARETH C. C. CHANG has served as Chairman and Chief Executive Officer of STAR TV since September 1998. Prior to joining STAR TV, Mr. Chang was President of Hughes Electronics International and Corporate Senior Vice President of Hughes Electronics since 1993. Previously, he was Corporate Vice President of McDonnell Douglas Corporation. He is currently an executive director of News Corp., and a member of the Advisory Council of Nike Inc.

MILLARD S. DREXLER has been Chief Executive Officer of Gap Inc. since 1995, and President of the Gap, Inc. since 1987. He has also served as the Chief Executive Officer of the Gap Division since 1987 and the Chief Executive Officer of Old Navy Inc. since 1997. From 1993 to 1995 he served as the Chief Operating Officer of the Gap Division and from 1988 to 1997 served as the Chief Executive Officer of Banana Republic, Inc. Mr. Drexler is currently a director of Restoration Hardware, Inc.

LAWRENCE J. ELLISON has been Chief Executive Officer and a director of Oracle Corporation ("ORACLE") since he co-founded Oracle in May 1977, and was President of Oracle until June 1996. Mr. Ellison has been Chairman of the Board of Oracle since June 1995. Mr. Ellison is also a director of SuperGen, Inc., Liberate Technologies, and Spring Group PLC.

STEVEN P. JOBS is one of the Company's co-founders and currently serves as its interim Chief Executive Officer. Mr. Jobs is also the Chairman and Chief Executive Officer of Pixar Animation Studios. In addition, Mr. Jobs co-founded NeXT Software, Inc. ("NEXT") and served as the Chairman and Chief Executive Officer of NeXT from 1985 until 1997 when NeXT was acquired by the Company. Mr. Jobs is currently a director of Gap Inc.

EDGAR S. WOOLARD, JR. retired as Chairman of the Board of Directors of E. I. DuPont de Nemours & Co. ("DUPONT") in October 1997, having served as Chariman since 1989. He remains a director of DuPont. Previously, he held the positions of President and Chief Executive Officer of DuPont. He is currently a director of CITIGROUP, Inc. and DuPont.

JEROME B. YORK is Chief Executive Officer of Harwinton Corporation, a private investment and consulting concern he founded in 1999. Previously, he was Vice Chairman of Tracinda Corporation from September 1995 to October 1999. In May 1993, he joined International Business Machines Corporation ("IBM") as Senior Vice President and Chief Financial Officer, and he served as a director of IBM from January 1995 to August 1995. Prior to joining IBM, Mr. York served in a number of executive positions at Chrysler Corporation, including Executive Vice President-Finance and Chief Financial Officer from May 1990 to May 1993. He also served as a director of Chrysler Corporation from 1992 to 1993. Mr. York is also a director of Waste Management, Inc., MGM Grand, Inc., Metro-Goldwyn-Mayer, Inc. and National TechTeam, Inc.

## **EXECUTIVE OFFICERS**

The following sets forth certain information regarding executive officers of the Company. Information pertaining to Mr. Jobs, who is both a director and an executive officer of the Company, may be found in the section entitled "DIRECTORS".

FRED D. ANDERSON, Executive Vice President and Chief Financial Officer (age 55) joined the Company in April 1996. Prior to joining the Company, Mr. Anderson was Corporate Vice President and Chief Financial Officer of Automatic Data Processing, Inc. ("ADP"), a position he held from August 1992 to March 1996.

TIMOTHY D. COOK, Senior Vice President, Worldwide Operations (age 39) joined the Company in February 1998. Prior to joining the Company, Mr. Cook held the position of Vice President, Corporate Materials for Compaq Computer Corporation ("COMPAQ"). Previous to his work at Compaq, Mr. Cook was the Chief Operating Officer of the Reseller Division at Intelligent Electronics. Mr. Cook also spent 12 years with IBM, most recently as Director of North American Fulfillment.

NANCY R. HEINEN, Senior Vice President, General Counsel and Secretary (age 43) joined the Company in September 1997. Prior to joining the Company, Ms. Heinen held the position of Vice President, General Counsel and Secretary of the Board of Directors at NeXT from February 1994 until the acquisition of NeXT by the Company in February 1997.

MITCHELL MANDICH, Senior Vice President, Worldwide Sales (age 51) joined the Company in February 1997 upon the Company's acquisition of NeXT. Mr. Mandich has also served the Company in the position of Vice President, North American Business Division. Prior to joining the Company, Mr. Mandich held the position of Vice President, Worldwide Sales and Service with NeXT from December 1995 through February 1997.

JONATHAN RUBINSTEIN, Senior Vice President, Hardware Engineering (age 43), joined the Company in February 1997. Before joining the Company, Mr. Rubinstein was Executive Vice President and Chief Operating Officer of FirePower Systems Incorporated ("FIREPOWER"), from May 1993 to August 1996. Mr. Rubinstein also serves as a member of the Board of Directors of Immersion Corporation.

AVADIS TEVANIAN, JR., PH.D., Senior Vice President, Software Engineering (age 38), joined the Company in February 1997 upon the Company's acquisition of NeXT. With NeXT, Dr. Tevanian held several positions, including Vice President, Engineering, from April 1995 to February 1997. Prior to April 1995, Dr. Tevanian worked as an engineer with NeXT and held several management positions.

SINA TAMADDON, Senior Vice President, Service & Support (age 42) joined the Company in September 1997. Mr. Tamaddon has also served with the Company in the position of Vice President and General Manager, Newton Group. Before joining the Company, Mr. Tamaddon held the position of Vice President, Europe with NeXT from September 1996 through March 1997. From August 1994 to August 1996, Mr. Tamaddon held the position of Vice President, Professional Services with NeXT.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires the Company's officers and directors, and persons who own more than ten percent of a registered class of the Company's equity securities, to file reports of securities ownership and changes in such ownership with the Securities and Exchange Commission (the "SEC"). Officers, directors and greater than ten percent shareholders also are required by rules promulgated by the SEC to furnish the Company with copies of all Section 16(a) forms they file.

Based solely upon a review of the copies of such forms furnished to the Company, the absence of a Form 3 or Form 5 or written representations that no Forms 5 were required, the Company believes that, during fiscal year 1999, its officers, directors and greater than ten percent beneficial owners complied with all applicable Section 16(a) filing requirements.

ITEM 11. EXECUTIVE COMPENSATION

INFORMATION REGARDING EXECUTIVE COMPENSATION

The following table summarizes compensation information for the last three fiscal years for (i) Mr. Jobs, interim Chief Executive Officer and (ii) the four most highly compensated executive officers other than the Chief Executive Officer who were serving as executive officers of the Company at the end of the fiscal year (collectively, the "NAMED EXECUTIVE OFFICERS").

SUMMARY COMPENSATION TABLE

NAME AND PRINCIPAL POSITION	FISCAL YEAR	SALARY (\$)	BONUS (\$)	RESTRICTED STOCK AWARDS (\$)	SECURITIES UNDERLYING OPTIONS (#)	ALL OTHER COMPENSATION (\$)
		ANNUAL COMPENSATION			LONG-TERM COMPENSATION	
Steven P. Jobs..... interim Chief Executive Officer	1999	1	--	--	--	--
	1998	1	--	--	--	--
	1997	--	--	--	30,000 (1)	--
Fred D. Anderson..... Executive Vice President and Chief Financial Officer	1999	605,260	--	--	475,000	29,700 (2)
	1998	604,283	--	--	250,000 (3)	60,123 (4)
	1997	520,311	--	40,748 (5)	850,000 (6)	250,489 (7)
Timothy D. Cook..... Senior Vice President, Worldwide Operations	1999	401,940	--	--	300,000	29,519 (8)
	1998	223,953	500,000 (9)	--	700,000	90,849 (10)
	1997	--	--	--	--	--
Mitchell Mandich..... Senior Vice President, Worldwide Sales	1999	402,941	--	--	387,876	7,200 (11)
	1998	402,253	--	--	424,250 (3)	8,118 (11)
	1997	174,348	104,000	--	565,050 (6) (12)	1,730 (11)
Jonathan Rubinstein..... Senior Vice President, Hardware Engineering	1999	402,200	--	--	458,334	5,888 (13)
	1998	402,095	--	--	300,000 (3)	4,804 (11)
	1997	250,262	100,000	19,108 (5)	700,000 (6)	1,864 (11)

(1) Mr. Jobs was granted 30,000 stock options in his capacity as a director of the Company pursuant to the 1997 Director Stock Option Plan.

(2) Consists of \$22,500 in relocation assistance and \$7,200 in matching contributions made by the Company in accordance with the terms of the 401(k) plan.

(3) Includes the replacement of 250,000, 224,250 and 300,000 options that were previously granted to Messrs. Anderson, Mandich and Rubinstein, respectively, and canceled pursuant to the December 1997 stock option exchange program. Other than the replacement options, Messrs. Anderson and Rubinstein were not granted any options during the fiscal year.

(4) Includes \$55,000 in relocation assistance and \$5,123 in matching contributions made by the Company in accordance with the terms of the 401(k) plan.

(5) For fiscal year 1997, these amounts represent the value on February 5, 1997 of the Common Stock underlying the Performance Shares earned by Mr. Anderson and Mr. Rubinstein under the terms of the Senior Officers Restricted Performance Share Plan.

Mr. Anderson and Mr. Rubinstein earned 2,672 and 1,253 performance shares, respectively. No dividends were paid on the Performance Shares. As of the last day of fiscal year 1997, Mr. Anderson and Mr. Rubinstein held no other Performance Shares or restricted stock.

(6) Includes the replacement of 500,000, 50,000 and 200,000 options that were previously granted to Messrs. Anderson, Mandich and Rubinstein respectively, and canceled pursuant to the July 1997 stock option exchange program.

(7) Consists of \$245,497 in relocation assistance and \$4,992 in matching contributions made by the Company in accordance with the terms of its 401(k) plan.

(8) Consists of \$24,719 in relocation assistance and \$4,800 in matching contributions made by the Company in accordance with the terms of the 401 (k) plan.

(9) In connection with his employment, Mr. Cook received a one-time hiring bonus in the amount of \$500,000.

(10) Consists of \$86,049 in relocation assistance and \$4,800 in matching contributions made by the Company in accordance with the terms of its 401(k) plan.

(11) Consists of matching contributions made by the Company in accordance with the terms of its 401(k) plan.

(12) Includes 240,800 NeXT options that were converted into Apple options during fiscal year 1997 in connection with Apple's acquisition of NeXT.

(13) Includes \$3,465 from the disqualifying disposition of the sale of shares of the Company stock acquired through the Company's Employee Stock Purchase Plan and \$2,423 in matching contributions made by the Company in accordance with the terms of the 401 (k) plan.

## OPTION GRANTS IN LAST FISCAL YEAR

The following table provides information about option grants to the Named Executive Officers during fiscal year 1999.

### OPTION GRANTS IN LAST FISCAL YEAR

#### INDIVIDUAL GRANTS

NAME	NUMBER OF SECURITIES UNDERLYING OPTIONS GRANTED (#)	PERCENT OF TOTAL OPTIONS GRANTED TO EMPLOYEES IN FISCAL YEAR(1)	EXERCISE OR BASE PRICE (\$/SH) (2)	EXPIRATION DATE	POTENTIAL REALIZABLE VALUE AT ASSUMED ANNUAL RATES OF STOCK PRICE APPRECIATION FOR OPTION TERM(3)	
					5% (\$)	10% (\$)
Steven P. Jobs.....	--	0.00%	--	--	--	--
Fred D. Anderson.....	475,000	7.98%	\$34.625	3/2/09	\$10,343,351	\$26,212,083
Timothy D. Cook.....	300,000	5.03%	\$34.625	3/2/09	\$6,532,643	\$16,555,000
Mitchell Mandich.....	387,876	6.51%	\$34.625	3/2/09	\$8,446,185	\$21,404,290
Jonathan Rubinstein.....	458,334	7.70%	\$34.625	3/2/09	\$9,980,441	\$25,292,398

(1) Based on an aggregate of 5,955,586 options granted to all employees during fiscal year 1999. Options typically vest in four equal annual installments commencing on the first anniversary of the date of grant.



(2) All options were granted at an exercise price equal to the fair market value based on the closing market value of Common Stock on the Nasdaq National Market on the date of grant.

