

HIGHWOODS PROPERTIES INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 6/20/1997

Address	3100 SMOKETREE CT STE 600 RALEIGH, North Carolina 27604
Telephone	919-872-4924
CIK	0000921082
Industry	Real Estate Operations
Sector	Services
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

HIGHWOODS PROPERTIES, INC.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction
of incorporation)

56-1869557
(I.R.S. Employer
Identification No.)

3100 Smoketree Court
Suite 600
Raleigh, North Carolina
(Address of principal
executive offices)

27604
(Zip Code)

HIGHWOODS PROPERTIES, INC.
1997 EMPLOYEE STOCK PURCHASE PLAN
(Full title of the plan)

Ronald P. Gibson
President
Highwoods Properties, Inc.
3100 Smoketree Court, Suite 600
Raleigh, North Carolina 27604
(919) 872-4924
(Name, address and telephone number of agent for service)

Copy to:
Brad S. Markoff
Smith Helms Mulliss & Moore, L.L.P.
2800 Two Hannover Square
Raleigh, North Carolina 27601
(919) 755-8700

CALCULATION OF REGISTRATION FEE

Title of Securities to be registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit(1)(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Common Stock, par value \$0.01 per share.....	500,000 shares	\$29.1375	\$14,568,750	\$4,414.78

(1) Offering prices vary with the market price of the Registrant's Common Stock but is the lesser of 90% of the fair market value of the Registrant's Common Stock on the Offering Date or the Exercise Date, as defined in the plan.

(2) Computed pursuant to Rule 457(h) under the Securities Act of 1933 (as amended) solely for the purpose of calculating the registration fee on the basis of the average of the high and low prices of the Registrant's Common Stock reported on the New York Stock Exchange on June 19, 1997.

In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The documents constituting the Prospectus of Highwoods Properties, Inc. (the "Registrant" or the "Company") with respect to this Registration Statement in accordance with Rule 428 promulgated pursuant to the Securities Act of 1933, as amended (the "Securities Act"), are kept on file at the offices of the Registrant. The Registrant will provide without charge to participants in the Company's 1997 Employee Stock Purchase Plan (the "Plan"), on the written or oral request of any such person, a copy of any or all of the documents constituting the Prospectus. Written requests for such copies should be directed to Director of Human Resources, Highwoods Properties, Inc., 3100 Smoketree Court, Suite 600, Raleigh, N.C. 27604. Telephone requests may be directed to (919) 872-4924.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by the Registrant with the Securities and Exchange Commission (the "Commission") (File No. 1-13100) pursuant to the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), are incorporated by reference herein and in the Prospectus constituting a part of this Registration Statement:

- a. the Company's annual report on Form 10-K for the year ended December 31, 1996;
- b. the Company's quarterly report on Form 10-Q for the quarter ended March 31, 1997;
- c. the description of the Common Stock of the Company included in the Company's Registration Statement on Form 8-A, dated May 16, 1994; and
- d. the Company's Current Reports on Form 8-K, dated January 9, 1997 (as amended by Form 8-K/A on February 7, 1997 and by Form 8-K/A on March 10, 1997) and February 12, 1997.

All documents subsequently filed by the Registrant or the Plan pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment that indicates that all securities offered hereunder have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing such reports and documents.

For purposes of this registration statement, any statement contained in a report, document or appendix incorporated, or deemed to be incorporated, by reference in this registration statement shall be deemed to be modified or superseded to the extent that a statement contained in this registration statement or in any subsequently filed report, document or appendix, which also is or is deemed incorporated by reference, modifies or supersedes such statement in such report, document or appendix. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

The Registrant will provide without charge to each person to whom the Prospectus constituting a part of this Registration Statement is delivered, on the written or oral request of any such person, a copy of any or all of the documents incorporated herein and in the Prospectus by reference (other than exhibits to such documents which are not specifically incorporated by reference in such documents). Written requests for such copies should be directed to Director of Human Resources, Highwoods Properties, Inc., 3100 Smoketree Court, Suite 600, Raleigh, N.C. 27604. Telephone requests may be directed to (919) 872-4924.

