

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Novell, Inc. has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Provo, State of Utah, on the 21st day of April, 1994.

NOVELL, INC.

By: DAVID R. BRADFORD  
 David R. Bradford,  
 Senior Vice President, General Counsel and  
 Corporate Secretary

## POWER OF ATTORNEY

Each of the undersigned directors and officers of Novell, Inc. constitutes and appoints David R. Bradford, his true and lawful attorney-in-fact and agent with full power to do any and all things and to execute any and all instruments which said attorney-in-fact and agent may deem necessary or advisable to enable Novell, Inc. to comply with the Securities Act of 1933, and any rules, regulations and requirements of the Securities and Exchange Commission in respect thereof in connection with the registration under the Securities Act of 1933 of shares of Common Stock, \$.10 par value, of Novell, Inc., to the same extent that he could do in person, including specifically, but without limiting the generality of the foregoing, the power and authority to sign the name of the undersigned directors and officers in the capacities indicated below to any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same with all exhibits to, and other documents in connection with, this Registration Statement with the Securities and Exchange Commission.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>RAYMOND J. NOORDA</u> (Raymond J. Noorda)	Chairman of the Board	April 21, 1994
<u>ROBERT J. FRANKENBERG</u> (Robert J. Frankenberg)	President and Chief Executive Officer (Principal Executive Officer)	April 21, 1994
<u>JAMES R. TOLONEN</u> (James R. Tolonen)	Chief Financial Officer (Principal Financial and Accounting Officer)	April 21, 1994
<u>ELAINE R. BOND</u> (Elaine R. Bond)	Director	April 21, 1994
<u>JACK L. MESSMAN</u> (Jack L. Messman)	Director	April 21, 1994
<u>KANWAL S. REKHI</u> (Kanwal S. Rekhi)	Executive Vice President, Corporate Technology and Director	April 21, 1994
<u>LARRY W. SONSINI</u> (Larry W. Sonsini)	Director	April 21, 1994
<u>IAN R. WILSON</u> (Ian R. Wilson)	Director	April 21, 1994

**APPENDIX A**

**AGREEMENT AND PLAN OF REORGANIZATION**

**Among**

**NOVELL, INC.**

**NOVELL ACQUISITION CORP.**

**WORDPERFECT CORPORATION**

**ALAN C. ASHTON**

**BRUCE W. BASTIAN**

**And**

**MELANIE L. BASTIAN**

**March 21, 1994**

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## AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION (the "Agreement"), dated as of March 21, 1994, is entered into by and among NOVELL, INC., a Delaware corporation ("Novell"), NOVELL ACQUISITION CORP., a Delaware corporation and a wholly owned subsidiary of Novell ("Sub"), and WORDPERFECT CORPORATION., a Utah corporation ("WordPerfect"). Alan C. Ashton ("Ashton"), Bruce W. Bastian ("Mr. Bastian"), and Melanie L. Bastian ("Ms. Bastian") shareholders of WordPerfect, are parties to this Agreement only for purposes of Section 5.3. Novell and WordPerfect are sometimes referred to as a "Company" or the "Companies."

INTENDING TO BE LEGALLY BOUND, and in consideration of the premises and mutual covenants and agreements contained herein, Novell, Sub and WordPerfect hereby agree as follows:

### ARTICLE I

#### THE MERGER

1.1 *Merger; Effective Time.* Subject to the terms and conditions of this Agreement and of the Articles of Merger attached as Exhibit 1.1 (the "Articles of Merger"), Sub will be merged into WordPerfect (the "Merger") in accordance with the Utah Revised Business Corporation Act (the "URBCA"). The Articles of Merger provide, among other things, the mode of effecting the Merger and the manner and basis of converting each issued and outstanding share of capital stock of WordPerfect into shares of Common Stock of Novell ("Novell Common Stock").

Subject to the provisions of this Agreement and the Articles of Merger, the Articles of Merger, together with required officers' certificates, shall be filed in accordance with the URBCA on the Closing Date (as defined in Section 1.2). The Merger shall become effective upon confirmation of such filing of the Articles of Merger and such officers' certificates (the date of confirmation of such filing is referred to as the "Effective Date" and the time of confirmation of such filing is referred to as the "Effective Time").

1.2 *Closing.* The closing of the Merger (the "Closing") will take place as soon as practicable on the later of (x) the date of the Shareholders' Meeting referred to in Section 5.6 or (y) the first business day after satisfaction or waiver of the latest to occur of the conditions set forth in Article VI (the "Closing Date"), at the offices of Wilson, Sonsini, Goodrich & Rosati, Two Palo Alto Square, Palo Alto, California 94306, unless a different date or place is agreed to in writing by the parties hereto.

1.3 *Effects of the Merger.* At the Effective Time, (i) the separate existence of Sub shall cease and Sub shall be merged with and into WordPerfect (Sub and WordPerfect are sometimes referred to as the "Constituent Corporations" and WordPerfect after the Merger is sometimes referred to as the "Surviving Corporation"), (ii) the Articles of Incorporation of WordPerfect shall be the Articles of Incorporation of the Surviving Corporation, except that such Articles of Incorporation shall be amended to provide that the authorized capital stock of the Surviving Corporation shall be 1,000,000 shares of Common Stock, (iii) the Bylaws of WordPerfect shall be the Bylaws of the Surviving Corporation, (iv) the directors of Sub shall be the directors of the Surviving Corporation, (v) the officers of WordPerfect shall be the officers of the Surviving Corporation; and (vi) the Merger shall, from and after the Effective Time, have all the effects provided by applicable law, this Agreement and the Articles of Merger.

1.4 *Tax-Free Reorganization; Pooling of Interests.* The Merger is intended to be a reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code"), and to be accounted for as a pooling of interests pursuant to Opinion No. 16 of the Accounting Principles Board.

## ARTICLE II

**EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE  
CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES**

2.1 *Effect on Capital Stock.* As of the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of capital stock of WordPerfect:

(a) *Capital Stock of Sub.* Each issued and outstanding share of capital stock of Sub shall continue to be issued and outstanding and shall be converted into one share of validly issued, fully paid and non-assessable Common Stock of the Surviving Corporation. Each stock certificate of Sub evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

(b) *Cancellation of Certain Shares of Capital Stock of WordPerfect.* All shares of capital stock of WordPerfect that are owned directly or indirectly by WordPerfect or by any Subsidiary (as defined below) of WordPerfect and any shares of capital stock of WordPerfect owned by Novell, Sub or any other Subsidiary of Novell shall be cancelled and no stock of Novell or other consideration shall be delivered in exchange therefor. In this Agreement, a "Subsidiary" means a corporation or other entity whose voting securities are owned or are otherwise controlled directly or indirectly by a parent corporation or other intermediary entity in an amount sufficient to elect at least a majority of the Board of Directors or other managers of such corporation or other entity.

(c) *Conversion of Capital Stock of WordPerfect.* Each issued and outstanding share of WordPerfect Common Stock (other than shares to be canceled pursuant to Section 2.1(b) and shares, if any, held by persons exercising dissenters' rights in accordance with the URBCA ("Dissenting Shares")), including shares issuable upon the exercise of any WordPerfect Option (as defined in Section 3.2 below) prior to the Effective Time, that are issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares) shall automatically be canceled and extinguished and converted, without any action on the part of the holder thereof, into the right to receive one share of Novell Common Stock. The ratio pursuant to which each share of capital stock of WordPerfect will be exchanged for one share of Novell Common Stock, determined in accordance with the foregoing provisions, is referred to as the "Exchange Ratio."

(d) *Adjustment of Exchange Ratio.* If, between the date of this Agreement and the Effective Time, the outstanding shares of Novell Common Stock shall have been changed into a different number of shares or a different class by reason of any reclassification, split-up, stock dividend, stock combination, then the Exchange Ratio shall be correspondingly adjusted.

(e) *Dissenters' Rights.* If holders of capital stock of WordPerfect are entitled to dissenters' rights in connection with the Merger under Part 13 of the URBCA, any Dissenting Shares shall not be converted into Novell Common Stock but shall be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to the law of the State of Utah. WordPerfect shall give Novell prompt notice of any demand received by WordPerfect to require WordPerfect to purchase shares of capital stock of WordPerfect, and Novell shall have the right to participate in all negotiations and proceedings with respect to such demand. WordPerfect agrees that, except with the prior written consent of Novell, or as required under the URBCA, it will not voluntarily make any payment with respect to, or settle or offer to settle, any such purchase demand. Each holder of Dissenting Shares ("Dissenting Shareholder") who, pursuant to the provisions of the URBCA, becomes entitled to payment of the value of shares of capital stock of WordPerfect shall receive payment therefor (but only after the value therefor shall have been agreed upon or finally determined pursuant to such provisions). In the event of legal obligation, after the Effective Time, to deliver shares of Novell Common Stock to any holder of shares of capital stock of WordPerfect who shall have failed to make an effective purchase demand or shall have lost its status as a Dissenting Shareholder, Novell shall issue and deliver, upon surrender by such Dissenting Shareholder of such holder's certificate or certificates representing

shares of capital stock of WordPerfect, the shares of Novell Common Stock to which such Dissenting Shareholder is then entitled under this Section 2.1 and the Articles of Merger.

(f) *Fractional Shares.* No fractional shares of Novell Common Stock shall be issued, but in lieu thereof each holder of shares of capital stock of WordPerfect who would otherwise be entitled to receive a fraction of a share of Novell Common Stock shall receive from Novell an amount of cash equal to the per share market value of Novell Common Stock (based on the last sales price of Novell Common Stock as reported on the National Market System of the National Association of Securities Dealers' Automated Quotation System on the Effective Date of the Merger) multiplied by the fraction of a share of Novell Common Stock to which such holder would otherwise be entitled. The fractional share interests of each WordPerfect shareholder shall be aggregated, so that no WordPerfect shareholder shall receive cash in an amount greater than the value of one full share of Novell Common Stock.

## 2.2 *Exchange of Certificates.*

(a) *Exchange Agent.* Prior to the Closing Date, Novell shall appoint Mellon Bank, N.A. to act as exchange agent (the "Exchange Agent") in the Merger.

(b) *Novell to Provide Common Stock.* Promptly after the Effective Time, Novell shall make available for exchange in accordance with this Article II and the Articles of Merger, through such reasonable procedures as Novell may adopt, the shares of Novell Common Stock issuable pursuant to Section 2.1 and the Articles of Merger in exchange for outstanding shares of capital stock of WordPerfect.

(c) *Exchange Procedures.* As soon as practicable after the Effective Time, the Exchange Agent shall mail to each holder of record of a certificate or certificates which immediately prior to the Effective Time represented outstanding shares of capital stock of WordPerfect (the "Certificates") whose shares are being converted into Novell Common Stock pursuant to Section 2.1 and the Articles of Merger, (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in such form and have such other provisions as Novell may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for Novell Common Stock. Upon surrender of a Certificate for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by Novell, together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor the number of shares of Novell Common Stock to which the holder of capital stock of WordPerfect is entitled pursuant to Section 2.1 hereof. The Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of capital stock of WordPerfect which is not registered on the transfer records of WordPerfect, the appropriate number of shares of Novell Common Stock may be delivered to a transferee if the Certificate representing such capital stock of WordPerfect is presented to the Exchange Agent and accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer taxes have been paid. Until surrendered as contemplated by this Section 2.2, each Certificate shall be deemed at any time after the Effective Time to represent the right to receive upon such surrender the number of shares of Novell Common Stock as provided by this Article II and the provisions of the URBCA.

(d) *No Further Ownership Rights in Capital Stock of WordPerfect.* All Novell Common Stock delivered upon the surrender for exchange of shares of capital stock of WordPerfect in accordance with the terms hereof shall be deemed to have been delivered in full satisfaction of all rights pertaining to such shares of capital stock of WordPerfect. There shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of capital stock of WordPerfect which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Article II.



## ARTICLE III

## REPRESENTATIONS AND WARRANTIES OF WORDPERFECT

Except as disclosed in a document referring specifically to the representations and warranties in this Agreement which identifies the section and subsection to which such disclosure relates and which is delivered by WordPerfect to Novell prior to the execution of this Agreement (the "WordPerfect Disclosure Schedule"), WordPerfect represents and warrants to Novell and Sub as set forth below:

3.1 *Organization, Standing and Power.* Each of WordPerfect and its Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has all requisite power and authority to own, operate and lease its properties and to carry on its business as now being conducted. A true and complete list of such Subsidiaries is set out in Schedule 3.1 hereto together with the jurisdiction of incorporation of each Subsidiary. Each of WordPerfect and its Subsidiaries is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect (as defined below). WordPerfect has no direct or indirect equity interest in or loans to any partnership, corporation, joint venture, business association or other entity other than WordPerfect's Subsidiaries and loans to entities affiliated with employees of WordPerfect which in the aggregate do not exceed \$1,000,000. WordPerfect has delivered to Novell, or will deliver to Novell within twenty one (21) days of the date hereof, complete and correct copies of the Articles of Incorporation and Bylaws (or other organizational or charter document) of WordPerfect and each of WordPerfect's Subsidiaries, in each case as amended to the date hereof.

As used in this Agreement, the term "Material Adverse Effect" used in connection with a party or any of such party's subsidiaries means any event, change or effect that is materially adverse to the condition (financial or otherwise), properties, assets, liabilities, businesses, operations, results of operations or prospects of such party and its subsidiaries taken as a whole; provided, however, that a change or deterioration in the financial condition, assets, liabilities or results of operations of WordPerfect and its Subsidiaries which is reflected in the financial projections delivered by WordPerfect to Novell on March 17, 1994 (the "WordPerfect Financial Projections") will not be deemed to constitute a Material Adverse Effect with respect to WordPerfect for any purpose under this Agreement.

