

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

---

**FORM 10-Q**

---

(Mark One)

**Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended October 31, 2004

OR

**Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Commission File Number: 0-14338

**AUTODESK, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**94-2819853**  
(I.R.S. Employer  
Identification No.)

**111 McInnis Parkway**  
**San Rafael, California 94903**  
(Address of principal executive offices)

**Telephone Number (415) 507-5000**  
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days:

Yes  No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934).

Yes  No

As of November 30, 2004, there were approximately 229.5 million shares of the Registrant's Common Stock outstanding.

---

AUTODESK, INC.

INDEX

Page No.

**PART I. FINANCIAL INFORMATION**

<b>Item 1.</b>	<b><u>Condensed Consolidated Financial Statements:</u></b>	
	<u>Condensed Consolidated Statements of Income</u> <u>Three and nine months ended October 31, 2004 and 2003</u>	3
	<u>Condensed Consolidated Balance Sheets</u> <u>October 31, 2004 and January 31, 2004</u>	4
	<u>Condensed Consolidated Statements of Cash Flows</u> <u>Nine months ended October 31, 2004 and 2003</u>	5
	<u>Notes to Condensed Consolidated Financial Statements</u>	6
<b>Item 2.</b>	<b><u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u></b>	16
<b>Item 3.</b>	<b><u>Quantitative and Qualitative Disclosure About Market Risk</u></b>	41
<b>Item 4.</b>	<b><u>Controls and Procedures</u></b>	41

**PART II. OTHER INFORMATION**

<b>Item 1.</b>	<b><u>Legal Proceedings</u></b>	42
<b>Item 2.</b>	<b><u>Unregistered Sales in Equity Securities and Use of Proceeds</u></b>	43
<b>Item 3.</b>	<b><u>Defaults upon Senior Securities</u></b>	43
<b>Item 4.</b>	<b><u>Submission of Matters to a Vote of Security Holders</u></b>	43
<b>Item 5.</b>	<b><u>Other Information</u></b>	43
<b>Item 6.</b>	<b><u>Exhibits</u></b>	43
	<u>Signatures</u>	44

**PART I. FINANCIAL INFORMATION****ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**AUTODESK, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
(In thousands, except per share data)  
(Unaudited)

	Three months ended October 31,		Nine months ended October 31,	
	2004	2003	2004	2003
<b>Net revenues:</b>				
License and other	\$ 254,450	\$ 204,303	\$ 753,404	\$ 574,618
Maintenance	45,708	29,559	124,208	81,715
<b>Total net revenues</b>	<b>300,158</b>	<b>233,862</b>	<b>877,612</b>	<b>656,333</b>
<b>Costs and expenses:</b>				
Cost of license and other revenues	39,184	32,690	112,885	100,193
Cost of maintenance revenues	4,210	3,919	12,597	10,705
Marketing and sales	113,205	95,364	327,497	277,581
Research and development	59,942	53,004	176,165	154,247
General and administrative	26,837	20,945	76,856	65,118
Restructuring and other	2,922	—	14,889	—
<b>Total costs and expenses</b>	<b>246,300</b>	<b>205,922</b>	<b>720,889</b>	<b>607,844</b>
Income from operations	53,858	27,940	156,723	48,489
Interest and other income, net	2,801	1,805	7,396	8,147
Income before income taxes	56,659	29,745	164,119	56,636
Income tax benefit (provision)	17,411	(7,139)	(8,379)	6,081
<b>Net income</b>	<b>\$ 74,070</b>	<b>\$ 22,606</b>	<b>\$ 155,740</b>	<b>\$ 62,717</b>
Basic net income per share	\$ 0.33	\$ 0.10	\$ 0.69	\$ 0.28
Diluted net income per share	\$ 0.30	\$ 0.10	\$ 0.63	\$ 0.28
Shares used in computing basic net income per share	227,823	222,440	227,344	222,994
Shares used in computing diluted net income per share	248,045	228,333	245,492	227,319

See accompanying Notes to Condensed Consolidated Financial Statements.

**AUTODESK, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(In thousands)

	October 31, 2004	January 31, 2004
	(Unaudited)	(Audited)
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 377,148	\$ 282,249
Marketable securities	56,917	81,275
Accounts receivable, net	168,044	166,816
Inventories	12,530	17,365
Deferred income taxes	56,985	25,410
Prepaid expenses and other current assets	25,896	24,137
	<hr/>	<hr/>
Total current assets	697,520	597,252
Marketable securities	83,899	165,976
Computer equipment, software, furniture and leasehold improvements, at cost:		
Computer equipment, software and furniture	193,845	206,319
Leasehold improvements	32,625	34,526
Less accumulated depreciation	(158,571)	(174,371)
	<hr/>	<hr/>
Net computer equipment, software, furniture and leasehold improvements	67,899	66,474
Purchased technologies and capitalized software, net	13,108	19,378
Goodwill	166,669	160,094
Deferred income taxes, net	44,048	—
Other assets	8,984	7,986
	<hr/>	<hr/>
	\$ 1,082,127	\$ 1,017,160
	<hr/>	<hr/>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 50,909	\$ 52,307
Accrued compensation	107,917	92,830
Accrued income taxes	37,734	50,695
Deferred revenues	157,105	127,276
Other accrued liabilities	53,891	61,814
	<hr/>	<hr/>
Total current liabilities	407,556	384,922
Deferred income taxes, net	—	7,849
Other liabilities	1,293	2,746
Commitments and contingencies		
Stockholders' equity:		
Preferred stock	—	—
Common stock and additional paid-in capital	600,936	473,673
Accumulated other comprehensive loss	(4,432)	(4,754)
Deferred compensation	(412)	(451)
Retained earnings	77,186	153,175
	<hr/>	<hr/>
Total stockholders' equity	673,278	621,643
	<hr/>	<hr/>
	\$ 1,082,127	\$ 1,017,160
	<hr/>	<hr/>

See accompanying Notes to Condensed Consolidated Financial Statements.

**AUTODESK, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

	Nine months ended October 31,	
	2004	2003
<b>Operating activities</b>		
Net income	\$ 155,740	\$ 62,717
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	38,581	35,966
Stock compensation expense	2,915	1,497
Net loss on fixed asset disposals	321	—
Write-downs of cost method investments	—	61
Tax benefits from employee stock plans	91,414	—
Restructuring-related charges, net	4,773	—
Changes in operating assets and liabilities, net of business combinations	(64,318)	709
<b>Net cash provided by operating activities</b>	<b>229,426</b>	<b>100,950</b>
<b>Investing activities</b>		
Net sales and maturities of available-for-sale marketable securities	105,238	4,927
Capital and other expenditures	(29,291)	(18,716)
Business combinations	(11,750)	(5,150)
Other investing activities	(1,487)	(51)
<b>Net cash provided by (used in) investing activities</b>	<b>62,710</b>	<b>(18,990)</b>
<b>Financing activities</b>		
Proceeds from issuance of common stock, net of issuance costs	211,456	50,454
Repurchase of common stock	(400,066)	(81,062)
Dividends paid	(10,146)	(10,076)
<b>Net cash used in financing activities</b>	<b>(198,756)</b>	<b>(40,684)</b>
Effect of exchange rate changes on cash and cash equivalents	1,519	7,057
<b>Net increase in cash and cash equivalents</b>	<b>94,899</b>	<b>48,333</b>
Cash and cash equivalents at beginning of year	282,249	186,377
<b>Cash and cash equivalents at end of period</b>	<b>\$ 377,148</b>	<b>\$234,710</b>
<b>Supplemental cash flow information:</b>		
Net cash paid during the period for income taxes	\$ 12,123	\$ 2,058

See accompanying Notes to Condensed Consolidated Financial Statements.

**AUTODESK, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**1. Basis of Presentation**

The accompanying unaudited condensed consolidated financial statements reflect all adjustments which are, in the opinion of management, necessary for a fair presentation of the financial position and operating results for the interim periods. Other than certain adjustments related to income taxes, as further described below in Note 6 "Income Taxes," all adjustments are of a normal recurring nature. These statements should be read in conjunction with the consolidated financial statements and related notes, together with management's discussion and analysis of financial position and results of operations, contained in Autodesk's fiscal 2004 Annual Report on Form 10-K. The results of operations for the three and nine months ended October 31, 2004 are not necessarily indicative of the results for the entire fiscal year ending January 31, 2005 or for any other period.

Certain reclassifications, described as follows, have been made to prior year numbers to conform to current year presentation. Autodesk previously classified information technology and other corporate service costs that benefit the entire organization as General and Administrative expenses in our Consolidated Statements of Income. During the fourth quarter of fiscal 2004, Autodesk re-evaluated its cost allocation methodology and reclassified these costs to other functional areas of the business that benefit from these services. This reclassification had no impact on Autodesk's total income from operations or net income.

The effect of this reclassification on the previously reported condensed consolidated financial statements for the three and nine months ended October 31, 2003 is as follows (in thousands):

	Three months ended October 31, 2003		Nine months ended October 31, 2003	
	As previously reported	As reclassified	As previously reported	As reclassified
Cost of revenues	\$ 35,364	\$ 36,609	\$ 107,211	\$ 110,898
Marketing and sales	89,860	95,364	259,001	277,581
Research and development	48,562	53,004	141,708	154,247
General and administrative	32,136	20,945	99,924	65,118
Income from operations	27,940	27,940	48,489	48,489

On November 16, 2004 the Board of Directors authorized a two-for-one stock split in the form of a stock dividend to stockholders of record as of December 6, 2004. All references in the condensed consolidated financial statements and notes thereto with respect to the number of shares, per share amounts and market prices of Autodesk's common stock have been restated to reflect the effect of the stock split.

**2. Stock-Based Compensation**

As permitted by Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), as amended by Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure" ("SFAS 148"), Autodesk has elected to continue to follow the intrinsic value method of accounting in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") to account for employee stock options.

## [Table of Contents](#)

The following table illustrates the effect on net income and earnings per share if Autodesk had applied the fair value recognition provisions of SFAS 123, as amended by SFAS 148, to stock-based employee compensation (in thousands, except per share amounts):

	Three months ended October 31,		Nine months ended October 31,	
	2004	2003	2004	2003
Net income – as reported	\$ 74,070	\$ 22,606	\$ 155,740	\$ 62,717
Add: Stock-based employee compensation cost, net of related tax effects, included in the determination of net income as reported	2,041	368	2,327	1,061
Deduct: Total stock-based employee compensation cost determined under the fair-value based method for all awards, net of related tax effects	(16,577)	(10,951)	(42,178)	(34,746)
Pro forma net income	\$ 59,534	\$ 12,023	\$ 115,889	\$ 29,032
Net income per share:				
Basic – as reported	\$ 0.33	\$ 0.10	\$ 0.69	\$ 0.28
Basic – pro forma	\$ 0.26	\$ 0.05	\$ 0.51	\$ 0.13
Diluted – as reported	\$ 0.30	\$ 0.10	\$ 0.63	\$ 0.28
Diluted – pro forma	\$ 0.24	\$ 0.05	\$ 0.48	\$ 0.13

### 3. **Inventories**

Inventories consisted of the following (in thousands):

	October 31, 2004	January 31, 2004
Raw materials and finished goods	\$ 8,800	\$ 13,875
Demonstration inventory, net	3,730	3,490
	\$ 12,530	\$ 17,365

Inventories are stated at the lower of standard cost (determined on the first-in, first-out method) or market. Appropriate consideration is given to excess and obsolete inventory levels in evaluating lower of cost or market.

### 4. **Purchased Technologies and Capitalized Software**

Purchased technologies and capitalized software and the related accumulated amortization were as follows (in thousands):

	October 31, 2004	January 31, 2004
Purchased technologies	\$ 137,108	\$ 133,041
Capitalized software	21,780	20,875
	158,888	153,916
Less: Accumulated amortization	(145,780)	(134,538)
Purchased technologies and capitalized software, net	\$ 13,108	\$ 19,378

## Table of Contents

Expected future amortization expense for purchased technologies and capitalized software for the three months ended January 31, 2005 and each of the fiscal years thereafter is as follows (in thousands):

<u>Year ending January 31,</u>	
Remainder of 2005	\$ 3,788
2006	5,204
2007	2,259
2008	1,175
2009	682
<b>Total</b>	<b>\$13,108</b>

### 5. Goodwill

The changes in the carrying amount of goodwill during the nine months ended October 31, 2004 are as follows (in thousands):

	<u>Design Solutions</u>	<u>Discreet</u>	<u>Total</u>
Balance as of January 31, 2004	\$ 153,688	\$ 6,406	\$ 160,094
Additions arising from acquisitions	5,440	1,135	6,575
<b>Balance as of October 31, 2004</b>	<b>\$ 159,128</b>	<b>\$ 7,541</b>	<b>\$ 166,669</b>

### 6. Income Taxes

During the third quarter of fiscal 2005, the American Jobs Creation Act of 2004 was signed into law which allows for the repatriation of foreign dividends at a rate lower than the 35% federal statutory rate through a one-time election ("DRD Legislation"). Autodesk believes that it will be able to repatriate foreign earnings under this DRD legislation. During the third quarter of fiscal 2005, Autodesk recognized a one-time income tax benefit of \$15.5 million relating to the difference between income taxes previously provided on the earnings of a foreign subsidiary at the federal statutory tax rate and the lower rate afforded under the new DRD legislation. As a result, the deferred tax liability previously accrued on these earnings was reduced, which increased the Company's total net deferred tax asset balance.

Also, as a result of the Company's resolution and closure of its Internal Revenue Service (IRS) audit for fiscal 2001 as well as the closure of certain state and foreign tax years, Autodesk recognized a current income tax benefit of approximately \$8.9 million during the third quarter of fiscal 2005. This benefit reduced accrued income taxes at October 31, 2004.

Absent the impact of the one-time income tax benefits of \$15.5 million relating to the DRD legislation and \$8.9 million related to income tax audit closures in the third quarter of fiscal 2005, the Company has provided for taxes for the nine months ended October 31, 2004 based on a projected effective tax rate of 20%. The projected tax rate was reduced in the third quarter of fiscal 2005 as a result of the new DRD legislation and the belief that current year foreign earnings of certain subsidiaries will also be taxed at a rate lower than previously projected. As a result, a cumulative catch-up adjustment was recorded to the tax provision in the third quarter of fiscal 2005 totaling \$4.3 million to account for this reduction of the effective tax rate from 24% to 20%.

Finally, in the third quarter of fiscal 2005, Autodesk re-assessed the realizability of certain deferred tax assets related to stock option deductions that had not been previously recognized. As a result of recent U.S. operating results, as well as U.S. jurisdictional forecasts of pretax operating results we believe these deferred tax assets are now realizable on the "more likely than not" standard required for recognition. Accordingly, in the third quarter of fiscal 2005, the Company reduced the valuation allowance by \$21.1 million and credited additional paid in capital by an equal and offsetting amount.



## [Table of Contents](#)

### 7. **Restructuring Reserves**

The following table sets forth the restructuring plan activities during the nine months ended October 31, 2004 (in thousands). The balance at October 31, 2004 is included in other accrued liabilities on our Condensed Consolidated Balance Sheet.

	<u>Balance at January 31, 2004</u>	<u>Additions</u>	<u>Charges Utilized</u>	<u>Reversals</u>	<u>Balance at October 31, 2004</u>
Office closure costs	\$ 7,686	\$ 3,477	\$ (5,917)	\$ (137)	\$ 5,109
Employee termination costs	1,167	11,550	(10,901)	—	1,816
<b>Total</b>	<b>\$ 8,853</b>	<b>\$15,027</b>	<b>\$ (16,818)</b>	<b>\$ (137)</b>	<b>\$ 6,925</b>

During the fourth quarter of fiscal 2004, the Board of Directors approved a restructuring plan involving the elimination of employee positions and the closure of a number of offices worldwide. This plan, which we refer to as the fiscal 2004 restructuring plan, was designed to improve efficiencies across the organization, reduce operating expense levels to help achieve our targeted operating margins and redirect resources to product development, sales development and other critical areas. The expected total charges under this plan are approximately \$21.7 million, with \$18.2 million attributable to one-time termination benefits and \$3.5 million attributable to office closure costs. As a result of the restructuring activities completed during the fourth quarter of fiscal 2004 and the first three quarters of fiscal 2005 and through attrition, the Company expects to achieve its targeted efficiencies with a lower level of involuntary terminations than originally anticipated; consequently, the expected total charges under this plan have been reduced from a previous estimate of \$37.0 million to the approximately \$21.7 million noted above. This plan is expected to be completed by the end of fiscal 2005.

During the nine months ended October 31, 2004, Autodesk recorded gross restructuring charges of \$15.0 million under the fiscal 2004 restructuring plan, of which \$2.9 million was recorded in the three months ended October 31, 2004. Of the \$15.0 million, approximately \$11.5 million related to headcount reductions and \$3.5 million related to the closure of facilities. Partially off-setting this charge was a reversal of \$0.1 million related to a change in estimates underlying office closure cost liabilities originally established under a separate fiscal 2002 restructuring plan. The underlying liabilities were ultimately settled for less than originally estimated. Charges utilized include \$0.6 million of non-cash charges for the nine months ended October 31, 2004. Since inception of the fiscal 2004 restructuring plan, Autodesk recorded restructuring charges totaling \$18.7 million.

An analysis of the fiscal 2004 restructuring plan charges by reportable segment is included in Note 12, "Segments."

### 8. **Commitments and Contingencies**

#### *Guarantees and Indemnifications*

In the normal course of business, Autodesk provides indemnifications of varying scopes, including limited product warranties and indemnification of customers against claims of intellectual property infringement made by third parties arising from the use of our products or services. Autodesk accrues for known warranty and indemnification issues if a loss is probable and can be reasonably estimated. Historically, costs related to these warranties and indemnifications have not been significant, but because potential future costs are highly variable, Autodesk is unable to estimate the maximum potential impact of these guarantees on its future results of operations.

In connection with the sale or license to third parties of assets or businesses, Autodesk has entered into customary indemnity agreements related to the assets or businesses sold or licensed. Historically, costs related to these guarantees have not been significant, but because potential future costs are highly variable, Autodesk is unable to estimate the maximum potential impact of these guarantees on its future results of operations.

## [Table of Contents](#)

As permitted under Delaware law, Autodesk has agreements whereby it indemnifies its officers and directors for certain events or occurrences while the officer or director is, or was, serving at Autodesk's request in such capacity. The maximum potential amount of future payments Autodesk could be required to make under these indemnification agreements is unlimited; however, Autodesk has director and officer insurance coverage that is intended to reduce its exposure and may enable Autodesk to recover a portion of any future amounts paid. Autodesk believes the estimated fair value of these indemnification agreements in excess of applicable insurance coverage is minimal.

### *Legal Proceedings*

On December 27, 2001, Spatial Corp. ("Spatial") filed suit in Marin County Superior Court against Autodesk and one of our consultants, D-Cubed Ltd., seeking among other things, termination of a development and license agreement between Spatial and Autodesk and an injunction preventing Autodesk from working with contractors under the agreement. On October 2, 2003, a jury found that Autodesk did not breach the agreement. As the prevailing party in the action, the court awarded Autodesk approximately \$2.4 million for reimbursement of attorneys' fees and the costs of trial, which was paid during the second quarter of fiscal 2005 and recorded as other income. Spatial filed a notice of appeal on December 2, 2003 appealing the decision of the jury. Spatial claims that certain testimony of a witness should not have been considered by the jury and as a result, Spatial asserts that it is entitled to a new trial. Autodesk filed its opposition to Spatial's appeal in August 2004. At the present time, the appeal has not been set for hearing by the appellate court. After reviewing the arguments made in the appeal, we believe the ultimate resolution of this matter will not have a material effect on Autodesk's financial position, results of operations or cash flows. However, it is possible that an unfavorable resolution of this matter could occur and materially affect our future results of operations, cash flows or financial position in a particular period.

On May 13, 2004, Nuvo Services, LLC ("Nuvo") filed suit in United States District Court, District of Arizona against Autodesk seeking to compel arbitration of Nuvo's claim that Autodesk breached a contract that allegedly existed between Nuvo and a company acquired by Buzzsaw.com ("Buzzsaw") in 2000. Autodesk acquired Buzzsaw in 2001. In the complaint, Nuvo alleges that Autodesk breached the contract by assigning the contract or rights under the contract to a third party without Nuvo's prior consent. The complaint seeks unspecified damages and recovery of the amount in which Autodesk was unjustly enriched by the assignment. While Autodesk believes the ultimate resolution of this matter will not have a material effect on Autodesk's financial position, results of operations or cash flows, it is possible that an unfavorable resolution of this matter could occur and materially affect our future results of operations, cash flows or financial position in a particular period.

On September 22, 2004, Plaintiff z4 Technologies, Inc. ("z4") filed suit against Autodesk and Microsoft Corporation in the United States District Court, Eastern District of Texas, alleging infringement of U.S. Patent No. 6,044,471, entitled "Method and Apparatus for Securing Software to Reduce Unauthorized Use," and U.S. Patent No. 6,785,825, entitled "Method for Securing Software to Decrease Software Piracy." z4's complaint alleges that Autodesk infringes the '471 patent and the '825 patent by making, using, selling, and offering for sale the claimed matter of these patents without the plaintiff's authority. z4 seeks unspecified compensatory damages, injunctive relief and fees and costs. Autodesk is currently investigating the allegations made in the complaint and intends to vigorously defend against it. Autodesk cannot determine the expected impact, if any, on its financial position, results of operations or cash flows at this time.

In connection with our anti-piracy program, designed to enforce copyright protection of our software and conducted both internally and through the Business Software Alliance ("BSA"), from time to time we undertake litigation against alleged copyright infringers. Such lawsuits may lead to counter claims alleging improper use of litigation or violation of other local law and have recently increased in frequency, especially in Latin American countries. To date, none of such counter claims has resulted in material damages and the Company does not believe that any such pending claims, individually or in the aggregate, will result in a material adverse effect on our future results of operations, cash flows or financial position.

## [Table of Contents](#)

In addition, we are involved in legal proceedings from time to time arising from the normal course of business activities including claims of alleged infringement of intellectual property rights, commercial, employment, piracy prosecution and other matters. In our opinion, resolution of pending matters is not expected to have a material adverse impact on our consolidated results of operations, cash flows or our financial position. However, it is possible that an unfavorable resolution of one or more such proceedings could in the future materially affect our future results of operations, cash flows or financial position in a particular period.

### **9. Changes in Stockholders' Equity**

During the nine months ended October 31, 2004 Autodesk repurchased and retired 21.7 million shares of its common stock at an average repurchase price of \$18.42 per share. As a result, common stock and additional paid-in capital and retained earnings were reduced for the nine months ended October 31, 2004 by \$178.5 million and \$221.6 million, respectively.

In addition, during the nine months ended October 31, 2004 Autodesk paid cash dividends of \$0.045 per common share, or \$0.015 per common share per fiscal quarter, reducing retained earnings by \$10.1 million.

### **10. Comprehensive Income**

Autodesk's total comprehensive income, including net unrealized gains and losses on the Company's available for sale securities and cumulative foreign currency translation adjustments, was as follows, net of tax (in thousands):

	Three months ended October 31,		Nine months ended October 31,	
	2004	2003	2004	2003
Net income	\$74,070	\$22,606	\$155,740	\$62,717
Other comprehensive (loss) income, net of tax:				
Net unrealized losses (gains) on available-for-sale securities	186	53	(1,197)	(1,277)
Currency translation adjustments	4,903	2,704	1,519	5,026
Net unrealized gain in derivative instruments	—	(382)	—	—
Other comprehensive income	5,089	2,375	322	3,749
Total comprehensive income	\$79,159	\$24,981	\$156,062	\$66,466

### **11. Net Income Per Share**

On November 16, 2004, the Company's Board of Directors approved a two-for-one split of Autodesk's common stock in the form of a stock dividend, payable to shareholders of record on December 6, 2004. The additional shares of common stock will be mailed or delivered on or about December 20, 2004 by the Company's transfer agent. All share numbers and per share information have been retroactively adjusted for all periods presented to reflect the stock split.

## [Table of Contents](#)

A reconciliation of the numerators and denominators used in the basic and diluted net income per share amounts follows (in thousands):

	Three months ended October 31,		Nine months ended October 31,	
	2004	2003	2004	2003
<b>Numerator:</b>				
Numerator for basic and diluted net income per share – net income	\$ 74,070	\$ 22,606	\$ 155,740	\$ 62,717
<b>Denominator:</b>				
Denominator for basic net income per share — weighted average shares	227,823	222,440	227,344	222,994
Effect of dilutive common stock options	20,222	5,893	18,148	4,325
Denominator for dilutive net income per share	248,045	228,333	245,492	227,319

For the three months ended October 31, 2004 and 2003, options to purchase 0.1 million weighted average shares and 17.3 million weighted average shares were excluded from the computation of diluted net income per share. For the nine months ended October 31, 2004 and 2003, options to purchase 0.4 million weighted average shares and 28.0 million weighted average shares were excluded from the computation of diluted net income per share. Such options were excluded because the options had exercise prices greater than the average market prices of Autodesk common stock during the respective periods and therefore were not dilutive.

## **12. Segments**

Autodesk's operating results are aggregated into two reportable segments: the Design Solutions Segment and the Discreet Segment. The Location Services Division, which is not included in either reportable segment, is reflected as Other. During the first quarter of fiscal 2005 and again in the third quarter of fiscal 2005, Autodesk modified its segment disclosure to align the segment disclosure with the method by which Autodesk's business is currently being managed and evaluated. Prior period numbers have been restated to reflect the current segment alignment.