ITEM 4. DESCRIPTION OF SECURITIES. Not Applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL. Not Applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Company's officers and directors are and will be indemnified against certain liabilities in accordance with the Maryland General Corporations Law (the "MGCL"), the Articles of Incorporation and bylaws of the Company and the Partnership Agreement of Highwoods/Forsyth Limited Partnership (the "Operating Partnership Agreement"). The Articles of Incorporation require the Company to indemnify its directors and officers to the fullest extent permitted from time to time by the MGCL. The MGCL permits a corporation to indemnify its directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reasons of their service in those or other capacities unless it is established that the act or omission of the director or officer was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty, or the director or officer actually received an improper personal benefit in money, property or services, or in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

The Operating Partnership Agreement also provides for indemnification of the Company and its officers, and directors to the same extent indemnification is provided to officers and directors of the Company in its Articles of Incorporation and limits the liability of the Company and its officers and directors to the Operating Partnership and its partners to the same extent liability of officers and directors of the Company to the Company and its stockholders is limited under the Company's Articles of Incorporation.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED. Not Applicable.

ITEM 8. EXHIBITS.

The following exhibits are filed herewith:

Exhibit No.	Description
4.1	Form of Common Stock Certificate**
5.1	Opinion of Smith Helms Mulliss & Moore, L.L.P. regarding the legality of the shares of Common Stock being registered
23.1	Consent of Smith Helms Mulliss & Moore L.L.P. (included in Exhibit 5.1)
23.2	Consent of Ernst & Young, L.L.P.
99.1	Highwoods Properties, Inc. 1997 Employee Stock Purchase Plan

**Previously filed on Form S-11, File No. 33-76952, and incorporated herein by reference.

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 the 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, 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 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, 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 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 Raleigh, State of North Carolina, on June 20, 1997.

By: /s/ Ronald P. Gibson
Ronald P. Gibson
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated:

Name	Title	Date
/s/ O. Temple Sloan, Jr. ----- O. Temple Sloan, Jr.	Chairman of the Board of Directors	June 20, 1997
/s/ Ronald P. Gibson ----- Ronald P. Gibson	President, Chief Executive Officer and Director	June 20, 1997
/s/ William T. Wilson III ----- William T. Wilson III	Executive Vice President and Director	June 20, 1997
/s/ John L. Turner ----- John L. Turner	Vice Chairman of the Board of Directors and Chief Investment Officer	June 20, 1997
/s/ Gene H. Anderson ----- Gene H. Anderson	Senior Vice President and Director	June 20, 1997
/s/ John W. Eakin ----- John W. Eakin	Senior Vice President and Director	June 20, 1997
/s/ Thomas W. Adler ----- Thomas W. Adler	Director	June 20, 1997
/s/ William E. Graham, Jr. ----- William E. Graham, Jr.	Director	June 20, 1997

/s/ L. Glenn Orr, Jr. ----- L. Glenn Orr, Jr.	Director	June 20, 1997
/s/ Willard H. Smith Jr. ----- Willard H. Smith Jr.	Director	June 20, 1997
/s/ Stephen Timko ----- Stephen Timko	Director	June 20, 1997
/s/ Carman J. Liuzzo ----- Carman J. Liuzzo	Vice President, Chief Financial Officer and Treasurer (Principal Accounting Officer)	June 20, 1997

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the executive compensation committee of the Board of Directors of Highwoods Properties, Inc. has duly caused this registration statement to be signed on behalf of the Highwoods Properties, Inc. 1997 Employee Stock Purchase Plan by the undersigned, thereunto duly authorized, in the City of Raleigh, State of North Carolina, on June 20, 1997.