(3) Potential gains are net of exercise price, but before taxes associated with exercise. These amounts represent certain assumed rates of appreciation only, based on SEC rules, and do not represent the Company's estimate or projection of the price of the Company's stock in the future. Actual gains, if any, on stock option exercises depend upon the actual future price of Common Stock and the continued employment of the option holders throughout the vesting period. Accordingly, the potential realizable values set forth in this table may not be achieved.

## OPTIONS EXERCISED AND YEAR-END OPTION HOLDINGS

The following table provides information about stock option exercises by the Named Executive Officers during fiscal year 1999 and stock options held by each of them at fiscal year-end.

### AGGREGATED OPTION EXERCISES IN THE LAST FISCAL YEAR AND FISCAL YEAR-END OPTION VALUES

NAME	SHARES ACQUIRED ON EXERCISE (#)	VALUE REALIZED (\$)(1)	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS AT FISCAL YEAR-END (#)		VALUE OF UNEXERCISED IN- THE-MONEY OPTIONS AT FISCAL YEAR-END (\$)(2)	
			EXERCISABLE	UNEXERCISABLE	EXERCISABLE	UNEXERCISABLE
Steven P. Jobs.....	--	--	20,000	10,000	838,750	419,375
Fred D. Anderson.....	95,834	2,714,134	166,666	829,166	8,614,549	32,622,361
Timothy Cook.....	175,000	3,829,359	0	825,000	0	33,900,000
Mitchell Mandich.....	179,463	5,695,545	31,717	797,979	1,713,719	33,372,127
Jonathan Rubinstein.....	75,000	2,400,000	66,667	750,000	3,445,851	28,870,298

(1) Market value of underlying securities (based on the fair market value of Common Stock on the Nasdaq National Market) at the time of exercise, minus the exercise price.

(2) Market value of securities underlying in-the-money options at the end of fiscal year 1999 (based on \$64.9375 per share, the closing price of Common Stock on the Nasdaq National Market on September 24, 1999), minus the exercise price.

## DIRECTOR COMPENSATION

In 1997, the Company ended its practice of paying cash retainers and fees to directors, and approved the Apple Computer, Inc. 1997 Director Stock Option Plan (the "DIRECTOR PLAN"). The Director Plan was approved by the shareholders in April 1998, and 400,000 shares have been reserved for issuance under the Director Plan. Pursuant to the Director Plan, the Company's non-employee directors are granted an option to acquire 30,000 shares of Common Stock upon their initial election to the Board ("INITIAL OPTIONS"). On the fourth anniversary of a non-employee director's initial election to the Board and on each subsequent anniversary, the director will be entitled to receive an option to acquire 10,000 shares of Common Stock ("ANNUAL OPTIONS"). Initial Options vest and become exercisable in equal annual installments on each of the first through third anniversaries of the date of grant. Annual Options are fully vested and immediately exercisable on their date of grant. As of October 31, 1999, there were options for 180,000 shares outstanding under the Director Plan.

## COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

The current members of the Board's Compensation Committee are Messrs. Woolard and Chang, neither of whom is an employee of the Company. No person who was an employee of the Company in fiscal year 1999 served on the Compensation Committee in fiscal year 1999. During fiscal year 1999, no executive

officer of the Company (i) served as a member of the compensation committee (or other board committee performing similar functions or, in the absence of any such committee, the board of directors) of another entity, one of whose executive officers served on the Company's Compensation Committee, (ii) served as a director of another entity, one of whose executive officers served on the Company's Compensation Committee, or (iii) served as a member of the compensation committee (or other board committee performing similar functions or, in the absence of any such committee, the board of directors) of another entity, one of whose executive officers served as a director of the Company.

## COMPANY STOCK PERFORMANCE

The following graph shows a five-year comparison of cumulative total shareholder return, calculated on a dividend reinvested basis, for the Company, the S&P 500 Composite Index (the "S&P 500") and the S&P Computers (Hardware) Index (the "INDUSTRY INDEX"). The graph assumes \$100 was invested in each of the Common Stock, the S&P 500 and the Industry Index on September 30, 1994. Data points on the graph are annual. Note that historic stock price performance is not necessarily indicative of future stock price performance.

### CUMULATIVE TOTAL RETURN BASED UPON AN INITIAL INVESTMENT OF \$100 ON SEPTEMBER 30, 1994 WITH DIVIDENDS REINVESTED

#### EDGAR REPRESENTATION OF DATA POINTS USED IN PRINTED GRAPHIC

CUMULATIVE TOTAL RETURN  
BASED UPON AN INITIAL INVESTMENT OF \$100 ON SEPTEMBER 30,  
1994  
WITH DIVIDENDS REINVESTED

	Apple Computer Inc.	S&P 500	S&P Computers (Hardware)
30-Sep-94	\$100	\$100	\$100
29-Sep-95	\$112	\$130	\$143
27-Sep-96	\$67	\$156	\$173
26-Sep-97	\$64	\$219	\$322
25-Sep-98	\$117	\$246	\$391
25-Sep-99	\$196	\$304	\$633

SOURCE: GEORGESON SHAREHOLDER COMMUNICATION INC.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information as of November 30, 1999 (the "TABLE DATE") with respect to the beneficial ownership of the Company's Common Stock by (i) each person the Company believes beneficially holds more than 5% of the outstanding shares of Common Stock; (ii) each director; (iii) each Named Executive Officer listed in the Summary Compensation Table under the heading "EXECUTIVE COMPENSATION" and (iv) all directors and executive officers as a group. On the Table Date, 161,159,281 shares of Common Stock were issued and outstanding. Unless otherwise indicated, all persons named as beneficial owners of Common Stock have sole voting power and sole investment power with respect to the shares indicated as beneficially owned.

### SECURITY OWNERSHIP OF DIRECTORS, NOMINEES AND EXECUTIVE OFFICERS

NAME OF BENEFICIAL OWNER -----	SHARES OF COMMON STOCK BENEFICIALLY OWNED (1) -----
Fred D. Anderson.....	63,836(2)
William V. Campbell.....	20,251(3)
Gareth C. C. Chang.....	22,000(3)
Timothy D. Cook.....	0
Millard S. Drexler.....	0
Lawrence J. Ellison.....	20,000(3)
Steven P. Jobs.....	20,001(3)
Mitchell Mandich.....	197,980(4)
Jonathan Rubinstein.....	77,319(5)
Edgar S. Woolard, Jr.....	18,000
Jerome B. York.....	30,000(3)
All executive officers and directors as a group (14 persons).....	781,315(6)

- 
- (1) All amounts listed in this table represent less than 1% of the issued and outstanding shares of Common Stock on the Table Date.
  - (2) Includes 62,500 shares of Common Stock which Mr. Anderson has the right to acquire by exercise of stock options.
  - (3) Includes 20,000 shares of Common Stock which Messrs. Campbell, Chang, Ellison, Jobs and York each have the right to acquire by exercise of stock options.
  - (4) Constitutes 197,980 shares of Common Stock which Mr. Mandich has the right to acquire by exercise of stock options.
  - (5) Includes 75,000 shares of Common Stock which Mr. Rubinstein has the right to acquire by exercise of stock options.
  - (6) Represents shares of Common Stock held by 14 executive officers and directors and options held by such individuals that were exercisable at the Table Date or within 60 days thereafter.

## ITEM 13. ARRANGEMENTS WITH NAMED EXECUTIVE OFFICERS

### EMPLOYMENT AGREEMENTS WITH NAMED EXECUTIVE OFFICERS

The Company entered into an employment agreement with Mr. Anderson effective April 1, 1996, pursuant to which he serves as Executive Vice President and Chief Financial Officer of the Company. Pursuant to his agreement, Mr. Anderson is entitled to an annual base salary of no less than \$500,000. If Mr. Anderson's employment is terminated by the Company without "Cause" at any time during the five-year period following April 1, 1996, he will be entitled to receive a lump sum severance payment equal to the sum of his annual base salary and target bonus, if any. Mr. Anderson's agreement generally defines

"Cause" to include a felony conviction, willful disclosure of confidential information or willful and continued failure to perform his employment duties.

In February 1998, Mr. Cook joined the Company as Senior Vice President, Worldwide Operations. Under the terms of his employment, he is entitled to an annual base salary of no less than \$400,000. In addition, Mr. Cook received a one-time hiring bonus in the amount of \$500,000 and a stock option grant with a sell-back provision. The sell-back provision provides that during the five-day period starting on the second anniversary of his commencement of employment, he may elect to sell all of his remaining vested and unvested options and shares (obtained through the exercise of such options) back to the Company for the sum of \$3 million less any profits Mr. Cook has realized to date through the exercise and sale of such options (the "Sell-back Option"). During fiscal 1999, Mr. Cook realized net profits from the exercise and sale of his options in excess of \$3 million. The Sell-back Option has no future effect. If Mr. Cook's employment is terminated by the Company without "Cause" during the first two years of his employment, he will be entitled to receive an amount equal to \$800,000 minus the total base salary he has received since the start of his employment.

#### **CHANGE IN CONTROL ARRANGEMENTS--STOCK OPTIONS**

In the event of a "change in control" of the Company, all outstanding options under the Company's stock option plans, except the Director Stock Option Plan, will, unless otherwise determined by the plan administrator, become exercisable in full, and will be cashed out at an amount equal to the difference between the applicable "change in control price" and the exercise price. The Director Stock Option Plan provides that upon a "change in control" of the Company, all unvested options held by non-employee directors will automatically become fully vested and exercisable and will be cashed out at an amount equal to the difference between the applicable "change in control price" and the exercise price of the options. A "change in control" under these plans is generally defined as (i) the acquisition by any person of 50% or more of the combined voting power of the Company's 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.

In addition, options granted to Timothy D. Cook, Nancy R. Heinen, Mitchell Mandich and Sina Tamaddon provide that in the event there is a "change in control", as defined in the Company's stock option plans, and if in connection with or following such "change in control", their employment is terminated without "Cause" or if they should resign for "Good Reason", those options outstanding that are not yet vested and exercisable as of the date of such "change in control", shall become fully vested and exercisable. Generally, "Cause" is defined to include a felony conviction, willful disclosure of confidential information or willful and continued failure to perform his or her employment duties. "Good Reason" includes resignation of employment as a result of a substantial diminution in position or duties, or an adverse change in title or reduction in annual base salary.

#### **CHANGE IN CONTROL ARRANGEMENTS--RETENTION AGREEMENTS**

The Company was a party to retention agreements (the "RETENTION AGREEMENTS") with three executive officers (Messrs. Anderson, Rubinstein and Tevanian) providing for certain cash payments in the event of a termination of employment following a change in control of the Company. In March, 1999, Messrs. Anderson, Rubinstein and Tevanian agreed to waive any rights they may have under the Retention Agreements. In exchange, all options previously granted to Messrs. Anderson, Rubinstein and Tevanian were amended to include a "change in control" provision similar to the provision contained in option grants to Messrs. Cook, Mandich, Tamaddon and Ms. Heinen.

## **CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

In connection with the Company's use of aircraft to transport its executive officers, the Company paid approximately \$102,865 during fiscal year 1999 to Wing & A Prayer, a company wholly-owned by Lawrence J. Ellison.

**REPORT OF THE COMPENSATION COMMITTEE  
OF THE BOARD OF DIRECTORS ON EXECUTIVE COMPENSATION**

The Company's executive compensation program is administered by the Compensation Committee of the Board of Directors (the "COMMITTEE"). The role of the Committee, which is comprised of two outside non-employee directors, is to review and approve the base salaries, bonuses, stock options and other compensation of the executive officers and management-level employees of the Company. The Committee also administers the Company's stock option plans and makes grants to executive officers under the 1998 Executive Officer Stock Plan (the "1998 Plan").

The Company's executive compensation program utilizes Company performance, individual performance and an increase in stockholder value over time as determinants of executive pay levels. These principles are intended to motivate executive officers to improve the financial position of the Company, to hold executives accountable for the performance of the organizations for which they are responsible, to attract key executives into the service of the Company and to create value for the Company's shareholders. The compensation for executive officers is based on two elements: Cash compensation and equity-based compensation.

