

**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)

**EMERGING SOLUTIONS, INC. 1999 EQUITY OWNERSHIP PLAN**  
(Full title of the Plan)

**Pascal W. Di Fronzo, Esq.**  
**Vice President, 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**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee (1)</b>
Common Stock, \$0.01 par value, reserved under the Emerging Solutions, Inc. 1999 Equity Ownership Plan	12,412(2)	\$ 11.14(3)	\$ 138,270	\$ 15
<b>TOTAL</b>	<b>12,412</b>		<b>\$ 138,270</b>	<b>\$ 15</b>

- (1) Amount of registration fee was calculated pursuant to Section 6(b) of the Securities Act of 1933, which provides that the fee shall be \$107.00 per \$1,000,000 of the proposed maximum aggregate offering price of the securities proposed to be offered.
- (2) Pursuant to an Agreement and Plan of Merger dated as of February 7, 2006 by and among Autodesk, Inc. ("Autodesk"), Clark Acquisition Corporation, Emerging Solutions, Inc. (d/b/a/ Constructware) ("Constructware"), and certain other parties thereto, Autodesk assumed certain outstanding options to purchase common stock of Constructware granted under the Emerging Solutions, Inc. 1999 Equity Ownership Plan, and such options became exercisable to purchase shares of Autodesk's common stock, subject to appropriate adjustments to the number of shares and exercise price of each assumed option.
- (3) 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 \$11.14 per share.

**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) under the Securities Act of 1933, as amended (the "Securities Act"). 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 supplements pursuant to Rule 424 under the Securities Act.

**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) under the Securities Act. 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 supplements pursuant to Rule 424 under the Securities Act.

**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, 2006, filed with the Commission on March 30, 2006, 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 March 14, 2006, pursuant to Section 13 of the Exchange Act;
- (c) The Registrant's Current Report on Form 8-K, filed with the Commission on April 6, 2006, pursuant to Section 13 of the Exchange Act; and
- (d) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A filed with the Commission on January 5, 1996, as amended on January 8, 1996, January 15, 1998 and June 8, 2004, 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 to this Registration Statement that indicates that all securities offered have been sold or that 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.

Exhibit Number	Description
4.1(1)	Amended and Restated Certificate of Incorporation of the Registrant
4.2(2)	Bylaws of the Registrant, as amended
5.1	Opinion of Counsel as to legality of securities being registered
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
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	Emerging Solutions, Inc. 1999 Equity Ownership 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, 2006, filed on March 30, 2006.
- (2) Incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K, filed on January 18, 2006.

## 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 reports filed with or furnished to the Commission 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 1933 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 of 1933 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 of 1933 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 30<sup>th</sup> day of May 2006.

**AUTODESK, INC.**

By: /s/ Carl Bass  
Carl Bass, Chief Executive Officer and President

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Carl Bass and Pascal W. Di Fronzo, 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 30<sup>th</sup> day of May 2006 in the capacities indicated.

<u>Signature</u>	<u>Title</u>
<u>/s/ Carl Bass</u> Carl Bass	Chief Executive Officer and President ( <i>principal executive officer</i> )
<u>/s/ Alfred J. Castino</u> Alfred J. Castino	Senior Vice President and Chief Financial Officer ( <i>principal financial officer</i> )
<u>/s/ Andrew D. Miller</u> Andrew D. Miller	Vice President, Chief Accounting Officer and Controller ( <i>principal accounting officer</i> )
<u>/s/ Carol A. Bartz</u> Carol A. Bartz	Executive Chairman and Director
<u>/s/ Mark A. Bertelsen</u> Mark A. Bertelsen	Director
<u>/s/ Crawford W. Beveridge</u> Crawford W. Beveridge	Director
<u>/s/ J. Hallam Dawson</u> J. Hallam Dawson	Director
<u>/s/ Mike Fister</u> Mike Fister	Director
<u>/s/ Per-Kristian Halvorsen</u> Per-Kristian Halvorsen	Director
<u>/s/ Steven L. Scheid</u> Steven L. Scheid	Director
<u>/s/ Mary Alice Taylor</u> Mary Alice Taylor	Director
<u>/s/ Larry W. Wangberg</u> Larry W. Wangberg	Director

## Index to Exhibits

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- (2) Incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K, filed on January 18, 2006.

