CROCS, INC.

FORM S-1
(Securities Registration Statement)

Filed 8/15/2005

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Telephone	303-468-4260
CIK	0001334036
Fiscal Year	12/31

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As filed with the Securities and Exchange Commission on August 15, 2005

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

CROCS, INC.

(Exact name of Registrant as specified in its charter)

Delaware	**3021**	**84-1521507**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

6273 Monarch Park Place
Niwot, Colorado 80503
(303) 468-4260
(Address, including zip code and telephone number, including area code, of Registrant's principal executive offices)

Ronald R. Snyder
President and Chief Executive Officer
Crocs, Inc.
6273 Monarch Park Place
Niwot, Colorado 80503
(303) 468-4260
(Name, address, including zip code and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to public: As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ☐

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box: ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price [(1)(2)]	Amount of Registration Fee
Common Stock, $.001 par value	$145,000,000	$17,066.50

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) of the Securities Act of 1933, as amended.
(2) Includes offering price of shares that the underwriters have the option to purchase to cover over-allotments, if any.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the Securities and Exchange Commission declares our registration statement effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to completion, dated August 15, 2005

Shares

CROCS, INC.

Common Stock

$ per share

- Crocs, Inc. is offering shares and the selling stockholders are offering shares. We will not receive any proceeds from the sale of our shares by the selling stockholders.
- We anticipate that the initial public offering price will be between $ and $ per share.
- This is our initial public offering and no public market currently exists for our shares.
- Reserved trading symbol: Nasdaq National Market—CROX

This investment involves risk. See "Risk Factors" beginning on page 7.

	Per Share	Total
Public offering price	$	$
Underwriting discount	$	$
Proceeds, before expenses, to Crocs, Inc.	$	$
Proceeds to selling stockholders	$	$

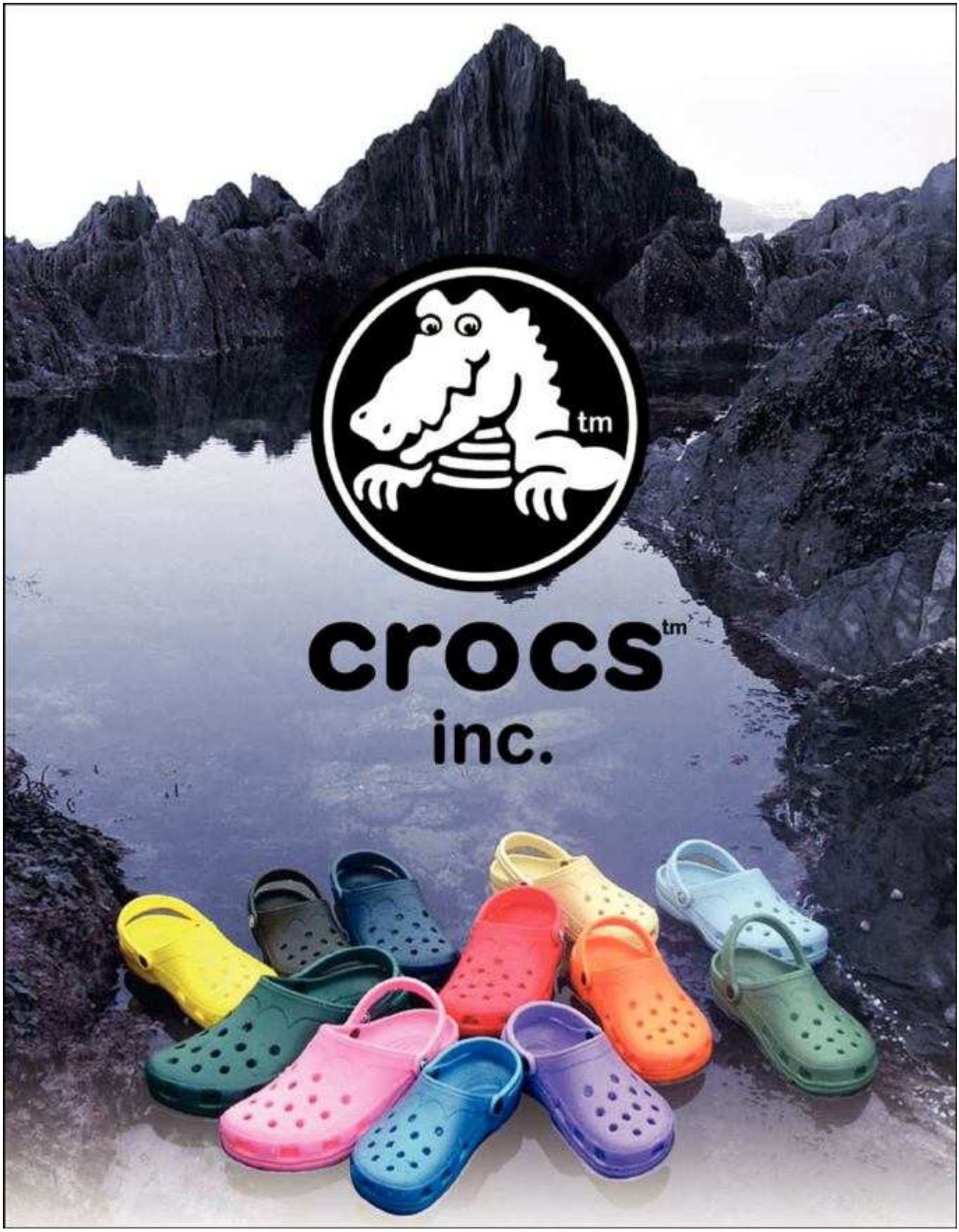
The underwriters have a 30-day option to purchase up to additional shares of common stock from the selling stockholders to cover over-allotments, if any.

