

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

**FORM S-8**  
**REGISTRATION STATEMENT**  
*Under*  
*The Securities Act of 1933*

**AUTODESK, INC.**

(Exact name of Registrant as specified in its charter)

Delaware  
(State of  
incorporation)

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

111 McInnis Parkway  
San Rafael, CA 94903

(Address, including zip code, of Registrant's principal executive offices)

REVIT TECHNOLOGY CORPORATION 1998 STOCK PLAN  
AUTODESK, INC. 1996 STOCK PLAN  
AUTODESK, INC. 1998 EMPLOYEE QUALIFIED STOCK PURCHASE PLAN  
(Full title of the Plan)

Marcia K. Sterling, Esq.  
Senior Vice President for Law and Corporate Affairs,  
General Counsel, and Secretary  
Autodesk, Inc.

111 McInnis Parkway  
San Rafael, CA 94903  
(415) 507-5000

(Name, address, and telephone number, including area code, of agent for service)

*Copies to:*

Mark A. Bertelsen, Esq.  
Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
(650) 493-9300

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$.01 par value				
— Outstanding under Revit Technology Corporation 1998 Stock Plan	254,928	\$ 1.49(2)	\$ 379,843	\$ 35
— 1996 Stock Plan	4,927,446	\$ 14.545(3)	\$ 71,669,703	\$ 6,594
— 1998 Employee Qualified Stock Purchase Plan	2,815,684	\$ 14.545(3)	\$ 40,954,124	\$ 3,768
<b>TOTAL</b>	<b>7,998,058</b>		<b>\$ 113,003,670</b>	<b>\$ 10,397</b>

- (1) Pursuant to a Agreement and Plan of Merger dated as of February 21, 2002 (the "Merger Agreement") by and among Autodesk, Inc., Rosie Acquisition Corporation, Revit Technology Corporation ("Revit") and Irwin Jungreis as Stockholder Representative, the Registrant assumed all of the outstanding options to purchase common stock of Revit granted under the Revit Technology Corporation 1998 Stock Plan, and such options became exercisable to purchase shares of the Registrant's Common Stock, subject to appropriate adjustments to the number of shares and exercise price of each assumed option.
- (2) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the filing fee on the basis of the weighted average exercise price of \$1.49

per share.

- (3) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the filing fee on the basis of \$14.545 per share, which represents the average of the high and low prices reported on the Nasdaq National Market on May 17, 2002.
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AUTODESK, INC.  
REGISTRATION STATEMENT ON FORM S-8

PART I

INFORMATION REQUIRED IN THE PROSPECTUS

**Item 1. *Plan Information.***

The documents containing the information specified in this Item 1 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1). In accordance with the rules and regulations of the Securities and Exchange Commission (the "Commission") and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplement pursuant to Rule 424.

**Item 2. *Registration Information and Employee Plan Annual Information.***

The documents containing the information specified in this Item 2 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1). In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplement pursuant to Rule 424.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

**Item 3. *Incorporation of Documents by Reference.***

There are hereby incorporated by reference in this Registration Statement the following documents and information heretofore filed with the Commission:

(a) The Registrant's Annual Report on Form 10-K for the fiscal year ended January 31, 2002, filed pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act");

(b) The Registrant's Current Report on Form 8-K, filed with the Commission on April 16, 2002 pursuant to Section 13 of the Exchange Act; and

(c) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A, as amended, filed on January 5, 1996, as amended on January 15, 1998 pursuant to Section 12(g) of the Exchange Act.

In addition, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Mark Bertelsen, a director of the Registrant, is a member of Wilson Sonsini Goodrich & Rosati, which has given an opinion upon the validity of the securities being registered by this Registration Statement.

**Item 6. Indemnification of Directors and Officers.**

As permitted by Section 145 of the Delaware General Corporation Law, the Registrant's Certificate of Incorporation, as amended, includes a provision that eliminates the personal liability of its directors for monetary damages for breach or alleged breach of their duty of care. In addition, as permitted by Section 145 of the Delaware General Corporation Law, the Bylaws of the Registrant provide that: (i) the Registrant is required to indemnify its directors and officers and persons serving in such capacities in other business enterprises (including, for example, subsidiaries of the Registrant) at the Registrant's request, to the fullest extent permitted by Delaware law; (ii) the Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is not required by law; (iii) the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, provided that payment of expenses incurred by a director or officer of the Registrant in advance of the final disposition of such proceeding shall be made only on receipt of an undertaking by the officer or director to repay all amounts advanced if it should ultimately be determined that the officer or director is not entitled to be indemnified; (iv) the rights conferred in the Bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers and employees; and (v) the Registrant may not retroactively amend the Bylaw provisions in a way that is adverse to such directors, officers and employees.