3.2 *Capital Structure.* The authorized capital stock of WordPerfect consists of 200,000,000 shares of Common Stock, no par value ("WordPerfect Common Stock"). At the close of business on March 18, 1994, there were 51,380,100 shares of WordPerfect Common Stock outstanding and 7,857,500 shares of WordPerfect Common Stock were reserved for issuance upon the exercise of outstanding employee stock options ("WordPerfect Options"), pursuant to the WordPerfect Corporation 1992 Long-Term Incentive Plan ("WordPerfect Option Plan"). All outstanding shares of WordPerfect Common Stock are, and any shares of WordPerfect Common Stock issued upon exercise of any WordPerfect Option will be, validly issued, fully paid and nonassessable and not subject to preemptive rights created by statute, WordPerfect's Articles of Incorporation or Bylaws or any agreement to which WordPerfect or any of its Subsidiaries is a party or by which WordPerfect or any of its Subsidiaries may be bound. Except for the shares listed above issuable pursuant to WordPerfect Options, there are no options, warrants, calls, conversion rights, commitments or agreements of any character to which WordPerfect or any Subsidiary of WordPerfect is a party or by which any of them may be bound that do or may obligate WordPerfect or any Subsidiary of WordPerfect to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of the capital stock of WordPerfect or of any Subsidiary of WordPerfect or that do or may obligate WordPerfect or any Subsidiary of WordPerfect to grant, extend or enter into any such option, warrant, call, conversion right, commitment or agreement. WordPerfect is, or will be prior to the Closing, the owner of all outstanding shares of capital stock of each of its Subsidiaries and all such shares are duly authorized, validly issued, fully paid and nonassessable. WordPerfect is not under any obligation to register under the Securities Act of 1993, as amended (the "Securities Act") any of its presently outstanding securities or any securities that may subsequently be issued.

3.3 *Authority.* WordPerfect has all requisite corporate power and authority to enter into this Agreement and the Articles of Merger and, subject to approval of this Agreement and the Articles of Merger by the shareholders of WordPerfect, to perform its obligations hereunder, and to consummate the transactions

contemplated hereby. The execution and delivery of this Agreement and the Articles of Merger, the performance by WordPerfect of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of WordPerfect, and have been unanimously approved by the Board of Directors of WordPerfect. No other corporate proceeding on the part of WordPerfect is necessary to authorize this Agreement or the Articles of Merger or the performance of WordPerfect's obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, other than the approval of the Merger by WordPerfect's shareholders. This Agreement and the Articles of Merger have been duly executed and delivered by WordPerfect and constitute legal, valid and binding obligations of WordPerfect enforceable against WordPerfect in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally and except that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought. Subject to satisfaction of the conditions set forth in Article VI, the execution and delivery of this Agreement and the Articles of Merger do not, and the consummation of the transactions contemplated hereby and thereby will not conflict with or result in any violation of any material statute, law, rule, regulation, judgment, order, decree, or ordinance applicable to WordPerfect or any Subsidiary of WordPerfect or their respective properties or assets, or conflict with or result in any breach or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or result in the creation of a material lien or encumbrance on any of the properties or assets of WordPerfect or any of its Subsidiaries pursuant to (i) any provision of the Articles of Incorporation or Bylaws of WordPerfect or any Subsidiary of WordPerfect or (ii) any material agreement, contract, note, mortgage, indenture, lease, instrument, permit, concession, franchise or license to which WordPerfect or any of its Subsidiaries is a party or by which WordPerfect or any of its Subsidiaries or any of their properties or assets may be bound or affected. No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency, commission, regulatory authority or other governmental authority or instrumentality, domestic or foreign (a "Governmental Entity"), is required by or with respect to WordPerfect or any of its Subsidiaries in connection with the execution and delivery of this Agreement or the Articles of Merger by WordPerfect or the consummation by WordPerfect of the transactions contemplated hereby or thereby, except for (i) the filing of a premerger notification report by WordPerfect under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) the distribution of a proxy statement relating to the Shareholders' Meeting (the "Proxy Statement") and the obtaining of the approval of the Merger by WordPerfect's shareholders, (iii) the filing of the Articles of Merger with the Utah Division of Corporations and Commercial Code and the Secretary of the State of the State of Delaware and appropriate documents with the relevant authorities of other states in which WordPerfect is qualified to do business, (iv) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under the laws of any foreign country, which if not obtained or made would not have a Material Adverse Effect on WordPerfect and (v) such other consents, authorizations, filings, approvals and registrations which if not obtained or made would not have a Material Adverse Effect on WordPerfect.

3.4 *Financial Statements.* WordPerfect has furnished Novell with its financial statements for each of the fiscal years ended December 31, 1991, 1992 and 1993, including a consolidated balance sheet of WordPerfect and its consolidated Subsidiaries as at each of the fiscal years ended December 31, 1991, 1992 and 1993 (collectively, the "WordPerfect Financial Statements"). The WordPerfect Financial Statements have been prepared in accordance with generally accepted accounting principles consistently applied (except as may be indicated in the notes thereto), and fairly present the consolidated financial position of WordPerfect and its consolidated Subsidiaries as at the dates thereof and the consolidated results of their operations and changes in financial position for the periods then ended. WordPerfect will provide in a timely manner audited WordPerfect Financial Statements and any interim financial statements required in connection with the filing of any registration statement relating to the transactions contemplated hereby. All reserves established by WordPerfect with respect to assets of WordPerfect are adequate. There has been no change in WordPerfect's accounting policies, except as described in the notes to the WordPerfect Financial Statements.

3.5 *Compliance with Law.* Each of WordPerfect and its Subsidiaries is in compliance and has conducted its business so as to comply with all laws, rules and regulations, judgments, decrees or orders of any Governmental Entity applicable to its operations or with respect to which compliance is a condition of engaging in the business thereof, except to the extent that failure to comply would, individually or in the aggregate, not have had and is reasonably expected not to have a Material Adverse Effect on WordPerfect. There are no material judgments or orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency or by arbitration) against WordPerfect or any Subsidiary of WordPerfect or against any of their respective properties or businesses.

3.6 *No Defaults.* Neither WordPerfect nor any Subsidiary of WordPerfect is, or has received notice that it would be with the passage of time, (i) in violation of any provision of the Articles of Incorporation or Bylaws (or other organizational or charter document) of WordPerfect or any Subsidiary of WordPerfect or (ii) in default or violation of any term, condition or provision of (A) any material judgment, decree, order, injunction or stipulation applicable to WordPerfect or any Subsidiary of WordPerfect or (B) any material agreement, note, mortgage, indenture, contract, lease or instrument, permit, concession, franchise or license to which WordPerfect or any Subsidiary of WordPerfect is a party or by which WordPerfect or any of its Subsidiaries or their properties or assets may be bound.

3.7 *Litigation.* There is no action, suit, proceeding, claim or investigation pending or, to the best knowledge of WordPerfect, threatened, against WordPerfect or any of its Subsidiaries which could, individually or in the aggregate, have a Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or delay any of the transactions contemplated hereby. The WordPerfect Disclosure Schedule sets forth with respect to each pending action, suit, proceeding, claim or investigation to which WordPerfect or any of its Subsidiaries is a party to the extent that the aggregate damages claimed for all such complaints exceed \$10,000,000, the forum, the parties thereto, a brief description of the subject matter thereof and the amount of damages claimed. WordPerfect has delivered to, or will deliver within twenty one (21) days of the date hereof to Novell correct and complete copies of all correspondence prepared by its counsel for WordPerfect's independent public accountants in connection with the last three completed audits of WordPerfect's financial statements and any such correspondence since the date of the last such audit.

3.8 *No Material Adverse Effect.* Since December 31, 1993, WordPerfect and its Subsidiaries have conducted their respective businesses in the ordinary course and there has not occurred:

- (a) Any Material Adverse Effect with respect to WordPerfect;
- (b) Any amendments or changes in the Articles of Incorporation or Bylaws of WordPerfect or any of its Subsidiaries other than in connection with a consolidation of its business units prior to the date of this Agreement in the manner previously disclosed to Novell;
- (c) Any damage, destruction or loss, whether covered by insurance or not, that could reasonably constitute a Material Adverse Effect;
- (d) Any redemption, repurchase or other acquisition of shares of capital stock of WordPerfect or its Subsidiaries by WordPerfect or its Subsidiaries (other than pursuant to arrangements with terminated employees or consultants), or any declaration, setting aside or payment of any dividend or other distribution (whether in cash, stock or property) with respect to the capital stock of WordPerfect or its Subsidiaries;
- (e) Any increase in or modification of the compensation or benefits payable or to become payable by WordPerfect or any Subsidiary to any of their directors or employees, except in the ordinary course of business consistent with past practice;
- (f) Any increase in or modification of any bonus, pension, insurance or other employee benefit plan, payment or arrangement (including, but not limited to, the granting of stock options, restricted stock awards or stock appreciation rights) made to, for or with any of its employees, except in the ordinary course of business consistent with WordPerfect's past practice;

(g) Any acquisition or sale of a material amount of property or assets of WordPerfect or any of its Subsidiaries;

(h) Any alteration in any term of any outstanding security of WordPerfect or any of its Subsidiaries;

(i) Any (A) incurrence, assumption or guarantee by WordPerfect or any of its Subsidiaries of any debt for borrowed money; (B) issuance or sale of any securities convertible into or exchangeable for debt securities of WordPerfect or any of its Subsidiaries; or (C) issuance or sale of options or other rights to acquire from WordPerfect or any of its Subsidiaries, directly or indirectly, debt securities of WordPerfect or any of its Subsidiaries or any securities convertible into or exchangeable for any such debt securities;

(j) Any creation or assumption by WordPerfect or any of its Subsidiaries of any mortgage, pledge, security interest or lien or other encumbrance on any asset (other than liens arising under existing lease financing arrangements or liens arising in the ordinary course of WordPerfect's business which in the aggregate are not material and liens for taxes not yet due and payable);

(k) Any making of any loan, advance or capital contribution to or investment in any person other than (A) loans, advances or capital contributions to or investments in wholly-owned Subsidiaries of WordPerfect, (B) travel loans or advances made in the ordinary course of business of WordPerfect and its Subsidiaries and (C) loans to entities affiliated with its employees prior to the date of this Agreement which do not exceed \$1,000,000 in the aggregate;

(l) Any entry into, amendment of, relinquishment, termination or non-renewal by WordPerfect or any of its Subsidiaries of any contract, lease transaction, commitment or other right or obligation requiring aggregate payments by WordPerfect in excess of \$10,000,000 other than in the ordinary course of business;

(m) Any transfer or grant of a right under the WordPerfect Intellectual Property Rights (as defined in Section 3.16), other than those transferred or granted in the ordinary course of business consistent with past practice;

(n) Any labor dispute, other than routine individual grievances, or any activity or proceeding by a labor union or representative thereof to organize any employees of WordPerfect or any of its Subsidiaries; or

(o) Any agreement or arrangement made by WordPerfect or any of its Subsidiaries to take any action which, if taken prior to the date hereof, would have made any representation or warranty set forth in this Section 3.8 untrue or incorrect as of the date when made.

3.9 *Absence of Undisclosed Liabilities.* WordPerfect and its Subsidiaries have no liabilities or obligations (whether absolute, accrued or contingent, and whether or not determined or determinable), of a character which, under generally accepted accounting principles, should be accrued, shown or disclosed on a balance sheet of WordPerfect (including the footnotes thereto) except liabilities (i) adequately provided for in the WordPerfect Balance Sheet, (ii) incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected on the WordPerfect Balance Sheet or (iii) incurred since the date of the WordPerfect Balance Sheet which are not, individually or in the aggregate, material.

3.10 *Information Supplied.* None of the information supplied or to be supplied by WordPerfect for inclusion in the Registration Statement on Form S-4 to be filed with the Securities and Exchange Commission (the "SEC") by Novell in connection with the issuance of the Novell Common Stock in or as a result of the Merger (the "S-4"), including the Proxy Statement included therein, at the date such information is supplied and at the time of the Shareholders' Meeting, contains or will contain any untrue statement of a material fact or omits or will omit 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 are made, not misleading or will, in the case of the S-4 at the time the S-4 becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

3.11 *Certain Agreements.* Neither the execution and delivery of this Agreement or the Articles of Merger nor the consummation of the transactions contemplated hereby or thereby will (i) result in any payment (including, without limitation, severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any director or employee of WordPerfect or its Subsidiaries from WordPerfect or its Subsidiaries, under any Plan (as defined in Section 3.12) or otherwise, (ii) materially increase any benefits otherwise payable under any Plan, or (iii) result in the acceleration of the time of payment or vesting of any such benefits, other than the acceleration of the WordPerfect Options.

3.12 *ERISA.* All material employee benefit plans, programs, policies or arrangements covering any active, former or retired employee of WordPerfect or its Subsidiaries are listed in the WordPerfect Disclosure Schedule (the "Plans"). To the extent applicable, the Plans comply with the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Code, and any Plan intended to be qualified under Section 401(a) of the Code has either obtained a favorable determination letter as to its qualified status from the Internal Revenue Service or still has a remaining period of time under applicable Treasury Regulations or Internal Revenue Service pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination. To the extent any Plan with an existing determination letter from the Internal Revenue Service must be amended to comply with the applicable requirements of the Tax Reform Act of 1986 and subsequent legislation, the time period for effecting such amendments will not expire prior to the Merger. WordPerfect has furnished or will furnish within twenty one (21) days of the date hereof, Novell with copies of the most recent Internal Revenue Service letters and Forms 5500 with respect to any such Plan. No Plan is covered by Title IV of ERISA or Section 412 of the Code. Neither WordPerfect, its Subsidiaries nor any officer or director of WordPerfect or any of its Subsidiaries has incurred any liability or penalty under Sections 4975 through 4980 of the Code or Title I of ERISA. Each Plan has been maintained and administered in all material respects in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations, including but not limited to ERISA and the Code, which are applicable to such Plans. No suit, action or other litigation (excluding claims for benefits incurred in the ordinary course of Plan activities) has been brought, or to the best knowledge of WordPerfect is threatened, against or with respect to any such Plan. All material contributions, reserves or premium payments required to be made or accrued as of the date hereof to the Plans have been made or accrued.