**CASH COMPENSATION**

The Company reviews executive compensation surveys in both the computer industry and general industry to ensure that the total cash compensation provided to executive officers and senior management remains at a competitive level to enable the Company to attract and retain management personnel with the talents and skills required to meet the challenges of a highly competitive industry. The compensation of executive officers, other than Mr. Jobs, interim Chief Executive Officer, is reviewed annually by the Committee.

**BONUSES**

For fiscal year 1999, the Compensation Committee approved the FY99 Vice Presidents and Directors Incentive Bonus Plan (the "BONUS PLAN"), under which cash bonuses for employees at the level of director and above were determined based on specified revenue, unit shipments and profit targets for the Company. Because the Company did not achieve the metrics specified in the Bonus Plan, no payments were made thereunder. Executive officers and members of the Board of Directors are not eligible to participate in the Bonus Plan.

**EQUITY-BASED COMPENSATION**

In fiscal year 1999, the Compensation Committee emphasized equity-based compensation, principally in the form of options, as the cornerstone of the Company's executive compensation program. Equity awards are typically set by the Compensation Committee based on industry surveys, each officer's individual performance and achievements, market factors and the recommendations of management. In fiscal year 1999, executive officers were eligible to receive grants of stock options under the 1998 Plan. In addition, executive officers were eligible to participate in the Company's Employee Stock Purchase Plan.

During fiscal year 1999, all of the executive officers of the Company received new option grants under the 1998 Plan. The Options granted under the 1998 Plan were at an exercise price equal to the fair market value of the Common Stock on the date of grant and generally vest in unequal increments over a five-year period after grant, subject to the participant's continued employment with the Company. All options granted under the 1998 Plan expire ten years from the date of grant, unless a shorter term is provided in the option agreement or the participant's employment with the Company ends before the end of such ten-year period.

**COMPENSATION OF THE CHIEF EXECUTIVE OFFICER**

Mr. Jobs, the Company's interim Chief Executive Officer, received \$1 for the services he performed for the Company in fiscal year 1999.

SECTION 162(m)

The Company intends that options granted under the Company's stock option plans be deductible by the Company under Section 162(m) of the Internal Revenue Code of 1986, as amended.

**MEMBERS OF THE COMPENSATION COMMITTEE**

**Edgar S. Woolard, Jr. (Chairman) Gareth C.C. Chang**

## PART IV

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

#### (a) Items Filed as Part of Report:

##### 1. Financial Statements

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

##### 2. Financial Statement Schedule

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

##### 3. Exhibits

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

#### (b) Reports on Form 8-K

A current report on form 8-K dated September 3, 1999, was filed by the Registrant with the Securities and Exchange Commission to report under Item 5 thereof the press release issued to the public on September 3, 1999, regarding the Company's settlement of a shareholder derivative action.

A current report on form 8-K dated July 16, 1999 was filed by the Registrant with the Securities and Exchange Commission to report under Item 5 thereof the press release issued to the public on July 14, 1999, reporting the Company's plan to repurchase shares of its common stock.

A current report on form 8-K dated December 23, 1998 was filed by the Registrant with the Securities and Exchange Commission to report under Item 8 thereof the amendment to the Company's fiscal year end. The Company's fiscal calendar was amended to move the fiscal year end from the last Friday in September to the last Saturday in September.

#### (c) Exhibits

EXHIBIT NUMBER -----	NOTES* -----	DESCRIPTION
2	97/1Q	Agreement and Plan of Merger Among Apple Computer, Inc., Blackbird Acquisition Corporation and NeXT Software, Inc., dated as of December 20, 1996.
3.1	88-S3	Restated Articles of Incorporation, filed with the Secretary of State of the State of California on January 27, 1988.
3.2	99/2Q	Amendment to Restated Articles of Incorporation, filed with the Secretary of State of the State of California on February 5, 1990.
3.3	99K	By-Laws of the Company, as amended through October 6, 1999.
4.1	89-8A	Common Shares Rights Agreement dated as of May 15, 1989 between the Company and the First National Bank of Boston, as Rights Agent.
4.1.1	96-S3/A	Indenture, dated as of June 1, 1996, between the Company and Marine Midland Bank, as Trustee, relating to the 6% Convertible Subordinated Notes due June 1, 2001.
4.2	94/2Q	Indenture dated as of February 1, 1994, between the Company and Morgan Guaranty Trust Company of New York (the "Indenture").
4.2.1	96-S3/A	Form of the 6% Convertible Subordinated Notes due June 1, 2001 included in Exhibit 4.1.1.
4.3	94/2Q	Supplemental Indenture dated as of February 1, 1994, among the Company, Morgan Guaranty Trust Company of New York, as resigning trustee, and Citibank, N.A., as successor trustee.

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\* Notes appear on pages 80-81.



EXHIBIT NUMBER -----	NOTES* -----	DESCRIPTION
4.3.1	96-S3/A	Specimen Certificate of Common Stock of Apple Computer, Inc. (Incorporated by reference to Exhibit 4.5 to the Company's Registration Statement on Form S-3 (file no. 33-62310) filed with the Securities and Exchange Commission on May 6, 1993.).
4.4	94/2Q	Officers' Certificate, without exhibits, pursuant to Section 301 of the Indenture, establishing the terms of the Company's 6 1/2% Notes due 2004.
4.5	94/2Q	Form of the Company's 6 1/2% Notes due 2004.
4.8	96-S3/A	Registration Rights Agreement, dated June 7, 1996 among the Company and Goldman, Sachs & Co. and Morgan Stanley & Co. Incorporated.
4.9	97K	Certificate of Determination of Preferences of Series A Non-Voting Convertible Preferred Stock of Apple Computer Inc.
4.10	97K	Registration Rights Agreement, dated as of August 11, 1997, between Apple Computer, Inc. and Microsoft Corporation.
10.A.1	93/3Q**	1981 Stock Option Plan, as amended.
10.A.2	91K**	1987 Executive Long Term Stock Option Plan.
10.A.3	91K**	Apple Computer, Inc. Savings and Investment Plan, as amended and restated effective as of October 1, 1990.
10.A.3-1	92K**	Amendment of Apple Computer, Inc. Savings and Investment Plan dated March 1, 1992.
10.A.3-2	97/2Q**	Amendment No. 2 to the Apple Computer, Inc. Savings and Investment Plan.
10.A.5	98/1Q**	1990 Stock Option Plan, as amended through November 5, 1997.
10.A.6	99K**	Apple Computer, Inc. Employee Stock Purchase Plan, as amended through October 6, 1999.
10.A.7	96/1Q**	1996 Senior/Executive Incentive Bonus Plan.
10.A.8	91K**	Form of Indemnification Agreement between the Registrant and each officer of the Registrant.
10.A.15-1	93K-10A.15**	1993 Executive Restricted Stock Plan.
10.A.25	96/1Q**	Summary of Principal Terms of Employment between Registrant and Gilbert F. Amelio.
10.A.26	96/2Q**	Employment Agreement dated February 28, 1996, between Registrant and Gilbert F. Amelio.
10.A.26-1	97/3Q**	Amendment to Employment Agreement, dated May 1, 1997, between Apple Computer, Inc. and Gilbert F. Amelio.
10.A.27	96/2Q**	Employment Agreement dated February 26, 1996, between Registrant and George M. Scalise.

(3) Notes appear on pages 80-81.

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

EXHIBIT NUMBER -----	NOTES*	DESCRIPTION
10.A.28	96/2Q**	Employment Agreement dated March 4, 1996, between Registrant and Fred D. Anderson, Jr.
10.A.29	96/2Q**	Retention Agreement dated March 4, 1996, between Registrant and Fred D. Anderson, Jr.
10.A.30	96/2Q**	Employment Agreement dated April 2, 1996, between Registrant and John Floisand.
10.A.31	96/2Q**	Employment Agreement dated April 3, 1996, between Apple Japan, Inc. and John Floisand.
10.A.32	96/3Q**	Employment Agreement dated June 13, 1996, between Registrant and Robert M. Calderoni.
10.A.33	96/3Q**	Employment Agreement dated June 25, 1996, between Registrant and Ellen M. Hancock.
10.A.34	96/3Q**	Retention Agreement dated June 25, 1996, between Registrant and Ellen M. Hancock.
10.A.35	96/3Q**	Retention Agreement dated June 27, 1996, between Registrant and George M. Scalise.
10.A.36	96/3Q**	Airplane Use Agreement dated June 27, 1996, among Registrant, Gilbert F. Amelio and Aero Ventures.
10.A.40	96K**	Employment Agreement effective June 3, 1996, between Registrant and G. Frederick Forsyth.
10.A.41	97/1Q**	Employment Agreement effective December 2, 1996, between Registrant and John B. Douglas III.
10.A.42	97/2Q**	Senior Officers Restricted Performance Share Plan, as amended through March 25, 1997.
10.A.43	97/2Q**	NeXT Computer, Inc. 1990 Stock Option Plan, as amended.
10.A.44	97/2Q**	Non-Employee Director Stock Plan.
10.A.45	97/3Q**	Retention Agreement dated May 1, 1997 between Apple Computer, Inc. and Fred D. Anderson.

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\* Notes appear on pages 80-81.

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

EXHIBIT NUMBER -----	NOTES* -----	DESCRIPTION
10.A.46	97K**	Resignation Agreement dated September 22, 1997 between Registrant and Gilbert F. Amelio.
10.A.47	97K**	Retention Agreement dated May 1, 1997 between Registrant and Jon Rubenstein.
10.A.48	97K**	Retention Agreement dated May 1, 1997 between Registrant and Avie Tevanian.
10.A.49	99K**	1997 Employee Stock Option Plan, as amended through October 6, 1999.
10.A.50	98/2Q**	1997 Director Stock Option Plan.
10.A.51	99K**	1998 Executive Officer Stock Plan, as amended through October 6, 1999.
10.B.1	88K-10.1	Master OEM Agreement dated as of January 26, 1988 between the Company and Tokyo Electric Co. Ltd.
10.B.7	91-8K-7	Know-how and Copyright License Agreement (Power PC Architecture) dated as of September 30, 1991 between IBM and the Registrant.
10.B.8	91-8K-8	Participation in the Customer Design Center by the Registrant dated as of September 30, 1991 between IBM and the Registrant.
10.B.9	91-8K-9	Agreement for Purchase of IBM Products (Original Equipment Manufacturer) dated as of September 30, 1991 between IBM and the Registrant.
10.B.11	91K	Agreement dated October 9, 1991 between Apple Corps Limited and the Registrant.
10.B.12	92K	Microprocessor Requirements Agreement dated January 31, 1992 between the Registrant and Motorola, Inc.
10.B.13	96/2Q	Restructuring Agreement dated December 14, 1995, among Registrant, Taligent, Inc. and International Business Machines Corporation.
10.B.14	96/2Q	Stock Purchase Agreement dated April 4, 1996 between Registrant and SCI Systems, Inc.
10.B.16	96/3Q	Fountain Manufacturing Agreement dated May 31, 1996 between Registrant and SCI Systems, Inc.
10.B.17	97K	Preferred Stock Purchase Agreement, dated as of August 5, 1997, between Apple Computer, Inc. and Microsoft Corporation.
21		Subsidiaries of the Company.
23.1		Consent of Independent Auditors.
24		Power of Attorney.
27		Financial Data Schedule.

(4) Notes appear on pages 80-81.

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

## NOTES

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88K Incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1988 (the "1988 Form 10-K").

88-S3 Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 (file no. 33-23317) filed July 27, 1988.

88K-10.1 Incorporated by reference to Exhibit 10.1 to the 1988 Form 10-K. Confidential treatment as to certain portions of these agreements has been granted.

89-8A Incorporated by reference to Exhibit 1 to the Company's Registration Statement on Form 8-A filed with the Securities and Exchange Commission on May 26, 1989.

90/2Q Incorporated by reference to Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 30, 1990.

91K Incorporated by reference to the exhibit of that number in the Company's Annual Report on Form 10-K for the fiscal year ended September 27, 1991 (the "1991 Form 10-K").

91-8K-7 Incorporated by reference to Exhibit 7 to the October 1991 Form 8-K.

91-8K-8 Incorporated by reference to Exhibit 8 to the October 1991 Form 8-K.