The Registrant's policy is to enter into indemnification agreements with each of its directors and officers that provide the maximum indemnity allowed to directors and officers by Section 145 of the Delaware General Corporation Law and the Bylaws, as well as certain additional procedural protections. In addition, the indemnification agreements provide that directors and officers will be indemnified to the fullest possible extent permitted by law against all expenses (including attorney's fees) and settlement amounts paid or incurred by them in an action or proceeding, including any action by or in the right of the Registrant, arising out of such person's services as a director or officer of the Registrant, any subsidiary of the Registrant or any other company or enterprise to which such person provides services at the request of the Registrant. The Registrant will not be obligated pursuant to the indemnification agreements to indemnify or advance expenses to an indemnified party with respect to proceedings or claims initiated by the indemnified party and not by way of defense, except with respect to proceedings specifically authorized by the Board of Directors or brought to enforce a right to indemnification under the indemnification agreement, the Registrant's Bylaws or any statute or law. Under the indemnification agreements, the Registrant is not obligated to indemnify the indemnified party (i) for any expenses incurred by the indemnified party with respect to any proceeding instituted by the indemnified party to enforce or interpret the indemnification agreement, if a court of competent jurisdiction determines that each of the material assertions made by the indemnified party in such proceeding was not made in good faith or was frivolous; (ii) for any amounts paid in settlement of a proceeding unless the Registrant consents to such settlement; (iii) on account of any suit in which judgment is rendered against the indemnified party for an accounting of profits made from the purchase or sale by the indemnified party of securities of the Registrant pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934 and related laws; or (iv) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

The indemnification provisions in the Bylaws and the indemnification agreements entered into between the Registrant and its directors and officers may be sufficiently broad to permit indemnification of the Registrant's directors and officers for liabilities arising under the Securities Act.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<u>Exhibit Number</u>	<u>Description</u>
4.1(1)	Certificate of Incorporation of the Registrant.
4.2(2)	Bylaws of the Registrant, as amended.
4.3(3)	Preferred Shares Rights Agreement dated December 14, 1995.
4.4(3)	Amendment No. 1 to the Preferred Shares Rights Agreement.
5.1	Opinion of Counsel as to legality of securities being registered.
23.1	Consent of Ernst & Young LLP, Independent Auditors.
23.2	Consent of Counsel (contained in Exhibit 5.1).
24.1	Power of Attorney (see Page II-5 of this Registration Statement).
99.1	Revit Technology Corporation 1998 Stock Plan.
99.2(4)	Autodesk, Inc. 1996 Stock Plan.
99.3(5)	Autodesk, Inc. 1998 Employee Qualified Stock Purchase Plan.

- (1) Incorporated by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended January 31, 1999.
- (2) Incorporated by reference to Exhibit 3.3 to the Registrant's Annual Report on Form 10-K for the fiscal year ended January 31, 1998.
- (3) Incorporated by reference to the Registrant's Report on Form 8-A filed on January 5, 1996, as amended on January 8, 1996 and January 15, 1998.
- (4) Incorporated by reference to Exhibit 99.1 to the Registrant's Registration Statement on Form S-8 filed on June 21, 1999.
- (5) Incorporated by reference to Exhibit 99.2 to the Registrant's Registration Statement on Form S-8 filed on June 21, 1999.

**Item 9. Undertakings.**

A. The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

*Provided, however,* that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act of 1933s may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereunder, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Rafael, State of California, on this 20 day of May 2002.

AUTODESK, INC.

By: /s/ Carol A. Bartz

Carol A. Bartz,  
Chairman of the Board,  
Chief Executive Officer, and President

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Carol A. Bartz and Marcia K. Sterling, jointly and severally his or her attorneys-in-fact, each with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Registration Statement on Form S-8 and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact, or their substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons on this 20 day of May 2002 in the capacities indicated.

