COPY

PREFERRED STOCK PURCHASE AGREEMENT

Dated as of August 5, 1997

Between

Apple Computer, Inc.

and

Microsoft Corporation

CONFIDENTIAL
UNDER TEX. BUS. & COM.
CODE SS 15.10(i)(5)

TABLE OF CONTENTS

Page

SECTION 1 - Agreement to Purchase and Sell Preferred Stock 1

1.1 Agreement to Purchase and Sell Preferred Stock 1
1.2 Per Share Purchase and Conversion Prices 1

SECTION 2 - Closing Date; Delivery 2

2.1 Closing Date 2
2.2 Delivery 2

SECTION 3 - Representations and Warranties of the Company 2

3.1 Organization 3
3.2 Authorization 3
3.3 No Conflict 3
3.4 SEC Documents 3
3.5 Absence of Certain Changes or Events 4
3.6 Governmental Consent, etc. 4
3.7 Litigation 4

SECTION 4 - Representations and Warranties of the Purchaser 4

4.1 Organization 5
4.2 Authority 5
4.3 Investment 5
4.4 Disclosure of Information 5
4.5 Investment Experience 5
4.6 Accredited Investor Status 5
4.7 Restricted Securities 5

SECTION 5 - Conditions to Obligation of the Purchaser 6

5.1 Representations and Warranties 6
5.2 Covenants 6
5.3 No Order Pending 6
5.4 No Law Prohibiting or Restricting Sale of the Shares 6
5.5 Registration Rights Agreement 6
5.6 Patent Cross License Agreement and Technology Agreement 6

SECTION 6 - Conditions to Obligation of the Company 7

CONFIDENTIAL
UNDER TEX. BUS. & COM.
CODE SS 15.10(i)(5)

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6.1 Representations and Warranties 7
6.2 Covenants 7
6.3 No Order Pending 7
6.4 No Law Prohibiting or Restricting the Sale of the Shares 7
6.5 The Purchaser 7
6.6 Patent Cross License Agreement and Technology Agreement 7

SECTION 7 - Covenants of the Company 7

7.1 Registration Rights 7

SECTION 8 - Covenants of the Purchaser 7

8.1 Right of First Refusal 8
8.2 Voting 9
8.3 Voting Trust, etc. 10
8.4 Solicitation of Proxies 10
8.5 Acts in Concert with Others 10
8.6 Restrictions on Transfer of Shares 10
8.7 Acquisition of Stock 10

SECTION 9 - Miscellaneous 10

9.1 Certain Definitions 10
9.2 Best Efforts 12
9.3 Governing Law 12
9.4 Survival; Termination of Covenants 12
9.5 Successors and Assigns 12
9.6 Entire Agreement; Amendment 12
9.7 Notices 12
9.8 Brokers 13
9.9 Fees, Costs and Expenses 13
9.10 Severability 13
9.11 Initial Public Announcement 14

CONFIDENTIAL
UNDER TEX. BUS. & COM.
CODE SS 15.10(i)(5)

PREFERRED STOCK PURCHASE AGREEMENT

This PREFERRED STOCK PURCHASE AGREEMENT (this "Agreement") is made as of this 5th day of August, 1997 between Apple Computer, Inc., a California corporation (the "Company"), and Microsoft Corporation, a Washington corporation (the "Purchaser").

RECITALS

WHEREAS, concurrently with this Agreement the Company and the Purchaser are entering into a Patent Cross License Agreement in the form attached hereto as Exhibit A;

WHEREAS, concurrently with this Agreement the Company and the Purchaser are entering into a Technology Agreement in the form attached hereto as Exhibit B; and

WHEREAS, in connection with the Patent Cross License Agreement and the Technology Agreement, the Company desires to sell to the Purchaser, and the Purchaser desires to purchase from the Company, shares of the Company's Series A Non-Voting Convertible Preferred Stock, no par value (the "Preferred Stock") convertible into the Company's Common Stock, no par value (the "Common Stock"), on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1

Agreement to Purchase and Sell Preferred Stock

1.1 Agreement to Purchase and Sell Preferred Stock. Upon the terms and subject to the conditions of this Agreement, the Company hereby agrees to sell to the Purchaser at the Closing (as defined below), and the Purchaser agrees to purchase from the Company at the Closing, $150,000,000 aggregate purchase price of Preferred Stock, no par value, of the Company having the terms and conditions set forth in the Certificate of Determination of Preferences of Series A Non-Voting Convertible Preferred Stock of Apple Computer, Inc. (the "Certificate") substantially in the form attached hereto as Exhibit C (the "Shares") at a price per share (the "Per Share Purchase Price") set forth in Section 1.2 below.