The Design Solutions Segment derives revenues from the sale of design software products and services for professionals or consumers who design, build, manage and own building projects or manufactured goods and from the sale of mapping and geographic information systems technology to public and private users. The Design Solutions Segment consists primarily of the following business divisions: Manufacturing Solutions Division, Infrastructure Solutions Division, Building Solutions Division and the Platform Technology Division and Other, which includes Autodesk Consulting. Sales of AutoCAD, AutoCAD upgrades and AutoCAD LT in the aggregate accounted for 45% of our consolidated net revenues during both the nine months ended October 31, 2004 and 2003.

The Discreet Segment derives revenues from the sale of its products to creative professionals for a variety of applications, including feature films, television programs, commercials, music and corporate videos, game production, web design and interactive web streaming.

## Table of Contents

Both segments primarily distribute their respective products through authorized dealers and distributors, and, to a lesser extent, they also sell their products directly to end-users. Autodesk evaluates each segment's performance on the basis of income from operations before income taxes. Autodesk currently does not separately accumulate and report asset information by segment, except for certain assets such as goodwill. Information concerning the operations of Autodesk's reportable segments is as follows (in thousands):

	Three months ended October 31,		Nine months ended October 31,	
	2004	2003	2004	2003
<b>Net revenues:</b>				
Design Solutions	\$ 257,898	\$ 201,844	\$ 763,347	\$ 558,504
Discreet	41,607	31,793	113,034	97,468
Other	653	225	1,231	361
	<u>\$ 300,158</u>	<u>\$ 233,862</u>	<u>\$ 877,612</u>	<u>\$ 656,333</u>
<b>Income (loss) from operations:</b>				
Design Solutions	\$ 115,803	\$ 87,553	\$ 346,567	\$ 219,591
Discreet	5,407	(2,575)	12,379	(4,342)
Unallocated amounts <sup>(1)</sup>	(67,352)	(57,038)	(202,223)	(166,760)
	<u>\$ 53,858</u>	<u>\$ 27,940</u>	<u>\$ 156,723</u>	<u>\$ 48,489</u>

<sup>(1)</sup> Unallocated amounts are attributed primarily to corporate expenses and other costs and expenses that are managed outside the reportable segments. Unallocated amounts in the three months and nine months ended October 31, 2004 also include \$2.9 million and \$14.9 million resulting from restructuring activity, respectively.

Net revenues attributable to the major divisions within the Design Solutions Segment are as follows (in thousands):

	Three months ended October 31,		Nine months ended October 31,	
	2004	2003	2004	2003
<b>Net revenues:</b>				
Manufacturing Solutions Division	\$ 50,383	\$ 33,272	\$ 139,396	\$ 92,461
Infrastructure Solutions Division	33,012	28,699	98,067	76,755
Building Solutions Division	29,091	20,787	85,006	52,997
Platform Technology Division and other	145,412	119,086	440,878	336,291
	<u>\$ 257,898</u>	<u>\$ 201,844</u>	<u>\$ 763,347</u>	<u>\$ 558,504</u>

Information regarding Autodesk's operations by geographic area is as follow (in thousands):

	Three months ended October 31,		Nine months ended October 31,	
	2004	2003	2004	2003
<b>Net revenues:</b>				
U.S. customers	\$ 116,808	\$ 88,351	\$ 318,148	\$ 239,029
Other Americas	20,193	16,558	55,487	42,852
<b>Total Americas</b>	<u>137,001</u>	<u>104,909</u>	<u>373,635</u>	<u>281,881</u>
Europe, Middle East and Africa	95,825	77,630	303,520	224,835
Asia Pacific	67,332	51,323	200,457	149,617
<b>Total net revenues</b>	<u>\$ 300,158</u>	<u>\$ 233,862</u>	<u>\$ 877,612</u>	<u>\$ 656,333</u>

## [Table of Contents](#)

The following table sets forth the fiscal 2004 restructuring plan activities for Autodesk's reportable segments during the nine months ended October 31, 2004 (in thousands). The balance at October 31, 2004 is included in other accrued liabilities on our Condensed Consolidated Balance Sheet.

	Design Solutions Segment		Discreet Segment		Unallocated		Total
	Office Closure Costs	Employee Termination Costs	Office Closure Costs	Employee Termination Costs	Office Closure Costs	Employee Termination Costs	
Balance at January 31, 2004	\$ 149	\$ 294	\$ —	\$ 333	\$ —	\$ 484	\$ 1,260
Additions	1,742	4,932	794	3,837	941	2,781	15,027
Charges utilized	(846)	(4,662)	(166)	(3,863)	(615)	(2,376)	(12,528)
Balance at October 31, 2004	\$ 1,045	\$ 564	\$ 628	\$ 307	\$ 326	\$ 889	\$ 3,759

The expected total charges under this plan are approximately \$21.7 million, with approximately \$8.3 million attributable to the Design Solutions Segment, approximately \$6.1 million attributable to the Discreet Segment and approximately \$7.3 million not allocable to either segment. Since inception of the fiscal 2004 restructuring plan, the Design Solutions Segment and the Discreet Segment recorded restructuring charges totaling \$7.7 million and \$5.8 million, respectively.

### 13. **Financial Instruments**

Autodesk uses derivative instruments to manage the exposure to its earnings and cash flow from fluctuations in foreign currency exchange rates. Under its risk management strategy, Autodesk uses foreign currency forward and option contracts to manage this exposure to its underlying assets, liabilities and other obligations, which exists as part of the ongoing business operations. These foreign currency instruments by policy have maturities of less than three months and settle before the end of each quarterly period. Generally, Autodesk's practice is to hedge a majority of its short-term foreign exchange transaction exposures. Contracts are primarily denominated in euros, Swiss francs, Canadian dollars, British pounds and Japanese yen. Autodesk does not enter into any foreign exchange derivative instruments for trading or speculative purposes.

#### *Forwards*

Autodesk's forward contracts, which are not designated as hedging instruments under Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133"), have average maturities of less than three months. The forwards are used to reduce the exchange rate risk associated primarily with receivables and payables. Forward contracts are marked-to-market at the end of each reporting period, with gains and losses recognized as other income or expense to offset the gains or losses resulting from the settlement of the underlying foreign currency denominated receivables and payables.

The notional amounts of foreign currency forward contracts were \$7.6 million at October 31, 2004 and \$26.0 million at January 31, 2004. While the contract or notional amount is often used to express the absolute volume of foreign exchange contracts, the amounts potentially subject to risk are generally limited to the net amount of obligations between Autodesk and the counterparties.

#### *Options*

In addition to the forward contracts, Autodesk utilizes foreign currency option collar contracts to reduce the exchange rate impact on the net revenue of certain anticipated transactions. These option contracts, which are designated and documented as cash flow hedges and qualify for hedge accounting treatment under SFAS 133, have maturities of less than three months and settle before the end of each fiscal quarter. For cash flow hedges, derivative gains and losses included in comprehensive income are reclassified into earnings at the time the forecasted revenue is recognized or the option expires.

## [Table of Contents](#)

The notional amounts of foreign currency option contracts were \$77.1 million at October 31, 2004 and \$42.0 million at January 31, 2004 and the critical terms were generally the same as those of the forecasted underlying exposure. Gains, if any, from the effective portion of the option contracts, as determinable under SFAS 133, are recognized as net revenues, while the ineffective portion of the option contract is recorded in interest and other income, net. There were no settlement gains or losses recorded during the three months ended October 31, 2004 and \$0.4 million of settlement gains recorded as net revenues during the three months ended October 31, 2003. Settlement gains of \$0.2 million and settlement gains of \$0.3 million were recorded as net revenues during the nine months ended October 31, 2004 and October 31, 2003, respectively. Amounts associated with the cost of the options totaling \$0.2 million were recorded in interest and other income, net during the three months ended October 31, 2004 and October 31, 2003. Option costs of \$0.6 million were recorded in interest and other income, net during the nine months ended October 31, 2004 and October 31, 2003.

### **14. Business Combinations**

The following acquisition was accounted for under Statement of Financial Accounting Standards No. 141, "Business Combinations." Accordingly, the results of operations are included in the accompanying condensed consolidated statements of income since the acquisition date, and the related assets and liabilities were recorded based upon their relative fair values at the date of acquisition. Pro forma results of operations have not been presented because the effects of the acquisition were not significant to Autodesk.

#### *MechSoft.com, Inc. ("MechSoft")*

In April 2004, Autodesk acquired certain assets of MechSoft for approximately \$6.5 million in cash. This acquisition provides technology that complements Autodesk's manufacturing solutions with tools that enable users to embed engineering calculations into their designs based on how parts function. Autodesk plans to integrate key components of MechSoft's technology into future versions of Autodesk Inventor Series. Autodesk's allocation of the purchase consideration, which is based on valuations of acquired assets performed by a third party, is as follows (in thousands):

Developed technologies (3 year useful life)	\$1,900
Goodwill	3,903
Other assets	697
	<hr/>
	\$6,500
	<hr/>

The \$3.9 million of goodwill, which is deductible for tax purposes, was assigned to the Manufacturing Solutions Division of the Design Solutions Segment. The goodwill is attributable to the premium paid for technology that accelerates our time to market for complementary manufacturing design product enhancements.

### **15. Subsequent Event**

On November 16, 2004, the Company's Board of Directors approved a two-for-one split of Autodesk's common stock in the form of a stock dividend, payable to shareholders of record on December 6, 2004. The additional shares of common stock will be mailed or delivered on or about December 20, 2004 by the Company's transfer agent. All references in the condensed consolidated financial statements and notes thereto with respect to the number of shares, per share amounts and market prices of Autodesk's common stock have been restated to reflect the effect of the stock split.

On November 18, 2004 Autodesk announced that it will discontinue its \$0.015 per share quarterly cash dividend effective after the dividend payable for the fourth quarter of fiscal 2005, which is expected to be paid in March 2005.

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The discussion in our Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") contains trend analyses and other forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements consist of, among other things, statements regarding anticipated operating expenses, both in absolute dollars and as a percentage of revenues, future growth opportunities, anticipated future net revenues, revenue mix, costs and expenses, operating margins, allowance for bad debts, level of product returns, level and timing of, and expected future cost savings from, restructuring activity, planned annual release cycles and short-term and long-term cash requirements, as well as statements involving trend analyses and statements including such words as "we believe" and "plan" and similar expressions. These forward-looking statements are subject to business and economic risks. As such, our actual results could differ materially from those set forth in the forward-looking statements as a result of the factors set forth below, in "Risk Factors Which May Impact Future Operating Results" and in our other reports filed with the Securities and Exchange Commission.*

**STRATEGY**

Our goal is to be the world's leading software and services company for the building, manufacturing, infrastructure, digital media and wireless data services fields. Our focus is to help customers create, manage and share their data and digital assets more effectively and improve efficiencies across the entire lifecycle management processes.

We believe that our ability to make technology available to mainstream markets is one of our competitive advantages. By innovating in existing technology categories, we bring powerful design products to volume markets. Our architecture allows for extensibility and integration. Our products are designed to be easy to learn and use, and to provide customers low cost of deployment, low total cost of ownership and a rapid return on investment.

We have created a large global community of resellers, third party developers and customers allowing us broad reach into volume markets. Our reseller network is extensive, and provides our customers with global resources for the purchase, support and training of our products in an effective and cost efficient manner. We have a significant number of registered third party developers, creating products that run on top of our products, further extending our reach into volume markets. Our installed base of millions of users has made Autodesk products a worldwide design software standard. Users trained on Autodesk products are broadly available both from universities and the existing work force, reducing the cost of training for our customers.

Our growth strategy derives from these core strengths. We continue to increase the business value of our desktop design tools for our customers in a number of ways. We improve the performance and functionality of existing products with each new release. Beyond our general design products, we develop products addressing specific vertical market needs. In addition, we believe that migration from our 2D products to our 3D products presents a significant growth opportunity. While the rate of migration to 3D varies from industry to industry, adoption of 3D design software should increase the productivity of our customers. However, this migration also poses various risks to us. In particular, if we do not successfully convert our 2D customer base to our 3D products as expected, and sales of our 2D products decrease without a corresponding conversion of customer seats to 3D products, we would not realize the growth we expect and our business would be adversely affected.

Additionally, we are creating products to address our customers' needs for better design information management tools, also known as lifecycle management. We believe that for each author of design information, there are five to 10 users of that information, whom we call downstream users. We are developing and introducing products that will allow downstream users, both within and external to our customer enterprises, to manage and share their designs. Our large installed base provides a unique opportunity to grow from design and engineering departments to adjacent departments and into the supply chain.



## [Table of Contents](#)

Expanding our geographic coverage is a key element of our growth strategy. We believe that rapidly growing economies, including those of China and Eastern Europe, present significant growth opportunities for the company. In support of our growth efforts in China, we opened our China Application Development Center during fiscal 2004. With a level of understanding of local markets that could not be obtained from remote operations, the Center, among other things, develops products to specifically address the Chinese market. In addition, we believe that our products will have a competitive advantage as a result of being engineered locally. We believe, our ability to conduct research and development at various locations throughout the world allows us to optimize product development and lower costs. However, international development, whether conducted by us or independent developers on our behalf, involves significant costs and challenges, including whether we can adequately protect our intellectual property and derive significant revenue in areas where software piracy is a substantial problem.

Another significant part of our growth strategy is based upon improving the installed base business model. A key element of this change is our current plan to release major products on at least an annual basis. Strong annual release cycles have a number of benefits. In particular, they permit us to deliver key performance and functionality improvements to the customer on a regular and timely basis. Annual releases also drive annual product retirement programs, thereby reducing the volatility of revenues we have experienced in the past, as both the release of the new version and retirement of the oldest supported version happen annually. Volatility may also be reduced through the Autodesk Subscription Program, as revenue is recognized ratably over the subscription contract period.

We are continually focused on improving productivity and efficiency in all areas of the company. Doing so will allow us to increase our investment in growth initiatives. During fiscal 2004, we conducted a rigorous study of our cost structure. Through the services of a major consulting firm, we benchmarked Autodesk metrics against averages of other companies as well as other leading software companies. As a result of the study, we are implementing efficiency initiatives throughout the company. Longer term, we will continue to balance operating margin targets with revenue growth opportunities.

Autodesk generates significant cash flow. Our uses of cash include share repurchases to offset the dilutive impact of our employee stock plans, mergers and acquisitions, investments in growth initiatives and a \$0.015 per share quarterly dividend that will be discontinued after the dividend payable for the fourth quarter of fiscal 2005, which is expected to be paid in March 2005. We evaluate merger and acquisition and divestiture opportunities to the extent they support our strategy. Our typical acquisitions are intended to provide adjacency to our current products and services, specific technology or expertise and quick product integration. Additionally, we continue to invest in growth initiatives including lifecycle management and sales, market and channel development.

### **Critical Accounting Policies**

Our condensed consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amount of assets, liabilities, net revenues, costs and expenses and related disclosures. We regularly re-evaluate our estimates and assumptions. Actual results may differ from these estimates under different assumptions or conditions.

We believe that of our significant accounting policies, the following policies involve a higher degree of judgment and complexity. Accordingly, these are the policies we believe are the most critical to aid in fully understanding and evaluating our financial condition and results of operations.

*Revenue Recognition.* Our accounting policies and practices are in compliance with Statement of Position 97-2, "Software Revenue Recognition," as amended, and SEC Staff Accounting Bulletin No. 104, "Revenue Recognition."

## [Table of Contents](#)

We recognize revenue when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed or determinable and collection is probable. However, determining whether and when some of these criteria have been satisfied often involves assumptions and judgments that can have a significant impact on the timing and amount of revenue we report.

For multiple element arrangements that include software products, we allocate and defer revenue for the undelivered elements based on their vendor-specific objective evidence ("VSOE") of fair value, which is the price charged when that element is sold separately or the price as set by management with the relevant authority. If we do not have VSOE of the undelivered element, we defer revenue recognition on the entire sales arrangement until all elements are delivered. We are required to exercise judgment in determining whether VSOE exists for each undelivered element based on whether our pricing for these elements is sufficiently consistent.

Our assessment of likelihood of collection is also a critical element in determining the timing of revenue recognition.

Our product sales to distributors and resellers are generally recognized at the time title to our product passes to the distributor or reseller, provided all other criteria for revenue recognition are met. This policy is predicated on our ability to estimate sales returns. We are also required to evaluate whether our distributors and resellers have the ability to honor their commitment to make fixed or determinable payments, regardless of whether they collect cash from their customers. If we were to change any of these assumptions or judgments, it could cause a material increase or decrease in the amount of revenue that we report in a particular period.

In addition to product sales, Autodesk recognizes maintenance revenues from our subscription program and hosted service revenues ratably over the contract periods. Customer consulting and training revenues are recognized as the services are performed.

*Allowance for Bad Debts.* We maintain allowances for bad debts for estimated losses resulting from the inability of our customers to make required payments. Our bad debt reserve was \$9.8 million at October 31, 2004 and \$9.7 million at January 31, 2004.

Estimated reserves are determined based upon historical loss patterns, the number of days that billings are past due and an evaluation of the potential risk of loss associated with specific problem accounts. The use of different estimates or assumptions could produce different allowance balances. While we believe our existing reserve for doubtful accounts is adequate and appropriate, additional reserves may be required should the financial condition of our customers deteriorate or as unusual circumstances arise.

*Product Returns and Price Adjustment Reserves.* With the exception of contracts with certain distributors, our sales contracts do not contain specific product return privileges. However, we permit our distributors and resellers to return product in certain instances, generally when new product releases supercede older versions. Our product returns reserves were \$17.6 million at October 31, 2004 and \$20.6 million at January 31, 2004. Product returns as a percentage of applicable revenues were 4.6% and 5.9% for the nine months ended October 31, 2004 and 2003, respectively.

For certain distributors in Europe, we offer incremental discounts, or price adjustments, ranging from less than 1% to 4%, for certain qualifying sales. At October 31, 2004 and January 31, 2004, our price adjustment reserves were \$2.0 million and \$4.2 million, respectively. Price adjustment claims as a percentage of applicable revenues were 1.3% and 3.9% for the nine months ended October 31, 2004 and 2003, respectively.

The product returns and price adjustment reserves are based on historical experience of actual product returns and price adjustment rates, estimated channel inventory levels, the timing of new product introductions, channel sell-in for applicable markets and other factors. The greater the channel inventory level or the closer the proximity of a major new product release such as AutoCAD 2005, the more product returns we expect. Similarly,

## [Table of Contents](#)

the higher the applicable channel sell-in or the higher the channel inventory level, the more price adjustment claims we expect. During the nine months ended October 31, 2004, we recorded a reserve for product returns of \$27.3 million and a reserve for price adjustments of \$3.3 million, both of which reduced our revenue.

While we believe our accounting practice for establishing and monitoring product returns and price adjustment reserves is adequate and appropriate, any adverse activity or unusual circumstances could result in an increase in reserve levels in the period in which such determinations are made.

*Realizability of Long-Lived Assets.* We assess the realizability of our long-lived assets and related intangible assets, other than goodwill, annually during the fourth fiscal quarter, or sooner should events or changes in circumstances indicate the carrying values of such assets may not be recoverable. We consider the following factors important in determining when to perform an impairment review: significant under-performance of a business or product line relative to budget; shifts in business strategies which impact the continued uses of the assets; significant negative industry or economic trends; and the results of past impairment reviews.

In assessing the recoverability of these long-lived assets, we first determine their fair values, which are based on assumptions regarding the estimated future cash flows that could reasonably be generated by these assets. When assessing long-lived assets, we use undiscounted cash flow models which include assumptions regarding projected cash flows and future uses of the asset or asset group. Variances in these assumptions could have a significant impact on our conclusion as to whether an asset is impaired or the amount of the impairment charge. Impairment charges, if any, result in situations where the fair values of these assets are less than their carrying values.

In addition to our recoverability assessments, we routinely review the remaining estimated useful lives of our long-lived assets. Any reduction in the useful life assumption will result in increased depreciation and amortization expense in the quarter when such determinations are made, as well as in subsequent quarters.

We will continue to evaluate the values of our long-lived assets in accordance with applicable accounting rules. As changes in business conditions and our assumptions occur, we may be required to record impairment charges.

*Goodwill.* As required under Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets," we no longer amortize goodwill, but test goodwill for impairment annually in the fourth quarter or sooner should events or changes in circumstances indicate potential impairment. As changes in business conditions and our assumptions occur, we may be required to record impairment charges.

*Deferred Tax Assets.* We currently have \$101.0 million of net deferred tax assets, mostly arising from net operating losses, tax credits, reserves and timing differences for purchased technologies and capitalized software offset by the establishment of U.S. deferred tax liabilities on unremitted earnings from certain foreign subsidiaries. We perform a quarterly assessment of the recoverability of these net deferred tax assets, which is principally dependent upon our achievement of projected future taxable income of approximately \$260.0 million in specific geographies. Our judgments regarding future profitability may change due to future market conditions and other factors. These changes, if any, may possibly require material adjustments to these net deferred tax assets, resulting in a reduction in net income in the period when such determinations are made.

*Restructuring Expenses.* During the fourth quarter of fiscal 2004, the Board of Directors approved a restructuring plan involving the elimination of employee positions and the closure of a number of offices worldwide. This plan, which we refer to as the fiscal 2004 restructuring plan, was designed to improve efficiencies across the organization, reduce operating expense levels to help achieve our targeted operating margins and redirect resources to product development, sales development and other critical areas. As a result of the restructuring activities completed during the previous four fiscal quarters and through attrition, we expect to achieve our targeted efficiencies with a lower level of involuntary terminations than originally anticipated;

## [Table of Contents](#)

consequently, we now expect the total charge under the fiscal 2004 restructuring plan to be approximately \$21.7 million, as compared to the \$37.0 million originally estimated. We expect that this plan will be completed by the end of fiscal 2005.

During the three months ended October 31, 2004, we recorded gross restructuring charges of \$2.9 million under the fiscal 2004 restructuring plan. Of this amount, approximately \$2.4 million related to headcount reductions in the third quarter of fiscal 2005 and approximately \$0.5 million related to the closure of facilities. The office closure costs were based upon the projected rental payments through the remaining terms of the underlying operating leases, offset by projected sublease income. The projected sublease income amounts were calculated by using information provided by third-party real estate brokers as well as management judgments and were based on assumptions for each of the real estate markets where the leased offices were located. If real estate markets worsen and we are not able to sublease the properties as expected, we will record additional expenses in the period when such rental payments are made. This situation occurred during each of fiscal 2002, 2003 and 2004; we therefore recorded additional charges as a result of the inability to sublease abandoned offices. If the real estate markets subsequently improve, and we are able to sublease the properties earlier or at more favorable rates than projected, we will reverse a portion of the underlying restructuring accruals, which will result in increased net income in the period when such sublease becomes effective.

*Legal Contingencies.* As described in Part II, Item 1, "Legal Proceedings," we are periodically involved in various legal claims and proceedings. We routinely review the status of each significant matter and assess our potential financial exposure. If the potential loss from any matter is considered probable and the amount can be reasonably estimated, we record a liability for the estimated loss. Because of inherent uncertainties related to these legal matters, we base our loss reserves on the best information available at the time. As additional information becomes available, we reassess our potential liability and may revise our estimates. Such revisions could have a material impact on future quarterly results of operations.

*Stock Option Accounting.* We do not record compensation expense when stock option grants are awarded to employees at exercise prices equal to the fair market value of Autodesk common stock on the date of grant.

Had we recorded compensation expense from stock option grants, our net income would have been substantially less. In addition, if we are required to record compensation expense, our ability to achieve our target operating margins will be adversely affected. The impact of expensing employee stock awards is further described in Note 2, "Stock-Based Compensation" in the Notes to Condensed Consolidated Financial Statements.

**Overview of the Three and Nine Months Ended October 31, 2004**

	Three Months Ended October 31, 2004	As a % of Net Revenues	Three Months Ended October 31, 2003	As a % of Net Revenues
	(in millions)			
Net Revenues	\$ 300.2	100%	\$ 233.9	100%
Cost of revenues	43.4	14%	36.6	16%
Gross margin	256.8	86%	197.3	84%
Operating expenses excluding restructuring and other charges	200.0	67%	169.4	72%
Restructuring and other	2.9	1%	—	—
<b>Income from Operations</b>	<b>\$ 53.9</b>	<b>18%</b>	<b>\$ 27.9</b>	<b>12%</b>
	(in millions)			
	Nine Months Ended October 31, 2004	As a % of Net Revenues	Nine Months Ended October 31, 2003	As a % of Net Revenues
Net Revenues	\$ 877.6	100%	\$ 656.3	100%
Cost of revenues	125.5	14%	110.9	17%
Gross margin	752.1	86%	545.4	83%
Operating expenses excluding restructuring and other charges	580.5	66%	496.9	76%
Restructuring and other	14.9	2%	—	—
<b>Income from Operations</b>	<b>\$ 156.7</b>	<b>18%</b>	<b>\$ 48.5</b>	<b>7%</b>

Our net revenues were 28% higher for the three months ended October 31, 2004 as compared to the same period in the prior fiscal year primarily due to strong new seat and subscription revenues, coupled with the positive effects of changes in foreign currencies, principally driven by the strength of the euro and the Japanese yen. New seat revenues in the third quarter of fiscal 2005 increased 36% compared to the third quarter of fiscal 2004 as unit sales increased due to the strength of our current product releases, in particular the AutoCAD 2005 family of products released in March 2004 and Autodesk Inventor 9, our 3D mechanical design product released in July 2004. Subscription revenues increased 55% from the same period in the prior fiscal year as our subscription program continues to attract new customers and existing customer renewals with its beneficial pricing and enhancements such as Web support direct from Autodesk, e-learning and multi-year contracts.