May 30, 2006

Autodesk, Inc.  
111 McInnis Parkway  
San Rafael, CA 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 an aggregate of 12,412 shares of your Common Stock (the "**Shares**") reserved for issuance pursuant to the Emerging Solutions, Inc. 1999 Equity Ownership Plan (the "**Plan**"). 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 Plan.

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

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 REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Emerging Solutions, Inc. 1999 Equity Ownership Plan of our reports dated March 27, 2006, 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, 2006, Autodesk, Inc. management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Autodesk, Inc., filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Jose, California  
May 24, 2006

**EMERGING SOLUTIONS, INC.  
1999 EQUITY OWNERSHIP PLAN**

Emerging Solutions, Inc. hereby establishes this Plan to be called the Emerging Solutions, Inc. 1999 Equity Ownership Plan to encourage participants and employees of the Company to acquire an equity interest in the Company, to make monetary payments to certain participants based upon the value of the Company's Stock, or based upon achieving certain goals on a basis mutually advantageous to such participants and the Company and thus provide an incentive for continuation of the efforts of the participants for the success of the Company, for continuity of employment and to further the interests of the shareholders.

**ARTICLE 1  
DEFINITIONS**

**Section 1.1 Definitions.** Whenever used herein, the masculine pronoun shall be deemed to include the feminine, the singular to include the plural, unless the context clearly indicates otherwise, and the following capitalized words and phrases are used herein with the meaning thereafter ascribed:

“Administrator” means the Board or its designee(s), including any Compensation Committee of the Board.

“Award” means any Stock Option, Stock Appreciation Right or Stock Award granted under the Plan.

“Beneficiary” means the person or persons designated by a Participant to exercise an Award in the event of the Participant's death while employed by the Company, or in the absence of such designation, the executor or administrator of the Participant's estate.

“Board” means the Board of Directors of the Company.

“Cause” means conduct by the Participant amounting to (1) fraud or dishonesty against the Company, (2) willful misconduct, repeated refusal to follow the reasonable directions of an individual or group authorized to give such directions, or knowing violation of law in the course of performance of the duties of Participant's employment with the Company, (3) repeated absences from work without a reasonable excuse, (4) intoxication with alcohol or drugs while on the Company's premises during regular business hours, (5) a conviction or plea of guilty or nolo contendere to a felony or a crime involving dishonesty, or (6) a material breach or violation of the terms of any employment or other agreement to which Participant and the Company are party.

“Change in Control” shall be deemed to have occurred if (1) a tender offer shall be made and consummated of the ownership of 70% or more of the outstanding voting securities of the Company, (2) the Company shall be merged or consolidated with another corporation and as a result of such merger or consolidation less than 70% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the former shareholders of the Company, other than affiliates (within the meaning of Rule 501 of the Securities Act of 1933) of any party to

such merger or consolidation, (3) the Company shall sell substantially all of its assets to another corporation that is not wholly owned by the Company, (4) a person, within the meaning of Section 3(a)(9) or of Section 13(d)(3) (as in effect on the date hereof) of the Exchange Act, shall acquire 70% or more of the outstanding voting securities of the Company (whether directly, indirectly beneficially or of record); provided, however, that in no event shall a financing transaction approved by the Board and entered into by the Company (e.g., rounds of venture capital financing or private placements of stock) be deemed to constitute a "Change in Control" of the Company, or (5) a liquidation or dissolution of the Company. For purposes hereof, ownership of voting securities shall take into account and shall include ownership as determined by applying the provisions of Rule 13d-3(d)(1)(i) (as in effect on the date hereof) pursuant to the Exchange Act.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means Emerging Solutions, Inc. a Georgia corporation.

"Constructive Discharge" means a Termination of Employment by the Participant on account of (1) any material reduction in the Participant's compensation, or (2) any relocation to an office of the Company which is more than fifty (50) miles from the office where the Participant was previously located to which the Participant has not agreed.

"Custodian" has the meaning set forth in Section 4.1.