1.2 Per Share Purchase and Conversion Prices. The Per Share Purchase Price shall be $1,000. The initial "Conversion Price" (as defined in the Certificate) shall be $16.50 per share.

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CODE SS 15.10(i)(5)

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CODE SS 15.10(i)(5)

SECTION 2

Closing Date; Delivery

2.1 Closing Date. The Closing of the purchase and sale of the Shares hereunder (the "Closing") shall be held at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California, at 10:00 a.m. (Pacific time), August __, 1997 or at such other time and place as the Company and the Purchaser mutually agree (the date of the Closing being hereinafter referred to as the "Closing Date").

2.2 Delivery. At the Closing, the Company will deliver to the Purchaser a certificate or certificates representing the Shares against payment of the aggregate purchase price of $150,000,000 by wire transfer of immediately available funds to an account designated by the Company. The certificate or certificates representing the Shares and the shares of Common Stock issuable upon conversion of the Shares shall be subject to a legend restricting transfer under the Securities Act of 1933, as amended (the "Securities Act"), and referring to restrictions on transfer herein, such legend to be substantially as follows:

> "The shares represented by this certificate have been acquired for investment and have not been registered under the Securities Act of 1933, as amended. Such shares may not be sold or transferred in the absence of such registration or an opinion of counsel reasonably satisfactory to the Company as to the availability of an exemption from registration.
>
> The shares represented by this certificate are subject to restrictions on transfer, including any sale, pledge or other hypothecation, set forth in an agreement dated as of August 5, 1997 between the Company and Microsoft Corporation, a copy of which agreement may be obtained at no cost by written request made by the holder of record of this certificate to the secretary of the Company at the Company's principal executive offices."

The Company agrees (i) to remove the legend set forth in the second preceding paragraph upon receipt of an opinion of counsel in form and substance reasonably satisfactory to the Company that the Shares or the shares of Common Stock issuable upon conversion of the Shares are eligible for transfer without registration under the Securities Act and (ii) to remove the legend set forth in the immediately preceding paragraph at such time as the Shares (or the shares of Common Stock issuable upon conversion of the Shares) may be transferred in compliance with Section 8 or upon the termination of the covenants of Section 8 as provided for in Section 9.4.

SECTION 3

Representations and Warranties of the Company

The Company hereby represents and warrants to the Purchaser as follows:

3.1 Organization. The Company is a corporation duly organized and validly existing under the laws of the State of California and is in good standing under such laws. The Company has the requisite corporate power to own and operate its properties and assets, and to carry on its business as presently conducted and as proposed to be conducted. The Company is qualified to do business as a foreign corporation in each jurisdiction in which the ownership of its property or the nature of its business requires such qualification, except where the failure to be so qualified would not have a materially adverse effect on the Company and its subsidiaries, taken as a whole.

3.2 Authorization. All corporate action on the part of the Company necessary for the authorization, execution, delivery and performance of this Agreement, the Registration Rights Agreement (attached as Exhibit D hereto), the Patent Cross License Agreement and the Technology Agreement by the Company, the authorization, sale, issuance and delivery of the Shares hereunder, and the performance of the Company's obligations hereunder and under said Agreements has been taken. This Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement constitute legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy as they may apply to Section 4 of the Registration Rights Agreement. Upon their issuance and delivery pursuant to this Agreement, the Shares will be validly issued, fully paid and nonassessable. The issuance and sale of the Shares will not give rise to any preemptive rights or rights of first refusal on behalf of any person in existence on the date hereof.

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CODE SS 15.10(i)(5)

3.3 No Conflict. The execution and delivery of this Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement do not, and the consummation of the transactions contemplated hereby and thereby will not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or to a loss of a material benefit under, any provision of the Articles of Incorporation or By-laws of the Company or any mortgage, indenture, lease or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company, its properties or assets, the effect of which could have a material adverse effect on the Company and its subsidiaries, taken as a whole, or materially impair or restrict the Company's power to perform its obligations as contemplated under said Agreements.