Our net revenues for the nine months ended October 31, 2004 were 34% higher as compared to the same period in the prior fiscal year primarily due to strong new seat, upgrade and subscription revenues, coupled with the positive effects of changes in foreign currencies, principally driven by the strength of the euro, and a decrease in our order backlog in the first quarter of fiscal 2005. Upgrade revenues for the nine months ended October 31, 2004 increased 26% compared to the same period during fiscal 2004 and new seat revenues increased 37% for the nine months ended October 31, 2004 as compared to the same period in the prior fiscal year as unit sales increased due to the strength of our current product releases, particularly the AutoCAD 2005 family of products and Autodesk Inventor 9 products, and a decrease in order backlog in the first quarter of fiscal 2005. Subscription revenues increased 52% from the same period in the prior fiscal year as our subscription program continues to attract new customers and existing customer renewals.

With the retirement of the AutoCAD 2000-based product series during the fourth quarter of fiscal 2004, we began fiscal 2005 with higher than normal levels of product backlog. Product backlog is comprised of deferred revenue and current software license product orders which have not yet shipped. The category of current software license product orders which we have not yet shipped consists of orders from customers with approved credit status for currently available license software products and may include orders with current ship dates and orders with ship dates beyond the current fiscal period. During the first quarter of fiscal 2005, the component of product

## [Table of Contents](#)

backlog attributable to product orders that have not yet shipped decreased approximately \$20.0 million back to typical levels and was somewhat above typical levels at the end of October 2004.

We generate a significant amount of our revenue in the United States, Japan, Germany, United Kingdom, Italy, France, Australia, China and Canada. The weaker value of the U.S. dollar, relative to international currencies, had a positive impact of \$5.9 million on operating results in the third quarter of fiscal 2005 compared to the prior fiscal year. Had exchange rates from the third quarter of fiscal 2004 been in effect during the third quarter of fiscal 2005, translated international revenue billed in local currencies would have been \$9.0 million lower and operating expenses would have been \$3.1 million lower.

Our operating expenses, excluding restructuring and other, increased \$30.6 million for the three months ended October 31, 2004 as compared to the same period in the prior fiscal year, but declined as a percentage of revenue. The increase is due primarily to higher commission and bonus costs, including related benefits and payroll taxes, based on our improved financial performance as well as higher marketing costs, offset in part by a reduction in salary expense due to our restructuring efforts. Our operating margins are very sensitive to changes in revenues, given the relatively fixed nature of most of our operating expenses, which consist primarily of employee-related expenditures, facilities costs and depreciation and amortization expense. We expect total operating expenses to increase during the fourth quarter of fiscal 2005 as our incremental commitments under our existing bonus and commission plans increase, and sales commission accelerators may be achieved. Also, beyond the fourth quarter of fiscal 2005, we expect operating expenses to increase in absolute dollars but decline as a percentage of revenue, subject to achievement of anticipated revenue growth, as we balance investment in our growth opportunities with our focus on increasing profitability. In future periods, employee-related expenditures will increase if we are required to expense employee stock option grants.

During fiscal 2004, with the help of a major consulting firm, we analyzed our operations and cost structure. We identified a number of opportunities to help achieve our targeted operating margins as well as redirect funds to the most promising growth areas, such as 3D development, product lifecycle management and development of our China sales and development infrastructure. As we execute on these plans, we continued to incur restructuring charges during the third quarter of fiscal 2005. We expect to incur additional charges relating to these plans through the end of fiscal 2005.

During the three months ended October 31, 2004 we generated \$91.0 million of cash from our operating activities as compared to \$53.4 million during the same period in the prior fiscal year. We closed the third quarter of fiscal 2005 with \$518.0 million in cash and marketable securities, a higher deferred revenue balance and an improved days sales outstanding position as compared to the same period in the prior fiscal year. Approximately 72% of the deferred revenues balance at October 31, 2004, as compared to 62% at the same point in the prior fiscal year, consisted of customer subscription contracts which will be recognized as maintenance revenue ratably over the life of the contracts, which is generally one year.

[Table of Contents](#)

**Results of Operations**

*Net Revenues*

	Three Months Ended October 31, 2004	Increase compared to prior year period		Three Months Ended October 31, 2003	Nine Months Ended October 31, 2004	Increase compared to prior year period		Nine Months Ended October 31, 2003
		\$	%			\$	%	
(in millions)								
<b>Net revenues:</b>								
License and other	\$ 254.5	\$50.2	25%	\$ 204.3	\$ 753.4	\$178.8	31%	\$ 574.6
Maintenance	45.7	16.1	55%	29.6	124.2	42.5	52%	81.7
	<u>\$ 300.2</u>	<u>\$66.3</u>	<u>28%</u>	<u>\$ 233.9</u>	<u>\$ 877.6</u>	<u>\$221.3</u>	<u>34%</u>	<u>\$ 656.3</u>
<b>Net revenues by geographic area:</b>								
Americas	\$ 137.0	\$32.1	31%	\$ 104.9	\$ 373.6	\$ 91.7	33%	\$ 281.9
Europe, Middle East and Africa	95.8	18.1	23%	77.7	303.5	78.7	35%	224.8
Asia Pacific	67.4	16.1	31%	51.3	200.5	50.9	34%	149.6
	<u>\$ 300.2</u>	<u>\$66.3</u>	<u>28%</u>	<u>\$ 233.9</u>	<u>\$ 877.6</u>	<u>\$221.3</u>	<u>34%</u>	<u>\$ 656.3</u>
<b>Net revenues by operating segment:</b>								
Design Solutions	\$ 257.9	\$56.0	28%	\$ 201.9	\$ 763.3	\$204.8	37%	\$ 558.5
Discreet	41.6	9.8	31%	31.8	113.0	15.5	16%	97.5
Other	0.7	0.5	250%	0.2	1.3	1.0	333%	0.3
	<u>\$ 300.2</u>	<u>\$66.3</u>	<u>28%</u>	<u>\$ 233.9</u>	<u>\$ 877.6</u>	<u>\$221.3</u>	<u>34%</u>	<u>\$ 656.3</u>
<b>Net Design Solutions Revenues:</b>								
Manufacturing Solutions Division	\$ 50.4	\$17.1	51%	\$ 33.3	\$ 139.4	\$ 47.0	51%	\$ 92.4
Infrastructure Solutions Division	33.0	4.3	15%	28.7	98.0	21.2	28%	76.8
Building Solutions Division	29.1	8.3	40%	20.8	85.0	32.0	60%	53.0
Platform Technology Division and other	145.4	26.3	22%	119.1	440.9	104.6	31%	336.3
	<u>\$ 257.9</u>	<u>\$56.0</u>	<u>28%</u>	<u>\$ 201.9</u>	<u>\$ 763.3</u>	<u>\$204.8</u>	<u>37%</u>	<u>\$ 558.5</u>

Net revenues increased to \$300.2 million in the third quarter of fiscal 2005 from \$233.9 million in the third quarter of fiscal 2004. Net revenues increased in all three of our geographic areas, due primarily to strong new seat and subscription revenues, and to a lesser extent to the positive effects of changes in foreign currencies. Net revenues increased to \$877.6 million in the nine months ended October 31, 2004 from \$656.3 million in the nine months ended October 31, 2003. Again, net revenues increased in all three of our geographic areas, due primarily to strong new seat, upgrade and subscription revenues, and to a lesser extent to the positive effects of changes in foreign currencies and a decrease in backlog of license product orders in the first quarter of fiscal 2005.

During the first half of fiscal 2004, customers in the industries we serve, particularly manufacturing, commercial construction and media and entertainment, were impacted by economic pressures in their own businesses, resulting in a difficult customer purchasing environment. Towards the end of fiscal 2004 and through the third quarter of fiscal 2005, we saw a lessening of these economic pressures, particularly in the manufacturing, building and media and entertainment sectors. However, uncertainty remains as to the sustainability of an economic recovery in the industries we serve.

## [Table of Contents](#)

License and other revenues for the third quarter of fiscal 2005 were \$254.5 million as compared to \$204.3 million in the same period of the prior fiscal year. The increase was primarily due to increased new seat revenues across all major products as a result of our new product releases, and to a lesser extent to the positive impact of changes in foreign currencies. License and other revenues for the nine months ended October 31, 2004 were \$753.4 million as compared to \$574.6 million in the same period of the prior fiscal year. The increase was primarily due to increased new seat and upgrade revenues across all major products as a result of our new product releases, and to a lesser extent to the positive impact of changes in foreign currencies and a decrease in backlog of license product orders in the first quarter of fiscal 2005. We expect upgrade revenues to continue to be higher than typical levels during the fourth quarter of fiscal 2005 as a result of the January 2005 retirement of the AutoCAD 2000i-based product series. The installed base of the AutoCAD 2000i release is similar in size to the then remaining installed base of the AutoCAD 2000 release at the time of its retirement in January 2004.

Maintenance revenues, consisting of revenues derived from the subscription program, were \$45.7 million for the third quarter of fiscal 2005 as compared to \$29.6 million for the third quarter of fiscal 2004. As a percentage of total net revenues, maintenance revenues were 15% and 13% for the third quarter of fiscal 2005 and fiscal 2004, respectively. Maintenance revenues were \$124.2 million for the nine months ended October 31, 2004 as compared to \$81.7 million for the nine months ended October 31, 2003. As a percentage of total net revenues, maintenance revenues were 14% and 12% for the first nine months of fiscal 2005 and fiscal 2004, respectively. Our subscription program, now available to most customers worldwide, continues to attract new and renewal customers with its beneficial pricing and our planned annual product release cycle and enhancements, such as Web support direct from Autodesk and e-learning. We expect maintenance revenues to continue to increase as a percentage of total net revenues.

Net revenues in the Americas increased 31% to \$137.0 million in the third quarter of fiscal 2005 as compared to \$104.9 million in the same period of the prior fiscal year largely due to strong new seat and subscription revenue during the third quarter of fiscal 2005. Net revenues in the Americas increased 33% to \$373.6 million in the nine months ended October 31, 2004 as compared to \$281.9 million in same period of the prior fiscal year, largely due to strong new seat, upgrade and subscription revenue during the first nine months of fiscal 2005 as well as a decrease in backlog of license product orders in the first quarter of fiscal 2005. In addition, the first nine months of fiscal 2004 were impacted by the difficult selling environment experienced during the first two quarters of fiscal 2004.

Net revenues in the Europe, Middle East and Africa (“EMEA”) region increased 23% to \$95.8 million in the third quarter of fiscal 2005 from \$77.7 million in the same period of the prior fiscal year due primarily to strong new seat and subscription sales and favorable exchange rates offset in part by a slight decline in upgrade revenues. Ignoring the effects of changes in foreign currencies during the current quarter, net revenues for EMEA increased approximately 14% in the third quarter of fiscal 2005 as compared to the third quarter of fiscal 2004. Net revenues in EMEA increased 35% to \$303.5 million in the nine months ended October 31, 2004 from \$224.8 million in the same period of the prior fiscal year due primarily to strong new seat, upgrade and subscription sales and to a lesser extent to favorable exchange rates and a decrease in backlog of license product orders in the first quarter of fiscal 2005. Ignoring the effects of changes in foreign currencies during the current fiscal year, net revenues for EMEA increased approximately 24% in the nine months ended October 31, 2004 as compared to the same period of the prior fiscal year.

Net revenues in Asia Pacific increased 31% to \$67.4 million in the third quarter of fiscal 2005 from \$51.3 million in the same period of the prior fiscal year, due primarily to strong new seat and subscription sales and to a lesser extent to favorable exchange rates offset in part by a modest decline in upgrade revenues. We noted strong year over year revenue growth in Japan and continued strong sales in China and Australia. Ignoring the effects of changes in foreign currencies during the current quarter, net revenues for Asia Pacific increased approximately 28% in the third quarter of fiscal 2005 as compared to the third quarter of fiscal 2004. Net revenues in Asia Pacific increased 34% to \$200.5 million in the nine months ended October 31, 2004 from \$149.6 million in the same period of the prior fiscal year. The increase in net revenues was again due primarily to strong new seat and



## [Table of Contents](#)

subscription sales and to a lesser extent upgrade revenues and favorable exchange rates. In addition, revenues for the nine months ended October 31, 2003 were adversely affected by the impact on our sales operations of concerns regarding severe acute respiratory syndrome ("SARS") primarily during the first quarter of fiscal 2004. Ignoring the effects of changes in foreign currencies during the current fiscal year, net revenues for Asia Pacific increased approximately 28% in the nine months ended October 31, 2004 as compared to the same period of the prior fiscal year.

For the third quarter of fiscal 2005, net revenues for the Design Solutions Segment were \$257.9 million as compared to \$201.9 million in the same period in the prior fiscal year. The increase in net revenues in the current fiscal quarter for the Design Solutions Segment was due primarily to strong new seat and subscription revenues and to a lesser extent to favorable exchange rates. Revenue from renewals (upgrades and subscription) accounted for 37% of Design Solutions Segment revenues for the third quarter of fiscal 2005 with the remainder attributable to new seats and emerging businesses. Revenue from renewals (upgrades and subscription) accounted for 42% of Design Solutions Segment revenues for the third quarter of fiscal 2004. Maintenance revenue accounted for 17% of total Design Solutions Segment revenue for the third quarter of fiscal 2005 as compared to 14% in the third quarter of fiscal 2004. For the nine months ended October 31, 2004, net revenues for the Design Solutions Segment were \$763.3 million as compared to \$558.5 million in the same period of the prior fiscal year. The increase in net revenues in the current fiscal year for the Design Solutions Segment was due primarily to strong new seat, upgrade and subscription revenues and to a lesser extent to a decrease in backlog of license product orders in the first quarter of fiscal 2005 and favorable exchange rates. Although we have been shifting our focus to more vertically-oriented product lines, sales of AutoCAD, AutoCAD upgrades and AutoCAD LT continue to comprise a significant portion of our net revenues. Such sales, which are reflected in the net revenues for the Platform Technology Division and Other, accounted for 43% and 45% of our consolidated net revenues for the third quarter of fiscal 2005 and 2004, respectively, and 45% for both the nine months ended October 31, 2004 and 2003. Net revenues for our 3D products increased approximately 50% for the third quarter of fiscal 2005 and 55% for the nine months ended October 31, 2004 as compared to the same periods of the prior fiscal year. A critical component of our growth strategy is to convert our 2D customer base, including customers of AutoCAD and related vertical industry products, to our 3D products such as Autodesk Inventor Series, Autodesk Revit Series, Architectural Desktop, Autodesk Map 3D and Autodesk Civil 3D. However, should sales of 2D products decrease without a corresponding conversion of the customer seats to 3D products, our results of operations will be adversely affected.

Net revenues for the Discreet Segment increased 31% to \$41.6 million in the third quarter of fiscal 2005 from \$31.8 million in the third quarter of fiscal 2004. The increase is due primarily to higher Advanced Systems sales and continuing growth in upgrade and subscription revenues for our 3ds max Animation product. The increase in Advanced Systems sales resulted in part from a refreshed product line, modest demand for our new linux-based products and strong demand for our new color grading solution, lustre. Net revenues for the nine months ended October 31, 2004 increased 16% to \$113.0 million from \$97.5 million in the same period of the prior fiscal year primarily due to growth in new seat and subscription revenues of our 3ds max Animation product and good growth in Advanced Systems sales.

The weaker value of the U.S. dollar, relative to international currencies, had a positive impact on net revenues in the first nine months of fiscal 2005. Had exchange rates from the prior year been in effect in fiscal 2005, translated international net revenues recognized in local currencies would have been \$35.3 million lower. Changes in the value of the U.S. dollar may have a significant impact on net revenues in future periods. To reduce this impact, we utilize foreign currency option collar contracts to reduce the current quarter exchange rate impact on the net revenue of certain anticipated transactions.

International sales accounted for approximately 61% of our net revenues in the third quarter of fiscal 2005 as compared to 62% in the same period of the prior fiscal year. International sales accounted for 64% of our net revenues in the nine months ended October 31, 2004 and 2003. We believe that international sales will continue to comprise a significant portion of net revenues. Economic weakness in any of the countries which contribute a significant portion of our net revenues would have a material adverse effect on our business.

## [Table of Contents](#)

### Costs and Expenses

#### Cost of Revenues

	Three Months Ended October 31, 2004	Increase compared to prior year period		Three Months Ended October 31, 2003	Nine Months Ended October 31, 2004	Increase compared to prior year period		Nine Months Ended October 31, 2003
		\$	%			\$	%	
(in millions)								
Cost of revenues:								
License and Other	\$ 39.2	\$ 6.5	20%	\$ 32.7	\$ 112.9	\$ 12.7	13%	\$ 100.2
Maintenance	4.2	0.3	8%	3.9	12.6	1.9	18%	10.7
	<u>\$ 43.4</u>	<u>\$ 6.8</u>	19%	<u>\$ 36.6</u>	<u>\$ 125.5</u>	<u>\$ 14.6</u>	13%	<u>\$ 110.9</u>
As a percentage of net revenues	14%			16%	14%			17%

Cost of license and other revenues includes direct material and overhead charges, royalties, amortization of purchased technology and capitalized software, hosting costs and the labor cost of processing orders and fulfilling service contracts. Direct material and overhead charges include the cost of hardware sold (mainly workstations manufactured by SGI for the Discreet Segment), costs associated with transferring our software to electronic media, printing of user manuals and packaging materials and shipping and handling costs.

Cost of license and other revenues increased 20% during the three months ended October 31, 2004 and 13% during the nine months ended October 31, 2004, as compared to the same periods in the prior fiscal year, primarily due to increased volume and changes in product mix, offset in part by reduced royalty expenses for licensed technology embedded in our products.

Cost of maintenance revenues includes direct costs of our subscription program, amortization of capitalized software and overhead charges. Cost of maintenance revenues increased 8% during the three months ended October 31, 2004 and 18% during the nine months ended October 31, 2004, as compared to the same periods in the prior fiscal year primarily due to incremental direct program costs incurred as part of the expansion of the subscription program.

In the future, cost of revenues as a percentage of net revenues is likely to continue to be impacted by the volume and mix of product sales, changing consulting and hosted service costs, software amortization costs, royalty rates for licensed technology embedded in our products, new customer support offerings and the geographic distribution of sales.

#### Marketing and Sales

	Three Months Ended October 31, 2004	Increase compared to prior year period		Three Months Ended October 31, 2003	Nine Months Ended October 31, 2004	Increase compared to prior year period		Nine Months Ended October 31, 2003
		\$	%			\$	%	
(in millions)								
Marketing and sales	\$ 113.2	\$ 17.8	19%	\$ 95.4	\$ 327.5	\$ 49.9	18%	\$ 277.6
As a percentage of net revenues	38%			41%	37%			42%

Marketing and sales expenses include salaries, dealer and sales commissions, bonus, travel and facility costs for our marketing, sales, dealer training and support personnel and overhead charges. These expenses also include costs of programs aimed at increasing revenues, such as advertising, trade shows and expositions, and various sales and promotional programs designed for specific sales channels and end users.

## [Table of Contents](#)

The increase of \$17.8 million in marketing and sales expenses when comparing the third quarter of fiscal 2005 with the third quarter of fiscal 2004 was due primarily to approximately \$10.2 million of higher advertising, promotion and branding costs and approximately \$6.7 million of increased commission, bonus and other incentive compensation expenses related to the increased sales volume.

The increase of \$49.9 million in marketing and sales expenses when comparing the nine months ended October 31, 2004 with the nine months ended October 31, 2003 was due primarily to approximately \$19.3 million of increased commission, bonus and other incentive compensation expenses related to the increased sales volume, approximately \$20.5 million of higher advertising, branding and promotion costs as well as incremental costs related to a customer relationship management project.

We expect to continue to invest in marketing and sales of our products to develop market opportunities and to promote our competitive position. In addition, we expect that our incremental commitments under our existing bonus and commission plans are likely to continue to increase, in particular during the fourth quarter of fiscal 2005 when most sales commission accelerators may be achieved. Accordingly, we expect marketing and sales expenses to continue to be significant, both in absolute dollars and as a percentage of net revenues.

### *Research and Development*

	Three Months Ended October 31, 2004		Increase compared to prior year period		Three Months Ended October 31, 2003		Increase compared to prior year period		Nine Months Ended October 31, 2003	
	\$	%	\$	%	\$	%	\$	%	\$	%
	(in millions)									
Research and development	\$ 59.9		\$ 6.9	13%	\$ 53.0		\$ 176.2	\$ 22.0	14%	\$ 154.2
As a percentage of net revenues	20%				23%		20%		24%	

Research and development expenses consist primarily of salaries and benefits for software engineers, contract development fees, depreciation of computer equipment used in software development and overhead charges.

The increase of \$6.9 million in research and development expenses when comparing the third quarter of fiscal 2005 with the third quarter of fiscal 2004 was due primarily to approximately \$3.1 million related to higher bonus accruals and benefits based on current financial performance, higher localization costs and incremental costs of approximately \$2.3 million associated with purchased technology in our Manufacturing Solutions Division.

The increase of \$22.0 million in research and development expenses when comparing the nine months ended October 31, 2004 with the nine months ended October 31, 2003 was due primarily to approximately \$13.0 million related to higher bonus accruals and benefits based on current financial performance and incremental costs of approximately \$3.3 million associated with purchased technology in our Manufacturing Solutions Division.

We expect that research and development spending will continue to be significant in future periods as we continue to invest in product development and continue to acquire new technology.

[Table of Contents](#)

*General and Administrative*

	Three Months Ended October 31, 2004	Increase compared to prior year period		Three Months Ended October 31, 2003	Nine Months Ended October 31, 2004	Increase compared to prior year period		Nine Months Ended October 31, 2003
		\$	%			\$	%	
(in millions)								
General and administrative	\$ 26.8	\$ 5.9	28%	\$ 20.9	\$ 76.9	\$ 11.8	18%	\$ 65.1
As a percentage of net revenues	9%			9%	9%			10%

General and administrative expenses include our finance, human resources, legal costs and overhead charges.

The increase of \$5.9 million in general and administrative expenses when comparing the third quarter of fiscal 2005 with the third quarter of fiscal 2004 was due primarily to \$2.4 million of stock compensation expense incurred in connection with the change in employment status of a senior executive officer. In addition, general and administrative expenses for the third quarter of fiscal 2004 included the effects of a \$2.5 million reversal of a litigation reserve related to the Spatial matter (see Note 8. "Commitments and Contingencies," in the Notes to the Condensed Consolidated Financial Statements).

The increase of \$11.8 million in general and administrative expenses when comparing the nine months ended October 31, 2004 with the nine months ended October 31, 2003 was due primarily to approximately \$9.4 million of higher bonus accruals and benefits based on current financial performance, \$2.4 million of stock compensation expense incurred in connection with the change in employment status of a senior executive officer, offset in part by a reduction in IT-related expenses. In addition, general and administrative expenses for the nine months ended October 31, 2003 included the effects of a \$2.5 million reversal of a litigation reserve related to the Spatial matter (see Note 8. "Commitments and Contingencies," in the Notes to the Condensed Consolidated Financial Statements).

We plan to complete our restructuring activities by the end of fiscal 2005; however, we expect to incur incremental costs related to our assessment of internal control over financial reporting as required by the Sarbanes-Oxley Act of 2002 for fiscal 2005. As such, we expect that general and administrative expense, as a percentage of net revenues, will continue to be significant in future periods.

*Restructuring and Other*

	Three Months Ended October 31, 2004	Increase compared to prior year period		Three Months Ended October 31, 2003	Nine Months Ended October 31, 2004	Increase compared to prior year period		Nine Months Ended October 31, 2003
		\$	%			\$	%	
(in millions)								
Restructuring and other	\$ 2.9	\$ 2.9	n/a	\$ —	\$ 14.9	\$ 14.9	n/a	\$ —
As a percentage of net revenues	1%				2%			

During the fourth quarter of fiscal 2004, the Board of Directors approved a restructuring plan involving the elimination of employee positions and the closure of a number of offices worldwide having a total expected cost of \$21.7 million, with \$18.2 million attributable to one-time termination benefits and \$3.5 million attributable to office closure costs. This plan, which we refer to as the fiscal 2004 restructuring plan, was designed to improve efficiencies across the organization, reduce operating expense levels to help achieve our targeted operating margins and redirect resources to product development, sales development and other critical areas. As a result of the restructuring activities completed during the fourth quarter of fiscal 2004 and the first three quarters of fiscal 2005 and through attrition, we expect to achieve our targeted efficiencies with a lower level of involuntary

## [Table of Contents](#)

terminations than originally anticipated; consequently, the expected total charges under the fiscal 2004 restructuring plan were reduced from a previous estimate of \$37.0 million to the approximately \$21.7 million noted above. As a result of the fiscal 2004 restructuring plan, we expect to realize pretax savings of approximately \$8.7 million per quarter upon completion of the plan, resulting in an annual savings of approximately \$34.8 million to be reflected across each on-going cost and expense line item in the consolidated statements of income. However, these savings are being used to fund various growth initiatives in-line with our corporate strategy; consequently, not all of these savings will directly reduce operating expenses. We expect that this plan will be completed by the end of fiscal 2005.

During the three months ended October 31, 2004, we recorded gross restructuring charges of \$2.9 million under the fiscal 2004 restructuring plan. Of this amount, approximately \$2.4 million related to headcount reductions and approximately \$0.5 million related to the closure of facilities. During the nine months ended October 31, 2004, we recorded gross restructuring charges of \$15.0 million under the fiscal 2004 restructuring plan. Of this amount, approximately \$11.5 million related to headcount reductions and approximately \$3.5 million related to the closure of facilities. Partially off-setting this charge was a reversal of \$0.1 million related to a change in estimates underlying office closure costs originally established under the fiscal 2002 restructuring plan. The underlying liabilities were ultimately settled for less than originally estimated.