<u>Signature</u>	<u>Title</u>
/s/ Carol A. Bartz _____ Carol A. Bartz	Chairman of the Board, Chief Executive Officer and President (principal executive officer)
/s/ Steve Cakebread _____ Steve Cakebread	Senior Vice President and Chief Financial Officer (principal financial and accounting officer)
/s/ Mark A. Bertelsen _____ Mark A. Bertelsen	Director
/s/ Crawford W. Beveridge _____ Crawford W. Beveridge	Director
/s/ J. Hallam Dawson _____ J. Hallam Dawson	Director
/s/ Per-Kristian Halvorsen _____ Per-Kristian Halvorsen	Director
/s/ Paul S. Otellini _____ Paul S. Otellini	Director
/s/ Mary Alice Taylor _____ Mary Alice Taylor	Director
/s/ Larry W. Wangberg _____ Larry W. Wangberg	Director

## INDEX TO EXHIBITS

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**EXHIBITS**  
**REGISTRATION STATEMENT ON FORM S-8**

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**AUTODESK, INC.**

May 20, 2002

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May 20, 2002

Autodesk, Inc.  
111 McInnis Parkway  
San Rafael, California 94903

**Re: Registration Statement on Form S-8**

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 (the "*Registration Statement*") to be filed by Autodesk, Inc., a Delaware corporation (the "*Registrant*" or "*you*"), with the Securities and Exchange Commission on or about the date hereof, in connection with the registration under the Securities Act of 1933, as amended, of 254,928 additional shares of your Common Stock reserved for issuance pursuant to the Revit Technology Corporation 1998 Stock Plan, 4,927,446 additional shares of Common Stock reserved for issuance pursuant to the Autodesk, Inc. 1996 Stock Plan, and 2,815,684 additional shares of Common Stock reserved for issuance pursuant to the Autodesk, Inc. 1998 Employee Qualified Stock Purchase Plan (which Plans are referred to herein, collectively, as the "*Plans*" and which shares of Common Stock are referred to herein, collectively, as the "*Shares*"). As your legal counsel, we have reviewed the actions proposed to be taken by you in connection with the issuance and sale of the Shares to be issued under the Plans.

It is our opinion that the Shares, when issued and sold in the manner referred to in the Plans and pursuant to the agreements which accompany the Plans, will be legally and validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement, and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

/s/ WILSON SONSINI GOODRICH & ROSATI

**CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Revit Technology Corporation 1998 Stock Plan, the Autodesk, Inc. 1996 Stock Plan and the Autodesk, Inc. 1998 Employee Qualified Stock Purchase Plan of our report dated February 19, 2002, with respect to the consolidated financial statements and schedule of Autodesk, Inc. included in its Annual Report (Form 10-K) for the year ended January 31, 2002, filed with the Securities and Exchange Commission.

/s/ ERNST & YOUNG LLP

Palo Alto, California  
May 14, 2002

## REVIT TECHNOLOGY CORPORATION

**1998 STOCK INCENTIVE PLAN**  
**(As amended through October 31, 2001)****1. PURPOSE**

The purpose of this 1998 Stock Incentive Plan (the "Plan") is to advance the interests of Revit Technology Corporation (the "Company") by enhancing the ability of the Company and its subsidiaries to attract and retain directors and employees, consultants or advisers who are in a position to make significant contributions to the success of the Company, to reward them for their contributions and to encourage them to take into account the long-term interests of the Company.

The Plan provides for the award of options to purchase shares of the Company's common stock ("Stock") and for awards of restricted and unrestricted stock, as more fully described below.

**2. ELIGIBILITY FOR AWARDS**

Persons eligible to receive awards under the Plan shall be all directors of the Company (including directors who are not employees), all executive officers of the Company and its subsidiaries and such other employees, consultants and advisers who, in the opinion of the Board of Directors of the Company (the "Board"), are in a position to make a significant contribution to the success of the Company and its subsidiaries. (Incentive options (as defined in section 422 of the Internal Revenue Code of 1986 (as from time to time amended, the "Code")) shall be granted only to "employees" as defined in the provisions of the Code or regulations thereunder applicable to incentive stock options.) A subsidiary for purposes of the Plan shall be a corporation in which the Company owns, directly or indirectly, stock possessing 50% or more of the total combined voting power of all classes of stock. Persons selected for awards under the Plan are referred to herein as "Participants."