3.4 SEC Documents. The Company has filed all required reports, schedules, forms, statements and other documents with the Securities and Exchange Commission (the "SEC") since December 31, 1995 (the "SEC Documents"). As of their respective dates, the SEC Documents complied in all material respects with requirements of the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as the case may be and the rules and regulations of the SEC promulgated thereunder applicable to such SEC Documents, and none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Except to the extent that information contained in any SEC Document has been revised or superseded by a later filed SEC Document, none of the SEC Documents contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they

were made, not misleading. The financial statements of the Company included in the SEC Documents comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") (except, in the case of unaudited statements as permitted by Form 10Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicted in the notes thereto) and fairly present the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operation and cashflows (or changes in financial position prior to the approval of Financial Accounting Standards Boards Statement of Financial Accounting Standards No. 95) for the periods then ending in accordance with GAAP (subject, in the case of the unaudited statements, to normal year end audit adjustments). Except as set forth in the filed SEC Documents, neither the Company nor any of its subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be set forth on a consolidated balance sheet of the Company and its consolidated subsidiaries or in the notes thereto and which could reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole.

3.5 Absence of Certain Changes or Events. Except as disclosed in the SEC Documents since the date of the most recent audited financial statements included in the SEC Documents, there has not been (i) any declaration, setting aside or payment of any dividend or distribution (whether in cash, stock or property) with respect to any of the Company's capital stock, (ii) any split, combination or reclassification of any of its capital stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, (iii) any damage, destruction or loss of property, whether or not covered by insurance, that has or could reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole, or (iv) any change in accounting methods, principles or practices by the Company materially affecting its assets, liabilities, or business, except insofar as may have been required by a change in GAAP.

3.6 Governmental Consent, etc. No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale or issuance of the Shares, or the consummation of any other transaction contemplated hereby, except such filings as may be required to be made with the SEC and the National Association of Securities Dealers, Inc.

3.7 Litigation. Except as is disclosed in the SEC Documents, there is no suit, action or proceeding pending or affecting the Company or any of its subsidiaries that, individually or in the aggregate, could (i) have a material adverse effect on the Company and its subsidiaries taken as a whole, (ii) impair the ability of the Company to perform its obligations under this Agreement, the Registration Rights Agreement, the Patent Cross License and the Technology Agreement, or (iii) prevent the consummation of any of the transactions contemplated by said Agreements, nor is there any judgment, decree, injunction, rule or order of any governmental entity or arbitrator outstanding against the Company or any of its subsidiaries having, or which, could reasonably be expected to have, any such effect.

SECTION 4

Representations and Warranties of the Purchaser

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CODE SS 15.10(i)(5)

The Purchaser hereby represents and warrants to the Company as follows:

4.1 Organization. The Purchaser is a corporation duly organized and validly existing and in good standing under the laws of the State of Washington, with all requisite corporate power and authority to own, lease and operate its properties and to conduct its business as now being conducted.

4.2 Authority. All corporate action on the part for the Purchaser necessary of the authorization, execution, delivery and performance of this Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement by the Purchaser has been taken. This Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement have been duly executed and delivered by the Purchaser and constitute legal, valid and binding obligations of the Purchaser, enforceable in accordance with their respective terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy as they may apply to Section 4 of the Registration Rights Agreement. The execution and delivery of said Agreements do not, and the consummation of the transactions contemplated hereby and thereby will not, conflict with or result in any violation of any obligation under any provision of the Articles of Incorporation or By-laws of the Purchaser or any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Purchaser.

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UNDER TEX. BUS. & COM.
CODE SS 15.10(i)(5)

4.3 Investment. The Purchaser is acquiring the Shares for investment for its own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distribution thereof. The Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations and warranties contained herein.

4.4 Disclosure of Information. The Purchaser has had full access to all information it considers necessary or appropriate to make an informed investment decision with respect to the Shares to be purchased by the Purchaser under this Agreement. The Purchaser further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Shares and to obtain additional information necessary to verify any information furnished to the Purchaser or to which the Purchaser had access.

4.5 Investment Experience. The Purchaser understands that the purchase of the Shares involves substantial risk. The Purchaser has experience as an investor in securities of companies and acknowledges that it is able to fend for itself, can bear the economic risk of its investment in the Shares and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of this investment in the Shares and protecting its own interests in connection with this investment.

4.6 Accredited Investor Status. The Purchaser is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

4.7 Restricted Securities. The Purchaser understands that the Shares to be purchased by the Purchaser hereunder are characterized as "restricted securities" under the Securities Act inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that

under the Securities Act and applicable regulations thereunder such securities may be resold without registration under the Securities Act only in certain limited circumstances. The Purchaser is familiar with Rule 144 of the SEC, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act. The Purchaser understands that the Company is under no obligation to register any of the Shares sold hereunder except as provided in the Registration Rights Agreement.