91-8K-9 Incorporated by reference to Exhibit 9 to the October 1991 Form 8-K.

92K Incorporated by reference to the exhibit of that number in the Company's Annual Report on Form 10-K for the fiscal year ended September 25, 1992 (the "1992 Form 10-K").

93K-10.A.15 Incorporated by reference to Exhibit 10.A.15 to the 1993 Form 10-K.

93/3Q Incorporated by reference to Exhibit 10.A.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 25, 1993.

94/2Q Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended April 1, 1994.

96/1Q Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended December 29, 1995.

96/2Q Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended March 29, 1996.

96/3Q Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended June 28, 1996.

## NOTES

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96-S3/A-4.1.1, -4.2.1, -4.3.1, -4.8 Incorporated by reference to the exhibit 4.1, 4.2, 4.3, and 4.8, respectively, in the Company's Registration Statement on Form S-3/A (file no. 333-10961) filed October 30, 1996.

96K Incorporated by reference to the exhibit of that number in the Company's Annual Report on Form 10-K for the fiscal year ended September 27, 1996 (the "1996 Form 10-K").

97/1Q Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended December 27, 1996.

97/2Q Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended March 28, 1997.

NOTES

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97/3Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended June 27, 1997.
97K	Incorporated by reference to the exhibit of that number in the Company's Annual Report on Form 10-K for the fiscal year ended September 26, 1997 (the "1997 Form 10-K").
98/1Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended December 26, 1997.
98/2Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended March 27, 1998.
99/2Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended March 27, 1999.
99/3Q	Incorporated by reference to the exhibit of that number in the Company's Quarterly Report on Form 10-Q for the quarter ended June 26, 1999.
99K	Filed as an exhibit to this Annual Report on Form 10-K for the fiscal year ended September 25, 1999.

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(d) Financial Statement Schedule

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

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, this 21st day of December 1999.

APPLE COMPUTER, INC.

By: /s/ FRED D. ANDERSON

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 Fred D. Anderson  
 EXECUTIVE VICE PRESIDENT AND  
 CHIEF FINANCIAL OFFICER

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

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

NAME -----	TITLE -----	DATE -----
/s/ STEVEN P. JOBS ----- STEVEN P. JOBS	interim Chief Executive Officer and Director (Principal Executive Officer)	December 21, 1999
/s/ FRED D. ANDERSON ----- FRED D. ANDERSON	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	December 21, 1999
/s/ WILLIAM V. CAMPBELL ----- WILLIAM V. CAMPBELL	Director	December 21, 1999
/s/ GARETH C.C. CHANG ----- GARETH C.C. CHANG	Director	December 21, 1999
/s/ MILLARD S. DREXLER ----- MILLARD S. DREXLER	Director	December 21, 1999

NAME ----	TITLE -----	DATE ----
----- /s/ LAWRENCE J. ELLISON ----- LAWRENCE J. ELLISON	Director	December 21, 1999
----- /s/ EDGAR S. WOOLARD, JR. ----- EDGAR S. WOOLARD, JR.	Director	December 21, 1999
----- /s/ JEROME B. YORK ----- JEROME B. YORK	Director	December 21, 1999

**BY-LAWS**

**OF**

**APPLE COMPUTER, INC.**

(a California corporation)

(as amended through October 6, 1999)

**Article I**

**OFFICES**

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

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

**Article II**

**DIRECTORS**

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

**SECTION 2.2: NUMBER.** The number of directors of the corporation shall be not less than five (5) nor more than nine (9). The exact number of directors shall be seven (7) until changed within the limits specified above, by a by-law amending this section, duly adopted by the Board of Directors or by the shareholders. The indefinite number of directors may be changed, or a definite number fixed without provision for an indefinite number, by a duly adopted amendment to the Articles of Incorporation or by an amendment to this by-law duly adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote; provided, however, that an amendment reducing the fixed number or the minimum number of directors to a number less than five (5) cannot be adopted if the votes cast against its adoption at a meeting of the shareholders, or the shares not consenting in the case of action by written consent, are equal to more than 16-2/3% of the outstanding shares entitled to vote. No amendment may change the stated maximum number of authorized directors to a number greater than two times the stated minimum number of directors minus one.

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

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

**SECTION 2.5: ELECTION AND TERM OF OFFICE.** Through and until immediately prior to the annual meeting of shareholders to be held in fiscal year 2000, the directors shall be divided into two classes, designated Class I and Class II, each consisting of one-half of the directors or as close an approximation as possible, and each director shall serve for a term running until the second annual meeting of shareholders succeeding his or her election and until his or her successor shall have been duly elected and qualified; provided, however, that the terms of all directors shall expire at the annual meeting of shareholders to be held in fiscal year 2000. Commencing at the annual meeting of shareholders to be held in fiscal year 2000, each director shall be elected to serve until the annual meeting of shareholders held in the following fiscal year or until his or her successor shall have been duly elected and qualified.

**SECTION 2.6: VACANCIES.** A vacancy or vacancies on the Board of Directors shall exist in case of the death, resignation or removal of any director, or if the authorized number of directors is increased, or if the shareholders fail, at any annual meeting of shareholders at which any director is elected, to elect the full authorized number of directors to be voted for at that meeting. The Board of Directors may declare vacant the office of a director if he or she is declared of unsound mind by an order of court or convicted of a felony or if, within 60 days after notice of his or her election, he or she does not accept the office. Any vacancy, except for a vacancy created by removal of a director as provided in Section 2.7 hereof, may be filled by a



person selected by a majority of the remaining directors then in office, whether or not less than a quorum, or by a sole remaining director. Vacancies occurring in the Board of Directors by reason of removal of directors shall be filled only by approval of shareholders. The shareholders may elect a director at any time to fill any vacancy not filled by the directors. Any such election by written consent requires the consent of a majority of the outstanding shares entitled to vote. If, after the filling of any vacancy by the directors, the directors then in office who have been elected by the shareholders shall constitute less than a majority of the directors then in office, any holder or holders of an aggregate of 5% or more of the total number of shares at the time outstanding having the right to vote for such directors may call a special meeting of shareholders to be held to elect the entire Board of Directors. The term of office of any director shall terminate upon such election of a successor. Any director may resign effective upon giving written notice to the Chairman of the Board, if any, the Chief Executive Officer, the President, the Secretary or the Board of Directors of this corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective. A reduction of the authorized number of directors shall not remove any director prior to the expiration of such director's term of office.

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

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

- (a) To purchase, lease, and acquire any and all kinds of property, real, personal or mixed, and at its discretion to pay therefor in money, in property and/or in stocks, bonds, debentures or other securities of this corporation.
- (b) To enter into any and all contracts and agreements which in its judgment may be beneficial to the interests and purposes of this corporation.
- (c) To fix and determine and to vary from time to time the amount or amounts to be set aside or retained as reserve funds or as working capital of this corporation or for maintenance, repairs, replacements or enlargements of its properties.
- (d) To declare and pay dividends in cash, shares and/or property out of any funds of this corporation at the time legally available for the declaration and payment of dividends on its shares.
- (e) To adopt such rules and regulations for the conduct of its meetings and the management of the affairs of this corporation as it may deem proper.
- (f) To prescribe the manner in which and the person or persons by whom any or all of the checks, drafts, notes, bills of exchange, contracts and other corporate instruments shall be executed.
- (g) To accept resignations of directors; to declare vacant the office of a director as provided in Section 2.6 hereof; and, in case of vacancy in the office of directors, to fill the same to the extent provided in Section 2.6 hereof.
- (h) To create offices in addition to those for which provision is made by law or these By-Laws; to elect and remove at pleasure all officers of this corporation, fix their terms of office, prescribe their powers and duties, limit their authority and fix their salaries in any way it may deem advisable which is not contrary to law or these By-Laws; and, if it sees fit, to require from the officers or any of them security for faithful service.
- (i) To designate some person to perform the duties and exercise the powers of any officer of this corporation during the temporary absence or disability of such officer.
- (j) To appoint or employ and to remove at pleasure such agents and employees as it may see fit, to prescribe their titles, powers and duties, limit their authority, and fix their salaries in any way it may deem advisable which is not contrary to law or these By-Laws; and, if it sees fit, to require from them or any of them security for faithful performance.

(k) To fix a time in the future, which shall not be more than 60 days nor less than 10 days prior to the date of the meeting nor more than sixty (60) days prior to any other action for which it is fixed, as a record date for the determination of the shareholders entitled to notice of and to vote at any meeting, or entitled to receive any payment of any dividend or other distribution, or allotment of any rights, or entitled to exercise any rights in respect of any other lawful action; and in such case only shareholders of record on the date so fixed shall be entitled to notice of and to vote at the meeting or to receive the dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of this corporation after any record date fixed as aforesaid. The Board of Directors may close the books of this corporation against transfers of shares during the whole or any part of such period.

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

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

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

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

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

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

### **Article III**

#### **OFFICERS**

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

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

### **Article IV**

#### **CHAIRMAN OF THE BOARD**

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

## **Article V**

### **CHIEF EXECUTIVE OFFICER**

**SECTION 5.1: POWERS AND DUTIES.** The powers and duties of the Chief Executive Officer are:

- (a) To act as the general manager and chief executive officer of this corporation and, subject to the control of the Board of Directors, to have general supervision, direction and control of the business and affairs of this corporation.
- (b) To preside at all meetings of the shareholders and, in the absence of the Chairman of the Board or if there be no Chairman, at all meetings of the Board of Directors.
- (c) To call meetings of the shareholders and meetings of the Board of Directors to be held at such times and, subject to the limitations prescribed by law or by these By-Laws, at such places as he or she shall deem proper.
- (d) To affix the signature of this corporation to all deeds, conveyances, mortgages, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board of Directors or which, in the judgment of the Chief Executive Officer, should be executed on behalf of this corporation; to sign certificates for shares of stock of this corporation; and, subject to the direction of the Board of Directors, to have general charge of the property of this corporation and to supervise and control all officers, agents and employees of this corporation.

## **Article VA**

### **PRESIDENT**

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

- (a) To act as the general manager of this corporation and, subject to the control of the Board of Directors, to have general supervision, direction and control of the business and affairs of this corporation.
- (b) To preside at all meetings of the shareholders and, in the absence of the Chairman of the Board and the Chief Executive Officer or if there be no Chairman or Chief Executive Officer, at all meetings of the Board of Directors.
- (c) To affix the signature of this corporation to all deeds, conveyances, mortgages, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board of Directors or which, in the judgment of the President, should be executed on behalf of this corporation; to sign certificates for shares of stock of this corporation; and, subject to the direction of the Board of Directors, to have general charge of the property of this corporation and to supervise and control all officers, agents and employees of this corporation.

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

**Article VI  
VICE PRESIDENT**

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

**Article VII**

**SECRETARY**

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

- (a) To keep a book of minutes at the principal executive office of this corporation, or such other place as the Board of Directors may order, of all meetings of its directors and shareholders with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at shareholders' meetings and the proceedings thereof.
- (b) To keep the seal of this corporation and to affix the same to all instruments which may require it.
- (c) To keep or cause to be kept at the principal executive office of this corporation, or at the office of the transfer agent or agents, a record of the shareholders of this corporation, giving the names and addresses of all shareholders and the number and class of shares held by each, the number and date of certificates issued for shares and the number and date of cancellation of every certificate surrendered for cancellation.
- (d) To keep a supply of certificates for shares of this corporation, to fill in all certificates issued, and to make a proper record of each such issuance; provided that so long as this corporation shall have one or more duly appointed and acting transfer agents of the shares, or any class or series of shares, of this corporation, such duties with respect to such shares shall be performed by such transfer agent or transfer agents.
- (e) To transfer upon the share books of this corporation any and all shares of this corporation; provided that so long as this corporation shall have one or more duly appointed and acting transfer agents of the shares, or any class or series of shares, of this corporation, such duties with respect to such shares shall be performed by such transfer agent or transfer agents, and the method of transfer of each certificate shall be subject to the reasonable regulations of the transfer agent to which the certificate is presented for transfer and, also, if this corporation then has one or more duly appointed and acting registrars, subject to the reasonable regulations of the registrar to which a new certificate is presented for registration; and provided, further, that no certificate for shares of stock shall be issued or delivered or, if issued or delivered, shall have any validity whatsoever until and unless it has been signed or authenticated in the manner provided in Section 12.3 hereof.
- (f) To make service and publication of all notices that may be necessary or proper and without command or direction from anyone. In case of the absence, disability, refusal or neglect of the Secretary to make service or publication of any notices, then such notices may be served and/or published by the Chief Executive Officer, the President or a Vice President, or by any person thereunto authorized by either of them or by the Board of Directors or by the holders of a majority of the outstanding shares of this corporation.
- (g) Generally to do and perform all such duties as pertain to such office and as may be required by the Board of Directors.