EXECUTIVE COMPENSATION COMMITTEE

/s/ Thomas W. Adler

Thomas W. Adler

/s/ William E. Graham, Jr.

William E. Graham, Jr.

/s/ L. Glenn Orr, Jr.

L. Glenn Orr, Jr.

/s/ O. Temple Sloan, Jr.

O. Temple Sloan, Jr.

Exhibit Index

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23.2	Consent of Ernst & Young LLP	
99.1	Highwoods Properties, Inc. 1997 Employee Stock Purchase Plan	

** Previously filed on Form S-11, File No. 33-76952, and incorporated herein by reference.

EXHIBIT 5.1

June 20, 1997

Highwoods Properties, Inc.
3100 Smoketree Court
Suite 600
Raleigh, North Carolina 27604

RE: REGISTRATION STATEMENT ON FORM S-8

500,000 SHARES OF COMMON STOCK, \$0.01 PAR VALUE

1997 EMPLOYEE STOCK PURCHASE PLAN

Ladies and Gentlemen:

In connection with the possible offering and sale from time to time of up to 500,000 shares of the common stock, \$0.01 par value per share (the "Shares"), of Highwoods Properties, Inc. (the "Corporation"), upon the terms and conditions set forth in the Registration Statement on Form S-8 (the "Registration Statement"), filed on June 20, 1997 by the Corporation with the Securities and Exchange Commission under the Securities Act of 1933, as amended, and the prospectus constituting a part thereof (the "Prospectus"), we are of the opinion that when (a) the Registration Statement shall become effective and (b) the Shares have been sold upon the terms and conditions set forth in the Registration Statement and the Prospectus, the Shares will be validly authorized and legally issued, fully paid and nonassessable.

We hereby consent (1) to be named in the Registration Statement and in the Prospectus as attorneys who will pass upon the legality of the Shares and
(2) to the filing of a copy of this opinion as Exhibit 5.1 to the Registration Statement.

Very truly yours,

/s/ Smith Helms Mulliss & Moore, LLP

EXHIBIT 23.2

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-) pertaining to the 1997 Employee Stock Purchase Plan of Highwoods Properties, Inc. of our report dated February 14, 1997 with respect to the consolidated financial statements and schedule of Highwoods Properties, Inc. included in its Annual Report on Form 10-K for the year ended December 31, 1996, and our reports dated January 24, 1997 and January 25, 1997 with respect to the Combined Statements of Revenues and Certain Expenses of Century Center and Anderson Properties, respectively included in the Company's Current Report on Form 8-K dated January 9, 1997 (as amended on Form 8-K/A dated February 7, 1997 and March 10, 1997).

/s/ ERNST & YOUNG LLP

*Raleigh, North Carolina
June 19, 1997*

EXHIBIT 99.1

EXHIBIT A

HIGHWOODS PROPERTIES, INC. EMPLOYEE STOCK PURCHASE PLAN

Highwoods Properties, Inc. (the "Company") hereby establishes an Employee Stock Purchase Plan (the "Plan") granting Eligible Employees of the Company and its Subsidiaries the opportunity to purchase Common Stock of the Company.

NOW, THEREFORE, the Company hereby establishes the Plan, the terms of which are as follows:

SECTION 1. PURPOSE.

The purpose of this Plan is to give Eligible Employees of the Company and its Subsidiaries, an opportunity to acquire shares of the Company's Common Stock in order to increase their proprietary interest in the Company's success, to encourage them to remain in the employ of the Company, and to continue to promote the Company's best interests and enhance its long-term performance.

SECTION 2. DEFINITIONS.