There were no restructuring charges in the three months or nine months ended October 31, 2003.

For additional information regarding restructuring reserves, see Note 7, "Restructuring Reserves" and Note 11, "Segments," in the Notes to Condensed Consolidated Financial Statements.

### *Interest and Other Income*

The following table sets forth the components of interest and other income, net (in thousands):

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2004	2003	2004	2003
Interest and investment income, net	\$1,483	\$1,370	\$2,298	\$4,549
Gains (losses) on foreign currency transactions	710	(369)	49	998
Write-downs of cost method investments	—	(35)	—	(61)
Realized gains on sales of marketable securities	176	431	543	1,461
Other income	432	408	4,506	1,200
	<u>\$2,801</u>	<u>\$1,805</u>	<u>\$7,396</u>	<u>\$8,147</u>

Interest and investment income for the nine months ended October 31, 2004 includes \$2.8 million of foreign-based stamp taxes. During the second quarter of fiscal 2005, we determined that certain money market fund investments were subject to Swiss Transfer Stamp Taxes from the third quarter of fiscal 2001 through the second quarter of fiscal 2005 and that the impact of this adjustment was not material to previously reported periods. The investment income portion of the Interest and investment income, net line item fluctuates based on average cash and marketable securities balances, average maturities and interest rates.

Other income includes \$2.4 million received during the second quarter of fiscal 2005 as part of a court settlement related to legal proceedings with Spatial Corp. During October 2003, Spatial was ordered to reimburse Autodesk for attorneys' fees and trial costs.

### *Provision for income taxes.*

During the third quarter of fiscal 2005, Autodesk recognized a one-time income tax benefit of \$15.5 million relating to the new tax legislation surrounding the DRD Legislation. This DRD Legislation, which was signed into law during the third quarter of fiscal 2005 as part of the American Jobs Creation Act of 2004, allows for the

## [Table of Contents](#)

repatriation of certain foreign dividends at a rate lower than the 35% federal statutory rate. Because Autodesk believes that it will be able to repatriate foreign earnings under this DRD legislation, the deferred tax liability which was previously accrued on prior year foreign earnings was reduced, which resulted in a \$15.5 million one-time income tax benefit. This one-time income tax benefit relates to the difference between the taxes previously provided on the earnings of a foreign subsidiary at the federal statutory tax rate and the lower rate afforded under the new DRD legislation.

Also, as a result of the Company's resolution and closure of its Internal Revenue Service (IRS) audit for fiscal 2001 as well as the closure of certain state and foreign tax years, Autodesk recognized a current income tax benefit of approximately \$8.9 million during the third quarter of fiscal 2005. This benefit reduced accrued income taxes at October 31, 2004.

Absent the impact of the one-time income tax benefits of \$15.5 million relating to the DRD Legislation and \$8.9 million related to income tax audit closures in the third quarter of fiscal 2005, our effective income tax rate was 20% percent in the nine months ended October 31, 2004 and 24% in the nine months ended October 31, 2003 absent the impact of the non-recurring tax benefit from the resolution of the Foreign Sales Corporation ("FSC") issue in the second quarter of fiscal 2004. Autodesk reduced its projected tax rate in the third quarter of fiscal 2005 from 24% to 20% as a result of the new DRD legislation and our belief that current year foreign earnings of certain subsidiaries will be taxed at a rate lower than previously projected. As result, we recorded a cumulative catch-up adjustment of \$4.3 million to our tax provision in the third quarter of fiscal 2005 to account for this reduction of the effective tax rate. The effective tax rate for fiscal 2005 is less than the federal statutory rate of 35% due to the extraterritorial income exclusion ("ETI"), research credits, tax-exempt interest, and the tax benefits from low-taxed foreign earnings and the DRD legislation. The effective tax rate for fiscal 2004 was less than the federal statutory rate of 35% due to the ETI, research credits and tax-exempt interest.

Our future effective tax rate may be materially impacted by the amount of benefits associated with our foreign earnings, which are taxed at rates different from the federal statutory rate, ETI, research credits, tax-exempt interest, DRD election and changes in the tax law.

During the third quarter of fiscal 2005, following certain business changes, Autodesk completed an internal reorganization of the ownership of Autodesk Canada. As a result of the reorganization, Autodesk believes that it will be able to claim U.S. tax deductions for the remaining unamortized portion of the purchase price from the March 1999 acquisition of Discreet (now Autodesk Canada). The amount of the potential deferred tax asset arising from this reorganization is approximately \$96.2 million, reflecting future U.S. tax amortization deductions of goodwill and other intangible assets. Autodesk determined that these tax benefits are not probable and has not yet recognized these benefits. Instead, the tax benefits arising from this reorganization will be recognized if and when the tax treatment is verified with tax authorities or such other factors occur that would permit a probable confidence level to be achieved.

## [Table of Contents](#)

### **Business Combinations**

We acquire new technology or supplement our technology by purchasing businesses focused in specific markets or industries. During the nine months ended October 31, 2004, we acquired the following businesses:

<u>Date</u>	<u>Company</u>	<u>Details</u>
June 2004	DESC, Inc.	The assets acquired from DESC give Autodesk initial entry into the disaster response market with purpose-built applications developed around Autodesk MapGuide. The assets acquired were assigned to the Infrastructure Solutions Division of the Design Solutions Segment.
May 2004	Unreal Pictures	The acquisition of Unreal Pictures gives Autodesk complete access to a comprehensive character design software solution and a proven software development team. Autodesk integrated the Unreal Pictures technology (known as Character Studio) into the latest release of our 3ds max product in October 2004. The acquisition was assigned to the Discreet Segment.
April 2004	MechSoft.com, Inc.	The assets acquired from MechSoft complement Autodesk's solutions with tools that enable users to embed engineering calculations into their designs based on how parts function. Autodesk plans to integrate key components of MechSoft's technology into future versions of Autodesk Inventor Series. The assets acquired were assigned to the Manufacturing Solutions Division of the Design Solutions Segment.

### **Liquidity and Capital Resources**

At October 31, 2004, our principal sources of liquidity were cash and marketable securities totaling \$518.0 million and net accounts receivable of \$168.0 million. Cash flows from operating activities, together with the proceeds from stock issuances under our employee stock plans, continue to be our principal means of generating cash. Cash flows from operating activities have historically resulted from sales of our software products and changes in working capital accounts.

During the nine months ended October 31, 2004, we generated \$229.4 million of cash from operating activities as compared to \$101.0 million during the same period of fiscal 2004. Working capital sources of cash included increases in accrued compensation of \$15.1 million related to bonus and other incentive compensation accruals as well as significant movements in our deferred taxes resulting from the DRD Legislation and future tax benefits associated with employee stock option exercises. Working capital uses of cash included decreases in accrued income taxes of \$13.0 million.

During the nine months ended October 31, 2004, we generated \$62.7 million of cash from investing activities compared to net cash used of \$19.0 million during the same period of fiscal 2004. The net generation of cash from investing activities during the nine months ended October 31, 2004 was due to significantly higher net sales of available-for-sale marketable securities offset in part by slightly higher capital and other expenditures related to a customer relationship management ("CRM") software implementation and business combinations as compared to the same period last year. A larger portion of our internal software application development costs were required to be capitalized under generally accepted accounting principles during the nine months ended October 31, 2004 which resulted in a reduction of our IT-related project expenses, included in general and administrative expenses in our Condensed Consolidated Statements of Income. A portion of marketable securities were liquidated to fund our repurchase of 21.7 million shares of our common stock, as discussed below.

We used \$198.8 million in net cash for financing activities during the nine months ended October 31, 2004, compared to \$40.7 million in the same period last year. The major financing uses of cash in both periods were for the repurchase of shares and the payment of dividends. During the nine months ended October 31, 2004, we repurchased 21.7 million shares for \$400.1 million and during the same period of fiscal 2004 we repurchased 10.0 million shares for \$81.1 million. Dividend payments were \$10.1 million in the nine months ended October 31, 2004 and 2003. As mentioned previously, we announced we are discontinuing cash dividends after

## [Table of Contents](#)

the dividend payable for the fourth quarter of fiscal 2005, expected to be paid in March 2005. Proceeds from the issuance of common stock under our stock option and stock purchase plans continue to be a principal source of cash from financing activities and amounted \$211.5 million in the nine months ended October 31, 2004 and \$50.5 million in the nine months ended October 31, 2003.

During fiscal 2004, we had a U.S. line of credit available that permitted unsecured short-term borrowings of up to \$40.0 million. This credit facility expired in February 2004. We did not renew this facility as we believe our existing cash, cash equivalents, marketable securities and cash generated from operations will be sufficient to satisfy our currently anticipated short-term and long-term cash requirements. Long-term cash requirements, other than normal operating expenses, are anticipated for the development of new software products and incremental product offerings resulting from the enhancement of existing products; financing anticipated growth; the share repurchase program; the acquisition of businesses, software products, or technologies complementary to our business; and capital expenditures, including the purchase and implementation of internal software applications.

At October 31, 2004 approximately 23% of our consolidated cash, cash equivalents and marketable securities were held with financial institutions in the United States; the remaining balances are held with financial institutions outside the United States. As a result of the passage of the Dividends Received Deduction legislation in October 2004, we intend to repatriate cash earned by our foreign operations to the U.S. where we can more effectively manage our cash and invest in our business.

Our international operations are subject to currency fluctuations. To minimize the impact of these fluctuations, we use foreign currency option contracts to hedge our exposure on anticipated transactions and forward contracts to hedge our exposure on firm commitments, primarily certain receivables and payables denominated in foreign currencies. Our foreign currency instruments, by policy, have maturities of less than three months and settle before the end of each quarterly period. The principal currencies hedged during the nine months ended October 31, 2004 were the euro, Swiss francs, Canadian dollars, British pounds and Japanese yen. We monitor our foreign exchange exposures to ensure the overall effectiveness of our foreign currency hedge positions.

### Issuer Purchases of Equity Securities

The purpose of Autodesk's stock repurchase program is, among other things, to help offset the dilution to earnings per share caused by the issuance of stock under our employee stock plans. The number of shares acquired and the timing of the purchases are based on several factors, including general market conditions and the trading price of the Company's common stock. At October 31, 2004, approximately 12.3 million shares remained available for repurchase under the existing repurchase authorization.

The following table provides information about the repurchase of our common stock during the three months ended October 31, 2004:

	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
(Shares in thousands)				
August 1-August 31	—	—	—	—
September 1-September 30	8,032 <sup>(1)</sup>	\$ 22.86	8,032 <sup>(1)</sup>	12,349 <sup>(2)</sup>
October 1-October 31	—	—	—	—
Total	8,032	\$ 22.86	8,032	12,349

<sup>(1)</sup> Represents shares purchased in open-market transactions under the plan approved by the Board of Directors authorizing the repurchase of 32.0 million shares in December 2003. This plan, approved by the Board of Directors and announced in December 2003, does not have a fixed expiration date.

<sup>(2)</sup> Amount corresponds to remaining shares available for repurchase under the plan approved by the Board of Directors in December 2003.



### **Off-Balance Sheet Arrangements**

Other than operating leases, we do not engage in off-balance sheet financing arrangements or have any variable-interest entities. As of October 31, 2004 we did not have any off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

### **Material Changes in Contractual Obligations**

We lease certain office facilities under noncancelable operating leases. In October 2004, we entered into a Third Amendment to a lease agreement with J.H.S. Trust for approximately 116,000 square feet of office space located at 111 McInnis Parkway, San Rafael, California. The office space serves as our corporate headquarters. The lease term will begin on January 1, 2005 and end on December 31, 2009. Autodesk has two options to extend the lease term for additional periods of five years each. The annual rent expenses during the initial lease term range from approximately \$2.69 million in 2005 to approximately \$2.97 million in 2009, which amounts include operating expenses and real estate taxes. There were no other material changes in our contractual obligations from what we disclosed in our Annual Report on Form 10-K for the year ended January 31, 2004.

### **Stock Compensation**

#### *Option Program Description*

Autodesk maintains two active stock option plans for the purpose of granting stock options to employees and members of Autodesk's Board of Directors: the 1996 Stock Plan (available only to employees) and the 2000 Directors' Option Plan (available only to non-employee directors). Additionally, there are six expired or terminated plans with options outstanding, including the Nonstatutory Stock Option Plan (available only to non-executive employees and consultants) which was terminated by the Board of Directors in December 2004. In addition to its stock option plans, the Company's employees are also eligible to participate in Autodesk's 1998 Employee Qualified Stock Purchase Plan. Autodesk does not have a practice of awarding stock options to consultants.

Our stock option program is broad-based and designed to promote long-term retention. Essentially all of our employees participate. Approximately 82% of the options we granted during the nine months ended October 31, 2004 were awarded to employees other than the officers named in the table entitled "Summary Compensation Table" in our 2004 Proxy Statement. Options granted under our equity plans vest over periods ranging from one to five years and expire within ten years of the date of grant. The exercise price of the stock options is equal to the closing price of our Common Stock on the Nasdaq National Market on the grant date.

All stock option grants to executive officers are made by the Compensation and Human Resources Committee of the Board of Directors. All members of the Compensation and Human Resources Committee are independent directors, as defined by the listing standards of The Nasdaq Stock Market. See the "Report of the Compensation and Human Resources Committee of the Board of Directors" in our 2004 Proxy Statement for further information concerning Autodesk's policies and procedures regarding the use of stock options. Grants to our non-employee directors are non-discretionary and are pre-determined by the terms of the 2000 Directors' Option Plan.

## [Table of Contents](#)

### *Distribution and Dilutive Effect of Options*

The following table provides information about the distribution and dilutive effect of our stock options for the named periods:

	Nine months ended October 31, 2004	Fiscal year ended January 31,	
		2004	2003
Net grants during the period as % of outstanding shares <sup>(1)</sup>	3.6%	3.1%	3.1%
Grants to Named Executive Officers during the period as % of total options granted <sup>(2)</sup>	17.5% <sup>(3)</sup>	11.7%	9.3%
Grants to Named Executive Officers during the period as % of outstanding shares	0.8%	0.7%	0.6%
Cumulative options held by Named Executive Officers as % of total options outstanding	24.1%	20.9%	18.0%

<sup>(1)</sup> Net grants represent total option grants during the period less any shares returned to the plan as a result of cancellations.

<sup>(2)</sup> Named Executive Officers in our 2004 Proxy Statement for the fiscal year ended January 31, 2004 included Mike Sutton who changed his employment status from an executive officer to part time employee in September 2004.

<sup>(3)</sup> The executive officers, which includes the Named Executive Officers, generally receive option grants during the first fiscal quarter. Employee grants are made throughout the year.

### *General Option Information*

Our stock option activity for the named periods is summarized as follows:

	Shares Available for Options	Options Outstanding	
		Number of Shares	Weighted Average Price Per Share
<i>(Shares in thousands)</i>			
Options outstanding at January 31, 2003	19,115	58,890	\$ 8.10
Granted	(12,921)	12,921	8.73
Exercised	—	(12,850)	7.24
Canceled	5,533	(6,025)	8.57
Additional shares reserved	8,167	—	—
Options outstanding at January 31, 2004	19,894	52,936	\$ 8.40
Granted	(10,530)	10,530	16.24
Exercised	—	(21,735)	8.52
Canceled	2,310	(2,251)	9.12
Additional shares reserved	8,455	—	—
Options outstanding at October 31, 2004	20,129	39,480	\$ 10.38

## [Table of Contents](#)

### *In-the-Money and Out-of-the-Money Option Information*

The following table compares the number of shares subject to option grants with exercise prices at or below the closing price of our Common Stock at October 31, 2004 (“in-the-money”) with the number of shares subject to option grants with exercise prices greater than the closing price of our Common Stock at the same date (“out-of-the-money”). The closing price of our Common Stock on October 31, 2004 was \$26.38 per share.

	Exercisable		Unexercisable		Total	
	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
(Shares in thousands)						
In-the-Money	14,249	\$ 8.02	25,230	\$ 11.71	39,479	\$ 10.38
Out-of-the-Money	—	—	—	—	—	—
<b>Total Options Outstanding</b>	<b>14,249</b>	<b>\$ 8.02</b>	<b>25,230</b>	<b>\$ 11.71</b>	<b>39,479</b>	<b>\$ 10.38</b>

### *Option Grants in Last Fiscal Quarter*

There were no options granted to the Named Executive Officers during the three months ended October 31, 2004.

### *Equity Compensation Plan Information*

The following table summarizes the number of outstanding options granted to employees and directors, as well as the number of securities remaining available for future issuance, under the Company’s compensation plans at October 31, 2004 (number of securities in thousands).

Plan category	(a)	(b)	(c)
	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders <sup>(1)</sup>	32,641	\$ 10.66	30,959 <sup>(2)</sup>
Equity compensation plans not approved by security holders <sup>(3)</sup>	6,839	\$ 9.03	104
<b>Total</b>	<b>39,480</b>	<b>\$ 10.38</b>	<b>31,063</b>

<sup>(1)</sup> Included in these amounts are 0.2 million securities available to be issued upon exercise of outstanding options with a weighted-average exercise price of \$8.49 related to equity compensation plans assumed in connection with previous business mergers and acquisitions.

<sup>(2)</sup> Included in this amount are 10.9 million securities available for future issuance under Autodesk’s 1998 Employee Qualified Stock Purchase Plan.

<sup>(3)</sup> Amounts correspond to Autodesk’s Nonstatutory Stock Option Plan, which was terminated by the Board of Directors during December 2004.

Descriptions of each of our compensation plans may be found in our 2004 Proxy Statement.

## **Risk Factors Which May Impact Future Operating Results**

We operate in a rapidly changing environment that involves a number of risks, many of which are beyond our control. The following discussion highlights some of these risks and the possible impact of these factors on future results of operations. If any of the following risks actually occur, our business, financial condition or results of operations may be adversely impacted, causing the trading price of our common stock to decline.

*Because we derive a substantial portion of our net revenues from a limited number of products, if these products are not successful, our net revenues will be adversely affected.*

We derive a substantial portion of our net revenues from sales of AutoCAD software, including products based on AutoCAD that serve specific vertical markets, upgrades to those products and products that are interoperable with AutoCAD. As such, any factor adversely affecting sales of these products, including product release cycle, market acceptance, product performance and reliability, reputation, price competition and the availability of third-party applications, would likely harm our operating results.

In the Discreet Segment, our customers' buying patterns are heavily influenced by advertising and entertainment industry cycles, which have resulted in and may continue to have a negative impact on our operating results. In addition, Discreet's Advanced Systems products rely primarily on workstations manufactured by Silicon Graphics, Inc. ("SGI"). Failure of SGI to deliver products or product upgrades in a timely manner would likely result in an adverse effect upon our financial results for a given period.

*Our operating results fluctuate within each quarter and from quarter to quarter making our future revenues and operating results difficult to predict.*

Our quarterly operating results have fluctuated in the past and are likely to do so in the future. These fluctuations could cause our stock price to change significantly or experience declines. Some of the factors that could cause our operating results to fluctuate include the timing of the introduction of new products by us or our competitors, slowing of momentum in upgrade or maintenance revenue, failure to achieve anticipated levels of customer acceptance of key new applications, unexpected costs or changes in marketing or other operating expenses, changes in product pricing or product mix, platform changes, delays in product releases, failure to convert our 2D customer base to 3D products, distribution channel management, changes in sales compensation practices, the timing of large systems sales and general economic or political conditions, particularly in countries where we derive a significant portion of our net revenues.

We have also experienced fluctuations in operating results in interim periods in certain geographic regions due to seasonality or regional economic conditions. In particular, our operating results in Europe during the third quarter are usually impacted by a slow summer period, and the Asia Pacific operations typically experience seasonal slowing in the third and fourth quarters. Operating expenses may also increase in periods when major product releases occur.

Additionally, our operating expenses are based in part on our expectations for future revenues and are relatively fixed in the short term. Accordingly, any revenue shortfall below expectations could have an immediate and significant adverse effect on our profitability. Further, gross margins may be adversely affected if our sales of AutoCAD LT, upgrades and advanced systems products, which historically have had lower margins, grow at a faster rate than sales of our higher-margin products.

*Failure to comply with Section 404 of Sarbanes-Oxley Act of 2002 in a timely fashion may have a negative impact on investor confidence*

Under Section 404 of the Sarbanes-Oxley Act of 2002, beginning with our Annual Report on Form 10-K for our fiscal year ending January 31, 2005, we will be required to assess the effectiveness of our internal controls

## [Table of Contents](#)

over financial reporting and report that our internal control over financial reporting is effective. Our auditors must conduct an audit to evaluate management's assessment of the effectiveness of our internal control over financial reporting and both attest that management's report is fairly stated and express an opinion on the effectiveness of internal control over financial reporting. To comply with Section 404, we have undertaken certain actions including a schedule of activities for the evaluation, test and remediation, if necessary, of our internal controls. Although we believe that our efforts will enable us to provide the required report and our independent auditors to provide their affirmative attestation and opinion as of fiscal 2005, we cannot be certain as to the timing of completion of our evaluation, testing and any required remediation due in large part to the fact that there is no precedent available by which to measure compliance. Although we believe we will be able to satisfy the requirements of Section 404 in a timely fashion, if we are unable to do so, we may be unable to assert that the internal controls over financial reporting are effective, or our auditors may not be able to render the required attestation concerning our assessment and the effectiveness of the internal controls over financial reporting. This may negatively impact investor confidence in the accuracy and completeness of our financial reports, which could have an adverse effect on our stock price.

*Existing and increased competition may reduce our net revenues and profits.*

The software industry has limited barriers to entry, and the availability of desktop computers with continually expanding performance at progressively lower prices contributes to the ease of market entry. The markets in which we compete are fairly mature and characterized by vigorous competition, both by entry of competitors with innovative technologies and by consolidation of companies with complementary products and technologies. In addition, some of our competitors have greater financial, technical, sales and marketing and other resources. Furthermore, a reduction in the number and availability of compatible third-party applications may adversely affect the sale of our products. Because of these and other factors, competitive conditions in the industry are likely to intensify in the future. Increased competition could result in continued price reductions, reduced net revenues and profit margins and loss of market share, any of which would likely harm our business.

We believe that our future results depend largely upon our ability to offer products that compete favorably with respect to reliability, performance, ease of use, range of useful features, continuing product enhancements, reputation and price.

*Our efforts to develop and introduce new products and service offerings expose us to risks such as limited customer acceptance, costs related to product defects and large expenditures that may not result in additional net revenues.*

Rapid technological change as well as changes in customer requirements and preferences characterize the software industry. We are devoting significant resources to the development of technologies, like our lifecycle management initiatives, and service offerings to address demands in the marketplace for increased connectivity and use of digital data created by computer-aided design software. As a result, we are transitioning to new business models, requiring a considerable investment of technical and financial resources. Such investments may not result in sufficient revenue generation to justify their costs, or competitors may introduce new products and services that achieve acceptance among our current customers, adversely affecting our competitive position. In particular, a critical component of our growth strategy is to convert our 2D customer base, including customers of AutoCAD, AutoCAD LT, and related vertical industry products, to our 3D products such as Autodesk Inventor Series or Autodesk Revit. However, should sales of AutoCAD, AutoCAD upgrades and AutoCAD LT products decrease without a corresponding conversion of customer seats to 3D products, our results of operations will be adversely affected.

Additionally, the software products we offer are complex, and despite extensive testing and quality control, may contain errors or defects. These defects or errors could result in the need for corrective releases to our software products, damage to our reputation, loss of revenues, an increase in product returns or lack of market acceptance of our products, any of which would likely harm our business.

## [Table of Contents](#)

*We rely on third party technologies and if we are unable to use or integrate these technologies, our product and service development may be delayed.*

We rely on certain software that we license from third parties, including software that is integrated with internally developed software and used in our products to perform key functions. These third-party software licenses may not continue to be available on commercially reasonable terms, and the software may not be appropriately supported, maintained or enhanced by the licensors. The loss of licenses to, or inability to support, maintain and enhance any such software could result in increased costs, or in delays or reductions in product shipments until equivalent software could be developed, identified, licensed and integrated, which would likely harm our business.

In addition, for certain of our products and services, we rely on third party hardware and services, like the workstations supplied by SGI. Financial difficulties, product line changes, or even failure of these third parties, like SGI, may impact our ability to deliver such products and services and, as a result, may adversely impact our business.

*Disruptions with licensing relationships, independent developers and third party developers could adversely impact our business.*

Independent firms and contractors perform some of our product development activities, while other technologies are licensed from third parties. Licenses may restrict use of such technology in ways that negatively affect our business. We generally either own or license the software developed by third parties.

Because talented development personnel are in high demand, independent developers, including those who currently develop products for us in the United States and throughout the world, may not be able or willing to provide development support to us in the future. In addition, use of development resources through consulting relationships, particularly in non-US jurisdictions with developing legal systems, may be adversely impacted by evolving employment, export and intellectual property laws, which could result in disruptions to product delivery schedules. Similarly, we may not be able to obtain and renew license agreements on favorable terms, if at all, and any failure to do so could harm our business.

Our business strategy has historically depended in part on our relationships with third-party developers, who provide products that expand the functionality of our design software. Some developers may elect to support other products or may experience disruption in product development and delivery cycles or financial pressure during periods of economic downturn. In particular markets, this disruption would likely negatively impact these third-party developers and end users, which could harm our business.

*Our international operations expose us to significant regulatory, intellectual property, collections, exchange fluctuations and other risks, which could adversely impact our future net revenues and increase our net expenses.*

We anticipate that international operations will continue to account for a significant portion of our consolidated net revenues and will provide significant support to our overall development efforts. Risks inherent in our international operations include the following: unexpected changes in regulatory practices and tariffs, difficulties in staffing and managing foreign sales and development operations, longer collection cycles for accounts receivable, potential changes in tax laws and laws regarding the management of data, greater difficulty in protecting intellectual property and the impact of fluctuating exchange rates between the U.S. dollar and foreign currencies in markets where we do business.