3.13 *Major Contracts.* Neither WordPerfect nor any of its Subsidiaries is a party to or subject to:

(a) Any union contract or any employment contract or arrangement providing for future compensation, written or oral, with any officer, consultant, director or employee which is not terminable by it or its Subsidiary on 30 days' notice or less without penalty or obligation to make payments related to such termination, other than (A) (in the case of employees other than executive officers) such agreements as are not materially different from standard arrangements offered to employees generally in the ordinary course of business consistent with WordPerfect's past practices, copies of which have been provided, or will be provided within twenty one (21) days of the date hereof to Novell and (B) such agreements as may be imposed or implied by law;

(b) Any plans, contracts or arrangements which collectively require aggregate payments by WordPerfect in excess of \$500,000, written or oral, providing for bonuses, pensions, deferred compensation, severance pay or benefits, retirement payments, profit-sharing, or the like;

(c) Any joint venture contract or arrangement or any other agreement which has involved or is expected to involve a sharing of profits with other persons;

(d) Any existing OEM agreement, distribution agreement, volume purchase agreement, or other similar agreement in which the annual amount involved in 1993 exceeded or is expected to exceed in fiscal 1994 \$10,000,000 in aggregate amount or pursuant to which WordPerfect has granted or received exclusive marketing rights related to any product, group of products or territory;

(e) Any lease for real or personal property in which the amount of payments which WordPerfect is required to make on an annual basis exceeds \$1,000,000.

(f) Any material agreement, contract, mortgage, indenture, lease, instrument, license, franchise, permit, concession, arrangement, commitment or authorization which may be, by its terms, terminated or breached by reason of the execution of this Agreement, the Articles of Merger, the closing of the Merger, or the transactions contemplated hereby or thereby;

(g) Except for trade indebtedness incurred in the ordinary course of business, any instrument evidencing or related in any way to indebtedness in excess of \$10,000,000 incurred in the acquisition of companies or other entities or indebtedness in excess of \$10,000,000 for borrowed money by way of direct loan, sale of debt securities, purchase money obligation, conditional sale, guarantee, or otherwise;

(h) Any material license agreement, either as licensor or licensee (excluding nonexclusive software licenses granted to customers or end-users in the ordinary course of business) involving the payment of at least \$1,000,000;

(i) Any contract containing covenants purporting to limit WordPerfect's freedom or that of any of its Subsidiaries to compete in any line of business in any geographic area; or

(j) Any other agreement, contract or commitment which is material to WordPerfect and its Subsidiaries taken as a whole.

Each agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license and commitment listed in the WordPerfect Disclosure Schedule pursuant to this Section 3.13 is valid and binding on WordPerfect or its Subsidiaries, as applicable, and is in full force and effect, and neither WordPerfect nor any of its Subsidiaries, nor to the knowledge of WordPerfect, any other party thereto, has breached any material provision of, or is in material default under the terms of, any such agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license or commitment.

#### 3.14 *Taxes.*

(a) All Tax (as defined below) returns, statements, reports and forms (including estimated Tax returns and reports and information returns and reports) required to be filed with any Taxing Authority (as defined below) with respect to any Taxable period ending on or before the Effective Time, by or on behalf of WordPerfect or any of its Subsidiaries (collectively, the "WordPerfect Returns"), have been or will be filed when due in accordance with all applicable laws (including any extensions of such due date), and all amounts shown due thereon have been paid or have been fully accrued on the WordPerfect Financial Statements in accordance with generally accepted accounting principles. Except to the extent provided for or disclosed in the WordPerfect Financial Statements (including notes thereto), the WordPerfect Returns correctly reflect in all material respects (and, as to any WordPerfect Returns not filed as of the date hereof but filed prior to the Merger, will correctly reflect in all material respects) the Tax liability and status of WordPerfect and its Subsidiaries (including each such corporation's status as an S corporation within the meaning of Section 1361 of the Code or any comparable provision under state law). WordPerfect and its Subsidiaries have withheld and paid to the applicable financial institution or Taxing Authority all amounts required to be withheld. All WordPerfect Returns pertaining to federal income tax filed with respect to Taxable years of WordPerfect and its Subsidiaries through the Taxable year ended December 31, 1990 in the case of the United States, have been examined and closed or are WordPerfect Returns with respect to which the applicable period for assessment under applicable law, after giving effect to extensions or waivers, has expired. Neither WordPerfect nor any of its Subsidiaries (or any member of any affiliated or combined group of which WordPerfect or any of its Subsidiaries has been a member) has granted any extension or waiver of the limitation period applicable to any WordPerfect Returns. There is no claim, audit, action, suit, proceeding, or investigation now pending or (to the best knowledge of WordPerfect or any of its Subsidiaries) threatened against or with respect to WordPerfect or any of its Subsidiaries in respect of any Tax or assessment. No notice of deficiency or similar document of any Tax Authority has been received by WordPerfect or any of its Subsidiaries, and there are no liabilities for Taxes (including liabilities for interest, additions to tax and penalties thereon and related expenses) with respect to the issues that have been raised (and are currently pending) by any Tax Authority that could, if determined adversely to WordPerfect or any of its Subsidiaries, materially affect the liability of

WordPerfect or any of its Subsidiaries for Taxes in other Taxable (as defined below) periods. Neither WordPerfect nor any of its Subsidiaries, nor any other person on behalf of WordPerfect or any of its Subsidiaries, has entered into nor will it enter into any agreement or consent pursuant to Section 341 (f) of the Code. There are no liens for Taxes upon the assets of WordPerfect or any of its Subsidiaries except liens for current Taxes not yet due. Neither WordPerfect nor any of its Subsidiaries has been or will be required to include any material adjustment in Taxable income for any Tax period (or portion thereof) pursuant to Section 481 or 263A of the Code or any comparable provision under state or foreign Tax laws as a result of transactions, events or accounting methods employed prior to the Closing. There is no contract, agreement, plan or arrangement, including but not limited to the provisions of this Agreement, covering any employee or former employee of WordPerfect or any of its Subsidiaries that, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Section 162 (as unreasonable compensation) or pursuant to Section 280G of the Code. WordPerfect and its Subsidiaries have provided or made available to Novell or its designated representative true and correct copies of all material Tax Returns, and, as reasonably requested by Novell prior to or following the date hereof, information statements, reports, work papers, Tax opinions and memoranda and other Tax data and documents. WordPerfect has not been within the five year period preceding the date hereof a "United States real property holding corporation" within the meaning of Section 897(c) (2) of the Code. Neither WordPerfect nor any of its Subsidiaries is a party to (or obligated under) any Tax allocation, Tax distribution, tax sharing, tax indemnity or similar agreement or arrangement with respect to any tax (including without limitation any such agreement or arrangement imposed by operation of law).

(b) For purposes of this Agreement, the following terms have the following meanings: "Tax" (and, with correlative meaning, "Taxes" and "Taxable") means (A) any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Entity (a "Taxing Authority") responsible for the imposition of any such tax (domestic or foreign), (B) any liability for the payment of any amounts of the type described in (A) as a result of being a member of an affiliated, consolidated, combined or unitary group for any Taxable period and (C) any liability for the payment of any amounts of the type described in (A) or (B) as a result of any express or implied obligation to indemnify any other person.

3.15 *Interests of Officers and Directors.* Except as disclosed in a supplemental schedule to be delivered to Novell within 21 days following the date of this Agreement, no officer or director of WordPerfect or any "affiliate" or "associate" (as those terms are defined in Rule 405 promulgated under the Securities Act) of any such person has had, either directly or indirectly, a material interest in: (i) any person or entity which purchases from or sells, licenses or furnishes to WordPerfect or any of its Subsidiaries any goods, property, technology or intellectual or other property rights or services; (ii) any any contract or agreement to which WordPerfect or any of its Subsidiaries is a party or by which it may be bound or affected; or (iii) any property, real or personal, tangible or intangible, used in or pertaining to its business or that of its Subsidiaries, including any interest in the WordPerfect Intellectual Property Rights, except for rights as a shareholder, and except for rights under any Plan.

### 3.16 *Intellectual Property.*

(a) WordPerfect owns, or is licensed or otherwise entitled to exercise, without restriction, all rights to, all patents, trademarks, trade names, service marks, copyrights, mask work rights, trade secret rights and other intellectual property rights, and any applications or registrations therefor, and all mask works, net lists, schematics, technology, source code, know-how, computer software programs and all other tangible and intangible information or material, that are used or currently proposed to be used in the business of WordPerfect and its Subsidiaries as currently conducted or as currently proposed to be conducted (collectively, the "WordPerfect Intellectual Property Rights").

(b) The WordPerfect Disclosure Schedule lists all patents, registered and unregistered copyrights, trade names, trademarks, service marks and other company, product or service identifiers and mask work rights, and any applications or registrations therefor, included in the WordPerfect Intellectual Property Rights, together with a list of all of WordPerfect's currently marketed products and an indication as to which, if any, of such products have been registered for copyright protection with the United States Copyright Office and any foreign offices.

(c) Neither WordPerfect nor any of its Subsidiaries is, or as a result of the execution and delivery of this Agreement or the performance of WordPerfect's obligations hereunder will be, in violation of, or lose any rights pursuant to any license, sublicense or agreement described in the WordPerfect Disclosure Schedule.

(d) WordPerfect or one of its Subsidiaries is the owner or licensee of, with all necessary right, title and interest in and to (free and clear of any liens, encumbrances or security interests), the WordPerfect Intellectual Property Rights and has rights (and except as set forth in the WordPerfect Disclosure Schedule is not contractually obligated to pay any compensation to any third party in respect thereof) in an amount in excess of \$1,000,000 to the use thereof or the material covered thereby in connection with the services or products in respect of which the WordPerfect Intellectual Property Rights are being used.

(e) No claims with respect to the WordPerfect Intellectual Property Rights have been asserted or, to the best knowledge of WordPerfect, after reasonable investigation, are threatened by any person, and WordPerfect knows of no claims (i) to the effect that the manufacture, sale or use of any product as now used or offered or proposed for use or sale by WordPerfect or any Subsidiary of WordPerfect infringes any copyright, patent, trade secret, or other intellectual property right, (ii) against the use by WordPerfect or Subsidiary of WordPerfect of any WordPerfect Intellectual Property Rights, or (iii) challenging the ownership, validity or effectiveness of any of the WordPerfect Intellectual Property Rights.

(f) All patents and registered trademarks, service marks, and other company, product or service identifiers and registered copyrights held by WordPerfect are valid and subsisting.

(g) To the best knowledge of WordPerfect, there has not been and there is not now any material unauthorized use, infringement or misappropriation of any of the WordPerfect Intellectual Property Rights by any third party, including without limitation any employee or former employee of WordPerfect or any of its Subsidiaries; neither WordPerfect nor any of its Subsidiaries has been sued or charged in writing as a defendant in any claim, suit, action or proceeding which involves a claim of infringement of any patents, trademarks, service marks, copyrights or other intellectual property rights and which has not been finally terminated prior to the date hereof; there are no such charges or claims outstanding; and to the best knowledge of WordPerfect neither WordPerfect nor any of its Subsidiaries has any infringement liability with respect to any patent, trademark, service mark, copyright or other intellectual property right of another.

(h) No WordPerfect Intellectual Property Right is subject to any outstanding order, judgment, decree, stipulation or agreement restricting in any manner the licensing thereof by WordPerfect or any of its Subsidiaries. Neither WordPerfect nor any of its Subsidiaries has entered into any agreement to indemnify any other person against any charge of infringement of any WordPerfect Intellectual Property Right. Neither WordPerfect nor any of its Subsidiaries has entered into any agreement granting any third party the right to bring infringement actions with respect to, or otherwise to enforce rights with respect to, any WordPerfect Intellectual Property Right. WordPerfect and its Subsidiaries have the exclusive right to file, prosecute and maintain all applications and registrations with respect to the WordPerfect Intellectual Property Rights.

3.17 *Restrictions on Business Activities.* There is no material agreement, judgment, injunction, order or decree binding upon WordPerfect or any of its Subsidiaries which has or could reasonably be expected to have the effect of prohibiting or materially impairing any business practice of WordPerfect or any of its Subsidiaries, any acquisition of property by WordPerfect or any of its Subsidiaries or the conduct of business by WordPerfect or any of its Subsidiaries as currently conducted or as currently proposed to be conducted by WordPerfect.



3.18 *Title to Properties; Absence of Liens and Encumbrances; Condition of Equipment.*

(a) WordPerfect and its Subsidiaries have good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of their tangible properties and assets, real, personal and mixed, used in their business, free and clear of any liens, charges, pledges, security interests or other encumbrances, except as reflected in the WordPerfect Financial Statements or except for such imperfections of title and encumbrances, if any, which are not substantial in character, amount or extent, and which do not materially detract from the value, or interfere with the present use, of the property subject thereto or affected thereby.

(b) The equipment owned or leased by WordPerfect or its Subsidiaries is, taken as a whole, (A) adequate for the conduct of the business of WordPerfect and its Subsidiaries consistent with their past practice, (B) suitable for the uses to which it is currently employed, (C) in good operating condition, (D) regularly and properly maintained, (E) not obsolete, dangerous or in need of renewal or replacement, except for renewal or replacement in the ordinary course of business, and (F) free from any defects, except, with respect to clauses (B) through (E) above, as would not have a Material Adverse Effect.