Wherever used herein, the following words and phrases shall have the meanings stated below unless a different meaning is plainly required by the context:

- (a) "ADMINISTRATOR" means First Union National Bank of North Carolina, or such other third-party administrator appointed by the Committee to maintain the records of the Plan and conduct such other duties as may be further described herein.
- (b) "AVAILABLE SHARES" means the aggregate number of shares of Common Stock which may be purchased by Eligible Employees under the Plan, as described in Section 5.
- (c) "BOARD" means the Board of Directors of the Company.
- (d) "CODE" means the Internal Revenue Code of 1986, as amended.
- (e) "COMMITTEE" means a committee appointed by the Board and composed of not less than three members of the Board to which the Board may delegate its powers with respect to administration of the Plan pursuant to Section 6 hereof.
- (f) "COMMON STOCK" means shares of the common stock of the Company, \$.01 par value. Common stock hereunder includes both treasury stock and stock of original issue.
- (g) "COMPANY" means Highwoods Properties, Inc., a Maryland corporation.
- (h) "COMPENSATION" means an Eligible Employee's regular base pay at the rate in effect on the applicable Offering Date, but excludes any bonus, overtime payment, sales commission or pre-tax contribution to any medical or retirement plans qualified under Section 125 or 401(k) of the Code.
- (i) "ELIGIBLE EMPLOYEE" means any individual who on any Offering Date is employed by the Company or a Subsidiary on a regular full-time basis. A person shall be considered employed on a regular full-time basis if he or she is customarily employed by the Company or the Subsidiary, at least 20 hours per week and is customarily employed for more than five 5 months per calendar year. "Eligible Employee" shall not include any person who would own, immediately after the Option was granted, stock possessing five percent or more of the total combined voting power or value of any classes of stock of the Company, or any Subsidiary. For purposes of this subsection 2(i), stock ownership of an individual shall be determined under Section 424(d) of the Code, and stock that the individual may purchase under outstanding options shall be treated as stock owned by the individual.
- (j) "EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended.
- (k) "EXERCISE DATE" means September 30, 1997, and any subsequent December 31, March 31, June 30 and September 30 thereafter during the term of the Plan.
- (l) "FAIR MARKET VALUE" of Common Stock as of any date means the average of the closing or last prices of the Common Stock on the New York Stock Exchange or other comparable reporting system for the five consecutive trading days immediately preceding such applicable date. Notwithstanding any provision of the Plan to the contrary, no determination made with

respect to the Fair Market Value of Common Stock subject to an Option shall be inconsistent with Section 423 of the Code or regulations thereunder.

(m) "OFFERING DATE" means July 1, 1997, and any subsequent October 1, January 1, April 1 and July 1 thereafter during the term of the Plan.

(n) "OFFERING PERIOD" means the period commencing on an Offering Date hereunder and ending on the next following Exercise Date. The Board may change the duration and/or frequency of Offering Periods without stockholder approval if such change is announced at least 10 days prior to the scheduled beginning of the Offering Period to be affected.

(o) "OPTION" means an option granted hereunder which will entitle an Eligible Employee to purchase shares of Common Stock.

(p) "OPTION PRICE" means the lesser of 90% of the Fair Market Value per share of Common Stock as of the applicable Offering Date or 90% of the Fair Market Value per share of Common Stock on the applicable Exercise Date.

(q) "PLAN" means the Highwoods Properties, Inc. Employee Stock Purchase Plan as set forth herein and as subsequently amended.

(r) "PURCHASE ACCOUNT" means the book entry account maintained by the Company or Administrator to record the funds withheld from each Eligible Employee's payroll for the purchase of Common Stock and to record the shares of Common Stock credited to each Eligible Employee under the Plan.

(s) "SUBSIDIARY" or "SUBSIDIARIES" means the corporation or corporations meeting the requirements of Section 424(f) of the Code.

SECTION 3. BASIS OF PARTICIPATION AND GRANTING OF OPTIONS.