**3. ADMINISTRATION**

The Plan shall be administered by the Board. The Board shall have authority, not inconsistent with the express provisions of the Plan, (a) to grant awards consisting of options or restricted or unrestricted stock to such Participants as the Board may select; (b) to determine the time or times when awards shall be granted, the number of shares of Stock subject to each award and the type of each award; (c) to determine which options are, and which options are not, incentive options; (d) to determine the terms and conditions of each award; (e) to prescribe the form or forms of any instruments evidencing awards and any other instruments required under the Plan and to change such forms from time to time; (f) to adopt, amend and rescind rules and regulations for the administration of the Plan; and (g) to interpret the Plan and to decide any questions and settle all controversies and disputes that may arise in connection with the Plan. Such determinations of the Board shall be conclusive and shall bind all parties. Subject to

Section 9 the Board shall also have the authority, both generally and in particular instances, to waive compliance by a Participant with any obligation to be performed by the Participant under an award, to waive any condition or provision of an award, and to amend or cancel any award (and if an award is canceled, to grant a new award on such terms as the Board shall specify) except that the Board may not take any action with respect to an outstanding award that would adversely affect the rights of the Participant under such award without such Participant's consent. Nothing in the preceding sentence shall be construed as limiting the power of the Board to make adjustments required by Section 5(c) and Section 7(g).

The Board may, in its discretion, delegate some or all of its powers with respect to the Plan to a committee (the "Committee"), in which event all references in this Plan (as appropriate) to the Board shall be deemed to refer to the Committee. The Committee, if one is appointed, shall consist of at least two directors. A majority of the members of the Committee shall constitute a quorum, and all determinations of the Committee shall be made by a majority of its members. Any determination of the Committee under the Plan may be made without notice or meeting of the Committee by a writing signed by a majority of the Committee members.

#### **4. EFFECTIVE DATE AND TERM OF THE PLAN**

The Plan shall become effective on the date on which it is approved by the stockholders of the Company. Grants of awards under the Plan may be made prior to that date (but contemporaneous with or after Board adoption of the Plan), subject to approval of the Plan by such stockholders.

No awards shall be granted under the Plan after the completion of ten years from the date on which the Plan was adopted by the Board, but awards previously granted may extend beyond that date.

#### **5. SHARES SUBJECT TO THE PLAN**

(a) *Number of Shares.* Subject to adjustment as provided in Section 5(c), the aggregate number of shares of Stock that may be delivered upon the exercise of awards granted under the Plan shall be Five Million and Two Hundred Thousand (5,800,000). If any award granted under the Plan terminates without having been exercised in full, the number of shares of Stock as to which such award was not exercised shall be available for future grants within the limits set forth in this Section 5(a).

(b) *Shares to be Delivered.* Shares delivered under the Plan shall be authorized but unissued Stock or, if the Board so decides in its sole discretion, previously issued Stock acquired by the Company and held in its treasury. No fractional shares of Stock shall be delivered under the Plan.

(c) *Changes in Stock.* In the event of a stock dividend, stock split or combination of shares, recapitalization or other change in the Company's capital stock after the effective date of the Plan, the number and kind of shares of Stock subject to awards then outstanding or

subsequently granted under the Plan, the exercise price of such awards, the maximum number of shares of Stock that may be delivered under the Plan, and other relevant provisions, shall be appropriately adjusted by the Board, whose determination shall be binding on all persons.

The Board may also adjust the number and kind of shares subject to outstanding awards and the exercise price and the terms of outstanding awards to take into consideration material changes in law or in accounting practices or principles, extraordinary dividends, consolidations or mergers (except those described in Section 7(g)), acquisitions or dispositions of stock or property or any other event if it is determined by the Board that such adjustment is appropriate to avoid distortion in the operation of the Plan, provided that no such adjustment shall be made in the case of an incentive option, without the consent of the Participant, if it would constitute a modification, extension or renewal of the option within the meaning of section 424(h) of the Code.

## 6. TYPES OF AWARDS

### 6.1 OPTIONS

(a) *Nature of Options.* An option is an award entitling the recipient on exercise thereof to purchase Stock at a specified exercise price.

Options granted pursuant to the Plan may be incentive stock options as defined in section 422 of the Code (any option that is intended to qualify as an incentive stock option being referred to herein as an “incentive option”), or options that are not incentive options, or both. Options granted pursuant to the Plan shall be presumed to be non-incentive options unless expressly designated as incentive options by the Board at the time of grant. Incentive options shall be granted only to “employees” as defined in the provisions of the Code or regulations thereunder applicable to incentive stock options.