3.19 *Governmental Authorizations and Licenses.* Each of WordPerfect and its Subsidiaries is the holder of all licenses, authorizations, permits, concessions, certificates and other franchises of any Governmental Entity required to operate its business (collectively, the "Licenses"). The Licenses are in full force and effect. There is not now pending, or to the best knowledge of WordPerfect is there threatened, any action, suit, investigation or proceeding against WordPerfect or any of its Subsidiaries before any Governmental Entity with respect to the Licenses, nor is there any issued or outstanding notice, order or complaint with respect to the violation by WordPerfect or any of its Subsidiaries of the terms of any License or any rule or regulation applicable thereto.

3.20 *Environmental Matters.*

(a) No substance that is regulated by any Governmental Entity or that has been designated by any Governmental Entity to be radioactive, toxic, hazardous or otherwise a danger to health or the environment (a "Hazardous Material") is present in, on or under any property that WordPerfect or any of its Subsidiaries has at any time owned, operated, occupied or leased.

(b) Neither WordPerfect nor any of its Subsidiaries has transported, stored, used, manufactured, released or exposed its employees or any other person to any Hazardous Material in violation of any applicable statute, rule, regulation, order or law.

(c) WordPerfect and its Subsidiaries have obtained all permits, licenses and other authorizations ("Environmental Permits") required to be obtained by any of them under the laws of any Governmental Entity relating to pollution or protection of the environment (collectively, "Environmental Laws"). All Environmental Permits are in full force and effect. WordPerfect and its Subsidiaries (A) are in compliance with all terms and conditions of the Environmental Permits and (B) are in compliance in all material respects with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws or contained in any regulation, code, plan, order, decree, judgment, notice or demand letter issued, entered, promulgated or approved thereunder. Neither WordPerfect nor any of its Subsidiaries has received any notice or is aware of any past or present condition or practice of the businesses conducted by WordPerfect or its present or former Subsidiaries which forms or could form the basis of any claim, action, suit, proceeding, hearing or investigation against WordPerfect or any of its Subsidiaries, arising out of the manufacture, processing, distribution, use, treatment, storage, spill, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Material.

3.21 *Insurance.* WordPerfect maintains insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of WordPerfect and its Subsidiaries (collectively, the "Insurance Policies") which are of the type and in amounts customarily carried by persons conducting businesses similar to those of WordPerfect and its Subsidiaries. There is no material claim by WordPerfect or any of its Subsidiaries pending under any of the material Insurance Policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All

premiums payable under all such material Insurance Policies have been paid and WordPerfect and its Subsidiaries are otherwise in full compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage). WordPerfect does not know of any threatened termination of, or material premium increase with respect to, any of its material Insurance Policies.

3.22 *Board Approval.* The Board of Directors of WordPerfect has, as of the date hereof, unanimously (i) approved this Agreement and the Articles of Merger and the transactions contemplated hereby and thereby, (ii) determined that the Merger is in the best interests of the shareholders of WordPerfect and is on terms that are fair to such shareholders and (iii) recommended that the shareholders of WordPerfect approve this Agreement, the Articles of Merger and the Merger.

3.23 *Labor Matters.* WordPerfect and its Subsidiaries are in compliance in all material respects with all currently applicable laws and regulations respecting employment, discrimination in employment, terms and conditions of employment and wages and hours and occupational safety and health and employment practices, and are not engaged in any unfair labor practice. Neither WordPerfect nor any of its Subsidiaries has received any notice from any Governmental Entity, and there has not been asserted before any Governmental Entity, any claim, action or proceeding to which WordPerfect or any of its Subsidiaries is a party or involving WordPerfect or any of its Subsidiaries, and there is neither pending nor, to WordPerfect's best knowledge, threatened any investigation or hearing concerning WordPerfect or any of its Subsidiaries arising out of or based upon any such laws, regulations or practices.

3.24 *Questionable Payments.* Neither WordPerfect nor any of its Subsidiaries nor to its best knowledge any director, officer or other employee of WordPerfect or any of its Subsidiaries has: (i) made any payments or provided services or other favors in the United States of America or in any foreign country in order to obtain preferential treatment or consideration by any Governmental Entity with respect to any aspect of the business of WordPerfect or any of its Subsidiaries; or (ii) made any political contributions which would not be lawful under the laws of the United States and the foreign country in which such payments were made. Neither WordPerfect nor any of its Subsidiaries nor to its best knowledge any director, officer or other employee of WordPerfect or any of its Subsidiaries nor, to the best knowledge of WordPerfect, any customer or supplier of any of them has been the subject of any inquiry or investigation by any Governmental Entity in connection with payments or benefits or other favors to or for the benefit of any governmental or armed services official, agent, representative or employee with respect to any aspect of the business of WordPerfect or its Subsidiaries or with respect to any political contribution.

3.25 *Accounting Matters.* Neither WordPerfect nor any of its Subsidiaries nor, to WordPerfect's best knowledge after reasonable inquiry, any of its Affiliates (as defined in Section 5.12), has taken or agreed to take any action that would adversely affect the ability of Novell to account for the business combination to be effected by the Merger as a pooling of interests.

3.26 *Brokers.* No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement. In the event that the preceding sentence is in any way inaccurate, WordPerfect agrees to indemnify and hold harmless Novell from any liability for any commission or compensation in the nature of a finder's fee (and the costs and expenses of defending against such liability or asserted liability) for which Novell or any of its officers, partners, employees or representatives is responsible.

3.27 *Disclosure.* No representation or warranty made by WordPerfect in this Agreement, nor any document, written information, statement, financial statement, certificate, schedule or exhibit prepared and furnished or to be prepared and furnished by WordPerfect or its representatives pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements or facts contained herein or therein not misleading in light of the circumstances under which they were furnished. To the best knowledge of WordPerfect after reasonable inquiry, there is no event, fact or condition that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect that has not been set forth in this Agreement or in the WordPerfect Disclosure Schedule. The WordPerfect Financial Projections constitute WordPerfect's best estimate of the information purported to be shown therein and WordPerfect reasonably

believes that there is a reasonable basis for such projections and is not aware of any fact or information that would lead it to believe that such projections are incorrect or misleading in any material respect.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF NOVELL AND SUB

Except as disclosed in a document referring specifically to the representations and warranties in this Agreement which identifies the section and subsection to which such disclosure relates and which is delivered by Novell to WordPerfect prior to the execution of this Agreement (the "Novell Disclosure Schedule"), Novell and Sub represent and warrant to, and agree with, WordPerfect as follows:

4.1 *Organization; Standing and Power.* Each of Novell and Sub is a corporation validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted. Novell has delivered to WordPerfect complete and correct copies of the Certificate of Incorporation and Bylaws of Novell and the Articles of Incorporation and Bylaws of Sub as amended to the date hereof.

4.2 *Capital Structure.* As of the date hereof the authorized capital stock of Novell consists of 400,000,000 shares of Novell Common Stock, \$.10 par value and 500,000 shares of Novell Preferred Stock, \$.10 par value. At the close of business on January 29, 1994, 309,021,297 shares of Novell Common Stock were outstanding, 27,978,621 shares of Novell Common Stock were reserved for issuance upon the exercise of outstanding stock options ("Novell Options"), no shares of Novell Common Stock were held by Novell in its treasury, and no shares of Novell Preferred Stock were outstanding. All the outstanding shares of Novell Common Stock are validly issued, fully paid, nonassessable and free of preemptive rights except pursuant to rights issued under Novell's Stockholder Rights Plan. The shares of Novell Common Stock issuable in connection with the Merger are duly authorized and reserved for issuance and, when issued in accordance with the terms of this Agreement and the Articles of Merger, will be validly issued, fully paid, nonassessable and free of preemptive rights (other than any rights which may be issued pursuant to Novell's Stockholder Rights Plan). As of the date hereof, the authorized capital stock of Sub consists of 1,000,000 shares of Common Stock, \$.01 par value, all of which are validly issued, fully paid and nonassessable and owned by Novell. Except for the shares listed above issuable pursuant to Novell Options, there are not any options, warrants, calls, conversion rights, commitments or agreements of any character to which Novell or any Subsidiary of Novell is a party or by which any of them may be bound obligating Novell or any Subsidiary of Novell to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of the capital stock of Novell or of any Subsidiary of Novell or obligating Novell or any Subsidiary of Novell to grant, extend or enter into any such option, warrant, call, conversion right, commitment or agreement.

4.3 *Authority.* Novell and Sub have all requisite corporate power and authority to enter into this Agreement and, subject to any required stockholder approval, to consummate the transactions contemplated hereby and by the Articles of Merger. Sub has all requisite corporate power and authority to enter into the Articles of Merger. The execution and delivery by Novell of this Agreement, and by Sub of this Agreement and the Articles of Merger, and the consummation of the transactions contemplated by this Agreement and the Articles of Merger have been duly authorized by all necessary corporate action on the part of Novell and Sub. This Agreement has been duly executed and delivered by Novell and Sub and constitutes a valid and binding obligation of Novell and Sub enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally and except that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought. The Articles of Merger have been duly executed and delivered by Sub and constitutes a valid and binding obligation of Sub enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally and except that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought. Subject to satisfaction of the conditions set forth in Article VI, the execution and delivery of this Agreement and the Articles of Merger and the consummation of the transactions contemplated hereby and thereby will not conflict with or result in any

violation of any material statute, law, rule, regulation, judgment, order, decree or ordinance applicable to Novell or any Subsidiary of Novell or their respective properties or assets, or conflict with or result in any breach or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit, under (i) any provision of the Certificate of Incorporation or Bylaws of Novell or any of its Subsidiaries or (ii) any material agreement, contract, note, mortgage, indenture, lease, instrument, permit, concession, franchise or license to which Novell or any of its Subsidiaries is a party or by which Novell or any of its Subsidiaries or their respective properties or assets may be bound or affected. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to Novell or Sub in connection with the execution and delivery of this Agreement and the Articles of Merger or the consummation by Novell and Sub of the transactions contemplated hereby or thereby, except for (i) the filing of a premerger notification report by Novell and Sub under the HSR Act, (ii) the filing of the S-4 and such other documents with, and the obtaining of such orders from, the SEC and various state securities or "blue sky" authorities, and the making of such reports under the Exchange Act, as are required in connection with the transactions contemplated by this Agreement, (iii) the filing of the Articles of Merger with the Utah Division of Corporations and Commercial Code and the Secretary of State of the State of Delaware and appropriate documents with the relevant authorities of other states in which Novell is qualified to do business, (iv) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under the laws of any foreign country which if not obtained or made would not have a Material Adverse Effect and (v) such other consents, authorizations, filings, approvals and registrations which if not obtained or made would not have a Material Adverse Effect.

**4.4 SEC Documents; Novell Financial Statements.** Novell has furnished WordPerfect with or made available to WordPerfect a true and complete copy of each statement, annual, quarterly and other report, registration statement (without exhibits) and definitive proxy statement filed by Novell with the SEC since October 31, 1992 (the "Novell SEC Documents"). As of their respective filing dates, the Novell SEC Documents complied in all material respects with the requirements of the Exchange Act or the Securities Act, as the case may be, and none of the Novell SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, except to the extent corrected by a subsequently filed Novell SEC Document. The financial statements of Novell included in the Novell SEC Documents (the "Novell Financial Statements") comply as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with generally accepted accounting principles consistently applied (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) and fairly present the consolidated financial position of Novell and its consolidated Subsidiaries at the dates thereof and the consolidated results of their operations and changes in financial position for the periods then ended (subject, in the case of unaudited statements, to normal, recurring audit adjustments, provided that the notes and accounts receivable are collectible in the amounts shown thereon and inventories are not subject to write-down, except in either case in an amount not material or for which Novell has provided adequate reserves). There has been no change in Novell's accounting policies or estimates except as described in the notes to the Novell Financial Statements.

**4.5 Information Supplied.** None of the information supplied by Novell or Sub for inclusion in the Proxy Statement or the S-4, at the time such information is supplied and at the time of the Shareholders' Meeting, contains or will contain any untrue statement of a material fact or omits or will omit 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, or will, in the case of the S-4, at the time the S-4 becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

**4.6 Litigation.** There is no action, suit, proceeding, investigation or claim pending or, to the best knowledge of Novell, threatened against Novell or any of its Subsidiaries which could, individually or in the

aggregate, have a Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated hereby.

4.7 *No Defaults.* Neither Novell nor any Subsidiary of Novell is, or has received notice that it would be with the passage of time, (i) in violation of any provision of the Certificate of Incorporation or Bylaws of Novell or any Subsidiary of Novell; or (ii) in default or violation of any material term, condition or provision of (A) any material judgment, decree, order, injunction or stipulation applicable to Novell or any Subsidiary of Novell or (B) any material agreement, note, mortgage, indenture, contract, lease or instrument, permit, concession, franchise or license to which Novell or any Subsidiary of Novell is a party or by which Novell or any of its Subsidiaries or their properties or assets may be bound.

4.8 *Opinion of Financial Advisor.* Novell has been advised in writing by its financial advisor, Morgan Stanley & Co., that in its opinion as of the date hereof, the Exchange Ratio, when considered together with the transactions contemplated hereby, is fair to Novell from a financial point of view.

4.9 *Accounting Matters.* Neither Novell nor any of its Subsidiaries nor, to Novell's best knowledge after reasonable inquiry, any of its Affiliates (as defined in (Section 5.12)), has taken or agreed to take any action that would adversely affect the ability of Novell to account for the business combination to be effected by the Merger as a pooling of interests.

4.10 *Brokers.* No broker, finder or investment banker (other than Morgan Stanley & Co.) is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement. Novell agrees to indemnify and hold harmless WordPerfect from any liability for any commission or compensation in the nature of a finder's fee (and the costs and expenses of defending against such liability or asserted liability) for which Novell or any of its officers, partners, employees or representatives is responsible.

4.11 *Disclosure.* No representation or warranty made by Novell in this Agreement, nor any document, written information, statement, financial statement, certificate, schedule or exhibit prepared and furnished or to be prepared and furnished by Novell or its representatives pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements or facts contained herein or therein not misleading in light of the circumstances under which they were furnished. To the best knowledge of Novell after reasonable inquiry, there is no event, fact or condition that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect that has not been set forth in this Agreement or in the Novell Disclosure Schedule.

