

SOFTWARE LICENSE AGREEMENT

TD001-060184



APPLE COMPUTER, INC.
20525 Mariani Avenue M/S 23F
Cupertino, California 95014

RECEIVED

SEP 21 1984

SOFTWARE LICENSING

Developer Al Evans dba PowerTools
Individual to Contact Al Evans
Street Address _____
City Austin State TX Zip Code _____

Apple Computer, Inc. ("Apple") has the right to license the computer Software Programs described in Exhibit B (the "Apple Software"). Developer desires to obtain a license from Apple to distribute Apple Software for use solely in combination with Developer's own computer software programs identified in Exhibit A ("Developer Programs").

A single license agreement may cover all Apple Software and all Developer Programs. The licensing fee paid depends on the number of Developer Programs specified on Exhibit A using the licensed Apple Software.

Apple and Developer agree that the following terms and conditions shall govern the license of the Apple Software to Developer.

1. DEFINITIONS.

"Apple Software" shall mean the computer programs described in Exhibit B to this Agreement. "Developer Programs" shall mean the Developer's product as set forth in Exhibit A.

2. LICENSE.

(a) Apple hereby grants to Developer, and Developer hereby accepts, a nonexclusive, non-transferable worldwide license ("this License") to distribute Apple Software for use only in combination with Developer Programs identified in Exhibit A. Developer may distribute Apple Software in object code form only and only on magnetic diskettes on which the Developer Programs are also recorded. Developer agrees that this License gives no title or rights of ownership in the Apple Software and acknowledges that such Software is proprietary to Apple.

(b) This license shall be understood and interpreted as an aid to Developer and shall not be construed to permit customers of Developer to make copies of the Apple Software onto another diskette (except for archive purposes) or into memory unless as part of the execution of Developer's Programs described in Exhibit A. When Developer's Programs have completed execution, the copies of Apple Software shall not be used by any other program. Developer shall not distribute Apple Software separately or in combination with computer Software programs other than Developer Programs.

3. EFFECTIVE DATE; TERM.

The effective date of this License Agreement shall be the date of Apple's execution of this License. The term of this License shall be one year from the effective date. The License shall be renewed for consecutive one year periods unless either party gives written notice to the contrary at least thirty (30) days prior to the beginning of such year. The foregoing shall not affect Apple's right to terminate the License sooner for cause as provided in Paragraph 13.

4. DELIVERY OF THE SOFTWARE.

Where noted on Exhibit B, a master copy of the machine-readable object code for the Software shall be delivered by Apple to Developer upon the execution of this Agreement.

5. CONSIDERATION.

Developer shall pay Apple on the effective date of this License and on each anniversary of the effective date the amount set forth in Exhibit B. If Apple so requests in writing, Developer shall provide Apple with an archive copy of Developer Program(s), for the sole purpose of monitoring Developer's compliance with the terms of this Agreement. Apple shall keep this copy in strict confidence and agrees not to disclose or distribute it in any way without specific written permission of Developer.

6. EXPENSES.

Developer shall be solely responsible for all expenses incurred in the distribution of Apple Software by Developer.

7. MODIFICATION.

Apple Software may not be modified by Developer without the prior written permission of Apple. Any Apple Software that is modified after such consent will continue to be subject to the terms and conditions of this License.

8. DISCLAIMER OF WARRANTY.

Apple licenses the software to Developer hereunder solely on an "as is" basis. APPLE MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Without limiting the foregoing, in no event shall Apple be liable for incidental or consequential damages resulting from the use, sale or distribution of Apple Software by Developer or others, whether under theory of warranty, tort, or products liability, except for indemnification for infringement as and to the extent provided in Paragraph 12. Apple shall have no obligation to provide Developer with any updates to the software.

9. LABELLING.

(a) Developer shall not remove any copyright notices or proprietary legends contained within the Software and Developer shall include on the label of each diskette the copyright notices as shown on Exhibit B. Developer may also include an additional copyright notice reflecting the copyright ownership of Developer programs recorded on the same diskette. Developer shall also include in a conspicuous place in the manual and in bold letters, a warranty disclaimer as follows:

"APPLE COMPUTER, INC. MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE ENCLOSED COMPUTER SOFTWARE PACKAGE, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. THE EXCLUSION OF IMPLIED WARRANTIES IS NOT PERMITTED BY SOME STATES. THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY PROVIDES YOU WITH SPECIFIC LEGAL RIGHTS. THERE MAY BE OTHER RIGHTS THAT YOU MAY HAVE WHICH VARY FROM STATE TO STATE."