"Disability" has the same meaning as provided in any long-term disability plan maintained by the Company. In the event of a dispute, the determination of Disability shall be made by the Administrator. If, at any time during the period that this Plan is in operation, the Company does not maintain a long term disability plan, Disability shall mean a physical or mental condition which, in the judgment of the Administrator, permanently prevents a Participant from performing his usual duties for the Company or such other position or job which the Company makes available to him and for which the Participant is qualified by reason of his education, training and experience. In making its determination the Administrator may, but is not required to, rely on advice of a physician competent in the area to which such Disability relates. The Administrator may make the determination in its sole discretion and any decision of the Administrator will be binding on all parties.

"Disposition" means any conveyance, sale, transfer, assignment, pledge or hypothecation, whether outright or as security, inter vivos or testamentary, with or without consideration, voluntary or involuntary.

"Equity Ownership Agreement" means an agreement between the Company and a Participant or other documentation evidencing an Award.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, as in effect on the date of this Plan or as in effect at any applicable date thereafter.

"Exercise Price" has the meaning set forth in Section 3.2(a).

“Expiration Date” means, the last date upon which an Award can be exercised.

“Fair Market Value” means as of any date (1) the price that the Board acting in good faith determines through any reasonable valuation method that a share of Stock might change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts; or (2) (i) if the Stock is publicly traded on such date, the closing price on such date for a share of Stock as reported by The Wall Street Journal under the quotation system under which such closing price is reported or, if The Wall Street Journal does not report such closing price, such closing price as reported by a newspaper or trade journal selected by the Committee; if no such closing price is available on such date, the closing price as is reported in accordance with (ii) above for the immediately preceding business day; or (iii) if no newspaper or trade journal reports such closing price or if no such price quotation is available, the price as determined in accordance with (1) above.

“Incentive Stock Option” means an incentive stock option, as defined in Code Section 422, and described in Section 3.2.

“Initial Public Offering” means the offering of Stock for sale to the public pursuant to a registration statement filed with the Securities and Exchange Commission, with net proceeds to the Company of at least \$15,000,000, at a price to the public of at least \$6.00 per share.

“Involuntary Termination” means a Termination of Employment but does not include a Termination of Employment for Cause or a Voluntary Resignation.

“Maximum Plan Shares” has the meaning set forth in Section 2.2.

“Non-Qualified Stock Option” means a stock option, other than an option qualifying as an Incentive Stock Option, described in Section 3.2.

“Non-Employee Board Member” means a member of the Board who is not an employee of the Company.

“Option” means a Non-Qualified Stock Option or an Incentive Stock Option.

“Over 10% Owner” means an individual who at the time an Incentive Stock Option is granted owns Stock possessing more than 10% of the total combined voting power of the Company or one of its Parents or Subsidiaries, determined by applying the attribution rules of Code Section 424(d).

“Parent” means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if, with respect to Incentive Stock Options, at the time of granting of the Option, each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain.

“Participant” means an individual who receives an Award hereunder, including without limitation, employees, officers, directors and consultants.

“Plan” means the Emerging Solutions, Inc. 1999 Equity Ownership Plan.

“Retirement” means a Termination of Employment after attaining the normal retirement age specified in the qualified retirement plan maintained by the Company, or age 65 if no such plan exists.

“Stock” means the Company’s common stock, par value \$.10 per share.

“Stock Appreciation Right” means a stock appreciation right described in Section 3.3.

“Stock Award” means a stock award described in Section 3.4.

“Subsidiary” means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if, with respect to Incentive Stock Options, at the time of the granting of the Option, each of the corporations other than the last corporation in the unbroken chain owns stock possession 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain.

“Tax Date” has the meaning set forth in Section 5.l(a).

“Termination of Affiliation” means the termination of a business relationship, for any reason, between an advisor or consultant who is a Participant and the Company or its affiliates. A Termination of Affiliation shall be deemed to have occurred as of the date written notice to that effect is received by the Participant.

“Termination of Employment” means the termination of the employee-employer relationship between a Participant and the Company and its affiliates regardless of the fact that severance or similar payments may be made to the Participant, for any reason, including, but not by way of limitation, a Voluntary Resignation, Constructive Discharge, Involuntary Termination, death, Disability or Retirement. The Administrator shall, in its absolute discretion, determine the effect of all matters and questions relating to Termination of Employment, including, without limitation, the question of whether a leave of absence constitutes a Termination of Employment, or whether a Termination of Employment is for Cause or is a Constructive Discharge. With regard to a member of the Board, Termination of Employment shall mean the date on which the individual ceases to be a member of the Board for any reason.