(b) *Exercise Price of Options.* The exercise price of each option shall be determined by the Board but in the case of an incentive option shall not be less than 100% (110%, in the case of an incentive option granted to a ten-percent shareholder) of the fair market value of the Stock subject to the option at the time the option is granted; nor shall the exercise price be less, in the case of an original issue of authorized stock, than par value per share of the Stock. For this purpose, “fair market value” in the case of incentive options shall have the same meaning as it does in the provisions of the Code and the regulations thereunder applicable to incentive options; and “ten-percent shareholder” shall mean any Participant who at the time of grant owns directly, or by reason of the attribution rules set forth in section 424(d) of the Code is deemed to own, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any of its parent or subsidiary corporations.

(c) *Duration of Options.* Options shall be exercisable during such period or periods as the Board may specify. The latest date on which an option may be exercised (the “Final Exercise Date”) shall be the date that is ten years (five years, in the case of an incentive option

granted to a “ten-percent shareholder” as defined in (b) above) from the date the option was granted or such earlier date as the Board may specify at the time the option is granted.

(d) *Exercise of Options.*

(1) Options shall become exercisable at such time or times and upon such conditions as the Board shall specify. In the case of an option not immediately exercisable in full, the Board may at any time accelerate the time at which all or any part of the option may be exercised.

(2) Options may be exercised only in writing. Written notice of exercise must be signed by the proper person and furnished to the Company, together with (i) such documents as the Board may require and (ii) payment in full as specified below in Section 6.1(e) for the number of shares for which the option is exercised.

(e) *Payment for and Delivery of Stock.* Stock purchased upon exercise of an option under the Plan shall be paid for as follows:

(1) in cash or by personal check, certified check, bank draft or money order payable to the order of the Company; or

(2) if so permitted by the Board (which, in the case of an incentive option, shall specify the method of payment at the time of grant), (i) through the delivery of shares of Stock (which, in the case of Stock acquired from the Company, shall have been held for at least six months prior to delivery) having a fair market value on the last business day preceding the date of exercise equal to the purchase price, or (ii) by delivery of a promissory note of the Participant to the Company, such note to be payable on such terms as are specified by the Board, or (iii) by delivery of an unconditional and irrevocable undertaking by a broker to deliver promptly to the Company sufficient funds to pay the exercise price, or (iv) by any combination of the permissible forms of payment; *provided*, that if the Stock delivered upon exercise of the option is an original issue of authorized Stock, at least so much of the exercise price as represents the par value of such Stock must be paid other than by a personal check or promissory note of the person exercising the option.

## 6.2 RESTRICTED AND UNRESTRICTED STOCK

(a) *Nature of Restricted Stock Award.* A restricted stock award entitles the recipient to acquire, for a purchase price to be specified by the Board but in no event less than par value, shares of Stock subject to the restrictions described in paragraph (d) below (“Restricted Stock”).

(b) *Acceptance of Award.* A Participant who is granted a Restricted Stock award will have no rights with respect to such award unless the Participant accepts the award by written instrument furnished to the Company at its principal office within thirty (30) days after grant,

accompanied by payment in full of the specified purchase price, if any, of the shares covered by the award. Payment may be by certified or bank check or other instrument acceptable to the Board.

(c) *Rights as a Stockholder.* A Participant who receives Restricted Stock will have all the rights of a stockholder with respect to the Stock, including voting and dividend rights, subject to the restrictions described in paragraph (d) below and any other conditions imposed by the Board at the time of grant. Unless the Board otherwise determines, certificates evidencing shares of Restricted Stock will remain in the possession of the Company until such shares are free of all restrictions under the Plan.

(d) *Restrictions.* Except as otherwise specifically provided by the Plan, Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of, and if the Participant ceases to be an employee for any reason, or if there is a termination for any reason of the consulting, service or similar relationship in respect of which a non-employee Participant was granted an award hereunder, must be offered to the Company for purchase for the amount of cash paid for the Stock, or forfeited to the Company if no cash was paid. These restrictions will lapse at such time or times, and on such conditions, as the Board may specify. Upon lapse of all restrictions, the Stock will cease to be Restricted Stock. The Board may at any time accelerate the time at which the restrictions on all or any part of the shares will lapse.