Neither the Securities and Exchange Commission nor any state securities commission has approved of anyone's investment in these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Piper Jaffray **Thomas Weisel Partners LLC**

SG Cowen & Co.

The date of this prospectus is , 2005.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You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized any other person to provide you with different information. This prospectus is not an offer to sell, nor is it seeking an offer to buy, these securities in any state where the offer or sale is not permitted. The information in this prospectus is complete and accurate as of the date on the front cover, but the information may have changed since that date.

We have registered the trademark " crocs " in Australia, Japan, New Zealand and Panama. " crocs ," "Foam Creations," our shoe model names and our logos are our common law trademarks in the U.S. and certain other countries. This prospectus also contains trademarks and service marks belonging to other entities.

SUMMARY

You should read the following summary together with the more detailed information concerning our company, the common stock being sold in this offering and our financial statements appearing in this prospectus. Because this is only a summary, you should read the rest of this prospectus before you invest in our common stock. Read this entire prospectus carefully, especially information contained in the "Risk Factors" section. As used in this prospectus, the terms the "Company," "we," "our," or "us" refer to Crocs, Inc., and its consolidated subsidiaries, taken as a whole, unless the context otherwise indicates.

Crocs, Inc.

We are a rapidly growing designer, manufacturer and marketer of footwear for men, women and children under the **crocs** brand. All of our footwear products incorporate our proprietary closed-cell resin material, which we believe represents a substantial innovation in footwear comfort and functionality. Our proprietary closed-cell resin enables us to produce a soft and lightweight, non-marking, slip- and odor-resistant shoe. These unique properties make our footwear ideal for casual wear, as well as for recreational uses such as boating, hiking, fishing or gardening, and have enabled us to successfully market our products to a broad range of consumers. We have combined the unique properties of our resin with fun colors and innovative designs to provide a new level of comfort, functionality and style in the casual lifestyle footwear category at attractive retail price points ranging from $29.99 to $59.99. Since we began marketing our first model in November 2002, we have expanded our product line to include seven models in up to 17 different colors, and we expect to introduce two new models and four additional colors in 2005. We recorded $13.5 million of revenues in 2004, compared to $1.2 million of revenues in 2003, and we recorded $11.0 million of revenues in the three months ended March 31, 2005.