“Vested” means that an Award is nonforfeitable and exercisable with regard to a designated number of shares of Stock.

“Voluntary Resignation” means a Termination of Employment as a result of the Participant’s resignation but does not include a Constructive Discharge.

“Withholding Election” has the meaning set forth in Section 5.1.

**ARTICLE 2**  
**GENERAL TERMS**

**Section 2.1 Purpose of the Plan.** The Plan is intended to (a) provide incentive to employees of the Company and its affiliates and other Participants to stimulate their efforts toward the continued success of the Company; (b) encourage stock ownership by employees by providing them with a means to acquire a proprietary interest in the Company by acquiring shares of Stock or to receive compensation which is based upon appreciation in the value of Stock; and (c) provide a means of obtaining and rewarding employees, officers, directors and consultants.

**Section 2.2 Stock Subject to the Plan.** Subject to adjustment in accordance with Section 5.2, 500,000 shares of Stock (the "Maximum Plan Shares") are hereby reserved and subject to issuance under the Plan. At no time shall the Company have outstanding Awards and shares of Stock issued in respect to Awards in excess of the Maximum Plan Shares. To the extent permitted by law, the shares of Stock attributable to the nonvested, unpaid, unexercised, unconverted or otherwise unsettled portion of any Award that is forfeited, canceled, expired or terminated for any reason without becoming vested, paid, exercised, converted or otherwise settled in full shall again be available for purposes of the Plan.

**Section 2.3 Administration of the Plan.** The Plan shall be administered by the Administrator. The Administrator shall have full authority in its discretion to determine the Participants to whom Awards shall be granted and the terms and provisions of Awards, subject to the Plan. Subject to the provisions of the Plan, the Administrator shall have full and conclusive authority to interpret the Plan; to prescribe, amend and rescind rules and regulations relating to the Plan; to determine the terms and provisions of the respective Equity Ownership Agreements and to make all other determinations necessary or advisable for the proper administration of the Plan. The Administrator's determination under the Plan need not be uniform and may be made by it selectively among persons who receive, or are eligible to receive, Awards under the Plan (whether or not such persons are similarly situated). The Administrator's decisions shall be final and binding on all Participants.

**Section 2.4 Eligibility and Limits.** Participants in the Plan shall be selected by the Administrator. No Participant may be granted Awards in excess of 30% of the Maximum Plan Shares. In the case of Incentive Stock Options, the aggregate Fair Market Value (determined as at the date an Incentive Stock Option is granted) of Stock with respect to which Stock Options intended to meet the requirements of Code Section 422 become exercisable for the first time by an individual during any calendar year under all plans of the Company and its Parents and Subsidiaries shall not exceed \$100,000; provided further, that if the limitation is exceeded, the Incentive Stock Option(s) which cause the limitation to be exceeded shall be treated as Non-Qualified Stock Option(s).

**ARTICLE 3  
TERMS OF AWARDS**

**Section 3.1 Terms and Conditions of All Awards.**

(a) The number of shares of Stock subject to an Award shall be determined by the Administrator in its sole discretion, subject to the provisions of Sections 2.2 and 2.4.

(b) Each Award shall be evidenced by an Equity Ownership Agreement in such form as the Administrator may determine is appropriate, subject to the provisions of the Plan.

(c) The date an Award is granted shall be the date on which the Administrator has approved the terms and conditions of the Equity Ownership Agreement and has determined the recipient of the Award and the number of shares covered by the Award and has taken all such other action necessary to complete the grant of the Award.

(d) The Administrator may provide in any Equity Ownership Agreement a vesting schedule. The vesting schedule shall specify when such Awards shall become Vested and exercisable. The Administrator may accelerate the vesting schedule set forth in the Equity Ownership Agreement if the Administrator determines that it is in the best interests of the Company and Participant to do so. Notwithstanding any vesting schedule which may be specified in an Equity Ownership Agreement, or any determination made by the Administrator, no award will vest if, to do so, would create a situation in which the exercisability of any such Award would result in an "excess parachute payment" within the meaning of Section 280G of the Code.