Our international results will also continue to be impacted by economic and political conditions in foreign markets generally or in specific large foreign markets. These factors may adversely impact our future international operations and consequently our business as a whole.

## [Table of Contents](#)

Our risk management strategy uses derivative financial instruments in the form of foreign currency forward and option contracts, for the purpose of hedging foreign currency market exposures, during each quarter, which exist as a part of our ongoing business operations. Nevertheless, significant fluctuations in exchange rates between the U.S. dollar and foreign currency markets may adversely impact our future net revenues.

*General economic conditions may affect our net revenues and harm our business.*

As our business has grown, we have become increasingly subject to the risks arising from adverse changes in domestic and global economic and political conditions. If economic growth in the United States and other countries' economies is slowed, many customers may delay or reduce technology purchases. This could result in reductions in sales of our products, longer sales cycles, slower adoption of new technologies and increased price competition. In addition, weakness in the end-user market could negatively affect the cash flow of our distributors and resellers who could, in turn, delay paying their obligations to us, which would increase our credit risk exposure. Any of these events would likely harm our business, results of operations and financial condition.

*Net revenues or earnings shortfalls or the volatility of the market generally may cause the market price of our stock to decline.*

The market price for our common stock has experienced significant fluctuations and may continue to fluctuate significantly. The market price for our common stock may be affected by a number of factors, including the following: net revenues or earnings shortfalls and changes in estimates or recommendations by securities analysts; the announcement of new products or product enhancements by us or our competitors; quarterly variations in our or our competitors' results of operations; developments in our industry; one-time events such as acquisitions, divestitures and litigation; and general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

In addition, stock prices for many companies in the technology sector have experienced wide fluctuations that have often been unrelated to the operating performance of such companies. Historically, after periods of volatility in the market price of a company's securities, a company becomes more susceptible to securities class action litigation. This type of litigation is often expensive and diverts management's attention and resources.

*Our business could suffer as a result of risks associated with strategic acquisitions, divestitures and investments.*

We periodically acquire or invest in businesses, software products and technologies that are complementary to our business through strategic alliances, equity investments and the like. For example, in April 2004 we acquired certain assets of MechSoft.com, Inc, in May 2004 we acquired Unreal Pictures and in June 2004 we acquired certain assets of DESC, Inc. The risks associated with such acquisitions or investments include, among others, the difficulty of assimilating the operations and personnel of the companies, the failure to realize anticipated synergies and the diversion of management's time and attention. In addition, such investments and acquisitions, as well as business divestitures, may involve significant transaction-related costs. We may not be successful in overcoming such risks, and such investments, acquisitions and divestitures may negatively impact our business. In addition, such investments and acquisitions have in the past and may in the future contribute to potential fluctuations in quarterly results of operations. The fluctuations could arise from transaction-related costs and charges associated with eliminating redundant expenses or write-offs of impaired assets recorded in connection with acquisitions. These costs or charges could negatively impact results of operations for a given period or cause quarter to quarter variability in our operating results.

*If we do not maintain our relationships with the members of our distribution channel, or achieve anticipated levels of sell-through, our ability to generate net revenues will be adversely affected.*

We sell our software products both directly to customers and through a network of distributors and resellers. Our ability to effectively distribute our products depends in part upon the financial and business condition of our

## [Table of Contents](#)

reseller network. Computer software dealers and distributors are typically not highly capitalized and have previously experienced difficulties during times of economic contraction and may do so in the future. While we have a processes to ensure that we assess the creditworthiness of dealers and distributors prior to our sales to them, if their financial condition were to deteriorate, they might not be able to make repeat purchases. In addition, the changing distribution models resulting from increased focus on direct sales to strategic accounts or from two-tiered distribution may impact our reseller network in the future. No single customer, distributor or reseller accounted for more than 10% of our consolidated net revenues in during fiscal 2004, 2003 or 2002. We rely significantly upon major distributors and resellers in both the U.S. and international regions. The loss of or a significant reduction in business with those distributors or resellers or the failure to achieve anticipated levels of sell-through with any one of our major international distributors or large resellers could harm our business. In particular, if one or more of such resellers should be unable to meet their obligations with respect to accounts payable to us, we could be forced to write off such accounts, which could have a material adverse effect on our results of operations in a given period.

*Product returns could exceed our estimates and harm our net revenues.*

With the exception of contracts with some distributors, our sales contracts do not contain specific product-return privileges. However, we permit our distributors and resellers to return products in certain instances. For example, we generally allow our distributors and resellers to return older versions of products which have been superceded by new product releases. We anticipate that product returns will continue to be impacted by product update cycles, new product releases such as AutoCAD 2005 and software quality.

We establish reserves for stock balancing and product rotation. These reserves are based on historical experience, estimated channel inventory levels and the timing of new product introductions and other factors. While we maintain strict measures to monitor these reserves, actual product returns may exceed our reserve estimates, and such differences could harm our business.

*If we are not able to adequately protect our proprietary rights, our business could be harmed.*

We rely on a combination of patents, copyright and trademark laws, trade secrets, confidentiality procedures and contractual provisions to protect our proprietary rights. Despite such efforts to protect our proprietary rights, unauthorized parties from time to time have copied aspects of our software products or have obtained and used information that we regard as proprietary. Policing unauthorized use of our software products is time-consuming and costly. While we have recovered some revenues resulting from the unauthorized use of our software products, we are unable to measure the extent to which piracy of our software products exists, and software piracy can be expected to be a persistent problem. Furthermore, our means of protecting our proprietary rights may not be adequate, and our competitors may independently develop similar technology.

*We may face intellectual property infringement claims that could be costly to defend and result in our loss of significant rights.*

As more and more software patents are granted worldwide, as the number of products and competitors in our industry segments grows and as the functionality of products in different industry segments overlap, we expect that software product developers will be increasingly subject to infringement claims. Infringement, invalidity claims or misappropriation claims may be asserted against us, and any such assertions could harm our business. Litigation often becomes more likely in times of economic downturn. Additionally, certain patent holders have become more aggressive in threatening litigation in attempts to obtain fees for licensing the right to use patents. Any such claims or threats, whether with or without merit, could be time-consuming to defend, result in costly litigation and diversion of resources, or could cause product shipment delays or require us to enter into royalty or licensing agreements. In addition, such royalty or license agreements, if required, may not be available on acceptable terms, if at all, which would likely harm our business.



## [Table of Contents](#)

*If we are required to expense options granted under our employee stock plans as compensation, our net income and earnings per share would be significantly reduced, and we may be forced to change our business practices to attract and retain employees.*

Historically, we have used stock options as a key component of our employee compensation packages. We believe that stock options provide an incentive to our employees to maximize long-term stockholder value and, through the use of vesting, encourage valued employees to remain with us. Proposals related to accounting for the grant of an employee stock option as an expense have been issued for comment by the Financial Accounting Standards Board. If such proposals are implemented, our net income and earnings per share will be negatively impacted, and we will not achieve our announced target for operating margins. As a result, we may decide to reduce the number of employees who receive stock options or grant fewer options to particular employees. This could adversely affect our ability to retain existing employees and attract qualified candidates, and also could increase the cash compensation we would have to pay to them.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK**

We have no material changes to the disclosure on this matter made in Item 7A of our report on Form 10-K for the fiscal year ended January 31, 2004.

### **ITEM 4. CONTROLS AND PROCEDURES**

#### **(a) Evaluation of disclosure controls and procedures.**

Our management evaluated, with the participation of our Chief Executive Officer and our Chief Financial Officer, the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are effective to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms. Our disclosure controls and procedures are designed to provide reasonable assurance that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding disclosure. Our disclosure controls and procedures include components of our internal control over financial reporting. Management's assessment of the effectiveness of our internal control over financial reporting is expressed at the level of reasonable assurance because a control system, no matter how well designed and operated, can provide only reasonable, but not absolute, assurance that the control system's objectives will be met.

#### **(b) Changes in internal control over financial reporting.**

We continue to enhance our internal control over financial reporting by adding resources in key areas and bringing our operations up to the level of documentation, segregation of duties, systems security, and transactional control procedures required under the new Auditing Standard No. 2 issued by the Public Company Accounting Oversight Board. We routinely discuss and disclose these matters to the audit committee of our board of directors and to our independent auditors.

There was no change in our internal control over financial reporting that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II. OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

On December 27, 2001, Spatial Corp. (“Spatial”) filed suit in Marin County Superior Court against Autodesk and one of our consultants, D-Cubed Ltd., seeking among other things, termination of a development and license agreement between Spatial and Autodesk and an injunction preventing Autodesk from working with contractors under the agreement. On October 2, 2003, a jury found that Autodesk did not breach the agreement. As the prevailing party in the action, the court awarded Autodesk approximately \$2.4 million for reimbursement of attorneys’ fees and the costs of trial, which was paid during the second quarter of fiscal 2005. Spatial filed a notice of appeal on December 2, 2003 appealing the decision of the jury. Spatial claims that certain testimony of a witness should not have been considered by the jury and as a result, Spatial asserts that it is entitled to a new trial. Autodesk filed its opposition to Spatial’s appeal in August 2004. At the present time, the appeal has not been set for hearing by the appellate court. After reviewing the arguments made in the appeal, we believe the ultimate resolution of this matter will not have a material effect on Autodesk’s financial position, results of operations or cash flows. However, it is possible that an unfavorable resolution of this matter could occur and materially affect our future results of operations, cash flows or financial position in a particular period.

On May 13, 2004, Nuvo Services, LLC (“Nuvo”) filed suit in United States District Court, District of Arizona against Autodesk seeking to compel arbitration of Nuvo’s claim that Autodesk breached a contract that allegedly existed between Nuvo and a company acquired by Buzzsaw.com (“Buzzsaw”) in 2000. Autodesk acquired Buzzsaw in 2001. In the complaint, Nuvo alleges that Autodesk breached the contract by assigning the contract or rights under the contract to a third party without Nuvo’s prior consent. The complaint seeks unspecified damages and recovery of the amount in which Autodesk was unjustly enriched by the assignment. While Autodesk believes the ultimate resolution of this matter will not have a material effect on Autodesk’s financial position, results of operations or cash flows, it is possible that an unfavorable resolution of this matter could occur and materially affect our future results of operations, cash flows or financial position in a particular period.

On September 22, 2004, Plaintiff z4 Technologies, Inc. (“z4”) filed suit against Autodesk and Microsoft Corporation in the United States District Court, Eastern District of Texas, alleging infringement of U.S. Patent No. 6,044,471, entitled “Method and Apparatus for Securing Software to Reduce Unauthorized Use,” and U.S. Patent No. 6,785,825, entitled “method for Securing Software to Decrease Software Piracy.” z4’s complaint alleges that Autodesk infringes the ‘471 patent and the ‘825 patent by making, using, selling, and offering for sale the claimed matter of these patents without the plaintiff’s authority. z4 seeks unspecified compensatory damages, injunctive relief and fees and costs. Autodesk is currently investigating the allegations made in the complaint and intend to vigorously defend against it. Autodesk cannot determine the expected impact, if any, on its financial position, results of operations or cash flows at this time.

In connection with our anti-piracy program, designed to enforce copyright protection of our software and conducted both internally and through the Business Software Alliance (“BSA”), we from time to time undertake litigation against alleged copyright infringers. Such lawsuits may lead to counter claims alleging improper use of litigation or violation of other local law and have recently increased in frequency, especially in Latin American countries. To date, none of such counter claims has resulted in material damages and the Company does not believe that any such pending claims, individually or in the aggregate, will result in a material adverse effect on our future results of operations, cash flows or financial position.

In addition, we are involved in legal proceedings from time to time arising from the normal course of business activities including claims of alleged infringement of intellectual property rights, commercial, employment, piracy prosecution and other matters. In our opinion, resolution of pending matters is not expected to have a material adverse impact on our consolidated results of operations, cash flows or our financial position. However, it is possible that an unfavorable resolution of one or more such proceedings could in the future materially affect our future results of operations, cash flows or financial position in a particular period.

[Table of Contents](#)

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

There were no sales of unregistered securities during the nine months ended October 31, 2004.

The information concerning issuer purchases of equity securities required by this Item is incorporated by reference herein to the section of this Report entitled "Issuer Purchases of Equity Securities" in Part I, Item 2 above.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

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

None.

**ITEM 5. OTHER INFORMATION**

None.

**ITEM 6. EXHIBITS**

Exhibits

The Exhibits listed below are filed as part of this Form 10-Q.

Exhibit 10.1	Office lease between Registrant and the J.H.S Trust for 111 McInnis Parkway, San Rafael, CA, as amended
Exhibit 31.1	Certification of Chief Executive Officer pursuant to Exchange Act Rule 13a-14(a) or 15(d)-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
Exhibit 31.2	Certification of Chief Financial Officer pursuant to Exchange Act Rule 13a-14(a) or 15(d)-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
Exhibit 32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

[Table of Contents](#)

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: December 9, 2004

AUTODESK, INC.  
(Registrant)

/s/ ALFRED J. CASTINO

---

**Alfred J. Castino**  
**Senior Vice President and Chief Financial Officer**  
**(Principal Financial Officer and Principal Accounting Officer)**

LEASE AGREEMENT

between

JOE SHEKOU and HAIDY SHEKOU  
- LANDLORD -

and

AUTODESK, INC.  
- TENANT -

October 5, 1993

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS	1
1.1 Certain Definitions	1
1.2 Table of Definitions	2
2. PREMISES	3
2.1 Landlord's Construction Obligation	3
2.2 Lease of Premises	3
2.3 Rentable Area	3
3. TERM	4
3.1 Initial Term	4
3.1.1 Commencement and Expiration Dates	4
3.1.2 Base Building Delivery Date; Late Delivery	4
3.1.3 Tenant's Termination Right	4
3.2 Extension Options	5
3.2.1 Option Rights	5
3.2.2 Exercise of Extension Option	5
3.2.3 Rent for Option Term	6
3.2.4 Rent Determination	6
3.2.4.1 Landlord's Estimate Notice	6
3.2.4.2 Landlord's Rent Determination Notice	7
3.2.4.3 Tenant's Objection Notice	7
3.2.4.4 Broker Arbitration	7
3.2.4.5 Continuation Payments	8
3.2.5 Refurbishment Allowances	8
3.3 Definition of Term	8
4. RENT	8
4.1 Gross Rent	8
4.2 Annual Increase to Gross Rent	8
4.3 Payment of Rent	9
4.4 Payment of First and Last Month's Rent	9
4.5 Late Charge	10
4.6 Interest	10
5. OCCUPANCY	10
5.1 Use	10
5.2 Signage	10
5.3 Satellite Dish	11
5.4 Emergency Generator and Fuel Storage Tank	11

6.	ASSIGNMENT, MORTGAGE, SUBLETTING	12
6.1	Consent Required	12
6.2	Consent not Required	12
6.3	Standard of Reasonableness	12
6.4	Future Consent	13
7.	ALTERATIONS	13
7.1	Consent Required	13
7.2	Consent Not Required	13
8.	REPAIRS	14
8.1	Tenant's Obligation to Repair	14
8.2	Landlord's Obligation to Repair	14
9.	REQUIREMENTS OF LAW	15
9.1	Requirements of Law	15
10.	SUBORDINATION, MORTGAGES, NONDISTURBANCE	15
10.1	Subordination	15
10.2	Mortgages	16
10.3	Nondisturbance	16
11.	INDEMNIFICATION	16
11.1	Indemnity	16
11.2	Waiver of Claims	16
12.	DAMAGE OR DESTRUCTION	16
12.1	Partial Damage	16
12.2	Total Damage	17
12.3	Limitation on Replacement Costs	17
12.4	Waiver	17
13.	EMINENT DOMAIN	17
13.1	Total Taking	17
13.2	Partial Taking	18
13.3	Restoration	18
13.4	Temporary Taking	18
14.	SERVICES	18
14.1	Services	18
14.2	Costs of Services	19
14.3	Approval of Service Contracts	19
14.4	Cessation of Services	19
15.	ACCESS TO PREMISES	20

16.	INSURANCE	21
16.1	Tenant's Insurance	21
16.2	Landlord's Insurance	21
16.3	Policies	21
16.4	Subrogation	22
17.	SECURITY	22
18.	TENANT DEFAULT	23
18.1	Definition of Tenant Default	23
18.2	Landlord's Remedies	24
18.2.1	Termination	24
18.2.2	Non-Termination	25
19.	LANDLORD' S DEFAULT	25
19.1	Landlord's Default	25
20.	END OF TERM	26
21.	HOLDING OVER	26
22.	QUIET POSSESSION	26
23.	TERMINATION, NO ORAL CHANGE	27
24.	INABILITY TO PERFORM	27
25.	BILLS AND NOTICES	28
26.	TAX ON TENANT'S PERSONAL PROPERTY	29
27.	SECURITY DEPOSIT	29
28.	MARGINAL NOTES	29
29.	TERMS AND DEFINITIONS	29
30.	BROKERAGE	29
31.	BINDING EFFECT	30
32.	ATTORNEYS' FEES	30
33.	ESTOPPEL CERTIFICATES	30
34.	OPTION TO PURCHASE	31
34.1	Option to Purchase	31



34.1.1	Purchase Price	31
34.1.2	Prepayment/Assumption of Loan	31
34.1.3	Exercise	31
34.1.4	Title	31
34.1.5	Closing	32
34.1.5.1	Documents	32
34.1.6	Prorations	33
34.1.7	Expenses	33
35.	RIGHT OF FIRST REFUSAL	33
36.	MEMORANDUM OF LEASE	33
37.	MISCELLANEOUS	34
37.1	Governing Law	34
37.2	Severability	34
37.3	Authority	34
37.4	Exhibits and Addenda	34
Exhibit A	- Legal Description	
Exhibit B	- Floor Plans of Premises	
Exhibit C	- Subordination, Attornment, and Non-Disturbance Agreement	
Exhibit D	- Janitorial Specifications	
Exhibit E	- Broker Agreement	
Exhibit F	- Preliminary Title Report	
Exhibit G	- Memorandum of Lease	

Construction Addendum

Land Purchase Option Addendum

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (the "Lease") is made and entered into as of the 5th day of October 1993, by and between JOE SHEKOU and HAIDY SHEKOU, husband and wife (the "Landlord"), and AUTODESK, INC., a California corporation (the "Tenant").

### RECITALS

A. WHEREAS, Landlord owns certain real property in San Rafael, California, that is approved for construction of a three-story commercial office building.

B. WHEREAS, Landlord desires to construct such building on said real property for use and occupancy by Tenant, and Tenant desires to locate its corporate headquarters in such building following construction thereof by Landlord.

C. WHEREAS, the parties desire to enter into this Lease to provide for Tenant's use and occupancy of such building.

NOW, THEREFORE, in consideration of the foregoing and of the material covenants and obligations set forth herein, Landlord and Tenant hereby agree as follows:

### **1. DEFINITIONS**

1.1 **Certain Definitions.** In addition to the terms defined elsewhere in this Lease, the terms set forth below shall have the following meanings:

1.1.1 The "**Building**" shall mean that certain three (3) story office building to be constructed by Landlord on the Land and located at 103-199 McInnis Parkway, San Rafael, California.

1.1.2 The "**Land**" shall mean that certain parcel of land in San Rafael, Marin County, California, containing approximately 8.13 acres, as more particularly described in Exhibit A attached hereto.

1.1.3 The "**Property**" shall mean the Land and the Building.

1.1.4 The "**Premises**" shall mean the entire rentable area of the Building, as shown on the floor plans of the Building attached hereto as Exhibit B.

1.1.5 The "**Landlord Parties**" shall mean Landlord's subsidiaries, affiliates, agents, contractors, employees, directors and officers, and the constituent partners of Landlord (if Landlord is a partnership).

1.1.6 The “**Tenant Parties**” shall mean Tenant’s agents, contractors, employees, subtenants or other occupants of the Premises.

**1.2 Table of Definitions.** For the convenience of the parties, set forth below is a table of the terms defined in this Lease and the Addenda attached hereto, and the Sections in which such terms are defined:

<u>Definition</u>	<u>Lease Section</u>
Base Building Delivery Date	3.1.2
Building	1.1.1
Building Systems	7.2
Closing Date	34.1.5
Commencement Date	3.1.1
Communications Equipment	5.3
Comparable Buildings	3.2.3
Default Rate	4.6
Event of Default	18.1
Expiration Date	3.1.1
Extension Notice	3.2.2
Extension Option	3.2.1
Fair Market Rent	3.2.3
Initial Term	3.1.1
Land	1.1.2
Landlord	Preamble
Landlord Parties	1.1.5
Landlord’s Estimate Notice	3.2.4.1
Landlord’s Notice	35
Landlord’s Rent Determination Notice	3.2.4.2
Late Delivery Penalty	3.1.2
Laws or Law	9.1
Lease	Preamble
Lease Year	3.1.1
Modified Offer	35

<u>Definition</u>	<u>Lease Section</u>
Mortgagee	19.1
Offer	35
Option Term	3.2.1
Premises	1.1.4
Premises	3.2.2
Property	1.1.3
Property Purchase Price	34.1.1
Rent	4.1
Taking or Condemnation	13.1
Tenant	Preamble
Tenant Parties	1.1.6
Tenant's Objection Notice	3.2.4.3
Tenant's Option to Purchase	34.1
Tenant's Right of First Refusal	35
Term	3.3

## 2. PREMISES

**2.1 Landlord's Construction Obligation.** Landlord shall construct the Building and other improvements on the Land in accordance with the terms and conditions of the Construction Addendum attached hereto and incorporated herein by this reference.

**2.2 Lease of Premises.** Subject to and upon the terms, covenants and conditions hereinafter set forth, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. As an integral part of Tenant's lease of the Premises, Tenant shall have the exclusive right to use the entirety of the Building, including the ground floor lobby, bathrooms, halls, passages, exits, entrances, elevators, loading and storage areas, stairways and the roof of the Building, and all portions of the Land outside of the Building, including all parking areas, roadways, walkways, trash enclosures and disposal areas, landscaped areas and other areas within the exterior boundaries of the Land. The use of such parking areas shall include the right to install, erect or paint identifying signs relating to the use of the parking areas in the Property.

**2.3 Rentable Area.** Landlord and Tenant hereby agree that the rentable square footage of the Premises shall be deemed to be 115,514 square feet of space, for all purposes.

### 3. TERM

#### 3.1 Initial Term

**3.1.1 Commencement and Expiration Dates.** The initial term of this Lease (the "Initial Term") and, subject to the provisions of Section 3.1.2 below, Tenant's obligation to pay Rent shall commence (the "Commencement Date") on the earlier to occur of (i) one hundred twenty (120) days following the date of substantial completion of the Base Building Shell (as defined in the Construction Addendum), or (ii) the occupancy for business purposes by Tenant of the entire Premises; and, unless sooner terminated as hereinafter provided, shall expire on the last day of the tenth (10th) Lease Year (the "Expiration Date"). As used herein, the term "Lease Year" means each consecutive twelve (12) month period during the term of this Lease; provided, however, that if the Commencement Date occurs on a day other than the first day of a month, then the first (1st) Lease Year shall consist of the partial month in which the Commencement Date occurs plus the succeeding twelve (12) full calendar months. The term of this Lease may be extended by Tenant pursuant to the provisions of Section 3.2 below.

**3.1.2 Base Building Delivery Date; Late Delivery.** Landlord shall complete the Base Building Shell and deliver possession of the Building to Tenant for the construction of the Tenant Improvements (as defined in the Construction Addendum) on or before September 1, 1994 (the "Base Building Delivery Date"). The requirements for the completion of the Base Building Shell and the required notice to Tenant of the completion of such work are specified in the Construction Addendum. If Landlord fails to so deliver possession of the Building to Tenant on or before the Base Building Delivery Date, Tenant shall receive a penalty ("Late Delivery Penalty") in the amount of \$100,000 per month (pro-rated for a partial month) for each month (or partial month) that Landlord is late in so delivering the Building to Tenant. Landlord shall either immediately pay to Tenant the Late Delivery Penalty or Tenant shall have the right to offset the Rent due each month in an amount equal to the difference between the total Rent due for any such month minus the then current debt service and expenses and taxes for the Building (which amount of monthly offset shall equal \$20,000) until the Late Delivery Penalty plus interest thereon at the rate of seven percent per annum is fully realized by Tenant. This rent credit, together with any rent credit allowed pursuant to Section 19 of the Lease and Section 8(d) of the Construction Addendum, shall not exceed the cumulative total of \$20,000 per month.

**3.1.3 Tenant's Termination Right.** In addition to the credit against Rent provided for in Section 3.1.2, if Landlord fails to deliver the Building to Tenant with all of the Base Building Shell completed within one hundred twenty (120) days of the Base Building Delivery Date, Tenant shall have the right to terminate this Lease, within ten (10) business days after the

passage of such 120th day, by delivering written notice to Landlord of Tenant's election to so terminate this Lease. In the event Tenant so elects to terminate this Lease, Landlord shall, within ten (10) days after receipt of Tenant's notice of termination, refund to Tenant the advance payment of Rent paid by Tenant pursuant to Section 4.4 below (together with the interest thereon specified in Section 4.4); and, following such termination, Landlord and Tenant shall have no further obligations or liability under this Lease, except for liabilities accrued under the Lease prior to the date of termination.