**Article VIII**

**CHIEF FINANCIAL OFFICER**

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

- (a) To supervise and control the keeping and maintaining of adequate and correct accounts of this corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. The books of account shall at all reasonable times be open to inspection by any director.
- (b) To have the custody of all funds, securities, evidences of indebtedness and other valuable documents of this corporation and, at his or her discretion, to cause any or all thereof to be deposited for the account of this corporation with such depository as may be designated from time to time by the Board of Directors.

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

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

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

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

## **Article VIII**

### **APPOINTED VICE PRESIDENTS, ETC.**

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

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

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

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

## **Article IX**

### **EXECUTIVE COMMITTEE**

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

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

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

- (b) the filling of vacancies on the Board of Directors or in the committee,
- (c) the fixing of compensation of the directors for serving on the Board of Directors or on any committee,
- (d) the amendment or repeal of By-Laws or the adoption of new By-Laws,
- (e) the amendment or repeal of any resolution of the Board of Directors which by its express terms is not so amendable or repealable,
- (f) a distribution to the shareholders of this corporation, except at a rate or in a periodic amount or within a price range determined by the Board of Directors,
- (g) the appointment of other committees of the Board of Directors or the members thereof.

## Article X

### MEETINGS OF SHAREHOLDERS

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

**SECTION 10.2: ANNUAL MEETINGS.** The annual meeting of the shareholders shall be held at the hour of 10:00 a.m. on the last Wednesday in January in each year, if not a legal holiday, and if a legal holiday, then on the next succeeding business day not a legal holiday or at such other time in a particular year as may be designated by written consent of all the shareholders entitled to vote thereat or which may be designated by resolution of the Board of Directors. Such annual meetings shall be held at the place provided pursuant to Section 10.1 hereof. Said annual meetings shall be held for the purpose of the election of directors, for the making of reports of the affairs of this corporation and for the transaction of such other business as may come before the meeting.

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

**SECTION 10.4: NOTICE OF MEETINGS.** Notice of any meeting of shareholders shall be given in writing not less than 10 nor more than 60 days before the date of the meeting to each shareholder entitled to vote thereat by the Secretary or an Assistant Secretary, or other person charged with that duty, or if there be no such officer or person, or in case of his or her neglect or refusal, by any director or shareholder. The notice shall state the place, date and hour of the meeting and (i) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (ii) in the case of the annual meeting, those matters which the Board of Directors, at the time of the mailing of the notice, intends to present for action by the shareholders, but any proper matter may be presented at the meeting for such action except that notice must be given or waived in writing of any proposal relating to approval of contracts between the corporation and any director of this corporation, amendment of the Articles of Incorporation, reorganization of this corporation or winding up of this corporation. The notice of any meeting at which directors are to be elected shall include the names of nominees intended at the time of the notice to be presented by management for election. Written notice shall be given by this corporation to any shareholder, either (i) personally or (ii) by mail or other means of written communication, charges prepaid, addressed to such shareholder at such shareholder's address appearing on the books of this corporation or given by such shareholder to this corporation for the purpose of notice. If a shareholder gives no address or no such address appears on the books of this corporation, notice shall be deemed to have been given if sent by mail or other means of written communication addressed to the place where the principal executive office of this corporation is located, or if published at least once in a newspaper of general circulation in the county in which such office is located. The notice shall be deemed to have been given at the time when delivered personally or deposited in the United States mail, postage prepaid, or sent by other means of written communication and addressed as hereinbefore provided. An affidavit of delivery or mailing of any notice in accordance with the provisions of this Section 10.4, executed by the Secretary, Assistant Secretary or any transfer agent, shall be prima facie evidence of the giving of the notice. If any notice addressed to the shareholder at the address of such shareholder appearing on the books of the corporation is returned to this corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the shareholder at such address, all future notices shall be deemed to have been duly given without further mailing if the same shall be available for the shareholder upon written demand of the shareholder at the principal executive office of this corporation for a period of one year from the date of the giving of the notice to all other shareholders.

**SECTION 10.5: CONSENT TO SHAREHOLDERS' MEETINGS.** The transactions of any meeting of shareholders, however called and noticed, and wherever held, are as valid as though had at a

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

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

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

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

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

**SECTION 10.9: ACTION BY WRITTEN CONSENTS.** Any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Within fourteen (14) days after receiving such written consent or consents from shareholders of the corporation, the Board of Directors shall determine whether holders of outstanding shares as of the record date established pursuant to Section 10.8 having not less than the minimum number of votes which would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted have properly consented thereto in writing and notify the requesting party of its finding. Unless the consents of all shareholders entitled to vote have been solicited in writing, notice of any shareholder approval of (i) contracts between this corporation and any of its directors, (ii) indemnification of any person, (iii) reorganization of this corporation or (iv) distributions to shareholders upon winding up of this corporation in certain circumstances without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by such approval, and prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent, to those shareholders entitled to vote who have not consented in writing. All notices given hereunder shall conform to the requirements of Section 10.4 hereto and applicable law. When written consents are given with



respect to any shares, they shall be given by and accepted from the persons in whose names such shares stand on the books of this corporation at the time such respective consents are given, or any shareholder's proxy holder, or a transferee of the shares or a personal representative of the shareholder or their respective proxy holders, may revoke the consent by a writing received by this corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the Secretary of this corporation, but may not do so thereafter. Such revocation is effective upon its receipt by the Secretary of this corporation. Notwithstanding anything to the contrary, directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.

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

**SECTION 10.11: PROXIES.** Every person entitled to vote or execute consents shall have the right to do so either in person or by one or more agents authorized by a written proxy executed by such person or such person's duly authorized agent and filed with the Secretary of this corporation. No proxy shall be valid (1) after revocation thereof, unless the proxy is specifically made irrevocable and otherwise conforms to this Section 10.11 and applicable law, or (2) after the expiration of eleven months from the date thereof, unless the person executing it specifies therein the length of time for which such proxy is to continue in force. Revocation may be effected by a writing delivered to the Secretary of this corporation stating that the proxy is revoked or by a subsequent proxy executed by, or by attendance at the meeting and voting in person by, the person executing the proxy. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, a written notice of such death or incapacity is received by this corporation. A proxy which states that it is irrevocable is irrevocable for the period specified therein when it is held by any of the following or a nominee of any of the following: (1) a pledgee, (2) a person who has purchased or agreed to purchase or holds an option to purchase the shares or a person who has sold a portion of such person's shares in this corporation to the maker of the proxy, (3) a creditor or creditors of this corporation or the shareholder who extended or continued credit to this corporation or the shareholder in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit and the name of the person extending or continuing the credit, (4) a person who has contracted to perform services as an employee of this corporation, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for, (5) a person designated by or under a close corporation shareholder agreement or a voting trust agreement. In addition, a proxy may be made irrevocable if it is given to secure the performance of a duty or to protect a title, either legal or equitable, until the happening of events which, by its terms, discharge the obligation secured by it. Notwithstanding the period of irrevocability specified, the proxy becomes revocable when the pledge is redeemed, the option or agreement to purchase is terminated or the seller no longer owns any shares of this corporation or dies, the debt of this corporation or the shareholder is paid, the period of employment provided for in the contract of employment has terminated or the close corporation shareholder agreement or the voting trust agreement has terminated. In addition, a proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability appears on the certificate representing such shares. Every form of proxy or written consent, which provides an opportunity to specify approval or disapproval with respect to any proposal, shall also contain an appropriate space marked "abstain", whereby a shareholder may indicate a desire to abstain from voting his or her shares on the proposal. A proxy marked "abstain" by the shareholder with respect to a particular proposal shall not be voted either for or against such proposal. In any election of directors, any form of proxy in which the directors to be voted upon are named therein as candidates and which is marked by a shareholder "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld shall not be voted either for or against the election of a director.

**SECTION 10.12: INSPECTORS OF ELECTION.** Before any meeting of shareholders, the Board of Directors may appoint any persons other than nominees for office to act as inspectors of election at the meeting or its adjournment. If no inspectors of election are so appointed, the Chairman of the meeting may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more shareholders or proxies, the holders of a majority of shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the Chairman of the meeting may, and upon the request of any shareholder or a shareholder's proxy shall, appoint a person to fill that vacancy.

These inspectors shall:

- (a) Determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;
- (b) Receive votes, ballots, or consents;

- (c) Hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (d) Count and tabulate all votes or consents;
- (e) Determine when the polls shall close;
- (f) Determine the result; and
- (g) Do any other acts that may be proper to conduct the election or vote with fairness to all shareholders.

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

## **Article XI**

### **MEETINGS OF DIRECTORS**

**SECTION 11.1: PLACE OF MEETINGS.** Meetings (whether regular, special or adjourned) of the Board of Directors of this corporation shall be held at the principal office of this corporation for the transaction of business, as specified in accordance with Section 1.1 hereof, or at any other place within or without the State which has been designated from time to time by resolution of the Board or which is designated in the notice of the meeting.

**SECTION 11.2: REGULAR MEETINGS.** Regular meetings of the Board of Directors shall be held after the adjournment of each annual meeting of the shareholders (which regular directors' meeting shall be designated the "Regular Annual Meeting") and at such other times as may be designated from time to time by resolution of the Board of Directors. Notice of the time and place of all regular meetings shall be given in the same manner as for special meetings, except that no such notice need be given if (1) the time and place of such meetings are fixed by the Board of Directors or (2) the Regular Annual Meeting is held at the principal place of business provided at Section 1.1 hereof and on the date specified in Section 10.2 hereof.

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

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

**SECTION 11.5: QUORUM.** A majority of all directors elected by the shareholders and appointed to fill vacancies as provided in Section 2.6 hereof shall constitute a quorum of the Board of Directors for the transaction of business. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors subject to (a) provisions of law relating to interested directors, (b) indemnification of agents of this corporation and (c) Section 12.9 hereof. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

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

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

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

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

## Article XII

### SUNDRY PROVISIONS

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

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

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

**SECTION 12.4: LOST CERTIFICATES.** Where the owner of any certificate for shares of this corporation claims that the certificate has been lost, stolen or destroyed, a new certificate shall be issued in place of the original certificate if the owner (1) so requests before this corporation has notice that the original certificate has been acquired by a bona fide purchaser, (2) files with this corporation an indemnity bond in such form and in such amount as shall be approved by the Chief Executive Officer, the President or a Vice President of this corporation, and (3) satisfies any other reasonable requirements imposed by this corporation. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

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

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

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

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

**SECTION 12.9: APPROVAL OF CERTAIN TRANSACTIONS.** In addition to Section 11.5. Quorum hereof, the affirmative vote of a majority of the disinterested outside directors shall be required to (a) approve any merger or acquisition transaction for which the approval of the Company's shareholders is necessary for consummation of the transaction and (b) .approve or ratify any related party transaction (or aggregation of similar transactions) involving a director of the Company and having an annualized value in excess of \$10,000.

## Article XIII

### CONSTRUCTION OF BY-LAWS WITH REFERENCE TO PROVISIONS OF LAW

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

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

#### **Article XIV**

##### **ADOPTION, AMENDMENT OR REPEAL OF BY-LAWS**

SECTION 14.1: BY SHAREHOLDERS. By-Laws may be adopted, amended or repealed by the vote or written consent of holders of a majority of the outstanding shares entitled to vote. By-Laws specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by the shareholders; provided, however, that a By-Law or amendment of the Articles of Incorporation reducing the number or the minimum number of directors to a number less than five cannot be adopted if the votes cast against its adoption at a meeting or the shares not consenting in the case of action by written consent are equal to more than 16-2/3% of the outstanding shares entitled to vote.