(e) Awards shall not be transferable or assignable except by will or by the laws of descent and distribution and shall be exercisable, during the Participant's lifetime, only by the Participant, or in the event of the Disability of the Participant, by the legal representative of the Participant.

**Section 3.2 Terms and Conditions of Options.**

(a) Type of Option. At the time any Option is granted, the Administrator shall determine whether the Option is to be an Incentive Stock Option or a Non-Qualified Stock Option, and the Option shall be clearly identified as to its status as an Incentive Stock Option or a Non-Qualified Stock Option. At the time any Incentive Stock Option is exercised, the Company shall be entitled to place a legend on the certificates representing the shares of Stock purchased pursuant to the Option to clearly identify them as shares of Stock purchased upon exercise of an Incentive Stock Option. An Incentive Stock Option may only be granted within ten (10) years from the date the Plan, as amended and restated, is adopted or the date such Plan is approved by the Company's shareholders, whichever is earlier. Incentive Stock Options may only be granted to employees of the Company and its Subsidiaries.

(b) Option Price. Subject to adjustment in accordance with Section 5.2 and the other provisions of this Section 3.2, the exercise price per share of the Stock purchasable under any Option (the "Exercise Price") shall be as set forth in the applicable Equity Ownership Agreement. With respect to each grant of an Incentive Stock Option to a Participant who is not an Over 10% Owner, the Exercise Price shall not be less than the Fair Market Value on the date the Option is granted. With respect to each grant for an Incentive Stock Option to a Participant who is an Over 10% Owner, the Exercise Price shall not be less than 110% of the Fair Market Value on the date the Option is granted.

(c) Option Term. The Equity Ownership Agreement shall set forth the term of each option. Any Incentive Stock Option granted to a Participant who is not an Over 10% Owner shall not be exercisable after the expiration of a maximum of ten (10) years after the date the Option is granted. Any Incentive Stock Option granted to an Over 10% Owner shall not be exercisable after the expiration of a maximum of five (5) years after the date the Option is granted.

(d) Payment. Payment for all shares of Stock purchased pursuant to exercise of an Option shall be made in any form or manner authorized by the Administrator in the Equity Ownership Agreement or by amendment thereto, including, but not limited to, cash or, if the Equity Ownership Agreement provides, (i) by delivery or deemed delivery (based on an attestation to the ownership thereof) to the Company of a number of shares of Stock which have been owned by the holder for at least six (6) months prior to the date of exercise having an aggregate Fair Market Value on the date of exercise equal to the Exercise Price or (ii) by tendering a combination of cash and Stock. Payment shall be made at the time that the Option or any part thereof is exercised, and no shares shall be issued or delivered upon exercise of an Option until full payment has been made by the Participant.

(e) Shareholder Rights. The holder of an Option, as such, shall have none of the rights of a shareholder.

(f) Conditions to the Exercise of an Option. Each Option granted under the Plan shall be exercisable at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Administrator shall specify in the Equity Ownership Agreement; provided, however, that after the grant of an Option, the Administrator, at any time before complete termination of such Option, may accelerate the time or times at which such Option may be exercised in whole or in part, including, without limitation, upon a Change in Control and may permit the Participant or any other designated person acting for the benefit of the Participant to exercise the Option, or any portion thereof, for all or part of the remaining Option term notwithstanding any provision of the Equity Ownership Agreement to the contrary.

(g) Termination of Option. With respect to an Option, in the event of Termination of Employment of a Participant, the Option or portion thereof held by the Participant which is unexercised shall expire, terminate, and become unexercisable no later than the expiration of three (3) months after the date of Termination of Employment; provided, however, that in the case of a Participant whose Termination of Employment is due to death or Disability, one (1) year shall be substituted for such three (3) month period. For purposes of this Subsection (f), Termination of Employment of the Participant shall not be deemed to have occurred if the Participant is employed by another corporation (or a parent or subsidiary corporation of such other corporation) which has assumed the Option of the Participant in a transaction to which Code Section 424(a) is applicable.