## ARTICLE V

### CONDUCT AND TRANSACTIONS PRIOR TO EFFECTIVE TIME; ADDITIONAL AGREEMENTS

5.1 *Information and Access.* Subject to and in accordance with the terms and conditions of that certain letter agreement dated March 7, 1994, between Novell and WordPerfect (the "Confidentiality Agreement"), from the date of this Agreement and continuing until the Effective Time, each party shall afford and, with respect to clause (b) below, such party shall cause its independent auditors to afford, (a) to the officers, independent auditors, counsel and other representatives of the other party reasonable access to the properties, books, records (including Tax returns filed and those in preparation) and personnel of such party and its Subsidiaries in order that the other party may have a full opportunity to make such investigation as it reasonably desires to make of such party and its Subsidiaries and (b) to the independent auditors of the other Company, reasonable access to the audit work papers and other records of the independent auditors of such party and its Subsidiaries. Additionally, subject to and in accordance with the Confidentiality Agreement, each party and its Subsidiaries will permit the other party to make such reasonable inspections of such party and its Subsidiaries and their respective operations during normal business hours as the other party may reasonably require and each party and its Subsidiaries will cause its officers and the officers of its Subsidiaries to furnish the other party with such financial and operating data and other information with respect to the

business and properties of such party and its Subsidiaries as the other party may from time to time reasonably request. WordPerfect further agrees to provide Novell with the following information as soon as practicable following the date of this Agreement:

(a) The jurisdictions in which each WordPerfect Intellectual Property Right has been issued or registered or in which an application for such issuance or registration has been filed, including the respective registration or application numbers;

(b) all licenses, sublicenses and other agreements as to which WordPerfect or any of its Subsidiaries is a party and pursuant to which WordPerfect or any of its Subsidiaries or any other person is authorized to use any WordPerfect Intellectual Property Right, including the identity of all parties thereto, a description of the nature and subject matter thereof, all material rights, restrictions, conditions, or other terms pertaining to each WordPerfect Intellectual Property Right, the applicable royalty or other consideration and the term thereof, and including the extent to which rights with respect to WordPerfect Intellectual Property Rights survive termination or expiration thereof (copies of all licenses, sublicenses, and other agreements identified pursuant to this clause (b) have previously been delivered by WordPerfect to Novell);

(c) all parties to whom WordPerfect has delivered copies of WordPerfect source code, whether pursuant to an escrow arrangement or otherwise, or parties who have the right to receive such source code;

(d) a true and complete list of all real property owned or leased by WordPerfect or any of its Subsidiaries and the aggregate annual rental or other fee payable under any such lease; and

(e) a true and complete list of all Environmental Permits.

No investigation pursuant to this Section 5.1 shall affect or otherwise obviate or diminish any representations and warranties of any party or conditions to the obligations of any party.

**5.2 Conduct of Business of the Parties.** During the period from the date of this Agreement and continuing until the Effective Time or until the termination of this Agreement pursuant to Section 7.1, the parties agree that (except to the extent that the other parties have given their prior written consent):

(a) **WordPerfect Conduct.** WordPerfect and its Subsidiaries shall conduct their respective businesses in the ordinary and usual course consistent with past practice and shall use reasonable efforts to maintain and preserve intact their business organizations, keep available the services of their officers and employees and to maintain satisfactory relations with licensors, licensees, suppliers, contractors, distributors, customers and others having business relationships with them. Without limiting the generality of the foregoing and except as expressly contemplated by this Agreement, prior to the Effective Time, neither WordPerfect nor any of its Subsidiaries shall, without the prior written consent of Novell:

(i) declare, set aside or pay any dividends on or make any other distribution (whether in cash, stock or property) in respect of any of its capital stock except as permitted by subsection (iii) below;

(ii) split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance or authorization of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or repurchase, redeem or otherwise acquire any shares of its capital stock;

(iii) issue, deliver, pledge, encumber or sell, or authorize or propose the issuance, delivery, pledge, encumbrance or sale of, or purchase or propose the purchase of, any shares of its capital stock or securities convertible into, or rights, warrants or options to acquire, any such shares of capital stock or other convertible securities (other than the issuance of such capital stock upon the exercise or conversion of WordPerfect Options, outstanding on the date of this Agreement in accordance with their present terms); or except pursuant to mandatory terms under options outstanding on the date hereof, accelerate, amend or change the period of exercisability of options granted under the WordPerfect Stock Option Plan or any other options, warrants or other

convertible securities or authorize cash payments in exchange for any options granted under any of the WordPerfect Stock Option Plan or authorize or propose any change in its equity capitalization;

(iv) cause or permit any amendments to its Articles of Incorporation or Bylaws or other charter documents;

(v) acquire or agree to acquire by merging or consolidating with, or by purchasing any material portion of the capital stock or assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the business condition of WordPerfect and its Subsidiaries, taken as a whole;

(vi) sell, lease, pledge, license or otherwise dispose of or encumber any of its assets or properties, except in the ordinary course of business consistent with past practice (including, without limitation, any indebtedness owed to it or any claims held by it);

(vii) except as contemplated by Section 5.20, transfer the stock of any Subsidiary to any other Subsidiary or any assets or liabilities to any new or, except in the ordinary course of business consistent with past practice, existing Subsidiary;

(viii) incur any indebtedness for borrowed money or guarantee any such indebtedness or issue or sell any of its debt securities or guarantee, endorse or otherwise as an accommodation become responsible for the obligations of others, or make loans or advances;

(ix) pay, discharge or satisfy any claims, liabilities or obligations (whether absolute, accrued, contingent or otherwise), other than the payment, discharge or satisfaction of liabilities in the ordinary course of business consistent with past practice of liabilities reflected or reserved against in the consolidated financial statements (or the notes thereto) of WordPerfect and its consolidated Subsidiaries;

(x) adopt or amend any Plan, or enter into or amend any employment, severance, special pay arrangement with respect to termination of employment or other similar arrangements or agreements with any of its directors, officers or employees or increase the salaries or wage rates of its employees other than pursuant to scheduled employee reviews under WordPerfect's or any of its Subsidiaries' normal employee review cycle, as the case may be, consistent with WordPerfect's past practices;

(xi) except in the ordinary course of business consistent with past practices and other than transfers between or among WordPerfect and any of its wholly-owned Subsidiaries, transfer to any person or entity any rights to the WordPerfect Intellectual Property Rights;

(xii) enter into or amend any agreements pursuant to which any other party is granted exclusive marketing or other rights of any type or scope with respect to any products of WordPerfect or any of its Subsidiaries;

(xiii) except in the ordinary course of business with prior notice to Novell, violate, amend or otherwise modify the terms of any of the contracts set forth on the WordPerfect Disclosure Schedule;

(xiv) commence a lawsuit other than for the routine collection of bills;

(xv) change the accounting methods or practices followed by WordPerfect or any of its Subsidiaries, including any change in any assumption underlying, or method of calculating, any bad debt, contingency or other reserve, except as may be required by changes in generally accepted accounting principles make or change any material Tax election, adopt or change any Tax accounting method, file any material Tax return or any amendment to a material Tax return, enter into any material closing agreement, settle any material Tax claim or assessment, or consent to any extension or waiver of the limitation period applicable to any material Tax claim or assessment, without the prior consent of Novell, which consent will not be unreasonably withheld (for purposes

of this covenant a "material" Tax Return, closing agreement, Tax claim or assessment shall mean a Tax liability with respect to each such item in excess of \$500,000);

(xvi) take any action that would result in any of the representations and warranties of WordPerfect set forth in this Agreement becoming untrue or in any of the conditions to the Merger set forth in Article VI not being satisfied;

(xvii) enter into any capital commitment or long term obligation equal to or in excess of \$500,000;

(xviii) authorize or propose any of the foregoing, or enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

(b) *Novell Conduct.* Except in connection with transactions contemplated by this Agreement, Novell shall not without the prior consent of WordPerfect (i) amend the Certificate of Incorporation in any manner which would adversely affect the rights of holders of Novell Common Stock, or (ii) issue, deliver or sell or authorize or propose the issuance, delivery or sale of, or purchase or propose the purchase of, any shares of its capital stock of any class or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating it or any of its Subsidiaries to issue any such shares or other convertible securities, except for the issuance or proposed issuance of its capital stock or options to purchase shares of its capital stock (A) in connection with a proposed business combination, (B) in connection with privately negotiated sales of stock pursuant to corporate partnering arrangements or (C) pursuant to stock option grants or exercises or other employee stock benefit plans.

5.3 *Negotiation With Others.* WordPerfect will not, nor will Ashton, Mr. Bastian or Ms. Bastian, directly or indirectly, through any officer, director, other shareholder, affiliate or agent of WordPerfect or otherwise, solicit, initiate, entertain, encourage or negotiate any proposals or offers from any third party relating to the merger or acquisition of WordPerfect or a material portion of its assets or capital stock of WordPerfect, including acquisition of WordPerfect Common Stock (or voting agreements or proxies with respect thereto) owned beneficially by Ashton, Mr. Bastian or Ms. Bastian, nor will WordPerfect, Ashton, Mr. Bastian or Ms. Bastian, during this period participate in any negotiations regarding, or furnish to any person any information with respect to, or otherwise cooperate with, facilitate or encourage any effort or attempt by any person to do or seek any such transaction. WordPerfect shall immediately cease and cause to be terminated all such negotiations with the third parties (other than Novell) which have occurred prior to the date of this Agreement.

5.4 *Preparation of S-4 and the Proxy Statement; Other Filings.* As promptly as practicable after the date of this Agreement, WordPerfect shall provide to Novell and its counsel for inclusion in the Prospectus/Proxy Statement on the S-4 in form and substance satisfactory to Novell and its counsel, such information concerning WordPerfect, its operations, capitalization, technology, share ownership and other material as Novell or its counsel may reasonably request. As promptly as practicable after the date of this Agreement, Novell shall prepare and file with the SEC the S-4, in which the Proxy Statement will be included as a prospectus. Each of Novell and WordPerfect shall use its reasonable efforts to respond to any comments of the SEC, to have the S-4 declared effective under the Securities Act as promptly as practicable after such filing and to cause the Proxy Statement to be mailed to WordPerfect's shareholders at the earliest practicable time. As promptly as practicable after the date of this Agreement, Novell and WordPerfect shall prepare and file any other filings required under the Exchange Act, the Securities Act or any other Federal or state securities or "blue sky" laws relating to the Merger and the transactions contemplated by this Agreement and the Articles of Merger, including, without limitation, under the HSR Act and State Takeover Laws (the "Other Filings"). Each Company will notify the other Company promptly of the receipt of any comments from the SEC or its staff and of any request by the SEC or its staff or any other government officials for amendments or supplements to the S-4, the Proxy Statement or any Other Filing or for additional information and will supply the other Company with copies of all correspondence between such Company or any of its representatives, on the one hand, and the SEC, or its staff or any other government officials, on the other hand, with respect to the S-4, the Proxy Statement, the Merger or any Other Filing. The Proxy Statement, the S-4 and the Other



Filings shall comply in all material respects with all applicable requirements of law. Whenever any event occurs which should be set forth in an amendment or supplement to the Proxy Statement, the S-4 or any Other Filing, Novell or WordPerfect, as the case may be, shall promptly inform the other Company of such occurrence and cooperate in filing with the SEC or its staff or any other government officials, and/or mailing to shareholders of Novell and WordPerfect, such amendment or supplement. The Proxy Statement shall include the unanimous recommendation of the Board of Directors of WordPerfect that the shareholders of WordPerfect approve the Merger.

5.5 *Advice of Changes.* Each Company shall confer on a regular and frequent basis with the other Company, report on operational matters and promptly advise the other orally and in writing of any change or event having, or which, insofar as can reasonably be foreseen, could result in, a Material Adverse Effect with respect to such Company. Each Company shall promptly provide the other Company (or its counsel) copies of all filings made by such Company with any Governmental Entity in connection with this Agreement, the Articles of Merger and the transactions contemplated hereby and thereby.

5.6 *Shareholder Approval.* WordPerfect will call a meeting of its shareholders (the "Shareholders' Meeting") to be held as promptly as practicable for the purpose of obtaining the shareholder approval required in connection with the transactions contemplated hereby and by the Articles of Merger and shall use all reasonable efforts to obtain such approval. WordPerfect shall coordinate and cooperate with Novell with respect to the timing of the Shareholders Meeting. WordPerfect shall not change the date of the Shareholders Meeting without the prior written consent of Novell, nor shall WordPerfect adjourn the Shareholders Meeting without the prior written consent of Novell, unless such adjournment is due to the lack of a quorum, in which case the Chairman of the Shareholders Meeting shall announce at such meeting the time and place of the adjourned meeting. Concurrently with the execution of this Agreement, Ashton, Mr. Bastian and Ms. Bastian (collectively, the "WordPerfect Principal Shareholders") shall have executed Shareholder Agreements in the form of *Exhibit 5.6* (the "Shareholder Agreements").