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

#### **Article XV**

##### **RESTRICTIONS ON TRANSFER OF STOCK**

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

#### **Article XVI**

##### **INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS**

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

SECTION 16.2: INDEMNIFICATION OF OTHERS. The corporation shall have the power, to the extent and in the manner permitted by the Code, to indemnify each of its employees and agents

(other than directors and officers) against expenses (as defined in Section 317(a) of the Code), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding (as defined in Section 317(a) of the Code), arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Article XVI, an "employee" or "agent" of the corporation (other than a director or officer) includes any person (i) who is or was an employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

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

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

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

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

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

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

**APPLE COMPUTER, INC.  
EMPLOYEE STOCK PURCHASE PLAN  
(AS AMENDED THROUGH 10/6/99)**

The following constitute the provisions of the Employee Stock Purchase Plan (herein called the "Plan") of Apple Computer, Inc. (herein called the "Company").

1. **PURPOSE.** The purpose of the Plan is to provide employees of the Company and its subsidiaries with an opportunity to purchase Common Stock of the Company through payroll deductions. It is the intention of the Company to have the Plan qualify as an "Employee Stock Purchase Plan" under Section 423 of the Internal Revenue Code of 1986. The provisions of the Plan shall, accordingly, be construed so as to extend and limit participation in a manner consistent with the requirements of that section of the Code.

2. **DEFINITIONS.**

(a) "BOARD" shall mean the Board of Directors of the Company.

(b) "COMMON STOCK" shall mean the Common Stock, no par value, of the Company.

(c) "COMPANY" shall mean Apple Computer, Inc., a California corporation.

(d) "COMPENSATION" shall mean all regular straight time earnings, payments for overtime, shift premium, incentive compensation, incentive payments, bonuses and commissions (except to the extent that the exclusion of any such items is specifically directed by the Board or its committee).

(e) "DESIGNATED SUBSIDIARIES" shall mean the Subsidiaries which have been designated by the Board from time to time in its sole discretion as eligible to participate in the Plan.

(f) "EMPLOYEE" shall mean:

(1) any person, including an officer, who is customarily employed for at least twenty (20) hours per week and more than five (5) months in a calendar year by the Company or one of its Designated Subsidiaries.

(2) Notwithstanding subsection (1), a different rule shall apply to an individual during any period (A) he or she receives compensation which is not initially treated by the Company as "wages": for payroll tax purposes, (i.e. payments to such individual are not initially subjected by the Company to income tax, FICA tax, or other withholdings applicable to wages), if (B) he or she is ultimately determined to have been a common law employee of the Company during the period, although initially reported as an independent contractor or treated as employed by a payroll agency for the period in question.

In that case, to the extent Section 423 requires such individual to be treated as retroactively eligible to have participated in the Plan, such individual shall be treated as an "Employee" during an offering period only to the extent that he or she satisfies the criteria set forth in the next sentence as of the start of the offering period. The two criteria are that: (A) the individual must be employed by the Company at least two years and (B) the individual is not a "highly compensated employee" within the meaning of Section 414(q) of the Internal Revenue Code of 1986. For the purpose of computing years of service, all service prior to a break in service shall be ignored to the extent permitted by Section 423. For the purpose of determining an individual's status as a "highly compensated employee", the rules in the Company's Savings and Investment Plan shall apply.

(g) "PLAN" shall mean this Employee Stock Purchase Plan.

(h) "SECTION 16 PERSON" shall mean any person participating in the Plan who has been designated by the Board of Directors as having authority to carry out policy-making functions such that the person is subject to the reporting and short-swing profit regulations of Section 16 of the Securities Exchange Act of 1934.

(i) "SUBSIDIARY" shall mean a corporation, domestic or foreign, of which not less than 50% of the voting shares are held by the Company or a Subsidiary, whether or not such corporation now exists or is hereafter organized or acquired by the Company or a Subsidiary.

(j) "1934 ACT SECTION 16" shall mean Section 16 of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.

### 3. ELIGIBILITY.

(a) Any Employee as defined in Section 2 who shall be employed by the Company or one of its Designated Subsidiaries on the date his or her participation in the Plan is effective shall be eligible to participate in the Plan, subject to the limitations imposed by Section 423(b) of the Internal Revenue Code of 1986, as amended.

(b) Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) if, immediately after the grant, such Employee would own shares and/or hold outstanding options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of shares of the Company or of any Subsidiary of the Company, or (ii) which permits his or her rights to purchase shares under all employee stock purchase plans of the Company and its Subsidiaries to accrue at a rate which exceeds Twenty-Five Thousand Dollars (\$25,000) of the fair market value of the shares (determined at the time such option is granted) for each calendar year in which such stock option is outstanding at any time.

4. OFFERING DATES. The Plan shall be implemented by one offering during each six-month period of the Plan, commencing on or about January 1, 1981 and continuing thereafter until terminated in accordance with Section 19 hereof. The Board



of Directors of the Company shall have the power to change the duration of offering periods with respect to future offerings without shareholder approval if such change is announced at least fifteen (15) days prior to the scheduled beginning of the first offering period to be affected.

## 5. PARTICIPATION.

(a) An eligible Employee may become a participant in the Plan by completing a subscription agreement authorizing payroll deductions on the form provided by the Company and filing it with the Company's payroll office prior to the applicable offering date. Once filed, the subscription agreement shall remain effective for all subsequent offering periods until the participant withdraws from the Plan as provided in Section 10 hereof or files another subscription agreement.

(b) Payroll deductions for a participant shall commence on the first payroll following the commencement offering date and shall continue at the same rate until such time as the participant withdraws from the Plan as provided in Section 10 hereof or another subscription agreement is filed which changes the rate of payroll deductions.

## 6. PAYROLL DEDUCTIONS.

(a) At the time a participant files his or her subscription agreement, he or she shall elect to have payroll deductions made on each payday during subsequent offering periods at a rate not exceeding ten percent (10%) of the Compensation which he or she received on such payday, and the aggregate of such payroll deductions during any offering period shall not exceed ten percent (10%) of his or her aggregate Compensation during said offering period.

(b) All payroll deductions made by a participant shall be credited to his or her account under the Plan. A participant may not make any additional payments into such account.

(c) A participant may discontinue his or her participation in the Plan as provided in Section 10, or may lower, but not increase, the rate of his or her payroll deductions (within the limitations set forth in subsection (a) above) during an offering period by completing and filing with the Company a new authorization for payroll deductions. The change in rate shall be effective within fifteen (15) days following the Company's receipt of the new authorization.

(d) A participant may increase his or her rate of payroll deductions (within the limitations set forth in subsection (a) above) to be effective for the next offering period by completing and filing with the Company a new authorization for payroll deductions at least fifteen (15) days before the beginning of said offering period.

## 7. GRANT OF OPTION.

(a) At the beginning of each six-month offering period, each eligible Employee participating in the Plan shall be granted an option to purchase (at the per

share option price) up to a number of shares of the Company's Common Stock determined by dividing the Employee's accumulated payroll deductions (not to exceed an amount equal to ten percent (10%) of his or her Compensation during the applicable offering period) by the lower of (i) eighty-five percent (85%) of the fair market value of a share of the Company's Common Stock on the date of the commencement of said offering period, or (ii) eighty-five percent (85%) of the fair market value of a share of the Company's Common Stock on the date of the expiration of the offering period, subject to the limitations set forth in Sections 3(b) and 12 hereof, and subject to the following limitation: The number of shares of the Company's Common Stock subject to any option granted to an Employee pursuant to this Plan shall not exceed two hundred percent (200%) of the number of shares of the Company's Common Stock determined by dividing an amount equal to ten percent (10%) of the Employee's semi-annual Compensation as of the date of the commencement of the applicable offering period by eighty-five percent (85%) of the fair market value of a share of the Company's Common Stock on the date of the commencement of said offering period. Fair market value of a share of the Company's Common Stock shall be determined as provided in Section 7(b) herein.

(b) The option price per share of such shares shall be the lower of: (i) 85% of the fair market value of a share of the Common Stock of the Company at the commencement of the six-month offering period; or (ii) 85% of the fair market value of a share of the Common Stock of the Company at the time the option is exercised at the termination of the six-month offering period. The fair market value of the Company's Common Stock on a given date shall be the mean of the reported bid and asked prices for that date, or if the Common Stock is listed on an exchange or quoted on the Nasdaq National Market, the closing sale price on such exchange or quotation system for that date.

8. EXERCISE OF OPTION. Unless a participant withdraws from the Plan as provided in Section 10, his or her option for the purchase of shares will be exercised automatically at the end of the offering period, and the maximum number of full shares subject to option will be purchased for him or her at the applicable option price with the accumulated payroll deductions in his or her account. During his or her lifetime, a participant's option to purchase shares hereunder is exercisable only by him or her.

#### 9. DELIVERY; ROLL-OVER OF FRACTIONAL SHARE INTERESTS.

As promptly as practicable after the termination of each offering, the Company shall arrange for the delivery to each participant, as appropriate, of a certificate representing the number of full shares purchased upon exercise of his or her option. No fractional shares shall be issued. Any cash remaining to the credit of a participant's account under the Plan after a purchase by him or her of shares at the termination of each offering period which is insufficient to purchase a full share of Common Stock of the Company subject to option shall remain in such participant's account and shall be applied to the next succeeding offering period unless the participant has withdrawn as to future offering periods, in which case such cash shall be returned to said participant. Any cash attributable to shares in excess of the number of shares subject to option to the participant (as determined in accordance with Section 7(a) hereof) shall be returned to the participant.

#### 10. WITHDRAWAL; TERMINATION OF EMPLOYMENT.

(a) A participant may withdraw all but not less than all the payroll deductions credited to his or her account under the Plan at any time prior to the end of the offering period by giving written notice to the Company. All of the participant's payroll deductions credited to his or her account will be paid to him or her promptly after receipt of his or her notice of withdrawal and his or her option for the current period will be automatically terminated, and no further payroll deductions for the purchase of shares will be made during the offering period.

(b) Upon termination of the participant's employment prior to the end of the offering period for any reason, including retirement or death, the payroll deductions credited to his or her account will be returned to him or her or, in the case of his or her death, to the person or persons entitled thereto under Section 14, and his or her option will be automatically terminated.

(c) In the event an Employee fails to remain in the continuous employ of the Company or one of its Designated Subsidiaries for at least twenty (20) hours per week during the offering period in which the employee is a participant, he or she will be deemed to have elected to withdraw from the Plan and the payroll deductions credited to his or her account will be returned to him or her and his or her option terminated.

(d) Except as provided in Section 3(a) with respect to Section 16 Persons, a participant's withdrawal from an offering will not have any effect upon his or her eligibility to participate in a succeeding offering or in any similar plan which may hereafter be adopted by the Company. However, a new subscription agreement will have to be filed in such case.

11. NO INTEREST. No interest shall accrue on the payroll deductions of a participant in the Plan.

#### 12. STOCK.

(a) The maximum number of shares of the Company's Common Stock which shall be made available for sale under the Plan shall be fifteen million (15,000,000) shares, subject to adjustment upon changes in capitalization of the Company as provided in Section 18. The shares to be sold to participants under the Plan may, at the election of the Company, be either treasury shares or shares authorized but unissued. If at the termination of any offering period the total number of shares which would otherwise be subject to options granted pursuant to Section 7(a) hereof exceeds the number of shares then available under the Plan (after deduction of all shares for which options have been exercised or are then outstanding), the Company shall promptly notify the participants, and shall, in its sole discretion (i) make a pro rata allocation of the shares remaining available for option grant in as uniform a manner as shall be practicable and as it shall determine to be equitable, (ii) terminate the offering period without issuance of any shares or (iii) obtain shareholder approval of an increase in the number of shares authorized under the Plan such that all options could be

exercised in full. The Company may delay determining which of (i), (ii) or (iii) above it shall decide to effect, and may accordingly delay issuances of any shares under the Plan, for such time as is necessary to attempt to obtain shareholder approval of any increase in shares authorized under the Plan. The Company shall promptly notify participants of its determination to effect (i), (ii) or (iii) above upon making such decision. A participant may withdraw all but not less than all the payroll deductions credited to his or her account under the Plan at any time prior to such notification from the Company. In the event the Company determines to effect (i) or (ii) above, it shall promptly upon such determination return to each participant all payroll deductions not applied towards the purchase of shares.