(e) *Notice of Election.* Any Participant making an election under section 83(b) of the Code with respect to Restricted Stock must provide a copy thereof to the Company within 10 days of the filing of such election with the Internal Revenue Service.

(f) *Options Settled with Restricted Stock.* The Board may, at the time any option described in this Section 6 is granted, provide that any or all the Stock delivered upon exercise of the option will be Restricted Stock.

(g) *Unrestricted Stock.* The Board may, in its sole discretion, approve the sale to any Participant of shares of Stock free of restrictions under the Plan for a price which is not less than the par value of the Stock.



## 7. TERMS AND CONDITIONS OF AWARDS

### (a) *Conditions on Delivery of Stock.*

(1) The delivery of Stock pursuant to the Plan shall occur at the Company's principal office and shall be subject to compliance with (i) applicable federal and state laws and regulations, (ii) if the outstanding Stock is at the time listed on any stock exchange, the listing requirements of such exchange, and (iii) Company counsel's approval of all other legal matters in connection with the issuance and delivery of such Stock. If the sale of Stock has not been registered under the Securities Act of 1933, as amended, the Company may require, as a condition to exercise of the award, such representations or agreements as counsel for the Company may consider appropriate to avoid violation of such Act and may require that the certificates evidencing such Stock bear an appropriate legend restricting transfer.

(2) If at the time when any award is exercised the Company is a party to any agreement restricting the transfer of any outstanding shares of its Stock, the award may be exercised only if the Share so acquired are made subject to the transfer restrictions set forth in that agreement (or if more than one such agreement is then in effect, the agreement specified by the Board).

In addition, the Participant must agree, for himself and his heirs and Legal Representatives, that he will enter into any "lock-up" or similar agreements requested by the Company in connection with a public offering of the shares of the Company's stock.

(3) If an award is exercised by the executor or administrator of a deceased Participant, or by the person or persons to whom the award has been transferred by the Participant's will or the applicable laws of descent and distribution, the Company shall be under no obligation to deliver Stock pursuant to such exercise until the Company is satisfied as to the authority of the person or persons exercising the award.

### (b) *Tax Withholding.*

(1) In the case of an option that is not an incentive option, or in the case of Restricted Stock, the Board shall have the right to require that the Participant remit to the Company an amount sufficient to satisfy any federal, state, or local withholding tax requirements (or make other arrangements satisfactory to the Company with regard to such taxes) prior to the delivery of any Stock pursuant to the award. If permitted by the Board, either at the time of the grant of the award or the time of exercise, the Participant may elect, at such time and in such manner as the Board may prescribe, to satisfy such withholding obligation by (i) delivering to the Company Stock having a fair market value equal to such withholding obligation, or (ii) requesting that the Company withhold from the shares of Stock to be delivered upon the exercise (in the case of an option) a number of shares of Stock having a fair market value equal to such withholding obligation.

(2) In the case of an incentive option, if the Board determines that under applicable law and regulations the Company could be liable for the withholding of any federal, state or local tax with respect to the exercise or a disposition of the Stock received upon exercise, the Board may require as a condition of exercise that the Participant exercising the option agree (i) to pay any withholding taxes due upon exercise in the same manner as described above for non-incentive options, (ii) to inform the Company promptly of any disposition (within the meaning of section 424(c) of the Code and the regulations thereunder) of Stock received upon exercise, and (iii) to give such security as the Board deems adequate to meet the potential liability of the Company for the withholding of tax upon such a disposition, and to augment such security from time to time in any amount reasonably deemed necessary by the Board to preserve the adequacy of such security.

(c) *Rights as Shareholder.* A Participant shall not have the rights of a shareholder with regard to awards under the Plan except as to Stock actually received by the Participant under the Plan.

(d) *Nontransferability of Awards.* Except as the Board may otherwise determine, no award may be transferred other than by will or by the laws of descent and distribution, and during a Participant's lifetime an award requiring exercise may be exercised only by the Participant.

(e) *Death.* If a Participant dies, the following will apply:

(1) *Options.* Each option held by the Participant immediately prior to death may be exercised, to the extent it was exercisable immediately prior to death, by the Participant's executor or administrator or by the person or persons to whom the option is transferred by will or the applicable laws of descent and distribution, at any time within the one-year period (or such longer or shorter period as the Board may determine) beginning with the date of the Participant's death but in no event beyond the Final Exercise Date.