The broad appeal of our footwear has enabled us to successfully market our products to a wide range of distribution channels. Our footwear is currently sold through traditional footwear channels, including specialty footwear stores such as Brown's Shoe Fit and Journeys, sporting goods and outdoor retailers such as The Sports Authority, Dick's Sporting Goods, REI, Bass Pro Shops and West Marine, and department stores, including Dillard's and Nordstrom. Our products are also sold through a variety of other specialty channels, including gift shops, uniform suppliers, independent bicycle dealers, specialty food retailers, health and beauty stores and other specialty stores. We distribute our products through over 4,700 store locations domestically and in over 20 countries worldwide. We also sell our products directly to consumers through our website, www.crocs.com, and through several company-operated kiosks that are located in high foot traffic areas. Our website and kiosks serve to promote our products and increase our brand awareness.

We currently manufacture our footwear products in our own facilities in North America, and in third party manufacturers' facilities located around the world. A core element of our business strategy is to maintain the flexibility to offer our retailers timely inventory fulfillment throughout the year while capitalizing on the efficiencies and cost advantages of large scale contract manufacturing. As part of this strategy, we intend to produce a significant portion of our footwear in our company-operated North American manufacturing facilities, which provide us maximum production flexibility to more quickly meet changing customer demand. In addition, the geographic diversity of our company-operated and third party manufacturing facilities allows us to more efficiently and cost-effectively serve specific geographic markets.

Our Business Strategy

We seek to differentiate the **crocs** brand and our product offerings by focusing on several core strategies. Our principal strategies are to:

- *Continue to highlight the unique characteristics of* **crocs** *footwear.* We believe the comfort, functionality and styling of our footwear are key competitive advantages that consumers associate with the **crocs** brand. The distinct characteristics of our footwear products make them ideal for a wide range of casual and active uses, and we intend to expand the range of uses with the introduction of new models, reinforcing our reputation for producing functional and comfortable footwear.

- *Maintain a flexible, low-cost manufacturing model.* Our strategy is to maintain a flexible, globally diversified, low-cost manufacturing base. Our company-operated manufacturing facilities allow us to make rapid changes in our production schedules to meet changing customer demand, while contracting with third party manufacturers allows us to capitalize on the efficiencies and cost benefits of outsourced production. We believe this production strategy will enable us to continue to minimize our production costs, shorten production and development times to better serve our retail customers and increase overall operating efficiencies.

- *Focus on product design innovation.* We believe we have introduced a range of innovative footwear products that are clearly differentiated from other footwear lines, and we intend to continue refining existing models and introducing new models in additional footwear categories to expand our product portfolio and broaden our consumer appeal.

- *Enhance our* **crocs** *brand.* A core element of our strategy is to build our brand by capitalizing on market opportunities arising from the unique versatility of our proprietary closed-cell resin, while offering our existing consumer base an expanded line of **crocs** products. We also intend to employ targeted marketing strategies to continue to expand market awareness of our **crocs** products, and we have recently introduced a line of branded apparel and accessories to further support our marketing efforts.

- *Provide a compelling value proposition to retailers.* We offer retailers footwear products that we believe have year-round appeal, are unique in appearance and functionality and retail at attractive price points. We believe these factors, combined with our space-efficient merchandising display and year-round inventory replenishment, present our retail customers with attractive profit margins and sales per square foot while improving inventory turnover.

Our Growth Strategy

We seek to increase our market share and drive further growth in our business by pursuing the following strategies:

- *Introduce new footwear models* . We plan to continue introducing new models and additional colors at various price points to meet the evolving demands and tastes of consumers and to expand the appeal of our footwear products to diverse demographic audiences.

- *Expand domestic distribution* . We believe there is a significant opportunity to add new customers within our retail channels as well as expand sales to our existing retail

customers. To promote these efforts, we intend to continue to augment our domestic sales force, expand our product offering and provide high quality service to our customers.