(b) The participant will have no interest or voting right in shares covered by his or her option until such option has been exercised.

(c) Shares to be delivered to a participant under the Plan will be registered in the name of the participant or in the name of the participant and the spouse of the participant.

13. ADMINISTRATION. The Plan shall be administered by a committee of members of the Board of Directors, which committee shall be appointed by the Board. The administration, interpretation or application of the Plan by such committee shall be final, conclusive and binding upon all participants. Members of the committee shall not be permitted to participate in the Plan.

#### 14. DESIGNATION OF BENEFICIARY.

(a) A participant may indicate in his or her subscription agreement, or may file a written designation of beneficiary with respect to, a person who is to receive any shares and cash, if any, from the participant's account under the Plan in the event of such participant's death subsequent to the end of the offering period but prior to delivery to him or her of such shares and cash. In addition, a participant may file a written designation of a beneficiary who is to receive any cash from the participant's account under the Plan in the event of such participant's death prior to the end of the offering period.

(b) Such designation of beneficiary may be changed by the participant at any time by written notice. In the event of the death of a participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

15. TRANSFERABILITY. Neither payroll deductions credited to a participant's account nor any rights with regard to the exercise of an option or to receive shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in

Section 14 hereof) by the participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw funds in accordance with Section 10.

16. USE OF FUNDS. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions.

17. REPORTS. Individual accounts will be maintained for each participant in the Plan. Statements of account will be given to participating Employees semi-annually within a reasonable period of time following the stock purchase date, which statements will set forth the amounts of payroll deductions, the per share purchase price, the number of shares purchased, the amount of cash rolled over into the next offering period and the remaining cash balance, if any.

18. ADJUSTMENTS UPON CHANGES IN CAPITALIZATION. Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each option under the Plan which has not yet been exercised and the number of shares of Common Stock which have been authorized for issuance under the Plan but have not yet been placed under option (collectively, the "Reserves"), as well as the price per share of Common Stock covered by each option under the Plan which has not yet been exercised, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split or the payment of a stock dividend (but only on the Common Stock) or any other increase or decrease in the number of shares of Common Stock 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 Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issue by the Company of shares of stock of any class, or securities convertible into or exercisable for 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 of Common Stock subject to an Option.

The Board may, if it so determines in the exercise of its sole discretion, also make provision for adjusting the Reserves, as well as the price per share of Common Stock covered by each outstanding option under the Plan, in the event that the Company effects one or more reorganizations, recapitalizations, rights offerings or other increases or reductions of shares of its outstanding Common Stock, and in the event of the Company being consolidated with or merged into any other corporation.

19. AMENDMENT AND TERMINATION OF THE PLAN.

(a) AMENDMENT AND TERMINATION. The Board may at any time amend, alter, suspend or discontinue the Plan, but no amendment, alteration, suspension or discontinuation shall be made which would impair the rights of any participant under any option theretofore granted without his or her consent.

(b) SHAREHOLDER APPROVAL. The Company shall obtain shareholder

approval of any Plan amendment to the extent necessary and desirable to comply with Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended, or with Section 423 of the Internal Revenue Code of 1986, as amended (or any successor statute or rule or other applicable law, rule or regulation), such shareholder approval to be obtained in such a manner and to such a degree as is required by the applicable law, rule or regulation.

(c) EFFECT OF AMENDMENT OR TERMINATION. Any such amendment or termination of the Plan shall not affect options already granted hereunder and such options shall remain in full force and effect as if this Plan had not been amended or terminated.

20. NOTICES. All notices or other communications by a participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof. All notices or other communications to a participant by the Company shall be deemed to have been duly given when sent by the Company by regular mail to the address of the participant on the human resources records of the Company or when posted on AppleLink or any substitute general electronic messaging and bulletin board system utilized by the Company.

21. CONDITIONS UPON ISSUANCE OF SHARES. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, and the requirements of any stock exchange or automated 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, the Company may require the person exercising such option 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 applicable provisions of law.

**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.



**APPLE COMPUTER, INC. 1998  
EXECUTIVE OFFICER STOCK PLAN  
(AS AMENDED THROUGH 10/06/99)**

1. PURPOSES OF THE PLAN. The purposes of this Stock Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility;
- to provide additional incentive to the Chairman and/or Executive Officers and other key employees; and
- to promote the success of the Company's business.

Options granted under the Plan may be Incentive Stock Options (as defined under Section 422 of the Code) or Nonstatutory Stock Options, as determined by the Administrator at the time of grant. Stock appreciation rights ("SARs") may be granted under the Plan in connection with Options or independently of Options. Stock Purchase Rights may also be granted under the Plan.

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

- (a) "ADMINISTRATOR" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.
- (b) "AGREEMENT" means an agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option, SAR or Stock Purchase Right grant. The Agreement is subject to the terms and conditions of the Plan.
- (c) "APPLICABLE LAWS" means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Options, SARs or Stock Purchase Rights are, or will be, granted under the Plan.
- (d) "BOARD" means the Board of Directors of the Company.
- (e) "CHAIRMAN" means the Chairman of the Board.
- (f) "CODE" means the Internal Revenue Code of 1986, as amended.
- (g) "COMMITTEE" means a committee of Directors appointed by the Board in accordance with Section 4 of the Plan.
- (h) "COMMON STOCK" means the common stock of the Company.
- (i) "COMPANY" means Apple Computer, Inc., a California corporation.
- (j) "CONTINUOUS STATUS AS CHAIRMAN" unless determined otherwise by the Administrator, means the absence of any interruption or termination as

Chairman of the Board with the Company. Continuous Status as Chairman shall not be considered interrupted in the case of 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 as Chairman with the Company. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute status as "Chairman" by the Company.

(k) "CONTINUOUS STATUS AS AN EMPLOYEE" means the absence of any interruption or termination of the employment relationship with the Company or any Subsidiary. 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, 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, or its successor; For purposes of Incentive Stock Options, no such leave may exceed ninety days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 91st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option. Neither service as a Chairman nor as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

(l) "DIRECTOR" means a member of the Board.

(m) "EMPLOYEE" means any person employed by the Company or any Parent or Subsidiary of the Company subject to (k) above.

(n) "EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended.

(o) "EXECUTIVE OFFICER" means any person who is an officer of the

Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(p) "FAIR MARKET VALUE" means, as of any date, 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 Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, 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 exchange or system, on 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 by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid 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, as reported in THE WALL STREET JOURNAL or such other source as the

Administrator deems reliable; or

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

(q) "INCENTIVE STOCK OPTION" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder and is expressly designated by the Administrator at the time of grant as an incentive stock option.

(r) "NONSTATUTORY STOCK OPTION" means an Option not intended to qualify as an Incentive Stock Option.

(s) "OPTION" means a stock option granted pursuant to the Plan.

(t) "OPTIONED STOCK" means the Common Stock subject to an Option, SAR or Stock Purchase Right.

(u) "OPTIONEE" means the holder of an outstanding Option, SAR or Stock Purchase Right.

(v) "PARENT" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(w) "PLAN" means this 1998 Executive Officer Stock Plan.

(x) "RESTRICTED STOCK" means shares of Common Stock acquired pursuant to a grant of Stock Purchase Rights under Section 12 of the Plan.

(y) "RULE 16b-3" means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(z) "SAR" means a stock appreciation right granted pursuant to Section 10 below.

(aa) "SECTION 16(b)" means Section 16(b) of the Exchange Act.

(bb) "SHARE" means a share of the Common Stock, as adjusted in accordance with Section 15 of the Plan.

(cc) "STOCK PURCHASE RIGHT" means the right to purchase Common Stock pursuant to Section 12 of the Plan, as evidenced by an Agreement.

(dd) "SUBSIDIARY" means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. STOCK SUBJECT TO THE PLAN. Subject to the provisions of Section 15 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan or for which SARs or Stock Purchase Rights may be granted and exercised is 17,000,000 Shares. 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.

If an Option, SAR or Stock Purchase Right issued under the Plan should expire or become unexercisable for any reason without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for other Options, SARs or Stock Purchase Rights under this Plan (unless the

Plan has terminated); however, should the Company reacquire Shares which were issued pursuant to the exercise of an Option or SAR, such Shares shall not become available for future grant under the Plan. If Shares of Restricted Stock are repurchased by the Company at their original purchase price, such shares shall become available for future grant under the Plan.

#### 4. ADMINISTRATION OF THE PLAN.

##### (a) PROCEDURE.

(i) **MULTIPLE ADMINISTRATIVE BODIES.** If permitted by Rule 16b-3 promulgated under the Exchange Act or any successor rule thereto, as in effect at the time that discretion is being exercised with respect to the Plan, and by the legal requirements of the Applicable Laws relating to the administration of stock plans such as the Plan, if any, the Plan may (but need not) be administered by different administrative bodies with respect to (A) Directors who are not Employees, (B) Directors who are Employees, (C) Officers who are not Directors and (D) Employees who are neither Directors nor Officers.

(ii) **SECTION 162(m).** To the extent that the Administrator determines it to be desirable to qualify Options or SARs granted hereunder as "performance-based compensation" within the meaning of Section 162(m) of the Code, the Plan shall be administered by a Committee of two or more "outside directors" within the meaning of Section 162(m) of the Code.

(iii) **RULE 16b-3.** To the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder shall be structured to satisfy the requirements for exemption under Rule 16b-3.

(iv) **OTHER ADMINISTRATION.** Other than as provided above, the Plan shall be administered by (A) the Board or (B) a Committee, which committee shall be constituted to satisfy Applicable Laws.

(b) **POWERS OF THE ADMINISTRATOR.** Subject to the provisions of the Plan, and in the case of a 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;

(ii) to select the person(s) to whom Options, SARs and Stock Purchase Rights may be granted hereunder;

(iii) to determine the number of shares of Common Stock to be covered by each Option, SAR or Stock Purchase Right granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Option, SAR or Stock Purchase Right granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the date of grant, the time or times when Options, SARs or Stock Purchase Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option, SAR or Stock Purchase Right or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole

discretion, shall determine;

(vi) to reduce the exercise price of any Option, SAR or Stock Purchase Right to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option, SAR or Stock Purchase Right shall have declined since the date the Option, SAR or Stock Purchase Right was granted;

(vii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;

(viii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(ix) to modify or amend each Option, SAR or Stock Purchase Right (subject to Section 17(c) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;

(x) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option, SAR or Stock Purchase Right that number of Shares having a Fair Market Value equal to the amount required to be withheld. 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. All elections by an Optionee to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

(xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option, SAR or Stock Purchase Right previously granted by the Administrator; and

(xii) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) EFFECT OF ADMINISTRATOR'S DECISION. The Administrator's decisions, determinations and interpretations shall be final and binding on all Optionees and any other holders of Options, SARs or Stock Purchase Rights.

5. ELIGIBILITY. Nonstatutory Stock Options, SARs and Stock Purchase Rights may be granted to the Chairman, Executive Officers and other key employees or to such other individuals as determined by the Administrator whom the Company has offered a position of Chairman or Executive Officer. Incentive Stock Options may be granted only to Executive Officers and other key employees.

## 6. LIMITATIONS.

(a) Each Option shall be designated in the Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds \$100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(b) Neither the Plan nor any Option, SAR or Stock Purchase Right shall confer upon an Optionee any right with respect to continuing the Optionee's relationship as an Employee with or Chairman of the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such relationship at any time, with or without cause.

(c) The following limitations shall apply to grants of Options and SARs:

(i) No participant shall be granted, in any fiscal year of the Company, Options or SARs to purchase more than 17,000,000 Shares;

(ii) The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 15;

(iii) If an Option or SAR is canceled in the same fiscal year of the Company in which it was granted (other than in connection with a transaction described in Section 15), the canceled Option will be counted against the limits set forth in subsections (i) above. For this purpose, if the exercise price of an Option or SAR is reduced, the transaction will be treated as a cancellation of the Option or SAR and the grant of a new Option or SAR.

7. TERM OF PLAN. Subject to Section 21 of the Plan, the Plan shall become effective upon its adoption by the Board. It shall continue in effect for a term of ten (10) years unless terminated earlier under Section 16 of the Plan.