(a) Each Eligible Employee on any Offering Date, commencing with the Offering Date which occurs on or after July 1, 1997 and, subject to earlier termination of the Plan pursuant to subsection 14(c) hereof, ending with the last Offering Date on which shares of Common Stock are available for grant within the limitation set forth in Section 5, is granted an Option hereunder which will entitle him or her to purchase, at the Option Price per share applicable to such Offering Date, the largest number of whole shares of Common Stock that may be obtained by having deducted from such Eligible Employee's Compensation for each payroll period in the applicable Offering Period an amount not less than one percent of the Eligible Employee's Compensation nor more than the lesser of 15% of the Eligible Employee's Compensation and \$7,500.

(b) If the number of shares of Common Stock for which Options are granted pursuant to subsection 3(a) exceeds the applicable number set forth in Section 5, then the Options granted under the applicable paragraph to all Eligible Employees shall, in a nondiscriminatory manner which shall be consistent with subsection 13(c), be reduced in proportion to their respective Compensation, and the balance of payroll deductions credited to the Purchase Account of each Eligible Employee shall be returned without interest to each Eligible Employee as soon as practicable.

(c) Payment for Common Stock purchased under the Option shall be made only by payroll deductions over a designated Offering Period.

(d) Each Option under the Plan shall be granted on the condition that (i) a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the Common Stock subject to such Option has become effective and a copy of the Prospectus has been delivered to the Eligible Employee and (ii) the shares of Common Stock issuable hereunder have been approved for listing by the New York Stock Exchange.

SECTION 4. PURCHASE ACCOUNT.

Each Eligible Employee shall notify the Company, on such forms as shall be provided by the Company, at least 10 days before the applicable Offering Date, of the percentage of Compensation which the Eligible Employee wishes to have withheld ratably from the Eligible Employee's Compensation during the Offering Period; provided that not withstanding anything to the contrary herein, with respect to the Offering Period commencing July 1, 1997 and ending September 30, 1997 (the "Initial Offering Period"), the Eligible Employee may so notify the Company up to July 1, 1997 and payroll deductions will commence July 7, 1997.

Each Eligible Employee shall authorize the Company and its Subsidiaries to withhold from the Eligible Employee's after-tax compensation, beginning as soon as practicable following the making of the election described in this Section 4 and continuing throughout the duration of the Offering Period unless terminated sooner under Section 7. All withheld amounts may be used by the Company for general corporate purposes. The Company or Administrator shall maintain a record of each Eligible Employee's funds in the Eligible Employee's Purchase Account. Such funds so accumulated within said Purchase

Account may be returned to an Eligible Employee or beneficiary without interest or applied toward the purchase of Common Stock only pursuant to the provisions contained in this Plan.

SECTION 5. MAXIMUM LIMITATIONS.

The aggregate number of shares of Common Stock available for grant as Options pursuant to this Plan shall not exceed 500,000, subject to adjustment pursuant to Section 10 hereof. Shares of Common Stock granted pursuant to the Plan may be either authorized but unissued shares or shares now or hereafter held in the treasury of the Company. In the event that any Option granted pursuant to subsection 3(a) expires or is terminated, surrendered or canceled without being exercised, in whole or in part, for any reason, the number of shares of Common Stock theretofore subject to such Option shall again be available for grant as an Option pursuant to subsection 3(a) and shall not reduce the aggregate number of shares of Common Stock available for grant as such Options as set forth in the first sentence of this Section.

SECTION 6. ADMINISTRATION.

The Plan shall be administered by the Board, which, to the extent it shall determine, may delegate its powers with respect to the administration of the Plan (except its powers under subsection 14(c)) to the Committee. If the Board chooses to appoint a Committee, references hereinafter to the Board (except in subsection 14(c)) shall be deemed to refer to the Committee. Subject to the express provisions of the Plan, the Board may interpret the Plan, prescribe, amend and rescind rules and regulations relating to it, correct any defect or omission or reconcile any inconsistency in the Plan, determine the terms and provisions of the Options granted hereunder, determine and change the Offering Periods, Offering Dates and Exercise Dates (except as otherwise limited herein) and make all other determinations necessary or advisable for the administration of the Plan. The determinations of the Board on all matters regarding the Plan shall be conclusive. A member of the Board shall only be liable for any action taken or determination made in bad faith.