- *Further develop international distribution* . We are expanding our distribution efforts internationally and plan to continue establishing a sales presence in major foreign markets. We have recently initiated direct sales efforts in 12 countries, including Australia, the United Kingdom, Germany, and Japan and other parts of Asia. We also market our products in 12 countries through third party distributors.

- *Expand complementary apparel and accessories offerings.* Apparel and accessories present us with an attractive opportunity to increase awareness of the **crocs** brand by leveraging our distribution network. We recently introduced a line of branded accessories and apparel.

Our History

We were organized as a limited liability company in 1999, and began marketing and distributing footwear products in the U.S. under the **crocs** brand in November 2002, shortly after completing the modification and improvement of a shoe produced by Foam Creations, Inc., formerly known as Finproject N.A., Inc. The unique characteristics of the proprietary closed-cell resin developed by Foam Creations enabled us to offer consumers an innovative shoe unlike any other footwear model then available. Initially we targeted our products to water sports enthusiasts, but the comfort and functionality of our products appealed to a more diverse group of consumers who used our footwear in a wide range of activities. To capitalize on the broad appeal of our footwear, we expanded our sales infrastructure, strengthened our senior management team and developed relationships with a range of retailers in the U.S through 2003 and 2004. In June 2004, we acquired Foam Creations, including its manufacturing operations, product lines and rights to the proprietary closed-cell resin used in our products.

Since June 2004, we have significantly expanded all aspects of our operations in order to take advantage of what we believe to be an attractive market opportunity. We have substantially increased the depth and breadth of our distribution and currently sell our products in over 4,700 domestic store locations and in over 20 countries worldwide. To meet the growing demand for our footwear, we have increased our production capacity from 70,000 pairs per month in June 2004, manufactured at a single Foam Creations facility, to over 1.2 million pairs per month in July 2005, manufactured at six facilities located around the world. Additionally, we have expanded our product line to include seven models in up to 17 different colors, and we expect to introduce two new models and four additional colors during the remainder of 2005.

Recent Developments

For the three months ended June 30, 2005, our preliminary unaudited results of operations indicate revenues of approximately $25 million, and sales of approximately 1.5 million pairs of **crocs** footwear.

Corporate Information

We were organized as a limited liability company in Colorado in 1999, converted to a Colorado corporation in January 2005, and reincorporated in Delaware in June 2005. Our principal executive offices are located at 6273 Monarch Park Place, Niwot, Colorado 80503. Our telephone number at that location is (303) 468-4260. Our website address is www.crocs.com. This is a textual reference only. We do not incorporate the information on our website into this prospectus and you should not consider any information on, or that can be accessed through, our website as part of this prospectus.

The Offering

Common stock offered:	
By Crocs, Inc.	shares
By the selling stockholders	shares
Total	shares
Common stock to be outstanding after the offering	shares
Offering price	$ per share
Use of proceeds	We intend to use the proceeds we receive from this offering to repay amounts outstanding under our bank credit facility ($5.0 million as of June 30, 2005) and for working capital and general corporate purposes. We will not receive any proceeds from the sale of common stock by the selling stockholders. See "Use of Proceeds."
Reserved Nasdaq National Market symbol	CROX

The information in this prospectus is based on the number of shares outstanding as of July 31, 2005 and unless otherwise indicated:

- gives effect to:
  - (1) the conversion of all of our outstanding shares of preferred stock into shares of common stock;
  - (2) a -for-one stock split in the form of a stock dividend, which will occur immediately prior to the completion of this offering; and
  - (3) the adoption and filing of our restated certificate of incorporation and adoption of our amended and restated bylaws.
- does not give effect to:
  - (1) 2,605 shares of common stock issuable upon exercise of options outstanding under our 2005 Equity Incentive Plan, at a weighted average exercise price of $790.00 per share, none of which were exercisable as of July 31, 2005;
  - (2) 5,500 shares of common stock issuable upon exercise of options outstanding outside of our 2005 Equity Incentive Plan, at a weighted average exercise price of $281.48 per share, none of which were exercisable as of July 31, 2005;
  - (3) 20,663 shares of common stock reserved for future issuance under our 2005 Equity Incentive Plan, of which options to purchase shares of common stock are proposed to be issued in connection with the completion of this offering at an exercise price equal to the price per share of our common stock sold in this offering, and of which 5,519 shares have been reserved for issuance to employees and consultants in the future under restricted stock award agreements; and
  - (4) exercise of the underwriters' over-allotment option to purchase up to shares of common stock from the selling stockholders.