5.7 *Agreements to Cooperate.*

(a) WordPerfect shall take, and shall cause its Subsidiaries to take, all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on WordPerfect or its Subsidiaries with respect to the Merger (including furnishing all information required under the HSR Act) and shall take all reasonable actions necessary to cooperate promptly with and furnish information to Novell in connection with any such requirements imposed upon Novell or Sub or any Subsidiary of Novell or Sub in connection with the Merger. WordPerfect shall take, and shall cause its Subsidiaries to take, all reasonable actions necessary (i) to obtain (and will take all reasonable actions necessary to promptly cooperate with Novell or Sub and their Subsidiaries in obtaining) any consent, authorization, order or approval of, or any exemption by, any Governmental Entity, or other third party, required to be obtained or made by WordPerfect or any of its Subsidiaries (or by Novell or Sub or any of their Subsidiaries) in connection with the Merger or the taking of any action contemplated by this Agreement; (ii) to lift, rescind or mitigate the effect of any injunction or restraining order or other order adversely affecting the ability of WordPerfect to consummate the transactions contemplated hereby; (iii) to fulfill all conditions applicable to WordPerfect pursuant to this Agreement; and (iv) to prevent, with respect to a threatened or pending temporary, preliminary or permanent injunction or other order, decree or ruling or statute, rule, regulation or executive order, the entry, enactment or promulgation thereof, as the case may be; *provided, however*, that WordPerfect shall not be obligated to, nor shall WordPerfect be obligated to cause its Subsidiaries to, dispose of or hold separate all or a material portion of the business or assets of WordPerfect and its Subsidiaries, taken as a whole.

(b) Novell and Sub shall take, and shall cause their Subsidiaries to take, all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on them or their Subsidiaries with respect to the Merger (including furnishing all information required under the HSR Act) and shall take all reasonable actions necessary to cooperate promptly with and furnish information to WordPerfect in connection with any such requirements imposed upon WordPerfect or any Subsidiary of WordPerfect in connection with the Merger. Novell and Sub shall take, and shall cause their Subsidiaries to take, all reasonable actions necessary (i) to obtain (and will take all reasonable actions necessary to promptly cooperate with

WordPerfect and its Subsidiaries in obtaining) any consent, authorization, order or approval of, or any exemption by, any Governmental Entity, or other third party, required to be obtained or made by Novell or Sub or any of their Subsidiaries (or by WordPerfect or any of its Subsidiaries) in connection with the Merger or the taking of any action contemplated by this Agreement; (ii) to lift, rescind or mitigate the effect of any injunction or restraining order or other order adversely affecting the ability of Novell or Sub to consummate the transactions contemplated hereby; (iii) to fulfill all conditions applicable to Novell or Sub pursuant to this Agreement; and (iv) to prevent, with respect to a threatened or pending temporary, preliminary or permanent injunction or other order, decree or ruling or statute, rule, regulation or executive order, the entry, enactment or promulgation thereof, as the case may be; *provided, however*, that Novell shall not be obligated to, nor shall Novell be obligated to cause its Subsidiaries to, dispose of or hold separate or otherwise relinquish all or a material portion of the business or assets either of WordPerfect or of Novell and its Subsidiaries, taken as a whole, or to change its business in any material way.

(c) Subject to the terms and conditions of this Agreement, each of the parties shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, subject to the appropriate approval of the shareholders of Novell and WordPerfect. The parties hereto will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to the HSR Act or any other federal or state antitrust or fair trade law.

5.8 *State Statutes.* If any State Takeover Law shall become applicable to the transactions contemplated by this Agreement, Novell and its Board of Directors or WordPerfect and its Board of Directors, as the case may be, shall use their reasonable efforts to grant such approvals and take such actions as are necessary so that the transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effects of such State Takeover Law on the transactions contemplated by this Agreement.

5.9 *Consents.* Novell, Sub and WordPerfect shall each use all reasonable efforts to obtain the consent and approval of, or effect the notification of or filing with, each person or authority whose consent or approval is required in order to permit the consummation of the Merger and the transactions contemplated by this Agreement and to enable the Surviving Corporation to conduct and operate the business of WordPerfect and its Subsidiaries substantially as presently conducted and as contemplated to be conducted.

5.10 *Nasdaq National Market Listing.* Novell shall use its reasonable efforts to cause the shares of Novell Common Stock issuable to the shareholders of WordPerfect in the Merger to be authorized for listing on the Nasdaq National Market, upon official notice of issuance.

5.11 *Public Announcements.* Novell and WordPerfect shall cooperate with each other prior to releasing information concerning this Agreement and the transactions contemplated hereby, shall furnish to the other drafts of all press releases or other public announcements prior to publication and shall obtain the consent of the other prior to the issuance of press releases or the release of other public announcements; provided that any party hereto shall have the right (i) to furnish any information to any Governmental Entity or (ii) to issue any other release, in each case when in the reasonable opinion of its counsel it is legally required to do so.

5.12 *Affiliates.*

(a) The WordPerfect Disclosure Schedule sets forth those persons who are, in WordPerfect's reasonable judgment, "affiliates" of WordPerfect within the meaning of Rule 145 (each such person, together with the persons identified below, an "Affiliate") promulgated under the Securities Act ("Rule 145"), including without limitation Mr. Bastian, Ms. Bastian and Ashton. WordPerfect shall provide Novell such information and documents as Novell shall reasonably request for purposes of reviewing such list. WordPerfect shall use its best efforts to deliver or cause to be delivered to Novell, concurrently with the execution of this Agreement from each of the Affiliates of WordPerfect identified in the foregoing list Affiliates Agreements in the form

attached as *Exhibit 5.12*. Novell and Sub shall be entitled to place appropriate legends on the certificates evidencing any Novell Common Stock to be received by such Affiliates pursuant to the terms of this Agreement and the Articles of Merger, and to issue appropriate stop transfer instructions to the transfer agent for Novell Common Stock, consistent with the terms of such Affiliates Agreements.

(b) Novell shall use its reasonable efforts to obtain prior to the Effective Date the execution of agreements with respect to the sale of Novell Common Stock with each person who is an Affiliate of Novell regarding compliance with pooling restrictions.

#### 5.13 *WordPerfect Options.*

(a) At the Effective Time, each outstanding option (each, a "WordPerfect Option") to purchase shares of WordPerfect Common Stock issued pursuant to the WordPerfect Option Plan, whether vested or unvested, shall be assumed by Novell. Accordingly, each WordPerfect Option shall be deemed to constitute an option to acquire, on the same terms and conditions as were applicable under such WordPerfect Option, the number, rounded down to the nearest whole integer, of full shares of Novell Common Stock the holder of such WordPerfect Option would have been entitled to receive pursuant to the Merger had such holder exercised such Option in full, including as to unvested shares, immediately prior to the Effective Time, at a price per share equal to (y) the aggregate exercise price for the shares of WordPerfect Common Stock otherwise purchasable pursuant to such WordPerfect Option divided by (z) the number of full shares of Novell Common Stock deemed purchasable pursuant to such WordPerfect Option with such exercise price per share rounded up to the nearest whole cent. The vesting of the WordPerfect Options shall accelerate upon consummation of the Merger, based on existing contractual commitments to holders of such WordPerfect Options.

(b) As soon as practicable after the Effective Time, Novell shall deliver to each holder of a WordPerfect Option a document evidencing the foregoing assumption of such WordPerfect Option by Novell.

(c) As soon as practicable after the Effective Time, Novell shall file a registration statement on Form S-8 (or any successor or other appropriate form), or another appropriate form with respect to the shares of Novell Common Stock subject to such WordPerfect Options and shall use its reasonable efforts to maintain the effectiveness of such registration statement (and maintain the current status of the prospectus or prospectuses contained therein) for so long as such WordPerfect Options remain outstanding. With respect to those individuals who subsequent to the Merger will be subject to the reporting requirements under Section 16(a) of the Exchange Act, where applicable, Novell shall administer the WordPerfect Option Plan assumed pursuant to this Section 5.13 in a manner that complies with Rule 16b-3 promulgated by the SEC under the Exchange Act to the extent the applicable WordPerfect Option Plan complied with such rule prior to the Merger.

5.14 *Indemnification.* From and after the Effective Time, Novell and the Surviving Corporation shall (to the fullest extent permitted by applicable law) indemnify, defend and hold harmless each person who is now, or has been at any time prior to the date hereof or who becomes prior to the Effective Time, an officer or director of WordPerfect or any of its Subsidiaries (the "Indemnified Parties") against any and all losses, damages, costs, expenses, liabilities or judgments, or amounts that are paid in settlement of, or in connection with, any claim, action, suit, proceeding or investigation based on or arising out of the fact that such person is or was a director or officer of WordPerfect or any Subsidiary of WordPerfect, whether pertaining to any matter existing or occurring at or prior to the Effective Time ("Indemnified Liabilities"). Without limiting the foregoing, in the event any such claim, action, suit, proceeding or investigation is brought against any Indemnified Party (whether arising before or after the Effective Time), (i) any counsel retained by the Indemnified Parties for any period after the Effective Time shall be reasonably satisfactory to Novell (ii) after the Effective Time, Novell shall pay all reasonable fees and expenses of counsel for the Indemnified Parties promptly as statements therefor are received; and (iii) after the Effective Time, Novell shall use all reasonable efforts to assist in the defense of any such matter, provided that Novell shall not be liable for any settlement of any claim effected without its written consent, which consent, however, shall not be unreasonably withheld. Any Indemnified Party wishing to claim indemnification under this Section upon learning of any such claim, action, suit, proceeding or investigation, shall notify Novell (but the failure so to notify Novell shall not relieve

it from any liability which it or the Surviving Corporation may have under this Section except to the extent such failure materially prejudices Novell or the Surviving Corporation). The Indemnified Parties as a group may retain only one law firm to represent them with respect to each such matter unless there is, under applicable standards of professional conduct, a potential conflict on any issue between the positions of any two or more Indemnified Parties.

5.15 *Notification of Certain Matters.* WordPerfect shall give prompt notice to Novell, and Novell and Sub shall give prompt notice to WordPerfect, of the occurrence, or failure to occur, of any event, which occurrence or failure to occur would be likely to cause (a) any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date of this Agreement to the Effective Time, or (b) any material failure of WordPerfect or Novell and Sub, as the case may be, or of any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement.

5.16 *Pooling Accounting.* Each party agrees not to take any action that would adversely affect the ability of Novell to treat the Merger as a pooling of interests, and each party agrees to take such action as may be reasonably required to negate the impact of any past actions which would adversely impact the ability of Novell to treat the Merger as a pooling of interests. The foregoing covenant shall be inapplicable, however, in the event that Novell shall waive the condition precedent to Closing set forth in Section 6.2(c).

5.17 *FIRPTA.* WordPerfect shall deliver to the Internal Revenue Service a notice regarding the statement described in Section 6.2(m) hereof, in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

5.18 *Subsequent Amendments of Disclosure Schedules.* Novell and WordPerfect shall each have the right after the date hereof but no later than twenty one (21) days after the date hereof to deliver to the other written amendments to the applicable Sections of the Novell Disclosure Schedule or the WordPerfect Disclosure Schedule, as the case may be; provided, that any such disclosure is as of, and may not include events or actions subsequent to, the date hereof. To the extent that any such amendment shall not disclose any event or condition that, individually or in the aggregate, could be reasonably likely to have a Material Adverse Effect on Novell or WordPerfect, respectively, such amendment shall be deemed accepted by the other party and the relevant Section of the Disclosure Schedule shall be deemed amended accordingly thereby. Notwithstanding the foregoing, each party hereby represents and warrants that it has used all reasonable efforts to have completed such party's Disclosure Schedule delivered prior to execution of this Agreement.

5.19 *Establishment of Applications Group.* Novell agrees that upon consummation of the Merger, it will establish and maintain WordPerfect as a separate operating unit constituting the Novell Applications Group. The present President of WordPerfect shall be appointed President of the Novell Applications Group, to serve until his successor is duly appointed, who shall report directly to the Chief Executive Officer and President of Novell and the remaining executive officers shall report to such Novell Applications Group President. Novell also agrees that the Novell Applications Group shall be operated in accordance with a plan submitted by WordPerfect and approved by Novell, as modified from time to time.

5.20 *Satisfaction of WordPerfect Obligations.* Novell agrees that in the period following the Effective Date it shall, or shall cause WordPerfect to, satisfy and discharge the liabilities and obligations of WordPerfect in a timely manner in accordance with the contractual terms, if any, associated with any such liability or obligation.

5.21 *Continued Nomination of Directors.* The Board of Directors of Novell shall take all necessary action to cause Ashton and Mr. Bastian (or a designee of either of such persons which designee or designees shall be reasonably acceptable to the Board of Directors of Novell) to be nominated as a member of the Novell management slate of directors to stand for election to the Novell Board of Directors to serve until such person's successor shall be duly appointed. The Board of Directors of Novell shall also take all necessary action to cause Ashton and Mr. Bastian (or their designees) to be nominated for election at the Novell annual meeting of stockholders to be convened in Novell's 1995 fiscal year.

5.22 *Other Transactions.* The parties acknowledge that any action taken by either party with respect to the acquisition of rights to sell a spreadsheet program mutually acceptable to the parties which has been approved by both Novell and WordPerfect will not be deemed a breach of any representation, warranty or covenant, notwithstanding the terms of any such representation, warranty or covenant.

## ARTICLE VI

### CONDITIONS PRECEDENT

6.1 *Conditions to Each Party's Obligation to Effect the Merger.* The respective obligation of each party to effect the Merger is subject to the satisfaction prior to the Closing Date of the following conditions:

(a) *Effectiveness of the S-4.* The S-4 shall have been declared effective by the SEC under the Securities Act. No stop order suspending the effectiveness of the S-4 shall have been issued by the SEC and no proceedings for that purpose and no similar proceeding with respect to the Proxy Statement shall have been initiated or threatened by the SEC.

(b) *Shareholder Approval.* This Agreement and the Articles of Merger shall have been approved and adopted by the affirmative vote or consent of the holders of at least a majority of the issued and outstanding shares of WordPerfect Common Stock present, in person or by proxy, at the meeting of WordPerfect's shareholders contemplated by Section 5.6. Notwithstanding anything in this Agreement to the contrary, the issuance of shares of Novell Common Stock, whether in the Merger or in connection with the Merger or any transaction contemplated hereby, shall have been approved by the stockholders of Novell if required by applicable law or by any requirement of the National Association of Securities Dealers.

(c) *HSR Act.* The applicable waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated.