SECTION 5

Conditions to Obligation of the Purchaser

The Purchaser's obligation to purchase the Shares at the Closing is, at the option of the Purchaser, which may waive any such conditions, subject to the fulfillment on or prior to the Closing Date of the following conditions:

5.1 Representations and Warranties. Each of the representations and warranties of the Company contained in Section 3 will be true and correct on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made as of the Closing Date. The Purchaser shall have received a certificate signed by an officer of the Company to such effect on the Closing Date.

5.2 Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing Date shall have been performed or complied with in all material respects. The Purchaser shall have received a certificate signed by an officer of the Company to such effect on the Closing Date.

5.3 No Order Pending. There shall not then be in effect any order enjoining or restraining the transactions contemplated by this Agreement.

5.4 No Law Prohibiting or Restricting Sale of the Shares There shall not be in effect any law, rule or regulation prohibiting or restricting the sale of the Shares, or requiring any consent or approval of any Person which shall not have been obtained to issue the Shares with full benefits afforded the Preferred Stock or the Common Stock into which the Preferred Stock is convertible (except as otherwise provided in this Agreement).

5.5 Registration Rights Agreement. The Company shall have executed and delivered the Registration Rights Agreement substantially in the form attached hereto as Exhibit D.

5.6 Patent Cross License Agreement and Technology Agreement. The Company shall have executed and delivered the Patent Cross License Agreement and Technology Agreement substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively.

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CODE SS 15.10(i)(5)

SECTION 6

Conditions to Obligation of the Company

The Company's obligation to sell and issue the Shares at the Closing is, at the option of the Company, which may waive any such conditions, subject to the fulfillment on or prior to the Closing Date of the following conditions:

6.1 Representations and Warranties. The representations and warranties of the Purchaser contained in Section 4 will be true and correct on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made as of the Closing Date. The Company shall have received a certificate signed on behalf of the Purchaser by an officer of the Purchaser to such effect on the Closing Date.

6.2 Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Purchaser on or prior to the Closing Date shall have been performed or complied with in all material respects. The Company shall have received a certificate signed on behalf of the Purchaser by an officer of the Purchaser to such effect on the Closing Date.

6.3 No Order Pending. There shall not then be in effect any order enjoining or restraining the transactions contemplated by this Agreement.

6.4 No Law Prohibiting or Restricting the Sale of the Shares. There shall not be in effect any law, rule or regulation prohibiting or restricting the sale of the Shares, or requiring any consent or approval of any person which shall not have been obtained to issue the Shares with full benefits afforded the Preferred Stock or the Common Stock into which the Preferred Stock is convertible (except as otherwise provided in this Agreement).

6.5 The Purchaser. The Purchaser shall have executed and delivered the Registration Rights Agreement substantially in the form attached hereto as Exhibit D.

6.6 Patent Cross License Agreement and Technology Agreement. The Purchaser shall have executed and delivered the Patent Cross License Agreement and Technology Agreement substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively.

SECTION 7

Covenants of the Company

7.1 Registration Rights. The Company will comply with the provisions regarding registration rights contained in the Registration Rights Agreement attached hereto as Exhibit D.

SECTION 8

Covenants of the Purchaser

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CODE SS 15.10(i)(5)

8.1 Right of First Refusal. Prior to making any sale or transfer of the Shares (other than a sale or transfer registered under the Securities Act or pursuant to Rule 144, or a sale or transfer of that number of Shares representing less than three percent (3%) of the Company's outstanding Common Stock to any person or group), the Purchaser shall give the Company the opportunity to purchase such Shares in the following manner:

(i) The Purchaser shall give notice (the "Transfer Notice") to the Company in writing of such intention specifying the approximate number of the proposed purchasers or transferees, the amount of Shares proposed to be sold or transferred, the proposed price per share therefor (the "Transfer Price") and the other material terms upon which such disposition is proposed to be made.

(ii) The Company shall have the right, exercisable by written notice given by the Company to the Purchaser within five (5) business days after receipt of such Transfer Notice, to purchase all but not part of the Shares specified in such Transfer Notice for cash per share equal to the Transfer Price, provided, within five (5) business days after written notice of exercise by the Company, the Company shall provide the Purchaser with evidence satisfactory to the Purchaser (by written commitment letter subject only to customary representations, diligence and documentation, letter of credit or otherwise) of its ability to finance such repurchase.