(b) Developer shall also include in a conspicuous place in the manual the following language:

"(List Apple Software pursuant to Exhibit B) are copyrighted programs of Apple Computer, Inc. licensed to (Developer's Name) to distribute for use only in combination with (Title of Software). Apple Software shall not be copied onto another diskette (except for archive purposes) or into memory unless as part of the execution of (Title of Software). When (Title of Software) has completed execution Apple Software shall not be used by any other program."

(c) Apple may, during the term of this Agreement, require revisions or additions to the notices to be placed in Developer's manual. Developer shall incorporate such revisions or additions to the notices required herein, within thirty (30) days of written notice from Apple.

(d) Except as expressly set forth in this paragraph, Developer shall not use the name "Apple Computer, Inc.", the trademark "Apple" or any other trademark or trade name of Apple in any of Developer's advertising or in any other way whatsoever, except that Developer may include a discreet notice indicating that, for example, its Program is compatible with particular models of Apple computers. Any such notice shall not make it appear that Developer's Program originates from Apple. The size of the type used for the word "Apple" shall be smaller and less conspicuous than the size of the type used for Developer's trade name or trademark. Such notice shall never include the use of Apple's logo. Developer shall indicate that "Apple" is the registered trademark of Apple Computer, Inc.

10. PASCAL SPECIAL PROVISIONS.

If this Agreement covers UCSD Pascal related programs, for the Apple II and/or Apple III Computers, the warranty disclaimer in Paragraph 9 shall read "Apple Computer, Inc. and the Regents of the University of California make no warranties, etc." and the indemnification in Paragraph 11 shall be deemed to cover Apple and the Regents of the University of California, and their agents as indemnitees. Developer acknowledges that Apple's license from the Regents of the University of California for Pascal related programs is limited to the use of such programs in conjunction with computers manufactured by Apple and agrees to distribute or license Developer Programs containing Pascal related programs only for use in conjunction with computers manufactured by Apple, and the notice required by Paragraph 9(b) shall be modified to include such restriction.

11. INDEMNIFICATION BY DEVELOPER.

Developer shall defend any and all claims based upon, allegedly or in fact, Developer's distribution of Apple software or the use of Apple Software in combination with Developer Programs. Apple shall promptly notify Developer of any such claim. Developer is only liable to Apple for expenses incurred by Apple, after Apple receives Developers prior written approval for incurring such expenses, such approval not to be unreasonably withheld.

12. INDEMNIFICATION BY APPLE.

Apple shall defend any and all claims made against Developer based on a claim that the distribution of Apple Software infringes allegedly or in fact, any copyright or other proprietary right of any third party. Developer shall promptly notify Apple of any such claim. In no event shall Apple's liability to Developer for damages exceed the total amount paid by Developer to Apple for the license granted hereunder.

13. BREACH AND TERMINATION.

While any breach of this Agreement by Developer continues after thirty (30) days written notice by Apple, Apple may terminate this Agreement by written notice to Developer, whereupon this License and all rights granted to Developer herein shall immediately cease. Waiver by Apple of any breach by Developer shall not be deemed to be a waiver of any other or subsequent breach. The rights of Apple under this clause are in addition to any other rights and remedies provided by law or under this Agreement. Upon written notice by Apple after any termination of this Agreement, Developer shall promptly return to Apple any master copy supplied under Paragraph 4 above.

14. NOTICES.

Any notice required under this Agreement shall be given by first class mail, postage prepaid with return receipt requested, or by telex.

15. COMPLETE UNDERSTANDING.

This Agreement constitutes the entire Agreement between the parties concerning the subject matter. Any waiver or amendment of any provision of this Agreement shall be effective only if in writing and signed by the parties.

16. ASSIGNMENT.

This Agreement may not be assigned, nor the rights granted hereunder sublicensed, by Developer without the prior written consent of Apple.

17. DISCLAIMER OF AGENCY.

This Agreement shall not be construed as creating an agency, partnership or any other form of legal association between the parties.

18. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of California and the U.S. Copyright laws.

DEVELOPER

Signature:



Title:

Owner

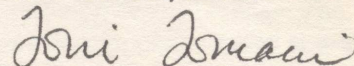
Date:

9/14/84

Phone #:

APPLE COMPUTER, INC.

Signature:



Title: Administrator

Date:

25 September 1984

EXHIBIT A

1. Title and Description of Developer's Program(s):

1- Cap'n Magneto - Apple III Adventure/Fantasy Role-Playing
game

2. Apple Software Developer is Licensing:

APPLE III PASCAL OS/INTERP

3. Developer is using:

II+ - _____
IIe - _____
IIc - _____
III - ☒ _____
LISA - _____
MACINTOSH - _____