### **3.2 Extension Options.**

**3.2.1 Option Rights.** Tenant shall have three (3) options to extend the term of this Lease with respect to all or any portion of the Premises for additional periods of five (5) years each. Each such option to extend the term of this Lease shall be referred to herein as an "Extension Option," and the five (5) year period of each such Extension Option shall be referred to herein as an "Option Term." The first Option Term shall commence on the day following the Expiration Date, and each subsequent Option Term shall commence on the day following the expiration of the immediately preceding Option Term.

**3.2.2 Exercise of Extension Option.** Tenant must notify Landlord in writing of its exercise of any Extension Option ("Extension Notice"), and such Extension Notice must be given by Tenant to Landlord on or before the date that is six (6) months prior to the expiration of the Initial Term or the then current Option Term, as the case may be. Notwithstanding the foregoing, Tenant shall not have the right to exercise an Extension Option if an Event of Default then exists against Tenant. If Tenant elects to exercise an Extension Option with respect to only a portion of the Premises initially demised hereunder, Tenant shall specify in its Election Notice the portion of the Premises as to which Tenant's election applies; and in such case, upon the commencement of the Option Term in question, the term "Premises" as used herein shall mean that portion of the Premises specified in Tenant's Extension Notice. In the event Tenant elects to exercise an Extension Option with respect to only a portion of the Premises initially demised hereunder, then the portion Tenant desires to occupy for the Option Term, if less than an entire floor, shall be as to each partial floor subject to the reasonable consent of Landlord. In such event, Landlord's consent may be withheld only if the portion of the Premises sought to be extended will unnecessarily and unreasonably interfere with Landlord's ability to relet the portion of the Premises that is not extended and does not constitute an area that is required by Tenant by virtue of the location of permanent improvements to the Building. Landlord shall be responsible for all costs incurred to demise portions of the Premises retained by Tenant from the remainder of the Building. In the event Tenant elects to exercise an Extension Option with respect to only a portion of the Premises initially demised hereunder, the parties shall enter into an amendment of this Lease that modifies the provisions of this Lease premised upon single use of the Building to reflect a multi-tenant use of the Building.

**3.2.3 Rent for Option Term.** Tenant's occupancy of the Premises pursuant to the exercise of an Extension Option shall be upon all of the same terms and conditions contained in this Lease, except that the Rent shall be adjusted to equal 92.5% of the Fair Market Rent for the Premises being extended. The term "Fair Market Rent" for the Premises being extended for the Option Term applicable thereto shall mean the "fair market" base rent at the commencement of such Option Term for the Premises being extended for a term equal to the Option Term, based on the prevailing rental rates then being obtained in arms'-length transactions for new leases and lease renewals or extensions of comparable space and having a term similar to the Option Term in the Building and in comparable buildings in Marin County ("Comparable Buildings"), taking into account the size, age, location and amenities of the Building and Comparable Buildings. Landlord and Tenant acknowledge that the escalations of Rent currently provided for during the initial term is allocated toward taxes and expenses. Therefore, Fair Market Rent shall take into account that this Lease (as extended) is structured as a gross lease with a portion of the Rent being allocated toward taxes and expenses (which shall not include utilities that Tenant separately pays for, and will continue to pay for), which means that consideration shall be made for increases or decreases, if any, in the Rent for taxes and expenses. Concessions or inducements then being offered in arms'-length transactions in the Building or in Comparable Buildings shall be considered in determining Fair Market Rent, including, without limitation, "free rent" periods, improvement or refurbishment allowances then being given by Landlord or landlords of Comparable Buildings for comparable space and comparable lease terms, moving allowances, and other cash payments from a landlord to or on behalf of a tenant, such as payments for lease takeovers. Fair Market Rent shall also take into account leasing commissions, attorneys' fees, and other transaction costs that may be saved by Landlord by way of such extension compared with leasing space to a new tenant; provided, however, that the refurbishment allowance and any commissions paid by Landlord to Tenant's broker shall also be taken into account in determining Fair Market Rent.

**3.2.4 Rent Determination.** Fair Market Rent shall be determined in the following manner:

**3.2.4.1 Landlord's Estimate Notice.** Not less than five (5) months prior to the commencement of an Option Term, Landlord shall provide written notice to Tenant of Landlord's preliminary good faith estimate of the Fair Market Rent for the Premises being extended ("Landlord's Estimate Notice"). Tenant shall have the right to rescind Tenant's exercise of the Extension Option in question by giving written notice to Landlord of such election within thirty (30) days after receipt of Landlord's Estimate Notice, in which case Tenant's exercise of such Extension Option shall be rescinded and shall have no force or effect. In

the event Tenant does not rescind its exercise of the Extension Option, then Tenant shall be bound to the Option Term, with the Fair Market Rent being determined in accordance with the provisions set forth herein.

**3.2.4.2 Landlord's Rent Determination Notice.** If Tenant does not elect to rescind its exercise of the Extension Option, then the actual Fair Market Rent for such Option Term shall be specified by Landlord in a written notice ("Landlord's Rent Determination Notice") given to Tenant not less than ninety (90) days prior to commencement of the Option Term, subject to Tenant's right of arbitration as set forth below.

**3.2.4.3 Tenant's Objection Notice.** If Tenant believes that the Fair Market Rent specified by Landlord in Landlord's Rent Determination Notice exceeds the actual Fair Market Rent for the Premises being extended, Tenant shall so notify Landlord ("Tenant's Objection Notice") within ten (10) business days following receipt of Landlord's Rent Determination Notice. If Tenant fails to so notify Landlord within said ten (10) business days, Landlord's determination of the Fair Market Rent for the Premises being extended shall be deemed approved by Tenant.

**3.2.4.4 Broker Arbitration.** If Tenant notifies Landlord that Tenant objects to Landlord's determination of Fair Market Rent, and if the parties are unable to agree upon the Fair Market Rent for the Premises being extended within twenty (20) days after Landlord's receipt of Tenant's Objection Notice, then Landlord and Tenant shall each designate, within ten (10) days after the lapse of such twenty (20) day negotiation period, a real estate broker licensed in the State of California and then currently engaged in the office leasing brokerage business in Marin County for at least the immediately preceding five (5) years. If one party fails to notify the other of its designated broker, the broker designated on a timely basis shall be the sole broker to determine the issues. In the event that two brokers are chosen, the brokers so chosen shall meet within ten (10) business days after the second broker is appointed, and if within ten (10) business days after such first meeting the brokers shall be unable to agree upon the Fair Market Rent, they shall appoint a third broker, who shall be a competent and impartial person with qualifications similar to those required of the first two brokers pursuant to this Paragraph. Each of said three brokers shall, within fifteen (15) days after the appointment of the third broker, determine the Fair Market Rent for the Premises being extended for a term equal to Option Term. The Fair Market Rent shall be the arithmetic average of such three determinations; provided, however, that if any such broker's determination deviates more than ten percent (10%) from the median of such determinations, the Fair Market Rent shall be equal to the average of the two closest determinations; and, provided further, that in no event shall the Fair Market Rent for the Premises being extended be in excess of the amount originally specified by Landlord in Landlord's Estimate Notice. Landlord shall pay the costs and fees of Landlord's broker



in connection with any determination of Fair Market Rent hereunder, and Tenant shall pay the costs and fees of Tenant's broker in connection with such determination. The costs and fees of any third broker shall be paid one-half by Landlord and one-half by Tenant.

**3.2.4.5 Continuation Payments.** If the Fair Market Rent of the Premises being extended has not been determined as of the commencement of the Option Term, then, until such Fair Market Rent is determined, Tenant shall continue to pay as Rent for the Premises being extended the per square foot rental rate in effect at the time of Landlord's Rent Determination Notice. When such Fair Market Rent has been determined, if Tenant has underpaid the Rent applicable for the Option Term, Tenant shall pay such deficiency to Landlord at the time the next monthly payment of Rent is due or if Tenant has overpaid such Rent, Landlord shall, at Landlord's option, credit the amount of such overpayment against Tenant's payment(s) of Rent next coming due hereunder or pay such overpayment to Tenant within ten (10) days after Tenant's demand for payment thereof.

**3.2.5 Refurbishment Allowances.** In the event Tenant exercises an Extension Option, Landlord shall pay to Tenant upon such exercise the amounts set forth below corresponding to the Extension Option being exercised for refurbishment of the improvements in the Premises being extended:

<u>Option</u>	<u>Amount Per Rentable Square Foot of Premises Being Extended</u>
First Extension Option	\$ 5.00
Second Extension Option	\$ 8.00
Third Extension Option	\$ 12.00

**3.3 Definition of Term.** As used herein, "Term" shall mean the Initial Term together with any extension thereof as such may be extended and in effect pursuant to the terms hereof.

#### **4. RENT**

**4.1 Gross Rent.** From and after the Commencement Date, but subject to the terms of Section 3.1.2 above, Tenant shall pay to Landlord during the first Lease Year gross rent (the "Rent") in the amount of \$1.58 per rentable square foot of the Premises per month (i.e., \$182,512.12).

**4.2 Annual Increase to Gross Rent.** Landlord and Tenant have agreed that, in lieu of Tenant having the obligation to pay for operating expenses and taxes of the Property (other than as provided in Section 14.2 regarding payment by Tenant for gas and electricity), the Rent shall be subject to regularly scheduled annual increases commencing on the first day of the second Lease

Year and the first day of each Lease Year thereafter during the Initial Term, in accordance with the following schedule:

<u>Lease Year</u>	<u>Monthly Per Square Foot Rental Rate</u>
Second	\$1.62 (i.e., \$187,132.68)
Third	\$1.66 (i.e., \$191,753.24)
Fourth	\$1.70 (i.e., \$196,373.80)
Fifth	\$1.74 (i.e., \$200,994.36)
Sixth	\$1.79 (i.e., \$206,770.06)
Seventh	\$1.83 (i.e., \$211,390.62)
Eighth	\$1.88 (i.e., \$217,166.32)
Ninth	\$1.92 (i.e., \$221,786.88)
Tenth	\$1.97 (i.e., \$227,562.58)

**4.3 Payment of Rent.** Rent shall be payable by Tenant in consecutive monthly installments on or before the first day of each month, in advance, at the address specified for Landlord in Section 25, or such other place as Landlord shall designate, without any prior demand therefor and without any abatement, deduction or setoff whatsoever except as otherwise expressly provided in this Lease. If the Commencement Date should occur on a day other than the first day of a calendar month, the rental for such fractional month shall be prorated on a daily basis based upon the number of days in such month.

**4.4 Payment of First and Last Month's Rent.** Upon the delivery by Landlord to Tenant of a commitment letter from Landlord's permanent lender that such lender is committing to fund a permanent loan (which date is estimated by Landlord to be October 12, 1993), Tenant shall pay to Landlord the estimated first and last months Rent (i.e., \$182,512.12 and \$227,562.58). In the event Tenant elects to terminate this Lease pursuant to the terms of the Land Purchase Option Addendum attached hereto, the repayment of the amount paid by Tenant to Landlord pursuant to the foregoing sentence shall be secured by a deed of trust on the Property; and Tenant hereby agrees to reconvey such deed of trust if Tenant does not elect to terminate the Lease pursuant to the terms of the Land Purchase Option Addendum attached hereto. The amount so paid by Tenant upon the execution of this Lease (or the amount thereof outstanding at any time) shall bear simple interest at the rate of seven percent (7%) per annum throughout the Initial Term. Landlord shall pay to Tenant the accrued amount of such interest on the Commencement Date and thereafter on January 1st of each year during the Initial Term and on the Expiration Date or the date of any earlier termination of this Lease. In the event Landlord fails to make any such payment to Tenant when due, Tenant shall have the

right to offset the amount due against the Rent next due to Landlord hereunder. In the event the Property is transferred for any reason and Tenant is required to pay such first and last months rent again, Tenant retains the right to proceed against Joe Shekou and Haidy Shekou for the repayment of such amount Tenant is required to pay again.

**4.5 Late Charge.** Tenant acknowledges that the late payment of any Rent will cause Landlord to incur damages, the exact amount of which would be impractical and extremely difficult to ascertain. Such damages may include, without limitation, processing, accounting, and other administrative costs, loss of use of the overdue funds, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering any portion of the Property. Landlord and Tenant agree that if Landlord does not receive any payment of Rent by the eighth (8th) day of a calendar month in which Rent is due and Landlord has notified Tenant in writing by the fourth (4th) day of such calendar month that such Rent has not been received, Tenant shall pay to Landlord on demand a late charge in an amount equal to the late charge imposed by the then current senior mortgage holder; provided, however, Tenant shall not be responsible for a late charge that exceeds five percent (5%) of the Rent for such month. The parties agree that such late charges represent a reasonable estimate of the cost that Landlord will incur by reason of late payment by Tenant.

**4.6 Interest.** Notwithstanding any other provisions of this Lease, any payment owed by either party to the other hereunder, including payment of Rent hereunder, that is not paid when due shall bear interest from the date that is fifteen (15) days following written notice to the party from whom such payment is due that such payment is past due until the same has been fully paid, such interest to be at a rate (the "Default Rate") that is equal to the lesser of (i) two percent (2%) above the rate of interest publicly announced from time to time by Bank of America N.T. & S.A. at its San Francisco headquarters as its "Reference Rate" for commercial borrowing adjusted monthly on the first day of each month, such adjustment to be effective for the following month, and (ii) the highest rate permitted by law.

## **5. OCCUPANCY**

**5.1 Use.** Tenant shall use and occupy the Premises for general office purposes and related lawful uses that may from time to time be necessary or desirable to be incorporated into Tenant's corporate headquarters, including, without limitation, computer centers, client briefing and service centers, training rooms, employee showers and fitness rooms, and dining facilities and other food service operations.

**5.2 Signage.** Tenant, at its sole cost, shall have exclusive signage rights for the Property, including the right to install one or more signs on the exterior of the Building and to install one or

more monument signs on the Land. Such signage shall be subject to the approval of the City of San Rafael, if and to the extent required; and such signage shall also be subject to the approval of Landlord, with such approval by landlord not to be unreasonably withheld, delayed, or conditioned.

**5.3 Satellite Dish.** Tenant shall have the right to use the roof of the Building (or another portion of the Property equally suitable) for the purpose of installing, operating, maintaining and replacing Tenant's communications equipment, including, without limitation, satellite dishes, microwave antennas and similar devices ("Communications Equipment"). Tenant may, at its sole cost and expense, erect, maintain, install and operate such Communications Equipment on the roof of the Building (or another location on the Property equally suitable) in one or more locations specified by Tenant and subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall be entitled to run appropriate conduit from such Communications Equipment to the Premises, in order to connect Tenant's related equipment in the Premises to such Communications Equipment on the roof of the Building. Tenant shall at all times maintain such Communications Equipment in good order and repair and Tenant shall be responsible for any and all costs and expenses incurred in connection with such Communications Equipment, including, without limitation, the installation of conduit from such Communications Equipment to the Premises. In the event the Communications Equipment is installed on the roof of the Building, Tenant shall construct a walkway and railing on the roof of the Building so as to reach the Communications Equipment and to discourage unauthorized access to other portions of the roof. Tenant's installation, repair, maintenance, and operation of the Communications Equipment shall be subject to and in accordance with all applicable governmental codes, laws, rules, regulations or ordinances in effect from time to time. Tenant shall indemnify and hold harmless Landlord from all damage, loss, cost, and liability arising from Tenant's operation and maintenance of the Communications Equipment.

**5.4 Emergency Generator and Fuel Storage Tank.** Tenant, at its sole cost and expense, shall have the right to install an emergency generator system serving the Building, including an emergency generator, fuel storage tank and associated piping and connections. The location of the generator and fuel storage tank (which may be underground or above ground) on the Land shall be determined by Tenant and approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, that in the event locating the fuel storage tank above ground is both reasonable and not disruptive of Tenant's use of the Property, it shall not be unreasonable for Landlord to refuse to consent to locating the fuel storage tank underground. Tenant shall at all times maintain such emergency generator system, including the fuel storage tank, in good condition and repair, and Tenant shall comply with all applicable federal, state and local laws, statutes and regulations relating to the operation and

maintenance of such system, including, without limitation, California Health and Safety Code Sections 25280 et seq. (and regulations promulgated thereto). Tenant shall indemnify and hold harmless Landlord from all damage, loss, cost, and liability arising from Tenant's operation and maintenance of the fuel storage tank installed by Tenant pursuant to this Section. Upon the expiration or early termination of the Term, Tenant shall, at its expense, remove the fuel storage tank (unless Landlord elects to have the tank remain and assume all liability therefore) in accordance with all applicable federal, state and local laws, statutes and regulations.

## **6. ASSIGNMENT, MORTGAGE, SUBLETTING**

**6.1 Consent Required.** Except as provided below, neither Tenant, nor Tenant's legal representatives, successors or assigns, shall assign, mortgage or encumber this Lease, or sublet, or use or occupy or permit the Premises or any part thereof to be used or occupied by others, without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by any party other than Tenant, Landlord may, after default by Tenant and the failure to cure such default during any applicable cure periods, collect rent from the assignee, subtenant or occupant and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as Tenant, or a release of Tenant from the further performance by Tenant of the obligations on the part of Tenant herein contained.

**6.2 Consent not Required.** Tenant shall have the right, without Landlord's consent, but with notice to Landlord, to assign this Lease or sublet all or a portion of the Premises to any parent, subsidiary, affiliate or successor of Tenant, to any person, firm or corporation which shall be controlled by, under the control of, or under common control with Tenant, or to any entity into which Tenant may be merged or consolidated or which purchases all or substantially all of the assets of Tenant. No assignment or sublease, whether with or without Landlord's consent, shall relieve Tenant from its covenants and obligations under this Lease.

**6.3 Standard of Reasonableness.** Notwithstanding any contrary provision of the foregoing, it shall be reasonable for Landlord to deny such consent to an assignment or sublet in the following circumstances:

**6.3.1** The use to be made of the premises by the proposed assignee violates the terms of Section 5.1, or is a use which would be prohibited by any other portion of this Lease; or

**6.3.2** The financial responsibility of the proposed assignee (as opposed to a proposed subtenant) is not reasonably satisfactory to Landlord.

**6.4 Future Consent.** Landlord's consent to an assignment or sublease shall not be construed to relieve Tenant or any assignee or subtenant from obtaining the express consent in writing of Landlord to any further assignment or sublease, to release Tenant from any liability whether past, present or future under this Lease or to release Tenant from any liability under this Lease because of Landlord's failure to give notice of default under or in respect of any of the terms, covenants, conditions, provisions or agreements of this Lease.

## 7. ALTERATIONS

**7.1 Consent Required.** Except as set forth below, Tenant shall make no alterations, decorations, additions or improvements in or to Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall submit such information as Landlord shall reasonably require, including, without limitation, plans and specifications for such proposed work; provided, however, that Tenant shall not be required to pay to Landlord any fee for Landlord's review of such documents or information (including architectural or engineering drawings). Landlord shall, within ten (10) business days following receipt of Tenant's plans and specifications for the proposed work, review and either approve, disapprove or conditionally approve, which conditional approval shall include written comments to Tenant's plans. Failure of Landlord to respond to said plans within such ten (10) business days shall constitute Landlord's approval of said plans and specifications.

**7.2 Consent Not Required.** Notwithstanding the foregoing, Tenant may, without the Landlord's consent, but with prior notice to Landlord, make (i) alterations, additions and improvements to the tenant finish work in the Premises, and (ii) other alterations, additions and improvements to the Premises costing less than \$100,000 that are non-structural in nature and that do not require altering the Building mechanical, plumbing or electrical systems ("Building Systems"). All such work shall be done at Tenant's sole cost and expense. All work done by Tenant shall be performed in compliance with applicable laws, ordinances, regulations and requirements of governmental authorities having jurisdiction, and in compliance with the rules, orders, directions and requirements of insurance underwriters that are necessary for the maintenance of all-risk property insurance for the Premises. Before commencing any work, Tenant shall give Landlord at least ten (10) days' written notice of the proposed commencement of such work in order to give Landlord an opportunity to prepare, post and record such notice as may be permitted by law to protect Landlord's interest in the Property from mechanic's liens. Any mechanic's lien filed against the Building or the Land for work claimed to have been done for, or materials claimed to have been furnished to Tenant, shall be discharged by Tenant, by bond or otherwise, within thirty (30) days after the filing thereof, at the cost and expense of Tenant. All improvements upon the Premises made by Tenant shall remain upon, and be surrendered with the Premises, as a part thereof, at

the end of the Term, unless Tenant elects to remove the same. In any event, Tenant shall have the right, but not the obligation, at the expiration or earlier termination of this Lease, to remove any personal property of Tenant, supplemental HVAC unit, signage installed by Tenant, computers and related equipment including peripheral equipment and tape and disk vaults, all projectors and projection screens and related equipment, blackboards, whiteboards, tack boards, and other display units, telephone systems, cipher locks and electronic security systems, paging systems, phone system equipment, including patch panel and subfeed panel locations for such phone systems, fire suppression systems, CRT patch panels and all other similar equipment of Tenant.

## 8. REPAIRS

**8.1 Tenant's Obligation to Repair.** Subject to Landlord's repair and maintenance obligations set forth in this Lease, Tenant shall, except for ordinary wear and tear, acts of God and casualty, make all repairs in and about the Premises necessary to preserve the Premises in good order and condition, including, without limitation, fixtures, interior walls, interior surfaces of exterior walls (however excluding exterior windows and window gaskets), doors located within the Premises, defects in the Tenant Improvements (as defined in the Construction Addendum), and repairs necessitated by the negligent acts of Tenant or Tenant's Parties to the extent such repairs are not covered by the insurance that Landlord is required to maintain pursuant to the terms of the Lease; provided, however, that Tenant shall not be responsible for any repairs or maintenance (i) to the extent made necessary by any defects in the Building or those portions of the Premises excluding the Tenant Improvements (which items shall be repaired by Landlord at no expense to Tenant), (ii) covered by Landlord's insurance or which would be covered under the insurance Landlord is required to carry under Section 16, (iii) needed in connection with any negligence or willful misconduct of Landlord or Landlord Parties, or (iv) made necessary by any casualty, condemnation or Landlord's default under the terms of this Lease.

**8.2 Landlord's Obligation to Repair.** Landlord shall maintain in good condition and repair the foundations, exterior walls and roof of the Building, all exterior windows and window frames, all structural elements of the Building, the Building Systems (including, without limitation, the heating, ventilating and air-conditioning system {except Tenant shall pay all costs for the routine, non-capital maintenance of the heating, ventilating and air-conditioning system in excess of the costs required to maintain a standard system for comparable buildings to the Building for similar tenants, which amount, if the parties are unable to agree, shall be determined by binding arbitration}, plumbing, electrical, life-safety, fire protection, security, and sewer) and the parking areas, landscaping and other exterior portions of the Property; provided, however, Landlord shall not be obligated to repair (i) any defects in the Tenant Improvements (as defined in the Construction Addendum), or (ii) any repairs necessitated by the

negligent acts of Tenant or Tenant's Parties to the extent such repairs are not covered by the insurance that Landlord is required to maintain pursuant to the terms of the Lease. There shall be no allowance to Tenant for a diminution of rental value, and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from the making of any repairs or improvements in or to any portion of the Building so long as such repairs or improvements are undertaken and accomplished in such manner as to minimize to the extent reasonably possible any disruption to the business operations of Tenant in the Premises; provided, however, in the event the Premises (or a portion thereof) are rendered unusable during and as a consequence of any such repair work undertaken by or on behalf of Landlord, then one (1) day of Rent (or such proportionate amount as relates to the unusable portion of the Premises) shall be abated for every day the Premises (or portion thereof) are rendered unusable.

## **9. REQUIREMENTS OF LAW**

**9.1 Requirements of Law.** Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities (collectively, "Laws," or individually, a "Law") pertaining to Tenant's use of the Property and with any direction of any public officer pursuant to law, which shall impose any duty upon Tenant with respect to the use or occupation of the Property, and shall not do or permit to be done any act or thing upon the Property, which will invalidate or be in conflict with any insurance policy covering the Building or its fixtures, appurtenances or equipment or the property located therein, and shall not do or permit to be done any act or thing upon the Property which shall or might subject Landlord to any liability or responsibility for injury to any person or persons or to any property by reason of any business or operation being carried on upon the Property; provided, however, that Tenant shall not be required to make any alterations of or improvements to the Property (structural or otherwise) in order to so comply unless such alterations or improvements shall be necessitated or occasioned by the particular nature or manner of Tenant's use of the Property as opposed to office use in general. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot area which such floor was designed to carry and which is allowed by law. Landlord, at Landlord's expense, shall comply with all Laws pertaining to the Property and with any recorded covenants, conditions and restrictions affecting the Land.

## **10. SUBORDINATION, MORTGAGES, NONDISTURBANCE**

**10.1 Subordination.** This Lease is subject and subordinate to (i) all ground or underlying leases, mortgages and deeds of trust which now affect the Land, (ii) all renewals, modifications, consolidations, replacements and extensions thereof, and (iii) any ground or underlying leases, mortgages, or deeds of trust which may hereafter affect the Land; provided, however, that it shall be a



condition precedent to such subordination that Tenant receive from such lessor, mortgagee or beneficiary a fully executed original of the Subordination, Non-Disturbance and Attornment Agreement specified in Section 10.3 below.

**10.2 Mortgages.** In the event of foreclosure or exercise of power of sale under any mortgage or deed of trust now or hereafter affecting the Land, Tenant shall attorn to such holder or purchaser; provided, however, that it shall be a condition precedent to such attornment that Tenant receive from such lessor, mortgagee or beneficiary a fully executed original of the Subordination, Non-Disturbance and Attornment Agreement specified in Section 10.3 below. Notwithstanding this Section 10.2, such holder or purchaser may elect that this Lease become or remain, as the case may be, superior to said mortgage or deed of trust.