(iii) If the Company exercises its right of first refusal hereunder, the closing of the purchase of the Shares with respect to which such right has been exercised shall take place within ten (10) business days after the Company gives notice of such exercise. Upon exercise of its right of first refusal, the Company and the Purchaser shall be legally obligated to consummate the purchase contemplated thereby and shall use their best efforts to secure any approvals required in connection therewith.

(iv) If the Company does not exercise its right of first refusal hereunder within the time specified for such exercise, the Purchaser shall be free, during the period of 90 calendar days following the expiration of such time for exercise, to sell the Shares specified in such Transfer Notice on terms no less favorable to the Purchaser than the terms specified in such Transfer Notice.

(v) Notwithstanding the foregoing, prior to making any sale or exchange of Shares in response to a tender or exchange offer, the Purchaser shall give the Company the opportunity to purchase such Shares in the following manner:

(a) The Purchaser shall give notice (the "Tender Notice") to the Company in writing of such intention no later than 10 calendar days prior to the latest time by which Shares must be tendered in order to be accepted pursuant to such offer or to qualify for any proration applicable to such offer (the "Tender Date"), specifying the amount of Shares proposed to be tendered. For purposes hereof, a tender offer to purchase Shares shall be deemed to be an offer at the price specified therein, without regard to any provisions thereof with respect to proration or conditions to the offeror's obligation to purchase (assuming such conditions are not impossible of performance when the offer is made, without giving effect to the Company's right of first refusal).

(b) If the Tender Notice is given, the Company shall have the right, exercisable by giving notice to the Purchaser at least two business days prior to the Tender Date, to purchase all but not part of the Shares specified in the Tender Notice for cash. If the Company

exercises such right by giving such notice, the closing of the purchase of such Shares shall take place not later than one business day prior to the Tender Date; provided, however, that if the purchase price specified in the tender offer includes any property other than cash, the value of any property included in the purchase price shall be jointly determined by a nationally recognized investment banking firm selected by each party or, in the event such firms are unable to agree, a third nationally recognized investment banking firm to be selected by such two firms. For this purpose:

(x) The parties shall use their best efforts to cause any determination of the value of any securities included in the purchase price to be made within three business days after the date of delivery of the Tender Notice. If the firms selected by the Purchaser and the Company are unable to agree upon the value of any such securities within such three-day period, the firms shall promptly select a third firm whose determination shall be made promptly and shall be conclusive.

(y) The parties shall use their best efforts to cause any determination of the value of property other than securities to be made within four business days after the date of delivery of the Tender Notice. If the firms selected by the Purchaser and the Company are unable to agree upon a value within six business days after the date of delivery of the Tender Notice, the firms shall promptly select a third firm whose determination shall be made promptly and shall be conclusive.

The purchase price to be paid by the Company pursuant to this Section 8.1(v) shall be (A) if such tender offer is consummated, the purchase price that the Purchaser would have received if it had tendered the Shares purchased by the Company and all such Shares had been purchased in such tender offer, including any increases in the price paid by the tender offeror after exercise by the Company of its right of first refusal hereunder, or (B) if such tender offer is not consummated, the highest price offered pursuant thereto, in each case with property, if any, to be valued as aforesaid. Each party shall bear the cost of its own investment banking firm and the parties shall share the cost of any third firm selected hereunder.

(c) If the Company does not exercise such right by giving such notice, then the Purchaser shall be free to accept the tender offer with respect to which the Tender Notice was given.

8.2 Voting. Unless the Company otherwise consents in writing, the Purchaser shall take such action as may be required so that all Shares are voted on all matters to be voted on by holders of Voting Stock (to the extent the Shares are entitled to a vote) in the same proportion as the votes cast by the other holders of Voting Stock with respect to such matters; provided, that the Shares and any other voting securities of the Company owned by the Purchaser may be voted as the Purchaser determines in its sole discretion on any Significant Event (as defined in Section 9.1 below) presented to the holders of Voting Stock for a vote. In the event that the Shares are entitled to vote on a matter submitted to the shareholders of the Company, the Purchaser, as the holder of Shares, shall be present, in person or by proxy, at all meetings of shareholders of the Company so that the Shares may be counted for the purposes of determining the presence of a quorum at such meetings.

