

HIGHWOODS PROPERTIES INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 6/8/2000

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 27604
(Address of principal executive offices, including zip code)

HIGHWOODS PROPERTIES, INC.
2000 EMPLOYEE STOCK PURCHASE PLAN
(Full title of the plan)

Mack D. Pridgen III
Vice President and General Counsel
Highwoods Properties, Inc.
3100 Smoketree Court, Suite 600
Raleigh, North Carolina 27604
(919) 872-4924

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

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(3)
common stock, par value (\$0.01 per share)	500,000 shares	\$23.875	\$11,937,500	\$3,152

(1) Offering prices vary in relation to the market price of the registrant's common stock. This offering is made pursuant to an employee benefit plan that provides the offering price will be the lesser of 85% of the average of the closing price for the registrant's common stock on the New York Stock Exchange for the five trading days ending on (i) the first day of the calendar quarter or (ii) the last day of the calendar quarter in which the common stock is offered.

(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 7, 2000.

(3) See explanatory note below.

EXPLANATORY NOTE

Highwoods Properties files this registration statement on Form S-8 with respect to its recently adopted Highwoods Properties, Inc. 2000 Employee Stock Purchase Plan. The 2000 Employee Stock Purchase Plan replaces the Highwoods Properties, Inc. 1997 Employee Stock Purchase Plan, with respect to which Highwoods Properties filed, on June 20, 1997, a registration statement on Form S-8 (registration no. 333-29763). Concurrently with its filing of this registration statement, Highwoods Properties is filing a post-effective amendment to registration no. 333-29763 to deregister 434,047 of the 500,000 shares of common stock originally registered on registration no. 333-29763. Pursuant to Instruction E of Form S-8, registration no. 333-29763 is incorporated by reference into this registration statement, and Highwoods Properties carries forward to this registration statement the 434,047 deregistered shares and \$3,152 of the \$4,414.78 filing fee paid in connection with registration no. 333-29763. With this registration statement, Highwoods Properties is registering 65,953 shares in addition to the 434,047 shares carried forward from registration no. 333-29763, for a total of 500,000 shares.

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 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:

1. The registrant's annual report on Form 10-K for the year ended December 31, 1999 (as amended on May 19, 2000);
2. The registrant's quarterly report filed on Form 10-Q for the quarter ended March 31, 2000;
3. The description of the common stock of the registrant included in the registrant's registration statement on Form 8-A, dated May 16, 1994.

All documents subsequently filed by the registrant 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 that 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 that are not specifically incorporated by reference in such documents). Written requests for such copies should be directed to Investor Relations, Highwoods Properties, Inc., 3100 Smoketree Court, Suite 600, Raleigh, North Carolina 27604. Telephone requests may be directed to (919) 872-4924.

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTEREST OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The registrant's officers and directors are and will be indemnified against certain liabilities in accordance with the Maryland General Corporation Law ("MGCL"), the articles of incorporation and bylaws of the registrant and the partnership agreement of Highwoods Realty Limited Partnership, which is the North Carolina limited partnership through which the registrant conducts its business. The articles of incorporation require the registrant 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 reason 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 partnership agreement of Highwoods Realty Limited Partnership also provides for indemnification of the registrant and its officers and directors to the same extent indemnification is provided to officers and directors of the registrant in its articles of incorporation and limits the liability of the registrant and its officers and directors to Highwoods Realty Limited Partnership and its partners to the same extent liability of officers and directors of the registrant to the registrant and its stockholders is limited under the registrant's articles of incorporation.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed 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.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

Exhibit No. -----	Description -----
5.1	Opinion of Alston & Bird LLP regarding the legality of the shares of Common Stock being registered
23.1	Consent of Alston & Bird LLP (included in Exhibit 5.1)
23.2	Consent of Ernst & Young LLP
99.1	Highwoods Properties, Inc. 2000 Employee Stock Purchase Plan

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 this 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 this registration statement;

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

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

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities being 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 this 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 registrant's articles of incorporation, bylaws, 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 8, 2000.

HIGHWOODS PROPERTIES, INC.

By: /s/ Ronald P. Gibson

Ronald P. Gibson
President

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 date indicated.