**10.3 Nondisturbance.** Notwithstanding anything to the contrary herein contained, with respect to any ground or underlying leases, mortgages or deeds of trust which now or may hereafter affect the Land, this Lease shall not be subject or subordinate thereto unless and until Landlord obtains from the mortgagee under said mortgage, beneficiary under the deed of trust, ground lessor under any ground lease or other secured party under any other security instrument or arrangement placed against the Property, a Subordination, Non-Disturbance and Attornment Agreement substantially in the form of Exhibit C attached hereto.

## **11. INDEMNIFICATION**

**11.1 Indemnity.** Subject to the terms of Section 16.4, the parties hereto shall indemnify and hold harmless the other party for all damages arising out of any damage to any person or property occurring in, on, or about the Premises or the Property resulting from the acts or omissions of the indemnifying party or their authorized representatives.

**11.2 Waiver of Claims.** The parties hereto shall not be liable to the other party for any damage to the other party or such other party's property, except that each party hereto shall be liable to the other party for damage resulting from the acts or omissions of the other party or such other party's authorized representative.

## **12. DAMAGE OR DESTRUCTION**

**12.1 Partial Damage.** If the Premises or any portion of the Building or Land required by Tenant to use the Premises as intended shall be partially damaged by fire or other cause, the damages shall be repaired by and at the expense of Landlord and the Rent until such repairs shall be made shall be apportioned according to the part of the Premises which is unusable by Tenant. No liability shall accrue for reasonable delay which may arise by reason of adjustment of insurance on the part of Landlord or Tenant, for reasonable delay on account of "labor troubles," or any other cause

beyond Landlord's control; provided, however, Tenant shall have the option thereafter to terminate this Lease if such partial damage is not fully repaired within one hundred eighty (180) days from the date of such damage. In the event Tenant desires to exercise its right of termination set forth above, Tenant shall notify Landlord in writing within thirty (30) days after the passage of the 180th day from the date of such damage.

**12.2 Total Damage.** If the Premises are totally damaged or are rendered wholly untenable by fire or other cause, and Landlord shall decide not to restore or rebuild the same, or if the Building shall, in Landlord's and Tenant's reasonable judgment, be so damaged that Landlord shall decide to demolish it and rebuild it, then in any of such events either party may, within ninety (90) days after such fire or other cause, give the other party notice of such decision, and thereupon this Lease shall expire by lapse of time upon the third day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord.

**12.3 Limitation on Replacement Costs.** Notwithstanding anything contained in Section 12.1 to the contrary, if the casualty causing such loss, damage or destruction is not covered by the insurance required to be maintained by Landlord pursuant to the terms of this Lease, Landlord shall not be required to spend for any repair, replacement or reconstruction of the Premises or the Building more than an amount equal to ten percent (10%) of the total replacement cost of the Building.

**12.4 Waiver.** The provisions of this Lease, including this Article 12, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or any other portion of the Land, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in any absence of an express agreement between the parties, and any similar statute or regulation, now or hereafter in effect, shall have no application to this Lease or to any damage to or destruction of all or any part of the Premises, the Building or any other portion of the Land.

### **13. EMINENT DOMAIN**

**13.1 Total Taking.** If the whole Building shall be taken or condemned for all or any portion of the term by any competent authority for any public or quasi public use or purpose, or transferred by agreement in connection with such public or quasi public use or purpose with or without any condemnation action or proceeding being instituted (collectively, a "Taking" or "Condemnation"), then, the Term shall terminate as of the date when the possession of the Building shall be required for such use or purpose, and without apportionment of the award, such that the entire award is paid to Landlord. The then current rental, however shall in any such case be equitably apportioned. Nothing contained

herein shall be deemed to give Landlord any interest in, or to require Tenant to assign to Landlord, any award made to Tenant specifically for its relocation expenses, the taking of personal property and fixtures belonging to Tenant, or the interruption of or damage to Tenant's business if such award is made separately to Tenant and not as part of the damages recoverable by Landlord.

**13.2 Partial Taking.** If any portion of the Premises is taken by Condemnation, this Lease shall remain in effect, except that Tenant shall have the right to elect to terminate this Lease if the remaining portion of the Premises is rendered inaccessible or unusable to Tenant or is not adequate space for Tenant's purposes. If any part of the Land is taken by Condemnation, this Lease shall remain in full force and effect so long as there is no material interference with the access to the Premises. If such a taking materially interferes with access to the Premises, either party shall have the election to terminate this Lease.

**13.3 Restoration.** If there is a partial taking of any portion of the Premises and this Lease remains in full force and effect pursuant to this Article 13, Landlord, at its cost, shall accomplish all necessary restoration so that the balance of such portion of the Premises is returned as near as practical to their condition immediately prior to the date of Taking.

**13.4 Temporary Taking.** If all or any portion of the Premises is condemned or otherwise taken for public or quasi-public use for a limited period of time, this Lease shall remain in full force and effect and Tenant shall continue to perform all terms, conditions and covenants of this Lease; provided, however, in the event such temporary taking continues for more than six months, Tenant shall have the right to terminate this Lease. Tenant shall be entitled to receive the entire award made in connection with any such temporary condemnation or other taking.

#### **14. SERVICES**

**14.1 Services.** At all times during the Term, Landlord shall:

**14.1.1** Provide automatic elevator facilities twenty four hours a day, seven days a week.

**14.1.2** On normal business days from 8:00 a.m. to 6:00 p.m. (and at other times for the then current hourly charge per fan room) ventilate the Premises and furnish heating or air conditioning as required for Tenant's comfortable use and normal occupancy of the Premises with temperatures between the range of 68° F dry bulb and 76° F dry bulb.

**14.1.3** Provide electricity for lighting and normal office business machines, including, without limitation, computers, electronic data processing and ancillary equipment.

14.1.4 Furnish water for drinking and lavatory purposes.

14.1.5 Cause the Premises to be kept clean and neat in accordance with the janitorial specifications set forth on Exhibit D attached hereto.

14.1.6 Provide a day porter for the Building for a minimum of four (4) hours per day, Monday through Friday, with duties to be specified by

Tenant.

14.1.7 Install, at Landlord's expense, all replacement Building standard fluorescent bulbs, light bulbs and ballasts as needed in the Premises.

14.1.8 Maintain the parking lot in a first class condition, which shall include, without limitation, regular sweeping so as to keep the parking lot generally free of trash and rubbish, patch and repair paving as necessary, and maintain the striping.

14.1.9 Maintain all landscaping and walkways in a first class condition, which shall include, without limitation, maintaining healthy vegetation, the removal of dead or deceased vegetation and the replacement thereof with vegetation of consistent maturity, and the regular sweeping and cleaning of walkways and plazas so as to keep such walkways and plazas generally free of trash and rubbish.

14.2 **Costs of Services.** Except for the cost of gas and electricity for the Building, which shall be the responsibility of Tenant, all services shall be performed at the sole cost and expense of Landlord.

14.3 **Approval of Service Contracts.** Tenant shall have the right to reasonably pre-approve all service contracts entered into by Landlord to provide service to the Property; provided, however, Tenant acknowledges that Landlord or a company controlled by Landlord may perform some of the services set forth herein. In addition, Landlord shall provide Tenant with copies of all service reports received by Landlord with respect to the Property.

14.4 **Cessation of Services.** Landlord shall notify Tenant in writing at least twenty-four (24) hours before any intentional shut-down of electrical power or HVAC serving the Premises, except in the case of an emergency. Notwithstanding the terms of this Lease to the contrary, if any Building service is interrupted for a period of one (1) day due to the negligence or willful acts of Landlord, its agents, servants, employees, contractors or subcontractors or for a period of three (3) consecutive days due to any other reason (other than the misuse, negligence or willful act of Tenant) and such failure adversely effects Tenant's use of the Premises for Tenant's normal business operations, then there shall be an abatement of Rent from and after said first or third day, as

the case may be, until such services are restored. Landlord agrees to use its best efforts to restore such services as soon as possible. In the event that Landlord fails to initiate and diligently prosecute curative actions within eight (8) business hours following receipt by Landlord (or Landlord's managing agent) of written notice from Tenant of any such service interruption, Tenant shall have the right to immediately exercise Tenant's self-help rights and remedies pursuant to Section 19 below without providing Landlord with any other or further cure period.

#### **15. ACCESS TO PREMISES**

Subject to the terms of Section 8 with respect to repairs and Section 14 with respect to services, Tenant shall permit Landlord to use and maintain pipes and conduits in and through the Premises; provided, such pipes and conduits are concealed above the ceiling, beneath the floor or behind the demising walls, and do not interfere with Tenant's use of the Premises. Landlord shall have the right to enter the Premises at reasonable hours upon at least twenty-four (24) hours advance written notice (except in the case of emergency) and in the accompaniment of a representative of Tenant to examine the same and to make such repairs required of Landlord hereunder and Landlord shall be allowed to take all material into and upon the Premises that may be required therefor without the same constituting an eviction of Tenant in whole or in part; provided, any such entry is strictly of a temporary nature. In the event any such entry by Landlord renders the Premises unusable for more than two (2) consecutive days, the Rent shall abate from and after said second day for so long as said entry renders the Premises unusable. Landlord is expressly granted permission to show the Premises at any reasonable time upon at least twenty-four (24) hours advance written notice to prospective tenants, mortgagees, purchasers, lessees of the Building and other persons with a business interest therein; provided, however, that Landlord shall only exhibit the Premises to prospective tenants during the final six (6) months of Tenant's occupancy of the Premises. Landlord agrees to use best efforts in connection with any entry to minimize any interference with Tenant's business operations and to protect Tenant's employees and property within the Premises, and Tenant shall cooperate with such efforts. Landlord shall be responsible for any damage to persons or property within the Premises caused by such entry by Landlord. If Tenant shall not be personally present to open and permit an entry into the Premises when for emergency reasons an entry therein shall be necessary, Landlord may enter the same by a master key, or may forcibly enter the same, without rendering Landlord liable therefor (if during such entry Landlord shall accord reasonable care to Tenant's property), and without in any manner affecting the obligations, terms, covenants, conditions, provisions or agreements of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, supervision or repair of the Land or the Building or any part thereof, other than as otherwise provided in this Lease.

## 16. INSURANCE

**16.1 Tenant's Insurance.** Tenant shall carry at its expense and maintain in force during the term the following insurance:

**16.1.1 Commercial General Liability Insurance** (including protective liability coverage on operations of independent contractors engaged in construction and also blanket contractual liability insurance) on an "occurrence" basis for the benefit of Tenant and Landlord as named insured against claims for "personal injury" liability, including, without limitation bodily injury, death or property damage liability with a limit of not less than \$2,000,000 in the event of "personal injury" to any number of persons or of damages to property arising out of any one "occurrence" in connection with Tenant's use of the Property. Such insurance may be furnished under a "primary" policy and an "umbrella" policy, provided that it is primary insurance and not excess over or contributory with any insurance in force for Landlord; and

**16.1.2 Insurance against loss or damage by fire and such other risks and hazards as are insurable under present and future standard forms of fire and extended coverage insurance policies, to the personal property, furniture, and furnishings belonging to Tenant located in the Premises for not less than 100% of the actual replacement value thereof.**

**16.2 Landlord's Insurance.** Landlord shall maintain policies of insurance covering loss of or damage to the Property (including tenant improvements and subsequent alterations) in the full amount of its replacement cost. Such policies shall provide protection (subject to reasonable deductibles) against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage, and earthquake; provided, however, Tenant shall pay one-half of the yearly premium for earthquake insurance for so long as Tenant desires Landlord to maintain earthquake insurance. The proceeds of such insurance received by Landlord shall be applied toward the restoration or replacement of the items to which they relate. In addition, Landlord shall maintain a policy of commercial general liability insurance with a combined single limit of not less than \$3,000,000 per person and \$5,000,000 per occurrence for bodily injury and property damage, plus coverage against such other risks Landlord deems advisable from time to time, insuring Landlord against liability arising out of the ownership, use, occupancy or maintenance of the Property and insuring the performance by Landlord of Landlord's indemnity provisions of this Lease.

**16.3 Policies.** All such insurance shall name the other party as additional insured, shall be effected under policies issued by insurers licensed to do business in the State of California and with a rating of at least AA by Duff & Phelps, Moody's or Standard & Poors and shall provide that the other party shall receive thirty

(30) days written notice from the insurer prior to any cancellation, diminution or material change of coverage. Landlord and Tenant shall each deliver policies of such insurance or certificates thereof to the other on or before the Commencement Date, and thereafter at least thirty (30) days before the expiration dates of expiring policies; and, in the event either party shall fail to procure such insurance or to deliver such policies or certificates, the other party may, at its option, procure the same, and the cost thereof shall be paid to by the other party within ten (10) days after delivery of bills therefor.

**16.4 Subrogation.** Notwithstanding any other term or provision of this Lease to the contrary, Landlord and Tenant hereby both release the other and their respective employees, agents, servants, licensees and invitees from and waive any claims either may have against the other or their employees, agents, servants, licensees or invitees for any loss or damage to the Building, Premises, improvements on or to the Building, Premises, or to the contents of the foregoing and any personal property stored or placed thereon by either of them caused by any of the perils insurable against under fire and extended coverage insurance policies with "all risk" endorsement, whether such damage or loss was caused by the negligence of either of them or their respective employees, agents, servants, invitees or licensees. The foregoing mutual release and waiver of subrogation shall apply whether or not such insurance on the Building, Premises, improvements, contents and/or personal property was in force at the time of the loss or damage. Moreover, each party agrees to take all actions necessary to make the foregoing release effective and binding upon their respective insurance carriers so that such carriers specifically waive any right of subrogation that such carriers might otherwise have against the other party and/or their respective employees, agents, servants, invitees or licensees, and Landlord and Tenant shall each indemnify the other against and reimburse the other for any and all loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

## **17. SECURITY**

Tenant, at its expense (subject to Tenant's ability to utilize the funds budgeted by Landlord as provided below) may install such safety and security systems or devices, including, without limitation, locked documentation rooms, tape and disk vaults, smoke detectors, electronic security devices and auxiliary emergency electric power supplies, as Tenant may deem appropriate. Tenant shall have the right by installation of a key system or otherwise, to control access to the Premises and the Building; provided that Tenant shall afford Landlord access to the Building so as to allow Landlord to provide services or perform any work under this Lease or as otherwise may be required in an emergency. Tenant shall have the right to utilize the funds budgeted by Landlord for a security program (i.e., \$15,000) for the installation of its own security program as set forth above. In the event Tenant elects to utilize

the funds for Landlord's security program, Tenant shall deliver to Landlord, following completion of such work, a written invoice for such funds, and Landlord shall pay such amount within thirty (30) days of receipt of such written invoice.

## **18. TENANT DEFAULT**

**18.1 Definition of Tenant Default.** The occurrence of any of the following shall constitute an "Event of Default" by Tenant:

**18.1.1** Tenant's failure to make any payment owed by Tenant under this Lease, as and when due, where such failure is not cured within ten (10) days following Tenant's receipt of Landlord's written notice thereof; or

**18.1.2** Tenant's failure to observe, keep, or perform any of the terms, covenants, agreements, or conditions under this Lease that Tenant is obligated to observe or perform, other than that described in paragraph (a) above, for a period of thirty (30) days after delivery of notice to Tenant of said failure; provided however, that if the nature of Tenant's failure is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default under this Lease if Tenant shall commence the cure of such default so specified within said thirty (30) day period and diligently prosecute the same to completion; or

**18.1.3** Filing by Tenant of a voluntary petition under any applicable bankruptcy Law, or the issuance of an order for relief entered under any applicable bankruptcy Law, or the filing by Tenant of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for Tenant under the present or any future applicable Law relative to bankruptcy, insolvency, or other relief for debtors, or Tenant's consent to or acquiescence in the appointment of any trustee, receiver, conservator, or liquidator of Tenant or of all or any substantial part of its properties or its interest in the Premises (the term "acquiesce," as used in this clause, includes but is not limited to the failure to file a petition or motion to vacate, appeal, or discharge any order, judgment, or decree within one hundred twenty (120) days after entry of such order, judgment, or decree); or

**18.1.4** Issuance or entry, by a court of competent jurisdiction, of any order, judgment, or decree approving a petition filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future applicable Law relating to bankruptcy, insolvency, or other relief for debtors, and acquiescence by Tenant in the entry of such order, judgment, or decree; or the failure of such order, judgment, or decree to be vacated or stayed within one hundred twenty (120) days after the date of entry thereof; or the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, conservator, or liquidator of Tenant or of all or any substantial part of its properties or its interest in the Premises and the failure of such appointment to be vacated or stayed within one hundred twenty (120) days.



**18.2 Landlord's Remedies.** Upon the occurrence of any Event of Default, Landlord shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other rights and remedies now or hereafter provided at law or in equity:

**18.2.1 Termination.** Landlord may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of such written notice from Landlord, no other act of Landlord, including, but not limited to, its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its acceptance of keys to the Premises from Tenant or its exercise of any other rights and remedies under this Section, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises. Upon such termination in writing of Tenant's right to possession of the Premises, as herein provided, this Lease shall terminate and Landlord shall be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future law, ordinance or regulation providing for recovery of damages for such breach, including but not limited to the following:

**18.2.1.1** The worth at the time of award of the unpaid rent which had been earned at the time of termination;

**18.2.1.2** The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

**18.2.1.3** Subject to Subdivision (c) of the California Civil Code Section 1951.2, the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

**18.2.1.4** Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. The "worth" at the time of award of the amounts referred to in this Section 18.2.1.1 and Section 18.2.1.2 shall be computed by allowing interest at the Default Rate. The worth at the time of the award of the amount referred to in Section 18.2.1.3 shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

**18.2.2 Non-Termination.** Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). During the continuance of an Event of Default, Landlord may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for such Term (which may be a period beyond the remaining term of this Lease), at such rents and on such other terms and conditions as Landlord deems advisable. In the event of any such subletting, rents received by Landlord from such subletting shall be applied (i) first, to the payment of reasonable costs of maintaining, preserving, altering and preparing the Premises for subletting and other reasonable costs of subletting, including, broker's commissions and attorneys' fees; (ii) second, to the payment of rent then due and payable; (iii) third, to the payment of future rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. If the rents received by Landlord from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to Landlord monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, Landlord may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event or Default. During the continuance of an Event of Default, for so long as Landlord does not terminate Tenant's right to possession of the Premises, Landlord shall not unreasonably withhold its consent to an assignment or sublease of Tenant's interest in the Premises or in this Lease.

## **19. LANDLORD' S DEFAULT**

**19.1 Landlord's Default.** If Landlord shall fail to keep or perform any of its obligations under this Lease with respect to the making of any payment to Tenant or the performance of any other obligation of Landlord under this Lease, and upon the continuance of such failure on Landlord's part for thirty (30) days after the receipt by Landlord and any holder of any mortgage or the beneficiary of any deed of trust secured by the Property ("Mortgagee") of written notice of such failure from Tenant (provided, however, that in the case of any such failure which cannot reasonably be cured within thirty (30) days, Landlord (and/or Mortgagee) shall be allowed such additional period as may be reasonably required by Landlord (and/or Mortgagee) to cure such failure with due diligence, provided Landlord (and/or Mortgagee) begins to cure such default within such thirty (30) day period and thereafter diligently and continuously pursues said cure to completion), and without waiving or releasing Landlord from any obligation, then Tenant may (but shall not be obligated to): (a) terminate this Lease without incurring any termination fee if Tenant's use of the Premises for normal business operations is materially and adversely affected as a consequence of such failure

on the part of Landlord, or (b) make such payment, or Tenant may perform such obligation and all sums actually paid or incurred by Tenant and all necessary and incidental costs and expenses, including reasonable attorney's fees incurred by Tenant in making such payment or performing such obligation, together with interest thereon at the Default Rate, from the date of payment by Tenant, date payment was due to Tenant or date a cost was incurred by Tenant, shall be paid by Landlord to Tenant within thirty (30) days after demand, and, if not so paid by Landlord, Tenant shall have the right to offset such sums against any Rent or other amounts thereafter payable by Tenant under this Lease, or (c) Tenant may pursue any other remedies available to Tenant at law or in equity to collect payment and/or cause Landlord to cure such default. The foregoing remedies of Tenant shall be cumulative. Tenant's right of offset provided herein, together with any rent credit allowed pursuant to Section 3.1.2 of the Lease and Section 8(d) of the Construction Addendum, shall not exceed the cumulative total of \$20,000 per month.

## **20. END OF TERM**

Upon the expiration or other termination of the term, Tenant shall quit and surrender to Landlord the Premises, broom clean, in as good order, condition and repair as it now is or may hereafter be placed, with all damage due to the removal of Tenant's fixtures and personal property repaired, ordinary wear and tear and damage by casualty excepted. Tenant shall remove all property of Tenant. Any property left on the Premises at the expiration or other termination of this Lease, or after the happening of an Event of Default set forth in Article 18, may, at the option of Landlord, either be deemed abandoned or be placed in storage at a public warehouse in the name of and for the account of and at the expense and risk of Tenant or otherwise disposed of by Landlord in the manner provided by law.

## **21. HOLDING OVER**

If Tenant holds possession of the Premises after expiration or of the Term, Tenant shall become a tenant from month to month upon the terms herein specified but at a monthly rental equivalent to 125% of the then prevailing Rent paid by Tenant at the expiration of the Term; provided, however, Tenant shall have the right to hold possession of the Premises after the expiration of the Term for two (2) periods of six (6) months each at the then current Rent. Tenant must exercise each such option at least six months prior to the commencement of such six month period. Notwithstanding the foregoing, Tenant shall not have the right to exercise such six month extension option if an Event of Default then exists against Tenant.

## **22. QUIET POSSESSION**

Landlord covenants and agrees with Tenant that upon Tenant's paying Rent and all other charges and observing and performing all

of the terms, covenants, conditions, provisions and agreements of this Lease on Tenant's part to be observed or performed, Tenant shall have quiet possession of the Premises for the term subject, however, to the terms of this Lease and of any ground leases, underlying leases, mortgages and deeds of trust affecting all or any portion of the Building or any of the areas used in connection with the operation of the Building.

### **23. TERMINATION, NO ORAL CHANGE**

In the event that this Lease terminates for any reason (including but not limited to termination by Landlord) prior to its natural expiration date, such termination will effect the termination of any and all agreements for the extension of this Lease (whether expressed in an option, exercised or not, or collateral document or otherwise); any right herein contained on the part of Landlord to terminate this Lease shall continue during any extension hereof; and any option on the part of Tenant herein contained for an extension hereof shall not be deemed to give Tenant any option for a further extension beyond the extended term in which the Lease was terminated. Except as provided by law, an interruption or curtailment of any services shall not constitute a constructive or partial eviction or except as provided herein, entitle Tenant to any abatement of rent or any compensation (including but not limited to compensation for annoyance, inconvenience or injury to business). No act or thing done by Landlord or Landlord's agents during the term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of any term, covenant, condition, provision or agreement of this Lease, shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any term, covenant, condition, provision or agreement of this Lease, shall not be deemed a waiver of such breach. This Lease contains the entire agreement between the parties, and recites the entire consideration given and accepted by the parties. Any agreement hereafter made shall be ineffective to charge, modify, waive or discharge it in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver or discharge is sought. Tenant acknowledges that any amendment or modification of this Lease requires the consent of the Mortgagee (which Landlord represents Mortgagee has agreed or will agree not to unreasonably withhold); provided, however, Landlord hereby agrees that Landlord and not Tenant shall be responsible for seeking Mortgagee's consent to any such amendment or modification to this Lease.

### **24. INABILITY TO PERFORM**

Except as expressly set forth elsewhere in this Lease, this Lease and the obligation of Tenant to pay rent hereunder and of

both Landlord and Tenant to keep, observe and perform all of the other terms, covenants, conditions, provisions and agreements of this Lease on the part of Tenant and Landlord, as the case may be, to be kept, observed or performed shall in no wise be affected, impaired or excused because the other party is unable to fulfill any of its obligations under this Lease or to supply, or is delayed or curtailed in supplying any service expressly or implied to be supplied or is unable to make, or is delayed or curtailed in making, any repairs, alterations, decorations, additions or improvements, or is unable to supply, or is delayed or curtailed in supplying, any equipment or fixtures, if the other party is prevented, delayed or curtailed from so doing by reason of any cause beyond its reasonable control including, but not limited to, acts of God, industry-wide strikes or labor troubles, fuel or energy shortages, governmental preemption or curtailment in connection with a national emergency or in connection with any rule, order, guideline or regulation of any department or agency, private or governmental or by reason of the conditions of supply and demand which have been or are affected by a war or other emergency. Any such prevention, delay or curtailment shall be deemed excused and the other party shall not be subject to any liability resulting therefrom. Tenant waives and releases its right to terminate this Lease under Section 1932(1) of the California Civil Code or under any similar law or statute now or hereafter in effect.

**25. BILLS AND NOTICES**

All notices, notifications, demands, requests, consents, approvals, designations, elections and waivers that may or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been duly received when delivered personally, or one business day after such notice or demand is sent by a reliable overnight courier service, or three (3) business days after it is sent by United States certified or registered mail, in each case with postage prepaid and the notice or demand addressed to the other party at its address set forth below, or to such other place as such party may from time to time by like notice designate:

Landlord: Joe Shekou and Haidy Shekou  
2173 D Francisco Boulevard  
San Rafael, California 94901

Tenant: Autodesk, Inc.  
2320 Marinship Way  
Sausalito, California 94965  
Attention: Director of Corporate Real Estate

With a copy to:

Autodesk, Inc.  
2320 Marinship Way  
Sausalito, California 94965  
Attention: General Counsel

## **26. TAX ON TENANT'S PERSONAL PROPERTY**

At least ten (10) days prior to delinquency Tenant shall pay all taxes levied or assessed upon Tenant's equipment, furniture, fixtures and other personal property located in or about the Premises. If the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon Tenant's equipment, furniture, fixtures or other personal property, Tenant shall pay to Landlord, upon written demand, the taxes so levied against the Landlord, or the proportion thereof resulting from said increase in assessment.