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UNDER TEX. BUS. & COM.
CODE SS 15.10(i)(5)

8.3 Voting Trust, etc. The Purchaser shall not deposit any Shares in a voting trust or, except as otherwise provided herein, subject any Shares to any arrangement or agreement with respect to the voting of such Shares.

8.4 Solicitation of Proxies. Without the Company's prior written consent, the Purchaser shall not solicit proxies with respect to any Shares of the Company owned by the Purchaser, nor shall it become a "participant" in any "Election Contest" (as such terms are used in Rule 14a-11 of Regulation 14A under the Exchange Act) relating to the election of directors of the Company. The Purchaser shall exercise its influence on the management, the Board of Directors and policies of the Company in a manner consistent with its shareholding and any business agreements between the Purchaser and the Company.

8.5 Acts in Concert with Others. Except as contemplated herein with regard to permissible sales of the Purchaser's Shares, the Purchaser shall not join a partnership, limited partnership, syndicate or other group, or otherwise act in concert with any Person, for the purpose of acquiring, holding or disposing of Shares of the Company owned by the Purchaser.

8.6 Restrictions on Transfer of Shares. For a period of three years from the date of this Agreement, the Purchaser shall not, directly or indirectly, sell, transfer, pledge or hypothecate any Shares (or shares of Common Stock received upon the conversion of the Shares) owned by it except (i) to the Company or any person or group approved in writing by the Company, or (ii) to a corporation of which the Purchaser owns not less than 50% of the voting power entitled to be cast in the election of directors (a "Controlled Corporation"), so long as such Controlled Corporation agrees to hold such Shares subject to all the provisions of this Agreement, including this Section 8.6, and agrees to transfer such Shares to the Purchaser or another Controlled Corporation of the Purchaser if it ceases to be a Controlled Corporation of the Purchaser. Notwithstanding the foregoing or anything else to the contrary in this Agreement, the Purchaser may enter into bona fide transactions through a nationally recognized investment banking firm which constitute a hedge against changes in the market price of the Common Stock, provided, however, no public disclosure is made with respect to such hedge transactions, except in an initial Schedule 13D, the text of which is reasonably satisfactory to the Company, or if in the opinion of counsel to Purchaser such disclosure is required as a matter of law.

8.7 Acquisition of Stock. The Purchaser shall advise management of the Company as to the Purchaser's general plans to acquire shares of Common Stock, or rights thereto, reasonably in advance of any such acquisitions. All of the Purchaser's purchases of Common Stock shall be in compliance with applicable laws and regulations and the provisions of this Agreement.

SECTION 9

Miscellaneous

9.1 Certain Definitions. As used in this Agreement:

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CODE SS 15.10(i)(5)

(a) The term "Voting Stock" means the Common Stock and any other securities issued by the Company having the ordinary power to vote in the election of directors of the Company (other than securities having such power only upon the happening of a contingency).

(b) The terms "Beneficial Owner," "beneficial Ownership" and "group" shall have the meaning comprehended by Section 13(d)(3) of the Exchange Act and the rules and regulations promulgated thereunder.

(c) The term "Person" shall mean any person, individual, corporation, partnership, trust or other non-governmental entity or any governmental agency, court, authority or other body (whether foreign, federal, state, local or otherwise).

(d) The term "Change of Control" shall mean (i) an acquisition of Voting Stock by a Person or group in a purchase or transaction or series of related purchases or transactions if immediately thereafter such Person or group has Beneficial Ownership of more than fifty percent (50%) of the combined voting power of the Company's then outstanding Voting Stock; (ii) the execution of an agreement providing for a tender offer, merger, consolidation or reorganization, or series of such related transactions involving the Company, unless the stockholders of the Company, immediately after such transaction or transactions are the Beneficial Owners of at least fifty percent (50%) of the Voting Stock; (iii) a change or changes in the membership of the Company's Board of Directors which represent a change of a majority or more of such membership during any twelve month period (unless such change or changes in membership are caused by the actions of the then existing Board of Directors and do not occur within twelve months of the commencement, threat or proposal of an Election Contest, tender offer or other transaction which would constitute a Change of Control under (i) or (ii) of this Section 9.1(d)); or (iv) a sale of all or substantially all of the Company's assets.