SECTION 7. TERMS OF OPTIONS.

(a) Each Option shall, unless sooner expired pursuant to subsection 7(b),
(c) or (d), be exercised on the Exercise Date for the applicable Offering Period. Each Option not exercised during an Offering Period shall expire on the Exercise Date for the applicable Offering Period.

(b) An Eligible Employee may at any time at least 21 days before an Exercise Date (or such other date as may be selected by the Committee) terminate the Option in its entirety by written notice of such termination delivered in the manner set forth in subsection 14(i). Such termination shall become effective upon receipt of such notice by the Company or Administrator. As soon as practical following such notice, all funds then in the Eligible Employee's Purchase Account shall be returned to the Eligible Employee without interest and the Eligible Employee's Purchase Account closed, and all rights and privileges of the Eligible Employee granted pursuant to this Plan and the Option granted hereunder shall be terminated. Such Eligible Employee may again elect to participate in the Plan on the next Offering Date pursuant to Sections 3 and 4.

(c) An Option shall expire on the first to occur of the Exercise Date for the applicable Offering Period and the date that the employment of the Eligible Employee with the Company and its Subsidiaries terminates (as determined by the Board) for any reason other than death or disability. In the event that the Option expires because of termination of employment, all funds then on deposit in the Eligible Employee's Purchase Account shall be returned without interest to the Eligible Employee and the Eligible Employee's Purchase Account closed.

(d) An Option shall expire on the Exercise Date for the applicable Offering Period if the Eligible Employee becomes disabled (as determined by the Board) or dies during an Offering Period. The Eligible Employee's Purchase Account at the date of such Eligible Employee's disability or death shall become the basis of the exercise of the Option under Section 8.

SECTION 8. MANNER OF EXERCISE OF OPTIONS AND PAYMENT FOR COMMON STOCK.

(a) Except as provided in subsection 7(b), (c) or (d), each Eligible Employee's Option shall be exercised automatically on the Exercise Date of each Offering Period, and the maximum number of shares of Common Stock will be purchased by the Administrator for each Eligible Employee with the entire proceeds of each Eligible Employee's Purchase Account. The Common Stock purchased under this Section 8 may be either treasury stock or stock of original issue, in the discretion and at the direction of the Company.

(b) Upon the written request of an Eligible Employee (or beneficiary, as described in subsection 9(b)) following any Offering Period, the Administrator shall deliver (or cause to be delivered) a certificate for the whole shares purchased under subsection 8(a) to such Eligible Employee (or beneficiary). If the number of shares purchased is not a whole number of shares, the number of shares reflected on such certificate shall be rounded down to the next whole number and the Company shall pay the difference to such Eligible Employee in cash. Any remaining shares in such Eligible Employee's Purchase Account will continue to be credited to such Eligible Employee's Purchase Account.

(c) An Eligible Employee may not make additional cash payments into such Eligible Employee's Purchase Account.

SECTION 9. TRANSFERABILITY AND DESIGNATION OF BENEFICIARY.

(a) No Option may be transferred, assigned, pledged, or hypothecated (whether by operation of law or otherwise), except as provided by will or the applicable laws of descent or distribution, and no Option shall be subject to execution, attachment or similar process. Any attempted assignment, transfer, pledge, hypothecation or other disposition of an Option, or levy of attachment or similar process upon the Option not specifically permitted herein shall be null and void and without effect. An Option may be exercised only by the Eligible Employee during his or her lifetime, or pursuant to subsection 7(c), by his or her beneficiary (as described in subsection 9(b)), estate or the person who acquires the right to exercise such Option upon his or her death by bequest or inheritance.