(d) *Governmental Entity Approvals.* All material authorizations, consents, orders or approvals of, or declarations or filings with, or expiration of waiting periods imposed by, any Governmental Entity necessary for the consummation of the transactions contemplated by this Agreement and the Articles of Merger shall have been filed, expired or been obtained.

(e) *No Injunctions or Restraints; Illegality.* No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending; and there shall not be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger, which would (i) make the consummation of the Merger illegal or (ii) render Novell, Sub or WordPerfect unable to consummate the Merger, except for any waiting period provisions.

(f) *Tax Opinions.* Novell and WordPerfect shall each have received substantially identical written opinions from their respective counsel, Wilson, Sonsini, Goodrich & Rosati, Professional Corporation and Brobeck, Phleger & Harrison, in form and substance reasonably satisfactory to them to the effect that the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code. In rendering such opinions, counsel may rely upon (and, to the extent reasonably required, the parties and WordPerfect's shareholders shall make) reasonable representations related thereto.

6.2 *Conditions of Obligations of Novell and Sub.* The obligations of Novell and Sub to effect the Merger are subject to the satisfaction of the following conditions, unless waived by Novell and Sub:

(a) *Representations and Warranties.* The representations and warranties of WordPerfect set forth in this Agreement shall be true and correct in all material respects (except for such representations and warranties which are qualified by their terms by a reference to materiality, which representations and warranties as so qualified shall be true in all respects) (i) as of the date of this Agreement and (ii) as of

the Closing Date, as though made on and as of the Closing Date (provided that in the cases of clauses (i) and (ii) any such representation and warranty made as of a specific date shall be true and correct in all material respects as of such specific date), unless any failures to be true and correct, individually or in the aggregate, do not have and could not reasonably be expected to have a Material Adverse Effect on WordPerfect; and there shall have been no willful breach by WordPerfect of any of its representations or warranties made in the Agreement. Novell and Sub shall have received a certificate signed by the chief executive officer and the chief financial officer of WordPerfect to such effect on the Closing Date.

(b) *Performance of Obligations of WordPerfect.* WordPerfect shall have performed in all material respects all obligations and covenants required to be performed by it under this Agreement and the Articles of Merger prior to or as of the Closing Date, and Novell and Sub shall have received a certificate signed by the chief executive officer and the chief financial officer of WordPerfect to such effect.

(c) *Auditors Letter.* (i) Novell shall have received a letter from Ernst & Young in form and substance satisfactory to Novell to the effect that the Merger will be accounted for as a pooling of interests and (ii) Ernst & Young shall have received a substantially identical letter from Price Waterhouse to such effect; provided that the letter from Price Waterhouse may except any effect on the accounting of the Merger as a pooling of interests based on any actions taken by Novell.

(d) *Opinion of WordPerfect's Counsel.* Novell shall have received an opinion of Brobeck, Phleger & Harrison, counsel to WordPerfect dated the Closing Date, in form and substance reasonably satisfactory to Novell and WordPerfect.

(e) *Consents.* Novell and Sub shall have received duly executed copies of all material third-party consents and approvals contemplated by this Agreement or the WordPerfect Disclosure Schedule in form and substance reasonably satisfactory to Novell and Sub.

(f) *Affiliate Agreements.* Novell shall have received the executed WordPerfect Affiliate Agreements contemplated by Section 5.12.

(g) *Shareholder Agreements.* Neither Ashton, Mr. Bastian nor Ms. Bastian shall have breached the Shareholder Agreements.

(h) *No Material Adverse Effect.* There shall have been no Material Adverse Effect on WordPerfect or any of its Subsidiaries on or before the Closing Date.

(i) *Resignation of Directors.* The directors of WordPerfect in office immediately prior to the Effective Time shall have resigned as directors of the Surviving Corporation effective as of the Effective Time.

(j) *Tax Matters Agreement.* The WordPerfect shareholders shall have executed and delivered to Novell and WordPerfect a Tax Matters Agreement substantially in the form attached to this Agreement as *Exhibit 6.2(j)*.

(k) *FIRPTA.* Novell, as agent for the shareholders of WordPerfect shall have received a properly executed FIRPTA Notification Letter, in form and substance satisfactory to Novell, which states that shares of capital stock of WordPerfect do not constitute "United States real property interests" under Section 897(c) of the Code, for purposes of satisfying Novell's obligations under Treasury Regulation Section 1.1445-2(c)(3).

6.3 *Conditions of Obligation of WordPerfect.* The obligation of WordPerfect to effect the Merger is subject to the satisfaction of the following conditions, unless waived by WordPerfect:

(a) *Representations and Warranties.* The representations and warranties of Novell and Sub set forth in this Agreement shall be true and correct in all material respects (except for such representations and warranties which are qualified by their terms by a reference to materiality, which representations and warranties as so qualified shall be true in all respects) (i) as of the date of this Agreement and (ii) as of the Closing Date, as though made on and as of the Closing Date (provided that in the cases of clauses (i) and (ii) any such representation and warranty made as of a specific date shall be true and correct in all

material respects as of such specific date), unless any failures to be true and correct, individually or in the aggregate, do not have and could not reasonably be expected to have a Material Adverse Effect on Novell; and there shall have been no willful breach by Novell of any of its representations or warranties made in the Agreement. WordPerfect shall have received a certificate signed by the chief executive officer and the chief financial officer of Novell and the president of Sub to such effect on the Closing Date.

(b) *Performance of Obligations of Novell and Sub.* Novell and Sub shall have performed in all material respects all obligations and covenants required to be performed by them under this Agreement and the Articles of Merger prior to or as of the Closing Date, and WordPerfect shall have received a certificate signed by the chief executive officer and the chief financial officer of Novell and the president of Sub to such effect.

(c) *Opinion of Novell's and Sub's Counsel.* WordPerfect shall have received an opinion dated the Closing Date of Wilson, Sonsini, Goodrich & Rosati, counsel for Novell and Sub, in form and substance reasonably satisfactory to WordPerfect and Novell.

(d) *Consents.* WordPerfect shall have received duly executed copies of all material third-party consents and approvals contemplated by this Agreement and the Novell Disclosure Schedule in form and substance satisfactory to WordPerfect.

(e) *No Material Adverse Effect.* There shall have been no Material Adverse Effect on Novell or any of its Subsidiaries on or before the Closing Date.

(f) *Election of Director Nominees.* The Board of Directors of Novell shall have taken appropriate action to cause the number of directors comprising the full Board of Directors of Novell to be increased by two persons, from seven to nine, and Ashton and Mr. Bastian (or a designee of either of such persons which designee or designees shall be acceptable to the Board of Directors of Novell) shall have been elected to the Board of Directors of Novell, effective upon the Effective Time, until their successors, if any, are duly elected or appointed.

(g) *Acquisition of Rights to Sell a Spreadsheet Program.* Either Novell or WordPerfect shall have acquired the rights to sell a spreadsheet program mutually acceptable to the parties hereto (which acquisition will close prior to or simultaneously with the consummation of the Merger contemplated by this Agreement).

(h) *Comparability of Employee Benefits.* WordPerfect shall be reasonably satisfied that the continuing employees of WordPerfect, after giving effect to the Merger, shall be entitled to receive at least comparable benefits to those being received by the employees of Novell, taken as a whole, who occupy comparable positions and have comparable responsibilities; *provided, however,* that, as soon as practicable after the date hereof and in any event prior to the Closing, Novell and WordPerfect shall confer and agree upon a plan that has as its primary purpose the transition of WordPerfect employees to Novell benefits in a manner that results in minimal disruption to the continuing operations of WordPerfect and continued employment of key individuals. The parties hereto acknowledge that such plan may take an extended period of time to implement successfully.

## ARTICLE VII

### TERMINATION

7.1 *Termination.* This Agreement may be terminated at any time prior to the Effective Time, whether before or after approval of the Merger by the shareholders of WordPerfect:

(a) by mutual written agreement of Novell, Sub and WordPerfect;

(b) by Novell, if there has been a breach by WordPerfect of any representation, warranty, covenant or agreement set forth in this Agreement on the part of WordPerfect or if any representation or warranty of WordPerfect shall have become untrue, in either case such that the condition set forth in Sections 6.2(a) or

6.2(b) would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become untrue and which breach or inaccuracy WordPerfect fails to cure within seven days after notice thereof is given by Novell (except that no cure period shall be provided for a breach by WordPerfect or inaccuracy which by its nature cannot be cured);

(c) by WordPerfect, if there has been a breach by Novell or Sub of any representation, warranty, covenant or agreement set forth in this Agreement on the part of Novell or Sub or if any representation or warranty of Novell or Sub shall have become untrue, in either case such that the condition set forth in Sections 6.3(a) or 6.3(b) would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become untrue and which breach or inaccuracy Novell or Sub, as the case may be, fails to cure within seven days after notice thereof is given by WordPerfect (except that no cure period shall be provided for a breach by Novell or Sub which by its nature cannot be cured);

(d) by Novell or WordPerfect, if the Merger shall not have been consummated on or before July 31, 1994 (other than delays attributable to concluding the HSR Act waiting period or receiving an order of effectiveness from the SEC with respect to the S-4, but in no event later than September 30, 1994);

(e) by Novell or WordPerfect if the required approval of the shareholders of WordPerfect or, if required, the stockholders of Novell, contemplated by this Agreement shall not have been obtained by reason of the failure to obtain the required vote upon a vote taken at the Shareholders' Meeting or at any adjournment thereof or at any meeting of the Novell stockholders or any adjournment thereof, to the extent determined to be necessary subsequent to the date hereof; or

(f) by Novell or WordPerfect if any permanent injunction or other order of a court or other competent authority preventing the Merger shall have become final and nonappealable.

**7.2 Amendment.** The Merger Agreement may be amended by the parties hereto, by action taken by their respective Board of Directors, at any time before or after approval of the Merger by the shareholders of WordPerfect; provided that following approval of the Merger by the shareholders of WordPerfect, no amendment shall be made which by law requires the further approval of such shareholders without obtaining such further approval.

**7.3 Effect of Termination.** In the event of termination of this Agreement pursuant to Section 7.1, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except that (i) that the provisions of the Confidentiality Agreement and Section 3.26, Section 4.10 and Article VIII of this Agreement shall survive the termination of this Agreement and (ii) nothing herein shall relieve any party from liability for any breach of this Agreement.

## ARTICLE VIII

### GENERAL PROVISIONS

**8.1 Nonsurvival of Representations, Warranties and Agreements.** All representations, warranties and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall be deemed to be conditions to the Merger and shall not survive the consummation of the Merger, except that the agreements contained in Article II, Section 3.26, Section 4.10 and Article VIII, the agreements delivered pursuant to this Agreement and the representations made to counsel in connection with the tax opinions to be delivered pursuant to Section 6.1(f) shall survive the consummation of the Merger.

**8.2 Expenses.** Whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement, the Articles of Merger and the transactions contemplated hereby and thereby shall be paid by the party incurring such expense, except that if the Merger is not consummated expenses incurred in connection with printing the documents distributed to shareholders of WordPerfect and the S-4 shall be shared equally by Novell and WordPerfect.

**8.3 Extension; Waiver.** At any time prior to the Effective Time, each of WordPerfect and Novell, by action taken by its Board of Directors, may, to the extent legally allowed, (i) extend the time for the



performance of any of the obligations or other acts of the other, (ii) waive any inaccuracies in the representations and warranties made to it contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions for the benefit of it contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

8.4 *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by registered or certified mail (return receipt requested) or sent by telecopy, confirmation received, to the parties at the following addresses and telecopy numbers (or at such other address or number for a party as shall be specified by like notice):

(a) if to Novell or Sub, to:

Novell, Inc.  
122 East 1700 South  
Provo, Utah 84606  
Attention: David R. Bradford, Esq.  
Telecopy No. (801) 377-7619  
Telephone No. (801) 429-7000

with a copy to:

Wilson, Sonsini, Goodrich & Rosati  
2 Palo Alto Square  
Palo Alto, California 94306  
Attn: Larry W. Sonsini, Esq.  
Telecopy No.: (415) 493-6811  
Telephone No.: (415) 493-9300

(b) if to WordPerfect, to:

WordPerfect Corporation  
1555 North Technology Way  
Orem, Utah 84057  
Attention: R. Duff Thompson, Esq.  
Telecopy No.: (801) 222-4477  
Telephone No.: (801) 222-4400

with a copy to:

Brobeck, Phleger & Harrison  
2 Embarcadero Place  
2200 Geng Road  
Palo Alto, California 94306  
Attn: Joshua Green, Esq.  
Telecopy No.: (415) 496-2885  
Telephone No.: (415) 424-0160

8.5 *Interpretation.* When a reference is made in this Agreement to Sections or Exhibits, such reference shall be to a Section or Exhibit to this Agreement unless otherwise indicated. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

8.6 *Counterparts.* This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

8.7 *Entire Agreement.* This Agreement, the Confidentiality Agreement and the documents and instruments and other agreements among the parties delivered pursuant hereto constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and are not intended to confer upon any other person any rights or remedies hereunder except as otherwise expressly provided herein.

8.8 *No Transfer.* This Agreement and the rights and obligations set forth herein may not be transferred or assigned by operation of law or otherwise without the consent of each party hereto. This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.

8.9 *Severability.* If any provision of this Agreement, or the application thereof, will for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

8.10 *Other Remedies.* Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law or equity on such party, and the exercise of any one remedy will not preclude the exercise of any other.

8.11 *Further Assurances.* Each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurances as may be reasonably requested by any other party to evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.

8.12 *Absence of Third Party Beneficiary Rights.* No provision of this Agreement is intended, nor will be interpreted, to provide to create any third party beneficiary rights or any other rights of any kind in any client, customer, affiliate, stockholder, employee, partner or any party hereto or any other person or entity unless specifically provided otherwise herein, and, except as so provided, all provisions hereof will be personal solely between the parties to this Agreement.