Summary Consolidated Financial and Operating Data

The summary financial data presented below under the heading "Consolidated Statement of Operations Data" for the years ended December 31, 2002, 2003 and 2004 and the summary financial data presented below under the heading "Consolidated Balance Sheet Data" as of December 31, 2003 and 2004 have been derived from, and are qualified by reference to, the consolidated financial statements included elsewhere in this prospectus. The summary financial data presented below under the headings "Consolidated Statement of Operations Data" and "Consolidated Balance Sheet Data" for the three months ended and as of March 31, 2004 and 2005 are unaudited, have been derived from unaudited consolidated financial statements that are included elsewhere in this prospectus and have been prepared on the same basis as the annual consolidated financial statements. The summary financial data presented below as of and for the year ended December 31, 2002 are derived from our unaudited financial statements. The summary financial data presented below also includes unaudited pro forma financial information under the heading "Pro Forma for acquisition of Foam Creations Year Ended December 31, 2004" to reflect the acquisition of Foam Creations as if it had occurred on January 1, 2004. Such unaudited pro forma financial information does not necessarily reflect the results of operations that may have actually resulted had the acquisition occurred on January 1, 2004, and should not be taken as necessarily indicative of our future results of operations. The unaudited pro forma financial information has been derived from, and is qualified by reference to, the "Unaudited Pro Forma Condensed Combined Consolidated Statement of Operations" included in this prospectus. In the opinion of management, the unaudited summary financial data presented below under the headings "Consolidated Statement of Operations Data" and "Consolidated Balance Sheet Data" reflect all adjustments, which include only normal and recurring adjustments, necessary to present fairly our results of operations for and as of the periods presented. Historical results are not necessarily indicative of the results of operations to be expected for future periods. You should read the summary consolidated financial data in conjunction with "Management's Discussion and Analysis of Financial Conditions and Results of Operations" and with our consolidated financial statements and related notes included in this prospectus.

	Year Ended December 31,			Pro Forma for acquisition of Foam Creations Year Ended	Three Months Ended March 31,	
	2002 [1]	2003	2004	December 31, 2004 [2]	2004	2005 [5]
	(in thousands, except per share and operating data)					
Consolidated Statement of Operations Data						
Revenues	$ 24	$ 1,165	$ 13,520	$ 16,921	$ 973	$ 10,95
Cost of sales	16	891	7,162	8,529	694	4,11
Gross profit	8	274	6,358	8,392	279	6,83
Selling, general and administrative expense (including stock-based compensation expense of $240, $356, $1,792, $1,792, $793 and $699, respectively)	453	1,471	7,929	9,325	1,272	4,09
Income (loss) from operations	(445)	(1,197)	(1,571)	(933)	(993)	2,74
Interest expense	—	3	47	101	1	3
Other expense—net	—	—	19	19	—	1
Income (loss) before income taxes	(445)	(1,200)	(1,637)	(1,053)	(994)	2,68
Income tax expense (benefit)	—	—	(143)	31	—	29
Net income (loss)	(445)	(1,200)	(1,494)	(1,084)	(994)	2,39
Dividends on redeemable convertible preferred shares [3]	—	—	142	275	—	6
Net income (loss) attributable to common stockholders	$ (445)	$ (1,200)	$ (1,636)	$ (1,359)	$ (994)	$ 2,32
Income (loss) per common share:						
Basic	$ (12.54)	$ (13.44)	$ (15.51)	$ (12.88)	$ (9.71)	$ 21.6
Diluted	$ (12.54)	$ (13.44)	$ (15.51)	$ (12.88)	$ (9.71)	$ 15.9
Weighted average common shares:						
Basic	35,479	89,271	105,479	105,479	102,378	107,76
Diluted	35,479	89,271	105,479	105,479	102,378	150,02
Pro forma income per common share [4]						
Basic						$ 16.6
Diluted						$ 15.5
Pro forma weighted average shares outstanding [4]						
Basic						139,66
Diluted						150,02
Operating Data						
Pairs of **crocs** footwear sold	1,500	76,000	649,000		58,000	641,00