(b) Each Eligible Employee may file a written designation of beneficiary who is to receive any stock or cash in the event that such Eligible Employee dies after the end of an Offering Period but before the issuance of the shares or during an Offering Period but before the respective Exercise Date.

SECTION 10. ADJUSTMENT PROVISIONS.

The aggregate number of shares of Common Stock with respect to which Options may be granted, the aggregate number of shares of Common Stock subject to each outstanding Option, and the Option Price per share of each Option may all be appropriately adjusted as the Board may determine for any increase or decrease in the number of shares of issued Common Stock resulting from a subdivision or consolidation of shares, whether through reorganization, recapitalization, stock split-up, stock distribution or combination of shares, or the payment of a share dividend or other increase or decrease in the number of such shares outstanding effected without receipt of consideration by the Company. Adjustments under this Section 10 shall be made according to the sole discretion of the Board, and its decision shall be binding and conclusive.

SECTION 11. DISSOLUTION, MERGER AND CONSOLIDATION.

In the event of (i) the adoption of a plan of merger, consolidation, share exchange or similar transaction of the Company with any other corporation as a result of which the holders of the Common Stock of the Company in the aggregate would receive less than 50% of the voting capital stock of the surviving or resulting corporation; (ii) the approval by the Board of an agreement providing for the sale or transfer (other than as security for obligations of the Company) by the Company of a majority of the stock of a significant subsidiary of the Company or substantially all of the assets of the Company or of a significant subsidiary of the Company; (iii) the acquisition of more than 20% of the Company's voting capital stock by any person within the meaning of Section 13(d)(3) of the Exchange Act, other than a person, or group including a person, who beneficially owned, as of the most recent Offering Date, more than 5% of the Company's securities, in the absence of a prior expression of approval of the Board; (iv) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board cease for any reason to constitute at least a majority thereof unless the election, or the nomination for election by the Company's stockholders, of each new director was approved by the vote of at least two-thirds of the directors then still in office who were directors at the beginning of the period; or (v) any other change in control of the Company of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A under the Exchange Act, then any Option granted hereunder during the then-current Option Period shall remain exercisable until the Exercise Date of the then-current Option Period, subject to all of the terms hereof not inconsistent with this Section 11.

Anything contained herein to the contrary notwithstanding, upon the dissolution or liquidation of the Company or the consummation of a merger or consolidation in which the stockholders of the Company receive less than 50% of the voting capital stock of the surviving or resulting corporation, each Option granted under the Plan shall terminate, but the Eligible Employee shall have the right, following the adoption of a plan of dissolution or liquidation or a plan of merger or consolidation and in any event prior to such dissolution, liquidation, merger or consolidation, to exercise his Option to purchase Common Stock on the Exercise Date of the then-current Option Period, subject to all of the other terms hereof not inconsistent with this Section 11.

The grant of an Option pursuant to this Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure, or to merge or consolidate, or to dissolve, liquidate or sell, or transfer all or any part of the business or assets.

SECTION 12. CONDITIONS SUBSEQUENT TO EFFECTIVE DATE.

The Plan is subject to the approval of the Plan by the holders of a majority of the outstanding shares of Common Stock of the Company within twelve

(12) months before or after the date of adoption of the Plan by the Board. The Plan shall be null and void and of no effect if the foregoing condition is not fulfilled.

SECTION 13. LIMITATION ON OPTIONS.

Notwithstanding any other provisions of the Plan:

(a) All Eligible Employees shall have the same rights and privileges under the Plan, except that the amount of Common Stock which may be purchased under Options granted pursuant to Section 3, shall bear a uniform relationship to the compensation of Eligible Employees. All rules and determinations of the Board in the administration of the Plan shall be uniformly and consistently applied to all persons in similar circumstances.

(b) The term of said Plan shall be for a period of 10 years commencing on July 1, 1997 and ending on December 31, 2007 unless terminated earlier by the exhaustion of the Available Shares pursuant to Section 3 or 5 or as provided in subsection 14(c).