8.13 *Mutual Drafting.* This Agreement is the joint product of Novell and WordPerfect, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of Novell and WordPerfect, and shall not be construed for or against any party hereto.

8.14 *Governing Law.* This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Delaware (without giving effect to its choice of law principles).

IN WITNESS WHEREOF, Novell, Sub and WordPerfect have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

NOVELL, INC.

By:           /s/ JAMES R. TOLONEN            
James R. Tolonen, Office of the  
President and Chief Financial Officer

WORDPERFECT CORPORATION

By:           /s/ R. DUFF THOMPSON            
R. Duff Thompson, Executive Vice-President

NOVELL ACQUISITION CORP.

By:           /s/ JAMES R. TOLONEN            
James R. Tolonen, President

By:           /s/ ALAN C. ASHTON            
Alan C. Ashton\*

By:           /s/ BRUCE W. BASTIAN            
Bruce W. Bastian\*

By:           /s/ MELANIE L. BASTIAN            
Melanie L. Bastian\*

\* For purpose of Section 5.3 only.

EXHIBIT 1.1

ARTICLES OF MERGER

These Articles of Merger, dated as of \_\_\_\_\_, 1994 ("Articles of Merger"), are entered into between WordPerfect Corporation, a Utah corporation ("WordPerfect" or "Surviving Corporation"), and Novell Acquisition Corp., a Delaware corporation ("Acquisition") (WordPerfect and Acquisition being collectively referred to as the "Constituent Corporations").

INTENDING TO BE LEGALLY BOUND, and in consideration of the premises and material covenants and agreements contained herein, the Constituent Corporations hereby agree as follows:

ARTICLE I

THE MERGER PLAN

1.1 Merger of Acquisition With and Into WordPerfect.

(a) Agreement and Plan of Reorganization. Subject to the terms of these Articles of Merger and an Agreement and Plan of Reorganization dated as of March 21, 1994 (the "Reorganization Agreement"), among the Constituent Corporations and Novell, Inc., a Delaware corporation and the owner of all the outstanding shares of capital stock of Acquisition ("Novell"), Acquisition shall be merged with and into WordPerfect (the "Merger").

(b) Effective Time of the Merger. The Merger shall become effective at such time (the "Effective Time") (the date the Merger shall become effective is sometimes referred to as the "Effective Date") as these Articles of Merger are filed with the Division of Corporations and Commercial Code of the State of Utah pursuant to Section 16-10a-1105 of the Revised Business Corporation Act of the State of Utah.

(c) Surviving Corporation. At the Effective Time, Acquisition shall be merged with and into WordPerfect and the separate corporate existence of Acquisition shall thereupon cease. WordPerfect shall be the surviving corporation in the Merger and the separate corporate existence of WordPerfect shall continue after the Merger.

1.2 Effect of the Merger; Additional Actions.

(a) Effects. The Merger shall have the effects set forth in Section 16-10a-1106 of the Revised Business Corporation Act of the State of Utah.

(b) Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of the Reorganization Agreement or these Articles of Merger and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of Acquisition and WordPerfect, the officers and directors of Acquisition and WordPerfect are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

ARTICLE II

THE CONSTITUENT CORPORATIONS

2.1 Organization of WordPerfect.

(a) Incorporation. WordPerfect was incorporated under the laws of the State of Utah in 1979.

(b) Authorized Stock. WordPerfect is authorized to issue an aggregate of 200,000,000 shares of Common Stock, \$0.001 par value ("WordPerfect Common Stock").

(c) Outstanding Stock. At the close of business on \_\_\_\_\_, 1994, \_\_\_\_\_ shares of WordPerfect Common Stock were outstanding.

2.2 *WordPerfect Shareholder Approval.* The Reorganization Agreement and these Articles of Merger were duly approved and adopted by the affirmative vote of the holders of at least a majority of the shares of WordPerfect Common Stock entitled to vote on the Reorganization Agreement and these Articles of Merger at a special meeting of the shareholders held on June , 1994, in accordance with the provisions of Section 16-10a-1103 of the Utah Revised Business Corporation Act.

2.3 *Organization of Acquisition.*

(a) *Incorporation.* Acquisition was incorporated under the laws of the State of Delaware on March 21, 1994.

(b) *Authorized Stock.* Acquisition is authorized to issue an aggregate of 1,000,000 shares of common stock, \$0.01 par value ("Acquisition Stock").

(c) *Outstanding Stock.* On the date hereof, an aggregate of shares of Acquisition Stock are outstanding.

2.4 *Acquisition Shareholder Approval.* The sole shareholder of Acquisition, as the holder of all of the outstanding shares of Acquisition, duly approved and adopted the Reorganization Agreement and these Articles of Merger without a meeting by written consent given by it on March , 1994.

### ARTICLE III

#### ARTICLES OF INCORPORATION, BYLAWS AND DIRECTORS AND OFFICERS OF THE SURVIVING CORPORATION

3.1 *Articles of Incorporation of Surviving Corporation.* The Articles of Incorporation of WordPerfect in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation, except that such Articles of Incorporation shall be amended to provide that the authorized capital stock of the Surviving Corporation shall be 1,000,000 shares of Common Stock.

3.2 *Bylaws of Surviving Corporation.* The Bylaws of WordPerfect in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation unless and until amended or repealed as provided by applicable law, the Articles of Incorporation of the Surviving Corporation and such Bylaws.

3.3 *Directors and Officers of Surviving Corporation.* The directors of Acquisition immediately prior to the Effective Time shall be the directors of the Surviving Corporation at the Effective Time, each to hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation, and the officers of WordPerfect immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case, until their respective successors are duly elected or appointed or qualified.

### ARTICLE IV

#### EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES

4.1 *Effect on Capital Stock.* As of the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of WordPerfect Common Stock:

(a) *Capital Stock of Acquisition.* Each issued and outstanding share of capital stock of Acquisition shall continue to be issued and shall be converted into one share of validly issued, fully paid and nonassessable Common Stock of the Surviving Corporation. Each stock certificate of Acquisition evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

(b) *Cancellation of Certain Shares of WordPerfect Common Stock.* All shares of WordPerfect Common Stock that are owned directly or indirectly by WordPerfect or by any Subsidiary (as defined

below) of WordPerfect and any shares of WordPerfect Common Stock owned by Novell, Acquisition or any other Subsidiary of Novell shall be cancelled and no stock of Novell or other consideration shall be delivered in exchange therefor. "Subsidiary" means a corporation or other entity whose voting securities are owned or are otherwise controlled directly or indirectly by a parent corporation or other intermediary entity in an amount sufficient to elect at least a majority of the Board of Directors or other managers of such corporation or other entity.

(c) *Conversion of WordPerfect Common Stock.* Each issued and outstanding share of WordPerfect Common Stock (other than shares to be cancelled pursuant to Section 4.1(b) hereof and shares, if any, which then or thereafter constitute dissenter's shares within the meaning of Part 16 of the Utah Revised Business Corporation Act ("Dissenter's Shares")) shall be canceled and extinguished and converted, without any action on the part of the holders thereof and subject to Section 4(e) hereof, into one share of Novell Common Stock.

(d) *Dissenters' Rights.* If holders of WordPerfect Common Stock are entitled to dissenters' rights in connection with the Merger under Part 16 of the Utah Revised Business Corporation Act, any Dissenter's Shares shall not be converted into Novell Common Stock but shall be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenter's Shares pursuant to the law of the State of Utah.

(e) *Fractional Shares.* No fractional shares of Novell Common Stock shall be issued, but in lieu thereof each holder of shares of WordPerfect Common Stock who would otherwise be entitled to receive a fraction of a share of Novell Common Stock shall receive from Novell an amount of cash equal to the per share market value of Novell Common Stock (based on the last sales price of Novell Common Stock as reported on the National Market System of the National Association of Securities Dealers' Automated Quotation System on the Effective Date of the Merger) multiplied by the fraction of a share of Novell Common Stock to which such holder would otherwise be entitled. The fractional share interests of each WordPerfect shareholder shall be aggregated, so that no WordPerfect shareholder shall receive cash in an amount greater than the value of one full share of Novell Common Stock.

#### 4.2 *Exchange of Certificates.*

(a) *Exchange Agent.* Mellon Bank, N.A. shall act as exchange agent (the "Exchange Agent") in the Merger.

(b) *Novell to Provide Common Stock.* Promptly after the Effective Time, Novell shall make available to the Exchange Agent for exchange in accordance with the provisions of this Article IV and the Reorganization Agreement, through such reasonable procedures as Novell may adopt, the shares of Novell Common Stock issuable pursuant to Section 4.1 of these Articles of Merger and the provisions of the Reorganization Agreement in exchange for outstanding shares of WordPerfect Common Stock.

(c) *No Further Ownership Rights in WordPerfect Common Stock.* All Novell Common Stock delivered upon the surrender for exchange of shares of WordPerfect Common Stock in accordance with the terms of the Reorganization Agreement and these Articles of Merger shall be deemed to have been delivered in full satisfaction of all rights pertaining to such shares of WordPerfect Common Stock. There shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of WordPerfect Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Article IV and the Reorganization Agreement.

## ARTICLE V

### TERMINATION

5.1 *Termination by Mutual Agreement.* Notwithstanding the approval of these Articles of Merger by the shareholders of WordPerfect, these Articles of Merger may be terminated at any time prior to the

Effective Time by mutual written agreement of the Boards of Directors of Novell, WordPerfect and Acquisition.

5.2 *Termination of Agreement and Plan of Merger.* Notwithstanding the approval of these Articles of Merger by the shareholders of WordPerfect, these Articles of Merger shall terminate forthwith in the event that the Reorganization Agreement shall be terminated as therein provided.

5.3 *Effects of Termination.* In the event of the termination of these Articles of Merger, these Articles of Merger shall forthwith become void and there shall be no liability on the part of either WordPerfect or Acquisition or their respective officers or directors, except as otherwise provided in the Reorganization Agreement.

ARTICLE VI

GENERAL PROVISIONS

6.1 *Amendment.* These Articles of Merger may be amended by the parties hereto any time before or after approval hereof by the shareholders of WordPerfect but, after such approval, no amendment shall be made which by law requires the further approval of shareholders of WordPerfect without obtaining such approval. These Articles of Merger may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

6.2 *Counterparts.* These Articles of Merger may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement.

6.3 *Governing Law.* These Articles of Merger shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have duly executed these Articles of Merger as of the date first written above.

WORDPERFECT CORPORATION  
1555 North Technology Way  
Orem, Utah 84057

By: \_\_\_\_\_  
Alan C. Ashton, President and Chief Executive  
Officer

NOVELL ACQUISITION CORP.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
James R. Tolonen, President

## EXHIBIT 5.6

## WORDPERFECT CORPORATION SHAREHOLDER AGREEMENT

THIS SHAREHOLDER AGREEMENT (this "Agreement") is made and entered into as of March 21, 1994, between Novell, Inc., a Delaware corporation ("Novell"), WordPerfect Corporation, a Utah corporation ("WordPerfect") and the undersigned shareholder ("Shareholder") of WordPerfect.

### RECITALS

A. Concurrently with the execution of this Agreement, Novell, Novell Acquisition Corp., a Delaware corporation and wholly-owned subsidiary of Novell ("Sub"), and WordPerfect have entered into an Agreement and Plan of Reorganization (the "Reorganization Agreement"), which contemplates that WordPerfect and Sub will enter into the Articles of Merger, which Reorganization Agreement and Articles of Merger (collectively, the "Merger Agreements") provide for the merger (the "Merger") of Sub with and into WordPerfect. Pursuant to the Merger, all outstanding capital stock of WordPerfect will be converted into Common Stock of Novell.

B. Shareholder is the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of such number of shares of the outstanding Common Stock, no par value per share, of WordPerfect as is indicated on the final page of this Agreement (the "Shares").

C. In consideration of the execution of the Reorganization Agreement by Novell, Shareholder agrees not to transfer or otherwise dispose of any of the Shares, or any other shares of capital stock of WordPerfect acquired by Shareholder hereafter and prior to the Expiration Date (as defined in Section 1.1 below), and agrees to vote the Shares and any other such shares of capital stock of WordPerfect so as to facilitate consummation of the Merger.

NOW, THEREFORE, the parties agree as follows:

1. *Agreement to Retain Shares.*

1.1 *Transfer and Encumbrance.* Shareholder agrees not to transfer (except as permitted under Section 1.3 below), sell, exchange, pledge (except in connection with a bona fide loan transaction, provided that any pledgee agrees not to transfer, sell, exchange, pledge or otherwise dispose or encumber the Shares or any New Shares (as defined in Section 1.2 below) prior to the Expiration Date and to be subject to the Proxy (as defined in Section 3 below)) or otherwise dispose of or encumber the Shares or any New Shares or to make any offer or agreement relating thereto, at any time prior to the Expiration Date. As used herein, the term "Expiration Date" shall mean the earlier to occur of (i) such date and time as the Merger shall become effective in accordance with the terms and provisions of the Merger Agreements or (ii) the termination of the Reorganization Agreement in accordance with its terms.

1.2 *New Shares.* Shareholder agrees that any shares of capital stock of WordPerfect that Shareholder purchases or with respect to which Shareholder otherwise acquires beneficial ownership after the date of this Agreement and prior to the Expiration Date ("New Shares") shall be subject to the terms and conditions of this Agreement to the same extent as if they constituted Shares.

1.3 *Permitted Transfers.* Shareholder may transfer up to thirty percent (30%) of the Shares or any New Shares to members of Shareholder's immediate family if, prior to any such transfer, (i) Novell receives advice from its counsel that such transfer will not affect the treatment of the Merger as a pooling of interests for accounting purposes and (ii) the transferee agrees to be bound by the provisions of this Agreement.

2. *Agreement to Vote Shares.* At every meeting of the shareholders of WordPerfect called with respect to any of the following, and at every adjournment thereof, and on every action or approval by written consent