(e) The term " Insolvency Proceeding" shall mean (i) an assignment for the benefit of creditors, (ii) the filing by or against Company of a petition to have Company adjudged insolvent, bankrupt or seeking s reorganization or liquidation under any law relating to bankruptcy, insolvency or receivership, (iii) an appointment of a receiver or trustee for all or substantially all of the assets of the Company, (iv) a public admission in writing of the Company's inability to pay its debts as they come due, or (v) the adoption of a plan of liquidation or dissolution by the Board of Directors of the Company.

(f) The term "Significant Event" means (i) any proposed amendment to the Articles of Incorporation or By-laws of the Company (other than a proposal to increase the number of authorized shares of Common Stock or Preferred Stock; provided such increase(s) is (are) not contrary to clause (v) of this Section 9.1 (f)), (ii) a disposition of the Company (by way of merger, disposition of assets or otherwise), (iii) a recapitalization of the Company, (iv) a liquidation of the Company, or (v) any vote pursuant to any provision of law or the Company's Articles of Incorporation or By-laws requiring or permitting shareholders to approve any business combination proposed by or with another Person or its affiliates which have acquired a certain percentage of the Company's shares or to grant voting rights to such Person or to waive or adopt provisions requiring such a vote.

9.2 Best Efforts. Each of the Company and the Purchaser shall use its best efforts to take all actions required under any law, rule or regulation adopted subsequent to the date hereto to ensure that the conditions to the Closing set forth herein are satisfied on or before the Closing Date.

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

9.4 Survival; Termination of Covenants. The representations and warranties in Sections 3 and 4 of this Agreement shall not survive the Closing except for the representations and warranties in Sections 4.3 and 4.7 hereof which shall continue to survive. The covenants of the Company and the Purchaser under Section 7 and Section 8 hereof shall terminate on the fifth anniversary of this Agreement, provided the Purchaser's covenants in Section 8 shall terminate in the event of a Change of Control or Insolvency Proceeding.

9.5 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.6 Entire Agreement; Amendment. This Agreement, the Certificate and the Registration Rights Agreement constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersede all prior agreements and understandings among the parties relating to the subject matter hereof. Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought. The enforceabiltiy and validity of this Agreement, the Patent Cross License Agreement and the Technology Agreement are each to be determined separately and any finding that any one or more of such agreements is invalid or nonenforceable shall have no effect on the vaidity or enforceability of this Agreement.

9.7 Notices. All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of delivery if delivered by hand, (ii) upon the third day after such notice is (a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice:

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

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

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

Larry W. Sonsini

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

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

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

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

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

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9.8 Brokers.

(a) The Company has not engaged, consented to or authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. The Company hereby agrees to indemnify and hold harmless the Purchaser from and against all fees, commissions or other payments owing to any party acting on behalf of the Company hereunder.

(b) The Purchaser has not engaged, consented to or authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. The Purchaser hereby agrees to indemnify and hold harmless the Company from and against all fees, commissions or other payments owing to any party acting on behalf of the Purchaser hereunder.

9.9 Fees, Costs and Expenses. All fees, costs and expenses (including attorneys' fees and expenses) incurred by either party hereto in connection with the preparation, negotiation and execution of this Agreement, the Registration Rights Agreement, the Patent Cross License Agreement and the Technology Agreement and the consummation of the transactions contemplated hereby and thereby, shall be the sole and exclusive responsibility of such party.

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

9.11 Initial Public Announcement. The Company and the Purchaser shall agree on the form and content of the initial public announcement which shall be made concerning this Agreement, the Patent Cross License Agreement and the Technology Agreement and the transactions contemplated hereby and thereby, and neither the Company nor the Purchaser shall make such public announcement without the consent of the other, except as required by law.

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

APPLE COMPUTER, INC.

By: _____

Name: John B. Douglas III

Title: Senior Vice President

MICROSOFT CORPORATION

By: _____

Name: _____

Title: _____

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EXHIBIT C

CERTIFICATE OF DETERMINATION OF

PREFERENCES OF SERIES A NON-VOTING CONVERTIBLE PREFERRED STOCK

OF APPLE COMPUTER, INC.

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

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT

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

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

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

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

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

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

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

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

5. **Conversion.**

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

(b) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock.

6. **Adjustment of Conversion for Dividend and Distributions**.

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

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

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

8. **Fractional Shares**. In lieu of any fractional shares to which the holder of the Series A Preferred Stock would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the closing price of one share of the Corporation's Common Stock on the trading day prior to conversion, if such price is available. If such price is not available, this Corporation shall pay cash for fractional shares equal to such fraction multiplied by the fair market value of one share of Series A Preferred Stock as determined by the Board of Directors of the Corporation. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A

Preferred Stock of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

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

10. No Other Rights, Privileges, etc. Except as specifically set forth herein, the holders of the Series A Preferred Stock shall have no other rights, privileges or preferences with respect to the Series A Preferred Stock.