(c) As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent that, at the time of any such exercise, the shares are being purchased only for an investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such representation is required by any applicable provisions of law.

SECTION 14. MISCELLANEOUS.

(a) **LEGAL AND OTHER REQUIREMENTS.** The obligations of the Company to sell and deliver Common Stock under the Plan shall be subject to all applicable foreign or domestic laws, regulations, rules and approvals, including, but not by way of limitation, the effectiveness of a registration statement under the Securities Act and the requirements of any stock exchange upon which the shares of Common Stock may be listed if deemed necessary or appropriate by the Company. Certificates for shares of Common Stock issued hereunder may be legended as the Board shall deem appropriate.

(b) **NO OBLIGATION TO EXERCISE OPTIONS.** The granting of an Option shall impose no obligation upon an Eligible Employee to exercise such Option unless such Eligible Employee affirmatively elects to purchase Common Stock through payroll withholding as described in Section 4.

(c) **TERMINATION AND AMENDMENT OF PLAN.** The Board, without further action on the part of the stockholders of the Company, may from time to time alter, amend or suspend the Plan or any Option granted hereunder or may at any time terminate the Plan, except that it may not (except to the extent provided in Section 10):

(i) change the total number of shares of Common Stock available for grant under the Plan; (ii) extend the duration of the Plan; (iii) increase the maximum term of Options; (iv) change the Option Price; or (v) change the class of Eligible Employees. No action taken by the Board under this subsection 14(c) may materially and adversely affect any outstanding Option without the consent of the holder thereof.

(d) **APPLICATION OF FUNDS.** The proceeds received by the Company from the sale of Common Stock pursuant to Options will be used for general corporate purposes.

(e) **WITHHOLDING TAXES.** Upon the exercise of any Option under the Plan, the Company shall have the right to require the Eligible Employee to remit to the Company an amount sufficient to satisfy all federal, state and local withholding tax requirements prior to the delivery of any certificate or certificates for shares of Common Stock.

(f) **RIGHT TO TERMINATE EMPLOYMENT.** Nothing in the Plan or any agreement entered into pursuant to the Plan shall confer upon any Eligible Employee the right to continue in the employment of the Company or any Subsidiary or affect any right which the Company or any Subsidiary may have to terminate the employment of such Eligible Employee.

(g) **RIGHTS AS A STOCKHOLDER.** No Eligible Employee shall have any right as a stockholder unless and until certificates for shares of Common Stock are issued to him or her.

(h) LEAVES OF ABSENCE AND DISABILITY. The Board shall be entitled to make such rules, regulations and determinations as it deems appropriate under the Plan in respect of any leave of absence taken by or disability of any Eligible Employee. Without limiting the generality of the foregoing, the Board shall be entitled to determine (i) whether or not any such leave of absence shall constitute a termination of employment within the meaning of the Plan, and (ii) the impact, if any, of any such leave of absence on Options under the Plan theretofore granted to any Eligible Employee who takes such leave of absence.

(i) NOTICES. Every direction, revocation or notice authorized or required by the Plan shall be deemed delivered on the date it is delivered (i) to the Administrator at First Union National Bank of North Carolina, 230 South Tryon Street, Charlotte, North Carolina 27288-1179, or (ii) three business days after it is sent by registered or certified mail, postage prepaid, addressed to the Company, Attention: Director of Human Resources, at its principal office at 3100 Smoketree Court, Suite 600, Raleigh, N.C. 27604; and shall be deemed delivered to an Eligible Employee (i) on the date it is personally delivered to him or her or (ii) three (3) business days after it is sent by registered or certified mail, postage prepaid, addressed to him or her at the last address shown for him or her on the records of the Company or of any Subsidiary.

(j) APPLICABLE LAW. All questions pertaining to the validity, construction and administration of the Plan and Options granted hereunder shall be determined in conformity with the laws of the state of Maryland.