8. TERM OF OPTION. The term of each Option shall be stated in the Agreement. In the case of an Incentive Stock Option, the term shall be ten (10) years from the date of grant or such shorter term as may be provided in the Agreement. Moreover, in the case of an Incentive Stock Option granted to an Optionee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the total combined voting power of

all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Agreement.

#### 9. OPTION EXERCISE PRICE AND CONSIDERATION.

(a) **EXERCISE PRICE.** The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, subject to the following:

(i) In the case of an Incentive Stock Option;

(A) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any Employee other than an Employee described in paragraph (A) immediately above, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant;

(ii) In the case of a Nonstatutory Stock Option, the per Share exercise price shall be determined by the Administrator. In the case of a Nonstatutory Stock Option intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant;

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price of less than 100% of the Fair Market Value per Share on the date of grant as determined by the Administrator or pursuant to a merger or other corporate transaction.

(b) **WAITING PERIOD AND EXERCISE DATES.** At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised.

(c) **FORM OF CONSIDERATION.** The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall

determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of:

- (i) cash;
- (ii) check;
- (iii) promissory note;
- (iv) other Shares which (A) in the case of Shares acquired upon exercise of an option, have been owned by the Optionee for more than six months on the date of surrender, and (B) 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) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan;
- (vi) a reduction in the amount of any Company liability to the Optionee, including any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;
- (vii) any combination of the foregoing methods of payment; or
- (viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

#### 10. 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 a SAR; provided, however, that such limit shall not restrict the exercisability of the related Option;
- (ii) When a SAR is exercised, the related Option, to the extent surrendered, shall no longer be exercisable;
- (iii) A 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; and
- (iv) A 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 a SAR; and

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

(c) FORM OF PAYMENT. The Company's obligation arising upon the exercise of a 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 a SAR shall be valued at their Fair Market Value as of the date of exercise.

(d) RULE 16b-3. SARs granted hereunder shall contain such additional restrictions as may be required to be contained in the Plan or Agreement in order for the SAR to qualify for the maximum exemption provided by Rule 16b-3.

## 11. EXERCISE OF OPTION OR SAR.

(a) PROCEDURE FOR EXERCISE; RIGHTS AS A SHAREHOLDER. Any Option or SAR granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Agreement. An Option may not be exercised for a fraction of a Share.

An Option or SAR shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the terms of the Option or SAR) from the person entitled to exercise the Option or SAR, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), 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. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 15 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised. Exercise of a SAR in any manner shall, to the extent the SAR is exercised, result in a decrease in the number of Shares which thereafter shall be available for purposes of the Plan, and the SAR shall cease to be exercisable to the extent it has been exercised.

(b) TERMINATION OF CONTINUOUS STATUS AS CHAIRMAN. Upon termination of an Optionee's Continuous Status as Chairman (other than termination by reason of the Optionee's death), the Optionee may, but only within ninety (90) 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) **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 (90) 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.

(d) **DEATH OF OPTIONEE.** If an Optionee dies (i) while an Employee or Chairman, 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 (90) days after the termination of Continuous Status as an Employee or Chairman, 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 or SAR by bequest or inheritance, but only to the extent of the right to exercise that had accrued at the date of termination. If the Option or SAR is not so exercised within the time specified herein, the Option or SAR shall terminate, and the Shares covered by such Option or SAR shall revert to the Plan.

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.

(e) **BUYOUT PROVISIONS.** The Administrator may at any time offer to buy out for a payment in cash or Shares an Option or SAR previously granted based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

## 12. STOCK PURCHASE RIGHTS.

(a) **RIGHTS TO PURCHASE.** Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the Optionee in writing or electronically, of the terms, conditions and restrictions related to the offer, including the number of Shares that the Optionee shall be entitled to purchase, the price to be paid, and the time within which the Optionee must accept such offer. The offer shall be accepted by execution of an Agreement in the form determined by the Administrator.

(b) **REPURCHASE OPTION.** Unless the Administrator determines otherwise, the Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's service with the Company for any reason (including death or Disability). The purchase price for Shares repurchased pursuant to the Agreement shall be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at a rate

determined by the Administrator.

(c) OTHER PROVISIONS. The Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(d) RIGHTS AS A SHAREHOLDER. Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a shareholder, and shall be a shareholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 15 of the Plan.

13. TRANSFERABILITY OF OPTIONS, SARS AND STOCK PURCHASE RIGHTS. Unless determined otherwise by the Administrator, an Option, SAR or Stock Purchase Right 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 1 of the Employee Retirement Income Security Act, and may be exercised, during the lifetime of the Optionee, only by the Optionee. If the Administrator makes an Option, SAR or Stock Purchase Right transferable, such Option, SAR or Stock Purchase Right shall contain such additional terms and conditions as the Administrator deems appropriate.

14. STOCK WITHHOLDING TO SATISFY WITHHOLDING TAX OBLIGATIONS. When an Optionee incurs tax liability in connection with the exercise of an Option, SAR or Stock Purchase Right, 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 or Stock Purchase Right, 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.

In the event the election to have Shares withheld is made by an Optionee and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, the Optionee shall receive the full number of Shares with respect to which the Option, SAR or Stock Purchase Right is exercised but such Optionee shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

## 15. ADJUSTMENTS UPON CHANGES IN CAPITALIZATION, DISSOLUTION, MERGER OR ASSET SALE.

(a) **CHANGES IN CAPITALIZATION.** Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option, SAR or Stock Purchase Right, and the number of shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options, SARs or Stock Purchase Rights have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, SAR or Stock Purchase Right, as well as the price per share of Common Stock covered by each such outstanding Option, SAR or Stock Purchase Right, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock 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 number of issued shares of Common Stock 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 Board, 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 of Common Stock subject to an Option, SAR or Stock Purchase Right.

(b) **DISSOLUTION OR LIQUIDATION.** In the event of the proposed dissolution or liquidation of the Company, all outstanding Options, SARs and Stock Purchase Rights 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, SAR or Stock Purchase Right shall terminate as of a date fixed by the Administrator and give each Optionee the right to exercise his or her Option, SAR or Stock Purchase Right as to all or any part of the Optioned Stock, including Shares as to which the Option, SAR or Stock Purchase Right would not otherwise be exercisable.

(c) **MERGER OR ASSET SALE.** Unless otherwise determined by the Administrator, in the event of a merger of the Company with or into another corporation, or the sale of substantially all of the assets of the Company, each outstanding Option, SAR and Stock Purchase Right shall be assumed or an equivalent option or right substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the Option, SAR or Stock Purchase Right, the Optionee shall fully vest in and have the right to exercise the Option, SAR or Stock Purchase Right as to all of the Optioned Stock, including Shares as to which it would not otherwise be vested or exercisable. If an Option, SAR or Stock Purchase Right becomes fully vested and exercisable in lieu of assumption or substitution in the event of a merger or sale of assets, the Administrator shall notify the Optionee in writing or electronically that the Option, SAR or Stock Purchase Right shall be fully vested and exercisable for a period of thirty (30) days from the date of such notice, and the Option, SAR or Stock Purchase Right shall terminate upon the expiration of such period. For the purposes of this paragraph, the Option, SAR or Stock Purchase Right shall be considered assumed if, following the merger or sale of assets, the option or right confers the right to purchase or receive, for each Share of Optioned Stock subject to the Option, SAR or Stock Purchase Right immediately prior to the merger or sale of assets, the consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock for each Share held on the effective date of the transaction (and if 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 merger or sale of assets is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option, SAR or Stock Purchase Right, for each Share of Optioned Stock subject to the Option, SAR or Stock Purchase Right, 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 merger or sale of assets.

(d) **CHANGE IN CONTROL.** In the event of a "Change in Control" of the Company, as defined in paragraph (e) below, 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, SARs and Stock Purchase Rights 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, SARs and Stock Purchase Rights shall, unless otherwise determined by the Administrator at or after grant, be cashed-out. The amount at which such Options, SARs and Stock Purchase Rights 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, SAR or Stock Purchase Right. 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, SAR or Stock Purchase Right by bequest or inheritance.

(e) **DEFINITION OF "CHANGE IN CONTROL".** For purposes of this Section 15, 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 15, "Change in Control Price" shall be, as determined by the Administrator, (i) the highest Fair Market Value at any time within the 60-day period immediately preceding the date of determination of the Change in Control Price by the Administrator (the "60-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 60-Day Period.

**16. DATE OF GRANT.** The date of grant of an Option, SAR or Stock Purchase Right shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, SAR or Stock Purchase Right, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of

such grant.

#### 17. AMENDMENT AND TERMINATION OF THE PLAN.

(a) AMENDMENT AND TERMINATION. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) SHAREHOLDER APPROVAL. The Company shall obtain shareholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) EFFECT OF AMENDMENT OR TERMINATION. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options, SARs or Stock Purchase Rights granted under the Plan prior to the date of such termination.

#### 18. CONDITIONS UPON ISSUANCE OF SHARES.

(a) LEGAL COMPLIANCE. Shares shall not be issued pursuant to the exercise of an Option, SAR or Stock Purchase Right unless the exercise of such Option, SAR or Stock Purchase Right and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) INVESTMENT REPRESENTATIONS. As a condition to the exercise of an Option, SAR or Stock Purchase Right, the Company may require the person exercising such Option, SAR or Stock Purchase Right 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.

19. INABILITY TO OBTAIN AUTHORITY. The 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 failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

20. 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.

21. SHAREHOLDER APPROVAL. The Plan shall be subject to approval by the shareholders of the Company within twelve (12) months after the date the Plan is adopted. Such shareholder approval shall be obtained in the manner and to the degree required under Applicable Laws.

**EXHIBIT 21**

**SUBSIDIARIES OF  
APPLE COMPUTER, INC\***

NAME	JURISDICTION OF INCORPORATION
----	-----
Apple Computer, Inc. Limited.....	Ireland
Apple Computer Limited.....	Ireland
Apple Computer International.....	Ireland
Apple Japan, LLC.....	Japan
Apple Computer B.V.....	Netherlands
Apple Computer (UK) Ltd.....	United Kingdom
A C Real Properties, Inc.....	United States

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\* Pursuant to Item 601(b)(21)(ii) of Regulation S-K, the names of other subsidiaries of Apple Computer, Inc. are omitted because, considered in the aggregate, they would not constitute a significant subsidiary as of the end of the year covered by this report.

**EXHIBIT 23.1**

**CONSENT OF INDEPENDENT AUDITORS**

The Board of Directors  
Apple Computer, Inc.

We consent to incorporation by reference in the registration statements (Nos. 2-70449, 2-77563, 2-85095, 33-00866, 33-23650, 33-31075, 33-40877, 33-47596, 33-57092, 33-57080, 33-53873, 33-53879, 33-53895, 33-60279, 33-60281, 333-07437, 333-23719, 333-23725, 333-60455 and 333-82603) on Forms S-8 and registration statements (No. 33-23317, 33-29578, 33-62310, 333-10961 and 333-28191) on Forms S-3 and (Nos. 333-10961 and 333-28191) on Forms S-3/A 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 21, 1999*



**ARTICLE 5**

MULTIPLIER: 1,000,000

PERIOD TYPE	YEAR
FISCAL YEAR END	SEP 25 1999
PERIOD END	SEP 25 1999
CASH	1,326
SECURITIES	1,900
RECEIVABLES	749
ALLOWANCES	68
INVENTORY	20
CURRENT ASSETS	4,285
PP&E	729
DEPRECIATION	411
TOTAL ASSETS	5,161
CURRENT LIABILITIES	1,549
BONDS	300
PREFERRED MANDATORY	150
PREFERRED	0
COMMON	1,349
OTHER SE	106
TOTAL LIABILITY AND EQUITY	5,161
SALES	6,134
TOTAL REVENUES	6,134
CGS	4,438
TOTAL COSTS	4,438
OTHER EXPENSES	1,337
LOSS PROVISION	0
INTEREST EXPENSE	47
INCOME PRETAX	676
INCOME TAX	75
INCOME CONTINUING	601
DISCONTINUED	0
EXTRAORDINARY	0
CHANGES	0
NET INCOME	601
EPS BASIC	4.20
EPS DILUTED	3.61

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