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

John B. Douglas, III
Senior Vice President

Paul D. Carmichael
Assistant Secretary

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EXHIBIT C

REGISTRATION RIGHTS AGREEMENT

Dated as of August __, 1997

Between

Apple Computer, Inc.

and

Microsoft Corporation

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TABLE OF CONTENTS

		Page
1.	Demand Registration	1
2.	Obligations of the Company	2
3.	Expenses	6
4.	Indemnification	7
	(a) Indemnification by the Company	7
	(b) Indemnification by the Purchaser	7
	(c) Notice of Claims	8
5.	Notices	9
6.	Governing Law	10
7.	Entire Agreement; Amendments	10
8.	Successors and Assigns	10
9.	Severability	10
10.	Termination of Company Obligation	11
11.	No Transfer or Assignment of Registration Rights	11

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CODE SS 15.10(i)(5)

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Apple000279

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "**Agreement**") is entered into as of this ___ day of August, 1997, between Apple Computer, Inc., a California corporation (the "**Company**"), and Microsoft Corporation, a Washington corporation (the "**Purchaser**").

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

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

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

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

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2. Obligations of the Company.

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

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

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

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

(2) The Company shall take such action as may be necessary so that (i) any registration statement and any amendment thereto and any prospectus forming part

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

delivered in connection with such opinions shall include in customary form, without limitation, as of the date of the opinion and as of the effective date of the registration statement or most recent post-effective amendment thereto, as the case may be, the absence from such registration statement and the prospectus included therein, as then amended or supplemented, including the documents incorporated by reference therein, of an untrue statement of a material fact or the omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; (iii) obtain "cold comfort" letters and updates thereof from the independent public accountants of the Company (and, if necessary, any other independent public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the registration statement), addressed to the underwriters in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with primary underwritten offerings; (iv) deliver such documents and certificates as may be reasonably requested by Purchaser and the managing underwriters, and with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company. The foregoing actions set forth in clauses (ii), (iii)and (iv) of this Section 2(c)(13) shall be performed at each closing under any underwritten offering to the extent required thereunder, but, in any event, need not be performed by the Company more than twice.

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

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

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

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

3. Expenses. The Company shall pay all fees and expenses incurred in connection with the performance of its obligations under Sections 1 and 2 hereof, including, without limitation, all SEC and blue sky registration and filing fees, printing expenses, transfer agents'

and registrars' fees, and the reasonable fees and disbursements of the Company's outside counsel and independent accountants incurred in connection with the preparation, filing and amendment of any registration statement authorized by this Agreement (but excluding underwriters' and brokers' discounts and commissions).

4. Indemnification and Contribution.

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

(b) Indemnification by the Purchaser. In the case of each offering registered pursuant to this Agreement, the Purchaser agrees, in the same manner and to the same extent as set forth in Section 4(a) of this Agreement to indemnify and hold harmless the Company and

each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, its directors and those officers of the Company who shall have signed any such registration statement with respect to any statement in or omission from such registration statement or any preliminary prospectus (as amended or as supplemented, if amended or supplemented as aforesaid) or prospectus contained in such registration statement (as amended or as supplemented, if amended or supplemented as aforesaid), if such statement or omission shall have been made in reliance upon and in conformity with information furnished in writing to the Company by the Purchaser specifically for use in connection with the preparation of such registration statement or any preliminary prospectus or prospectus contained in such registration statement or any such amendment thereof or supplement thereto.

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

(d) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Section 4 is for any reason held to be unavailable to the indemnified parties although applicable in accordance with its terms, the Company and

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

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

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

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

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

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

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

with a copy to:

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

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

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

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

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

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

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

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

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

9. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of

the terms, provisions, covenants and restriction of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

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

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

[The balance of this page intentionally left blank.]

CONFIDENTIAL
UNDER TEX. BUS. & COM.
CODE SS 15.10(i)(5)

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

APPLE COMPUTER, INC.

By: _____
Name: _____
Title: _____

MICROSOFT CORPORATION

By: _____
Name: _____
Title: _____

CONFIDENTIAL
UNDER TEX. BUS. & COM.
CODE SS 15.10(i)(5)