(h) Special Provisions for Certain Substitute Options. Notwithstanding anything to the contrary in this Section 3.2, any Option issued in substitution for an option previously issued by another entity, which substitution occurs in connection with a transaction to which Code Section 424(a) is applicable, may provide for an exercise price computed in accordance with such Code Section and the regulations thereunder and may contain such other terms and conditions as the Administrator may prescribe to cause such substitute Option to contain as nearly as possible the same terms and conditions (including the applicable vesting and termination provisions) as those contained in the previously issued option being replaced thereby.



### **Section 3.3 Terms and Conditions of Stock Appreciation Rights.**

(a) Form. A Stock Appreciation Right may be granted in connection with all or any portion of a previously or contemporaneously granted Award or not in connection with an Award. A Stock Appreciation Right shall entitle the Participant to receive the excess of (i) the Fair Market Value of a specified or determinable number of shares of the Stock at the time of payment or exercise over (ii) a specified price which, in the case of a Stock Appreciation Right granted in connection with an Option, shall be not less than the Exercise Price for that number of shares. A Stock Appreciation Right granted in connection with an Award may only be exercised to the extent that the related Award has not been exercised, paid or otherwise settled. The exercise of a Stock Appreciation Right granted in connection with an Award shall result in a pro rata surrender or cancellation of any related Award to the extent the Stock Appreciation Right has been exercised.

(b) Payment. Upon payment or exercise of a Stock Appreciation Right, the Company shall pay to the Participant the appreciation in cash or shares of Stock (valued at the aggregate Fair Market Value on the date of payment or exercise) as provided in the Equity Ownership Agreement or, in the absence of such provision, as the Administrator may determine.

(c) Conditions to Exercise. Each Stock Appreciation Right granted under the Plan shall be exercisable or payable at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Administrator shall specify in the Equity Ownership Agreement; provided, however, that subsequent to the grant of a Stock Appreciation Right, the Administrator, at any time before complete termination of such Stock Appreciation Right, may accelerate the time or times at which such Stock Appreciation Right may be exercised or paid in whole or in part.

**Section 3.4 Terms and Conditions of Stock Awards.** The number of shares of Stock subject to a Stock Award and restrictions or conditions on such shares, if any, shall be as the Administrator determines, and the certificate for such shares shall bear evidence of any restrictions or conditions. After the date of the grant of the Stock Award, the Administrator shall have the power to permit, in its discretion, an acceleration of the expiration of an applicable restriction period with respect to any part or all of the shares awarded to a Participant. The Administrator may require a cash payment from the Participant in an amount no greater than the aggregate Fair Market Value of the shares of Stock awarded determined at the date of grant in exchange for the grant of a Stock Award or may grant a Stock Award without the requirement of a cash payment.

**Section 3.5 Treatment of Awards Upon Termination of Employment or Affiliation.** Except as otherwise provided by Section 3.2(f), any Award under this Plan to a Participant who incurs a Termination of Employment or Affiliation may be canceled, accelerated, paid or continued, as provided in the Equity Ownership Agreement or, in the absence of such provision, as the Administrator may determine. The portion of any Award exercisable in the event of continuation or the amount of any payment due under a continued Award may be adjusted by the Administrator to reflect the Participant's period of service from the date of grant through the date of the Participant's Termination of Employment or Affiliation or such other factors as the Administrator determines are relevant to its decision to continue the Award.

**ARTICLE 4  
RESTRICTIONS ON STOCK**

**Section 4.1 Escrow of Shares.** Any certificates representing the shares of Stock issued under the Plan shall be issued in the Participant's name, but, if the Equity Ownership Agreement so provides, the shares of Stock shall be held by a custodian designated by the Administrator (the "Custodian"). Each Equity Ownership Agreement providing for transfer of shares of Stock to the Custodian shall appoint the Custodian as the attorney-in-fact for the Participant for the term specified in the Equity Ownership Agreement, with full power and authority in the Participant's name, place and stead to transfer, assign and convey to the Company any shares of Stock held by the Custodian for such Participant, if the Participant forfeits the shares under the terms of the Equity Ownership Agreement. During the period that the Custodian holds the shares subject to this Section, the Participant shall be entitled to all rights, except as provided in the Equity Ownership Agreement, applicable to shares of Stock not so held. Any dividends declared on shares of Stock held by the Custodian shall, as the Administrator may provide in the Equity Ownership Agreement, be paid directly to the Participant or, in the alternative, be retained by the Custodian until the expiration of the term specified in the Equity Ownership Agreement and shall then be delivered, together with any proceeds, with the shares of Stock to the Participant or the Company, as applicable.