(2) *Restricted Stock.* Except as otherwise determined by the Board, all Restricted Stock held by the Participant must be transferred to the Company (and, in the event the certificates representing such Restricted Stock are held by the Company, such Restricted Stock will be automatically transferred) in accordance with Section 6.2 above.

(f) *Termination of Service Other Than By Death.* If a Participant's employment with or other service to the Company and its subsidiaries terminates for any reason other than by death, the following will apply:

(1) *Options.* All options held by the Participant that are not exercisable at the time of termination shall terminate. Options that are exercisable on the date employment or other service terminates shall continue to be exercisable for a period of two weeks (or such longer period as the Board may determine, but in no event beyond the Final Exercise Date). After completion of the post-termination exercise period, such options shall terminate to the extent not previously exercised, expired or terminated.

(2) *Restricted Stock.* Except as otherwise determined by the Board, all Restricted Stock held by the Participant must be transferred to the Company (and, in the event the certificates representing such Restricted Stock are held by the Company, such Restricted Stock will be so transferred without any further action by the Participant) in accordance with Section 6.2 above.

For purposes of this Section 7(f), employment or other service shall not be considered terminated (i) in the case of sick leave or other *bona fide* leave of absence approved for purposes of the Plan by the Board, or (ii) in the case of a transfer of employment between the Company and a subsidiary or between subsidiaries, or to the employment of a corporation (or a parent or subsidiary corporation of such corporation) issuing or assuming an option in a transaction to which section 424(a) of the Code applies.

(g) *Mergers, etc.* In the event of a consolidation or merger in which the Company is not the surviving corporation or which results in the acquisition of substantially all the Company's outstanding Stock by a single person or entity or by a group of persons and/or entities acting in concert, or in the event of the sale or transfer of substantially all the Company's assets, all outstanding awards shall thereupon terminate, provided that all outstanding awards shall become exercisable immediately prior to consummation of such merger, consolidation or sale of assets unless, if there is a surviving or acquiring corporation, the Board has arranged, subject to consummation of the merger, consolidation or sale of assets, for the assumption of the awards or the grant to Participants of replacement awards by that corporation or an affiliate of that corporation, which awards in the case of incentive options shall satisfy the requirements of section 424(a) of the Code.

The Board may grant awards under the Plan in substitution for awards held by directors, employees, consultants or advisers of another corporation who concurrently become directors, employees, consultants or advisers of the Company or a subsidiary of the Company as the result of a merger or consolidation of that corporation with the Company or a subsidiary of the Company, or as the result of the acquisition by the Company or a subsidiary of the Company of property or stock of that corporation. The Company may direct that substitute awards be granted on such terms and conditions as the Board considers appropriate in the circumstances.

## **8. EMPLOYMENT RIGHTS**

Neither the adoption of the Plan nor the grant of awards shall confer upon any Participant any right to continue as an employee or director of, or consultant or adviser to, the Company or any parent or subsidiary or affect in any way the right of the Company or parent or subsidiary to terminate such Participant at any time. Except as specifically provided by the Board in any particular case, the loss of existing or potential profit in awards granted under this Plan shall not constitute an element of damages in the event of termination of an employment, service or similar relationship of a Participant even if the termination is in violation of an obligation of the Company to the Participant by contract or otherwise.

## **9. EFFECT, DISCONTINUANCE, CANCELLATION, AMENDMENT AND TERMINATION**

Neither adoption of the Plan nor the grant of awards to a Participant shall affect the Company's right to make awards to such Participant that are not subject to the Plan, to issue to such Participant Stock as a bonus or otherwise, or to adopt other plans or arrangements under which Stock may be issued to employees.

The Board may at any time discontinue granting awards under the Plan. With the consent of the Participant, the Board may at any time cancel an existing award in whole or in part and grant another award for such number of shares as the Board specifies. The Board may at any time or times amend the Plan or any outstanding award for the purpose of satisfying the requirements of section 422 of the Code or of any changes in applicable laws or regulations or for any other purpose that may at the time be permitted by law, or may at any time terminate the Plan as to further grants of awards, but no such amendment shall adversely affect the rights of any Participant (without the Participant's consent) under any award previously granted.