Name	Title	Date
/s/O. Temple Sloan, Jr. ----- O. Temple Sloan, Jr.	Chairman of the Board of Directors	June 8, 2000
/s/Ronald P. Gibson ----- Ronald P. Gibson	President, Chief Executive Officer and Director	June 2, 2000
/s/John L. Turner ----- John L. Turner	Vice Chairman of the Board of Directors and Chief Investment Officer	June 8, 2000
/s/Gene H. Anderson ----- Gene H. Anderson	Senior Vice President and Director	June 8, 2000
/s/Kay Nichols Callison ----- Kay Nichols Callison	Director	June 5, 2000
/s/James R. Heistand ----- James R. Heistand	Director	June 6, 2000
/s/Thomas W. Adler ----- Thomas W. Adler	Director	June 8, 2000
/s/William E. Graham, Jr. ----- William E. Graham, Jr.	Director	June 8, 2000
/s/L. Glenn Orr, Jr. ----- L. Glenn Orr, Jr.	Direcr	June 8, 2000

/s/Willard H. Smith, Jr.

Director

June 8, 2000

Willard H. Smith, Jr.

/s/Carman J. Liuzzo

Vice President, Chief Financial Officer and
Treasurer (Principal Accounting Officer)

June 2, 2000

Carman J. Liuzzo

Exhibit Index

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99.1	Highwoods Properties, Inc. 2000 Employee Stock Purchase Plan

Exhibit 5.1
ALSTON & BIRD LLP
3605 Glenwood Avenue, Suite 310
P. O. Drawer 31107
Raleigh, NC 27622-1107

919-420-2200
Fax: 919-420-2260
www.alston.com

June 8, 2000

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

Ladies and Gentlemen:

This opinion letter is furnished in connection with the registration statement on Form S-8 filed by Highwoods Properties, Inc., a Maryland corporation (the "Company"), with the Securities and Exchange Commission under the Securities Act of 1933, as amended, on or about the date hereof for the registration of 500,000 shares of common stock, \$.01 par value per share, of the Company (the "Shares"). The Shares are issuable pursuant to the Company's 2000 Employee Stock Purchase Plan (the "Plan").

We have reviewed such documents and considered such matters of law and fact as we, in our professional judgment, have deemed appropriate to render the opinion contained herein. We are familiar with the proceedings taken and proposed to be taken by the Company in connection with the authorization and issuance of the Shares and, for the purpose of this opinion letter, have assumed such proceedings will be timely completed in the manner presently proposed.

Based upon and subject to the foregoing and the further limitations and qualifications hereinafter expressed, it is our opinion that the Shares will be validly issued, fully paid and non-assessable when the Shares have been issued and sold and the consideration received therefor by the Company in accordance with the terms of the Plan.

We hereby consent to the filing of a copy of this opinion as Exhibit 5.1 to the Registration Statement.

Our opinions expressed herein are as of the date hereof, and we undertake no obligation to advise you of any changes in applicable law or any other matters that may come to our attention after the date hereof that may affect our opinions expressed herein.

Very truly yours,

ALSTON & BIRD LLP

By: */s/ Robert H. Bergdolt*

Robert H. Bergdolt, a Partner

One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
404-881-7000
Fax: 404-881-7777

1211 East Morehead Street
P. O. Drawer 34009
Charlotte, NC 28234-4009
704-331-6000
Fax: 704-334-2014

601 Pennsylvania Avenue, N.W.
North Building, 11th Floor
Washington, DC 20004-2601
202-756-3300
Fax: 202-756-3333

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 Highwoods Properties, Inc. 2000 Employee Stock Purchase Plan of our report dated February 18, 2000, with respect to the consolidated financial statements and schedule of Highwoods Properties, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 1999 (as amended on Form 10-K/A on May 19, 2000), filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP
ERNST & YOUNG LLP

Raleigh, North Carolina

June 1, 2000

Exhibit 99.1

**HIGHWOODS PROPERTIES, INC.
YEAR 2000 EMPLOYEE STOCK PURCHASE PLAN**

Highwoods Properties, Inc. (the "Company") hereby establishes a Year 2000 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 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 the Compensation Committee of the Board 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 and any annual bonus, overtime payment or sales commission, excluding any 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 a Subsidiary at least 20 hours per week and is customarily employed for more than five 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 class 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 June 30, 2000, 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.

(m) "OFFERING DATE" means April 1, 2000, 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.

(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 85% of the Fair Market Value per share of Common Stock as of the applicable Offering Date or 85% of the Fair Market Value per share of Common Stock on the applicable Exercise Date.

(q) "PLAN" means the Highwoods Properties, Inc. Year 2000 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, to record the shares of Common Stock credited to each Eligible Employee under the Plan and to record dividends credited to an Eligible Employee for use in the Plan pursuant to Section 12.