**Section 4.2 Forfeiture of Shares.** Notwithstanding any vesting schedule set forth in any Equity Ownership Agreement, in the event that the Participant is subject to a Termination of Employment for Cause or violates a non-competition or nonsolicitation agreement as set forth in the Equity Ownership Agreement, all Awards and shares of Stock issued to the holder pursuant to the Plan shall be forfeited; provided, however, that the Company shall return to the holder the lesser of any consideration paid by the Participant in exchange for Stock issued to the Participant pursuant to the Plan or the then Fair Market Value of the Stock forfeited hereunder.

**Section 4.3 Restrictions on Transfer.** The Participant shall not have the right to make or permit to exist any Disposition of the shares of Stock issued pursuant to the Plan except as provided in the Plan or the Equity Ownership Agreement. Any Disposition of the shares of Stock issued under the Plan by the Participant, not made in accordance with the Plan or the Equity Ownership Agreement, including, but not limited to, any right of repurchase or right of first refusal, shall be void. The Company shall not recognize, or have the duty to recognize, any Disposition not made in accordance with the Plan and the Equity Ownership Agreement, and the shares of Stock so transferred shall continue to be bound by the Plan and the Equity Ownership Agreement.

**ARTICLE 5  
GENERAL PROVISIONS**

**Section 5.1 Withholding.** The Company shall deduct from all cash distributions under the Plan any taxes required to be withheld by federal, state or local government. Whenever the Company proposes or is required to issue or transfer shares of Stock under the Plan or upon the vesting of any Stock Award, the Company shall have the right to require the recipient to remit to the

Company an amount sufficient to satisfy any federal, state and local withholding tax requirements prior to the delivery of any certificate or certificates for such shares or the vesting of such Stock Award. A Participant may pay the withholding tax in cash, or, if the Equity Ownership Agreement provides, a Participant may also elect to have the number of shares of Stock he is to receive reduced by, or with respect to a Stock Award, tender back to the Company, the smallest number of whole shares of Stock which, when multiplied by the Fair Market Value of the shares determined as of the Tax Date (defined below), is sufficient to satisfy federal, state and local, if any, withholding taxes arising from exercise or payment of an Award (a "Withholding Election"). A Participant may make a Withholding Election only if both of the following conditions are met:

(a) The Withholding Election must be made on or prior to the date on which the amount of tax required to be withheld is determined (the "Tax Date") by executing and delivering to the Company a properly completed notice of Withholding Election as prescribed by the Administrator; and

(b) Any Withholding Election made will be irrevocable; however, the Administrator may in its sole discretion approve or give no effect to the Withholding Election.

**Section 5.2 Changes in Capitalization; Change in Control; Liquidation.**

(a) The number of shares of Stock reserved for the grant of Options, Stock Appreciation Rights and Stock Awards; the number of shares of Stock reserved for issuance upon the exercise or payment, as applicable, of each outstanding Option, Stock Appreciation Right and upon vesting or grant, as applicable, of each Stock Award; the Exercise Price of each outstanding Option and the specified number of shares of Stock to which each outstanding Stock Appreciation Right pertains may be proportionately adjusted by the Administrator for any increase or decrease in the number of issued shares of Stock resulting from a subdivision or combination of shares or the payment of a stock dividend in shares of Stock to holders of outstanding shares of Stock or any other increase or decrease in the number of shares of Stock outstanding effected without receipt of consideration by the Company. Notwithstanding the foregoing, the issuance by the Company of any shares of any class or securities convertible into shares of any class, for cash or property, or for labor or services, either upon direct sale or upon exercise of rights or warrants to subscribe therefor, or upon conversion of shares or obligations of the Company convertible into such shares or other securities, shall not affect, and no adjustment by reason thereof shall be made with respect to, the shares of Stock authorized for issuance under the Plan, the shares of Stock subject to outstanding Awards, the Exercise Price of Awards, or the specified price for Stock Appreciation Rights.