## **27. SECURITY DEPOSIT**

Tenant shall not be required to provide a security deposit to Landlord.

## **28. MARGINAL NOTES**

The marginal notes and headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease nor do they in any way affect this Lease.

## **29. TERMS AND DEFINITIONS**

The term "Landlord" as used in this Lease means only the owner or the mortgagee in possession or grantee in possession under a deed of trust, or the owner of the Lease of the Building for the time being, so that in the event of any sale or sales of said land and/or Building or of said Lease, or in the event of a lease of said land and/or Building, the same Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder incurred after the date of such sale; provided, however, the successor-in-interest to Landlord assumes in writing all of such obligations. Tenant hereby acknowledges that Landlord intends to transfer its interest in the Property to Joe Shekou and Haidy Shekou as co-trustees of the J.H.S. Trust. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

## **30. BROKERAGE**

Except with respect to Colliers Advisory Group, which Landlord hereby agrees to pay a commission in accordance with the agreement attached hereto as Exhibit E, each party hereto agrees to indemnify and hold the other party harmless from any claim or claims, including costs, expenses and attorney's fees incurred by the other party, asserted by any broker or finder for a fee or commission based upon any dealings with or statements made by such indemnifying party or its representatives.

### **31. BINDING EFFECT**

All of the terms, conditions, provisions and agreements of this Lease shall be deemed to be covenants. The covenants contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives and successors, and, except as otherwise provided in this Lease, their assigns.

### **32. ATTORNEYS' FEES**

In the event either party requires the services of an attorney in connection with enforcing the terms of this Lease (including an action or proceeding between one party and the trustee or debtor in possession while the other party is a debtor in a proceeding under the Bankruptcy Code (Title 11 of the United States Code or any successor statute to such Code)), or in the event suit is brought for the enforcement of any of the terms hereof or for the recovery of any amount due and owing hereunder, the prevailing party shall be entitled to recover all its costs and expenses in connection therewith (including court costs and reasonable attorneys' fees, costs and disbursements) from the other party, whether or not such action, proceeding or appeal is prosecuted to judgment or other final determination. The term "prevailing party" shall include, without limitation, a party who obtains legal counsel or brings an action against the other party by reason of the other party's breach or default and obtains substantially the relief sought, whether by compromise, settlement, or judgment. If such prevailing party shall recover in any such action, proceeding, or appeal, such costs and expenses (including court costs and reasonable attorneys' fees, costs and disbursements) shall be included in and as a part of such judgment.

### **33. ESTOPPEL CERTIFICATES**

Upon either party's prior written request from time to time, the other party shall execute, acknowledge and deliver to the requesting party a statement in writing certifying to those facts for which certification has been requested, including without limitation (a) that this Lease is unmodified and in full force and effect (or, if modified, adequately identifying such modification and certifying that this Lease, as so modified, is in full force and effect) and (b) the date to which Rent, additional payments and other charges are paid and (c) whether or not there is any default by Landlord or Tenant in the performance of any term, covenant, condition, provision or agreement contained in this Lease and further whether or not there are any setoffs, defenses or counterclaims against enforcement of the obligations to be performed under this Lease and, if there are, specifying such default, setoff, defense or counterclaim. Any such statement may be conclusively relied upon by any prospective purchaser, lessee,

assignee or encumbrancer of the Premises or of all or any portion of the Building or the Land. A party's failure to deliver such statement within such time shall be deemed a statement that this Lease is in full force and effect, without modification except as may be represented by the requesting party.

### 34. OPTION TO PURCHASE

**34.1 Option to Purchase.** Tenant shall have during the first five years of the Term an irrevocable ongoing option to purchase the Property ("Tenant's Option to Purchase"), upon the terms set forth herein.

**34.1.1 Purchase Price.** In the event Tenant elects to exercise Tenant's Option to Purchase pursuant to the terms set forth herein, the purchase price of the Property ("Property Purchase Price") shall be as follows:

	<u>Per Square Foot of the Premises</u>
Land	$\$51.56 \times 115,514 = \$5,955,901$
Building Cost:	To be determined pursuant to the formula set forth below
Developer Profit:	$\$8.00 \times 115,514 = \$924,112$

The Building Cost shall equal the actual amount required to complete the Base Building Shell, reasonable and actual soft costs incurred from and after August 27, 1993 that are directly attributable to the construction of the Building, cost for initial landscaping and the Tenant Improvement Allowance; however, the Building Costs shall not take into account any costs initially paid to Landlord by Tenant or reimbursed Landlord by Tenant. The Property Purchase Price, subject to proration and credits hereinafter provided for, shall be paid to Landlord through escrow at the closing in immediately available funds.

**34.1.2 Prepayment/Assumption of Loan.** In the event Tenant exercises Tenant's Option to Purchase, Tenant shall be responsible for any prepayment penalty due under Landlord's then current loan secured by the first mortgage on the Property. Notwithstanding the foregoing, in the event Tenant exercises Tenant's Option to Purchase and Landlord's then current loan secured by the first mortgage on the Property does not allow for prepayment, Tenant shall assume such current loan (and pay any assumption fee), in which event the amount of the loan shall be credited against the Property Purchase Price.

**34.1.3 Exercise.** Tenant may exercise Tenant's Option to Purchase by delivering written notice thereof to Landlord.

**34.1.4 Title.** At the closing, Landlord shall convey to Tenant marketable and insurable fee simple title to the Property and all rights, privileges and easements appurtenant thereto, by duly executed and acknowledged grant deed in a form approved by



Tenant and a nationally recognized title company. Evidence of delivery of marketable and insurable fee simple title shall be the issuance by a nationally recognized title company of an ALTA Owner's Policies of Title Insurance in an aggregate amount equal to the full amount of the Property Purchase Price, insuring fee simple title to the Property in the Tenant, subject only to exceptions 1-13, 15-17, and 19-23 as are shown on that certain Preliminary Title Report prepared by Pacific Coast Title Company of Marin dated August 31, 1993, a copy of which is attached hereto as Exhibit F. Notwithstanding the foregoing, in the event any of the above exceptions to title have been removed from title prior to the close of the sale contemplated by this transaction, title shall be conveyed not subject to those exceptions.

**34.1.5 Closing.** At the closing, Landlord shall transfer title to all plans and specifications for the Property and any other personal property then part of the Property by a bill of sale, such title to be free of any liens and encumbrances. The closing hereunder shall be on a date that is no later than sixty (60) days following Tenant's exercise of Tenant's Option to Purchase (the "Closing Date").

**34.1.5.1 Documents.** At or before the Closing Date, Landlord shall deliver to Tenant through escrow the following:

(i) a duly executed and acknowledged grant deed;

(ii) a duly executed bill of sale;

(iii) originals or true, complete and correct copies of all contracts affecting the Property to be continued by Tenant after the Closing Date, as well as originals or true, complete and correct copies of all development agreements, building permits, design approvals, and the plans and specification for the improvements to be constructed on the Property;

(iv) a duly executed assignment and assumption of Contracts, Permits, Warranties and Guaranties in the form agreeable to the parties;

(v) a duly executed Affidavit of Non-foreign Status in a form agreeable to the parties;

(vi) a duly executed California Withholding Certificate; and

(vii) any other documents, instruments or agreements called for hereunder which have not previously been delivered.

At or before the Closing Date, Tenant shall deliver to Landlord through escrow the following:

(i) the Property Purchase Price, subject to the prorations and credits hereafter provided for;

(ii) a duly executed assignment and assumption of Contracts, Permits, Warranties and Guaranties and Other Intangible Property, in a mutually agreeable form; and

(iii) any other documents, instruments or agreements called for hereunder which have not previously been delivered.

**34.1.6 Prorations.** Real property taxes and other expenses normal to the operation and maintenance of the Property shall be prorated as of 12:01 a.m. on the date the grant deed is recorded on the basis of a 365-day year.

**34.1.7 Expenses.** Landlord shall pay all transfer taxes applicable to the sale. Tenant shall pay the fee for the policies of title insurance. The parties shall share evenly the cost of the escrow for the sale as well as the cost of recording the grant deed. Landlord shall pay all costs relating to the reconveyance or discharge of any lien, encumbrance or judgment against the Property.

### **35. RIGHT OF FIRST REFUSAL**

Tenant shall have during the Term, a right of first refusal (“Tenant’s Right of First Refusal”) to purchase the Property, upon the terms set forth herein. In the event Landlord negotiates a purchase contract, option or other agreement to sell the Property (the “Offer”) to a third party, which Offer Landlord is willing to accept, Landlord shall notify Tenant of the Offer (“Landlord’s Notice”). Within eighteen (18) days of Tenant’s receipt of Landlord’s Notice, Tenant shall notify Landlord as to whether Tenant shall exercise its Tenant’s Option to Purchase (as set forth in Section 34.1) if such Offer was received in the first five years of the Term or its Right of First Refusal and purchase the Property on the terms of the Offer or decline to so purchase the Property. In the event Tenant declines to exercise its right to purchase the Property either on the terms of the Tenant’s Option to Purchase or upon the terms of the Offer and Landlord negotiates modifications to the Offer with said third party, Landlord shall notify Tenant of such modifications (the “Modified Offer”) and Tenant shall have eighteen (18) days from receipt of Landlord’s notice of the terms of the Modified Offer in which to exercise its right to purchase the Property upon the terms of the Modified Offer.

### **36. MEMORANDUM OF LEASE**

Upon the mutual execution of this Lease, Landlord and Tenant shall each execute and have acknowledged a memorandum of this Lease for recording purposes in the form attached hereto as Exhibit G and shall immediately thereafter cause such memorandum of lease to be recorded.

**37. MISCELLANEOUS**

**37.1 Governing Law.** This Lease shall be governed by and construed in accordance with California law.

**37.2 Severability.** In the event any term, condition, provision and agreement herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement herein contained.

**37.3 Authority.** Each of the persons executing this Lease on behalf of Landlord and Tenant warrants that Landlord or Tenant, as the case may be, is a duly authorized and existing corporation, that it has been and is qualified to do business in California, that it has full right and authority to enter into this Lease, and that each of the persons signing on behalf of Landlord and Tenant, as the case may be, were authorized to do so.

**37.4 Exhibits and Addenda.** Any exhibits or addenda annexed hereto is made a part hereof.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

TENANT:

AUTODESK, INC.,  
a California Corporation

/s/ Joe Shekou

By: /s/ Eric Herr

\_\_\_\_\_  
Joe Shekou

\_\_\_\_\_  
Its: \_\_\_\_\_

/s/ Haidy Shekou

\_\_\_\_\_  
Haidy Shekou

**FIRST AMENDMENT TO LEASE**

THIS FIRST AMENDMENT TO LEASE ("First Amendment") is entered into as of November 12, 1993, by and between Joe Shekou and Haidy Shekou (collectively, "Landlord"), and Autodesk, Inc., a California corporation ("Tenant"), with reference to the following facts:

A. Landlord and Tenant entered into that certain Lease Agreement dated October 5, 1993 ("Lease"), pursuant to which Landlord has agreed to construct a building "(Building)" on certain real property in San Rafael, California, and Tenant has agreed to lease such Building. The Land Purchase Addendum dated October 1993 is attached to and forms a part of the Lease.

B. Landlord and Tenant desire to extent the Financing Date set forth in the Land Purchase Addendum from November 15, 1993 to November 30, 1993.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Financing Date. The Financing Date of November 15, 1993 set forth in the Land Purchase Addendum is hereby extended to November 30, 1993 ("New Financing Date"). From and after the date hereof, all references in the Lease and the Land Purchase Addendum to the Financing Date shall refer to the New Financing Date.

2. Status of Lease. Except as amended hereby, the Lease remains unamended, and as amended hereby, the Lease and all the terms and conditions thereof remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment as of the date first set forth above.

TENANT:

Autodesk, Inc.  
A California corporation

By: /s/ Steve McMahon

Its: \_\_\_\_\_  
\_\_\_\_\_

LANDLORD:

/s/ Joe Shekou  
\_\_\_\_\_  
Joe Shekou

/s/ Haidy Shekou  
\_\_\_\_\_  
Haidy Shekou

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("Second Amendment") is entered into as of March 3, 1994, by and between Joe Shekou and Haidy Shekou, Trustees of the J.H.S. Trust ("Landlord"), and Autodesk, Inc., a California corporation ("Tenant"), with reference to the following facts:

A. Joe Shekou and Haidy Shekou (the "Shekous"), as landlord, and Tenant entered into that certain Lease Agreement dated October 5, 1993, as amended by that certain First Amendment to Lease dated November 12, 1993 (collectively, the "Lease"), pursuant to which the Shekous agreed to construct a building ("Building") on certain real property in San Rafael, California, and Tenant has agreed to lease such Building. The Land Purchase Addendum dated October 5, 1993 is attached to and forms a part of the Lease.

B. The Shekous assigned their interest in the Lease to Landlord.

C. Landlord and Tenant now desire to modify certain terms of the Lease as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows (capitalized terms used herein and not defined herein shall have the meaning ascribed to them in the Lease):

1. Payment of First and Last Months Rent (Section 4.4). Landlord and Tenant hereby agree that Tenant's payment of \$227,562.58, which sum represented the last months Rent due under the Lease, shall be deemed a security deposit (the "Security Deposit") held by Landlord for the faithful performance of Tenant's obligations under the Lease. In addition, Landlord hereby waives Tenant's obligation to pay the last months Rent due under the Lease; provided, however, that regardless of whether or not Landlord uses the Security Deposit during the term of the Lease, Landlord shall not be obligated to return such deposit to Tenant. Notwithstanding the foregoing, in the event Tenant elects to terminate the Lease pursuant to Section 3.1.3 of the Lease, Landlord shall refund to Tenant, within the terms specified in Section 3.1.3, the first months Rent and the Security Deposit.

2. Status of Lease. Except as amended hereby, the Lease remains unamended, and as amended hereby, the Lease and all the terms and conditions thereof remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Second Amendment as of the date first set forth above.

TENANT:

Autodesk, Inc.

a California corporation

By: /s/ Steve McMahon

Its:

LANDLORD:

/s/ Joe Shekou

\_\_\_\_\_  
Joe Shekou, Trustee of the J.H.S. Trust

/s/ Haidy Shekou

\_\_\_\_\_  
Haidy Shekou, Trustee of the J.H.S. Trust

### THIRD AMENDMENT TO LEASE

**THIS THIRD AMENDMENT TO LEASE** (this "Amendment") is made and entered into as of the 28<sup>th</sup> day of October, 2004, by and between **JOE SHEKOU, as trustee of the J.H.S. Trust**, and **HEIDI SHEKOU, as Trustee of the J.H.S. Trust** (collectively, "Landlord"), and **AUTODESK, INC., a Delaware corporation** ("Tenant").

#### RECITALS

- A. Landlord (as successor in interest to Joe Shekou, an individual, and Haidy Shekou, an individual) and Tenant (as successor in interest to Autodesk, Inc., a California corporation) are parties to that certain lease dated October 5, 1993 which lease has been previously amended by that First Amendment to Lease dated November 12, 1993 and the Second Amendment to Lease dated March 3, 1994 (collectively, the "Lease"). Pursuant to the Lease, Landlord has leased to Tenant space currently containing approximately 115,514 rentable square feet (the "Premises") described as the building located at 111 McInnis Parkway, San Rafael, California (the "Building").
- B. The Lease by its terms shall expire on December 31, 2004 ("Prior Termination Date"), and Tenant has elected to exercise its first Extension Option pursuant to the Lease. Accordingly, the parties desire to extend the Term of the Lease, all on the following terms and conditions.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Extension.** The Term of the Lease is hereby extended for a period of 60 months and shall expire on December 31, 2009 ("Extended Termination Date"), unless sooner terminated in accordance with the terms of the Lease. That portion of the Term commencing the day immediately following the Prior Termination Date ("Extension Date") and ending on the Extended Termination Date shall be referred to herein as the "Extended Term".
2. **Rent.** As of the Extension Date, the schedule of Rent payable with respect to the Premises during the Extended Term is as follows:

<u>Period</u>	<u>Monthly Rate Per Square Foot</u>	<u>Monthly Gross Rent</u>
01/01/05 – 12/31/05	\$ 1.94	\$224,097.12
01/01/06 – 12/31/06	\$ 1.99	\$229,872.84
01/01/07 – 12/31/07	\$ 2.04	\$235,648.56
01/01/08 – 12/31/08	\$ 2.09	\$241,424.28
01/01/09 – 12/31/09	\$ 2.14	\$247,200.00

All such Rent shall be payable by Tenant in accordance with the terms of the Lease.

3. **Improvements to Premises.** Except as expressly provided in this Section 3, Tenant is in possession of the Premises and accepts the same "as is" without any agreements,

representations, understandings or obligations on the part of Landlord to perform any alterations, repairs or improvements. Tenant acknowledges that Landlord has fully performed and discharged all of its obligations with respect to the tenant improvements and the improvement allowances set forth in the Construction Addendum to the Lease. Landlord shall perform further improvements to the Premises in accordance with the Work Letter attached hereto as **Exhibit A**, and in such event, Tenant shall be entitled to an improvement allowance in connection with such work as more fully described in **Exhibit A**. Notwithstanding the foregoing, if Tenant so elects, Tenant may perform improvements to the Premises in accordance with the Tenant Work Letter attached hereto as **Exhibit B** in lieu of Landlord's performance of such work, and in such event, Tenant shall be entitled to an improvement allowance in connection with such work as more fully described in **Exhibit B**. Tenant shall notify Landlord in writing as to whether Tenant elects to perform the Tenant Alterations (as set forth in **Exhibit B**) or whether Tenant desires that Landlord perform the Landlord Work (as set forth in **Exhibit A**) ("Tenant's Alteration Notice") not later than December 1, 2004. If Tenant elects to perform the Tenant Alterations pursuant to **Exhibit B** or if fails to deliver the Tenant's Alteration Notice to Landlord prior to 5:00 pm on December 1, 2004, Tenant shall be deemed to have elected to perform the Tenant Alterations pursuant to **Exhibit B** and **Exhibit A** hereto shall void and of no further force and effect. If Tenant elects to have Landlord perform the Landlord Work pursuant to this Section, **Exhibit B** hereto shall be void and of no further force and effect. Notwithstanding anything to the contrary set forth in the Lease, in the event that the performance of the Landlord Work or the Tenant Alterations, as applicable, results in an increase in the real property taxes or assessment payable with respect to the Building, Tenant shall be solely responsible for such increase in taxes (but only as to the portion of such increase arising solely out of the Landlord Work or the Tenant Alterations, as applicable) and such amount shall constitute additional rent pursuant to the Lease.

4. **Other Pertinent Provisions.** Landlord and Tenant agree that, effective as of the date of this Amendment, the Lease shall be amended in the following additional respects:

(a) **Address.** The addresses for the bills and notices set forth in Section 25 of the Lease is hereby deleted in their entirety and replaced by the following:

Landlord: J.H.S. Trust  
2175 E. Francisco Boulevard, Suite L  
San Rafael, California 94901  
Attention: Joe Shekou

Tenant: Autodesk, Inc.  
111 McInnis Parkway  
San Rafael, California 94903  
Attention: Senior Director, Real Estate and Facilities

(b) **Waivers.**

(i) Tenant hereby waives any and all rights under and benefits of, Sections 1941 and 1942 (Repairs and Alterations) and 1950.7 (Security Deposit) of the California Civil Code, and Section 1265.130 (Condemnation) of the California Code of Civil Procedure, or any similar or successor laws now or hereinafter in effect. Nothing set forth herein shall be deemed to modify or negate any abatement, offset or other remedies of Tenant expressly set forth in the Lease.

- (ii) TENANT HEREBY WAIVES ANY AND ALL RIGHTS CONFERRED BY SECTION 3275 OF THE CIVIL CODE OF CALIFORNIA AND BY SECTIONS 1174 (c) AND 1179 OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA AND ANY AND ALL OTHER LAWS AND RULES OF LAW FROM TIME TO TIME IN EFFECT DURING THE LEASE TERM, AS AMENDED HEREBY, PROVIDING THAT TENANT SHALL HAVE ANY RIGHT TO REDEEM, REINSTATE OR RESTORE THE LEASE, AS AMENDED HEREBY, FOLLOWING ITS TERMINATION BY REASON OF TENANT'S BREACH. TENANT AND LANDLORD ALSO HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THE LEASE, AS HEREBY AMENDED.
- (c) **Option to Renew.** The parties hereby acknowledge that Tenant has exercised its first Extension Option pursuant to Section 3.2 of the Lease, and accordingly has 2 more Extension Options to renew the Term of the Lease pursuant to Section 3.2 of the Lease.
- (d) **Deletions.** The following provisions of the Lease are hereby deleted in their entireties and of no further force and effect: Sections 3.1.2 (Base Building Delivery Date), 3.1.3 (Tenant's Termination Right), 34 (Option to Purchase), and the Land Purchase Addendum to the Lease.

5. **Miscellaneous.**

- (a) This Amendment, including **Exhibit A** and **Exhibit B** attached hereto, sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Under no circumstances shall Tenant be entitled to any Rent abatement, improvement allowance (except as set forth in Section 3 above), leasehold improvements, or other work to the Premises, or any similar economic incentives that may have been provided Tenant in connection with entering into the Lease, unless specifically set forth in this Amendment.
- (b) Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect.
- (c) In the case of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern and control.
- (d) Submission of this Amendment by Landlord is not an offer to enter into this Amendment but rather is a solicitation for such an offer by Tenant. Landlord shall not be bound by this Amendment until Landlord has executed and delivered the same to Tenant.
- (e) The capitalized terms used in this Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this Amendment.



- (f) Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Amendment other than Colliers International (“Broker”). Tenant agrees to indemnify and hold Landlord, its principals, beneficiaries, officers, directors, employees, mortgagee(s) and agents, and the respective principals of any such agents (collectively, the “Landlord Related Parties”) harmless from all claims of any brokers other than Broker claiming to have represented Tenant in connection with this Amendment. Landlord agrees to indemnify and hold Tenant, its principals, beneficiaries, partners, officers, directors, employees, and agents, and the respective principals and members of any such agents (collectively, the “Tenant Related Parties”) harmless from all claims of any brokers claiming to have represented Landlord in connection with this Amendment. Landlord shall be responsible for payment of a commission to Broker in connection with this Amendment pursuant to the terms of a separate written agreement with Broker.
- (g) Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.
- (h) Except as otherwise required by applicable law or court order, Landlord and Tenant shall keep the contents of this Amendment and any information relating to the economic terms of the transaction contemplated herein (collectively, the “Information”) strictly confidential and shall not disclose the Information to any person, firm or entity except as expressly provided herein. Tenant may disclose the Information to Broker, and to Tenant’s officers, directors, employees, shareholders, auditors, accountants and attorneys (collectively, “Tenant’s Representatives”); provided that any such disclosure to any Tenant’s Representatives shall be made on a confidential and need-to-know basis and Tenant shall require that each such Tenant’s Representatives keep the Information strictly confidential. Landlord may disclose the Information to Broker and to Landlord’s employees, auditors, accountants, attorneys, lenders, and prospective purchasers of the Building or any interest therein (collectively, “Landlord’s Representatives”); provided that any such disclosure to any Landlord’s Representatives shall be made on a confidential and need-to-know basis and Landlord shall require that each such Landlord’s Representative keep the Information strictly confidential.
- (i) This Amendment may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which together shall constitute one and the same instrument. Landlord and Tenant hereby agree that the facsimile signatures shall be binding upon the parties to this Amendment.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, Landlord and Tenant have duly executed this Amendment as of the day and year first above written.

**LANDLORD:**

*/s/ Joe Shekou*

---

**JOE SHEKOU, TRUSTEE OF THE J.H.S. TRUST**

*/s/ Heidi Shekou*

---

**HEIDI SHEKOU, TRUSTEE OF THE J.H.S. TRUST**

**TENANT:**

**AUTODESK, INC., a Delaware corporation**

By: */s/ Carol Bartz*

---

Name: Carol Bartz

Title: Chairman of the Board and CEO

---

**CERTIFICATION**

I, Carol A. Bartz, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Autodesk, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 9, 2004

/s/ CAROL A. BARTZ

---

**Carol A. Bartz**  
**Chairman, Chief Executive Officer and President**

**CERTIFICATION**

I, Alfred J. Castino, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Autodesk, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 9, 2004

/s/ ALFRED J. CASTINO

---

**Alfred J. Castino**  
**Senior Vice President and Chief Financial Officer**  
**(Principal Financial Officer and Principal Accounting Officer)**

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Based on my knowledge, I, Carol A. Bartz, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Autodesk, Inc. on Form 10-Q for the quarterly period ended October 31, 2004 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-Q fairly presents in all material respects the financial condition and results of operations of Autodesk, Inc.

December 9, 2004

/s/ CAROL A. BARTZ

---

**Carol A. Bartz**  
**Chairman, Chief Executive Officer and President**

Based on my knowledge, I, Alfred J. Castino, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Autodesk, Inc. on Form 10-Q for the quarterly period ended October 31, 2004 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-Q fairly presents in all material respects the financial condition and results of operations of Autodesk, Inc.

December 9, 2004

/s/ ALFRED J. CASTINO

---

**Alfred J. Castino**  
**Senior Vice President and Chief Financial Officer**