(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 April 1, 2000 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 shares of Common Stock, including any fraction of a share (computed to at least three decimal places), that may be purchased with the cash balance of the Eligible Employee's Purchase Account.

(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 14(c), be reduced in proportion to their respective Compensation, and the balance of 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 and, in accordance with Section 12, the reinvestment of dividends paid in a designated Offering Period on shares credited to the Eligible Employee's Purchase Account.

(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, prior to March 31, 2000 or, if later, at least 21 days before the applicable Offering Date, of the percentage (in whole numbers) of Compensation which the Eligible Employee wishes to have withheld ratably from the Eligible Employee's Compensation during the Offering Period, which percentage may not be less than 1%, or more than 25%.

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) or (c), 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. 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. Subsequent cash dividends paid on shares held in the Eligible Employee's Purchase Account will be paid to the Eligible Employee and not retained in such Purchase Account. Such Eligible Employee may again elect to participate in payroll deductions under the Plan on the next Offering Date pursuant to Sections 3 and 4, when, in accordance with Section 12, cash dividends paid on shares held in the Eligible Employee's Purchase Account will again be credited to such Purchase Account for use pursuant to Section 3(a).

(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, including death or permanent disability (as determined by the Company's long term disability plan). In the event that the Option expires because of termination of employment, all funds and shares then on deposit in the Eligible Employee's Purchase Account shall be returned without interest to the Eligible Employee (or his or her estate or the beneficiary designated pursuant to Section 9(b)) and the Eligible Employee's Purchase Account closed.

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

(a) Except as provided in subsection 7(b) or (c), 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, including fractional shares, 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 following any Offering Period, the Administrator shall deliver (or cause to be delivered) to such Eligible Employee: (i) a certificate for up to all of the whole shares purchased under subsection 8(a) and then retained in the Eligible Employee's Purchase Account (as adjusted pursuant to Section 10), and (ii) the cash value of any fraction of a share (based on the Fair Market Value of the common Stock as of the date such request is delivered) remaining in such Purchase Account requested to be withdrawn. Shares to be delivered to an Eligible Employee under the Plan will be registered in the name of the Eligible Employee or, at the election of the Eligible Employee, in the name of the Eligible Employee and his or her spouse as joint tenants with rights of survivorship. Any remaining shares in such Eligible Employee's Purchase Account will continue to be credited to such Eligible Employee's Purchase Account and cash dividends paid thereon will be credited to such Purchase Account without interest in accordance with Section 12.

(c) Subsection 8(b) notwithstanding, an Eligible Employee may not withdraw any share purchased under this Plan until the date that is six months from the Exercise Date on which such share was purchased, except pursuant to subsection 7(c) upon the Eligible Employee's death, permanent disability or other termination of employment.

(d) Subject to Section 12, an Eligible Employee may not make additional cash payments into such Eligible Employee's Purchase Account.

SECTION 9. PROHIBITION OF TRANSFER AND DESIGNATION OF BENEFICIARY.

(a) No Option may be transferred, assigned, pledged, or hypothecated (whether by operation of law or otherwise), 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.

(b) Each Eligible Employee may file a written designation of beneficiary who is to receive any stock or cash held in the Eligible Employee's Purchase Account in the event that such Eligible Employee dies.

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, the Option Price per share of each Option and the number of shares in each Purchase Account 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 Offering 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. DIVIDENDS AND INTEREST.

(a) During any period in which an Eligible Employee is participating in the Plan through payroll deductions, but only during such period, cash dividends paid on shares (including any fraction of a share) held in an Eligible Employee's Purchase Account will be credited to such Eligible Employee's Purchase Account and used in addition to such payroll deductions to purchase shares of Common Stock on the Exercise Date. Adjustments made pursuant to Section 10 will be credited to the Purchase Account of the Eligible Employee. Dividends paid in property other than cash or shares of Common Stock will be

distributed to an Eligible Employee as soon as practicable. No dividends will be earned on a share in an Eligible Employee's Purchase Account until the dividend payment for the first dividend record date that follows the purchase date of such share.

(b) No interest will accrue on or be payable with respect to cash dividends held in an Eligible Employee's Purchase Account.

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 April 1, 2000 and ending on March 31, 2010 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 include a restricted legend 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 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 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 with respect to shares covered by an Option unless and until such Option has been exercised.

(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 personally delivered, or the date that is three business days after it is sent by registered or certified mail, postage prepaid, to the Company's Director of Human Resources, at the Company's 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 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.