(b) Upon the consummation of any transaction involving a Change in Control of the Company, fifty percent (50%) of all then outstanding Awards that have not previously vested shall vest in full. Notwithstanding the foregoing, in connection with a Change in Control, the Administrator shall have the right to take such additional action, if any, with respect to any or all then outstanding Awards as the Administrator deems appropriate under the circumstances to protect the interests of the Company, including, without limitation, the substitution of new awards, the termination or adjustment of outstanding awards, the acceleration of awards or the removal of restrictions on outstanding awards. Any adjustment pursuant to this Section 5.2 may provide, in the Administrator's discretion, for the elimination without payment therefore of any fractional shares that might otherwise become subject to any Award.

(c) The existence of the Plan and the Awards granted pursuant to the Plan shall not affect in any way the right or power of the Company to make or authorize any adjustment, reclassification, reorganization or other change in its capital or business structure, any merger or consolidation of the Company, any issue of debt or equity securities having preferences or priorities as to the Stock or the rights thereof, the dissolution or liquidation of the Company, any sale or transfer of all or any part of its business or assets, or any other corporate act or proceeding.

**Section 5.3 Cash Awards.** The Administrator may, at any time and in its discretion, grant to any holder of an Award the right to receive, at such times and in such amounts as determined by the Administrator in its discretion, a cash amount which is intended to reimburse such person for all or a portion of the federal, state and local income taxes imposed upon such person as a consequence of the receipt of the Award or the exercise of rights thereunder.

**Section 5.4 Compliance with Code.** All Incentive Stock Options to be granted hereunder are intended to comply with Code Section 422, and all provisions of the Plan and all Incentive Stock Options granted hereunder shall be construed in such manner as to effectuate that intent.

**Section 5.5 Right to Terminate Employment.** Nothing in the Plan or in any Award shall confer upon any Participant the right to continue as an employee or officer of the Company or any of its affiliates or affect the right of the Company or any of its affiliates to terminate the Participant's employment at any time.

**Section 5.6 Restrictions on Delivery and Sale of Shares; Legends.** Each Award is subject to the condition that if at any time the Administrator, in its discretion, shall determine that the listing, registration or qualification of the shares covered by such Award upon any securities exchange or under any state or federal law is necessary or desirable as a condition of or in connection with the granting of such Award or the purchase or delivery of shares thereunder, the delivery of any or all shares pursuant to such Award may be withheld unless and until such listing, registration or qualification shall have been effected. If a registration statement is not in effect under the Securities Act of 1933 or any applicable state securities laws with respect to the shares of Stock purchasable or otherwise deliverable under Awards then outstanding, the Administrator may require, as a condition of exercise of any Option or as a condition to any other delivery of Stock pursuant to an Award, that the Participant or other recipient of an Award represent, in writing, that the shares received pursuant to the Award are being acquired for investment and not with a view to distribution and agree that shares will not be disposed of except pursuant to an effective registration statement, unless the Company shall have received an opinion of counsel that such disposition is exempt from such requirement under the Securities Act of 1933 and any applicable state securities laws. The Company may include on certificates representing shares delivered pursuant to an Award such legends referring to the foregoing representations or restrictions or any other applicable restrictions on resale as the Company, in its discretion, shall deem appropriate.

**Section 5.7 Non-alienation of Benefits.** Other than as specifically provided with regard to the death of a Participant, no benefit under the Plan shall be subject in any manner to anticipation,

alienation, sale, transfer, assignment, pledge, encumbrance or charge; and any attempt to do so shall be void. No such benefit shall, prior to receipt by the Participant, be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the Participant.

**Section 5.8 Termination and Amendment of the Plan.** The Board at any time may amend or terminate the Plan without shareholder approval; provided, however, that the Board may condition any amendment on the approval of shareholders of the Company if such approval is necessary or advisable with respect to tax, securities or other applicable laws. No such termination or amendment without the consent of the holder of an Award shall adversely affect the rights of the Participant under such Award.

**Section 5.9 Shareholder Approval.** The Plan shall be submitted to the shareholders of the Company for their approval within twelve (12) months after the adoption of the Plan by the Board. If such approval is not obtained, any Award granted hereunder shall be void.

**Section 5.10 Choice of Law.** The laws of the State of Georgia shall govern the Plan, to the extent not preempted by federal law.

**Section 5.11 Effective Date of Plan.** The Plan shall be effective as of October 11, 1999.