	As of December 31,			As of March 31,	
	2002 [1]	2003	2004	2004	2005
	(in thousands)				
Consolidated Balance Sheet Data					
Cash and cash equivalents	$ 73	$ 326	$ 1,054	$ 54	$ 1,751
Total assets	454	1,304	16,224	1,487	23,704
Long-term obligations	—	400	3,660	400	3,789
Redeemable common shares	—	1,800	1,800	1,800	1,800
Redeemable convertible preferred shares	—	—	5,500	—	5,500
Total stockholders' deficit	389	(1,642)	(3,591)	(1,488)	(555)

(1) We were founded in 1999 but did not commence operations until 2002, when we began selling footwear in the United States. As a result, there were no material operations prior to 2002.

(2) Pro forma to reflect our acquisition of Foam Creations as if it had occurred on January 1, 2004.

(3) Dividends accrued in 2004 were paid to holders of our Class C convertible preferred membership units. Our Class C membership units were converted into shares of our Series A preferred stock in connection with our conversion from a limited liability company to a corporation on January 4, 2005.

(4) Unaudited pro forma income per common share for the three months ended March 31, 2005 reflects the conversion of shares of our Series A preferred stock to shares of common stock upon completion of this offering.

(5) On January 4, 2005, the Company converted from a limited liability company to a taxable corporation. For the tax years beginning on January 1, 2005 and afterward, we will be subject to corporate-level U.S. federal and state income taxes. Additionally, the statement of operations for the three months ended March 31, 2005 reflects a one-time income tax benefit of $723,000 to record the net deferred tax assets at the date of conversion.

RISK FACTORS

An investment in our common stock involves a high degree of risk. You should carefully consider the risks described below, together with all of the other information included in this prospectus, before making an investment decision. If any of the following risks actually occurs, our business, financial condition or results of operations could suffer. In that case, the trading price of our common stock could decline, and you may lose all or part of your investment.

Risks Related to Crocs, Inc.

We have a limited operating history, which makes it difficult to evaluate our business and prospects.

We commenced sales of our **crocs** footwear, which currently constitutes a substantial majority of our sales, in 2002. As an early stage company with a limited operating history, our business is subject to all of the risks inherent in a new business enterprise, including:

- products without a significant history in the market;
- reliance on a small number of products;
- limited manufacturing experience;
- lack of established distribution channels;
- a small and relatively new management team and an evolving organizational infrastructure; and
- weaknesses in newly implemented or limited management information systems and weaknesses in internal controls over financial reporting.

Furthermore, our limited operating history will make it difficult for you to evaluate our business and prospects, and this difficulty is increased because our recent rapid growth has made our current operations and our expected future operations substantially different from our past operating history.

We have significantly expanded the nature and scope of our operations over the past two years, and if we fail to manage any future growth effectively we may experience greater difficulty in filling customer orders, declines in product quality, increases in costs or other operating difficulties.

We have significantly expanded the nature and scope of our operations over the past two years, and we anticipate that substantial further expansion will be required to address potential growth in our customer base and new market opportunities. Prior to June 2004, we distributed in the U.S. under our **crocs** brand a limited range of footwear products manufactured and sold to us by Foam Creations. In June 2004, we acquired Foam Creations. Since that acquisition, we have expanded our product line to include seven footwear models, and in addition, over the last two years, we expanded from:

- eight employees at March 31, 2003, to 260 employees at March 31, 2005; and
- 53,000 pairs of shoes manufactured for us by Foam Creations in the three months ended March 31, 2003, to 1.6 million pairs of shoes manufactured by us and our third party manufacturers in the three months ended March 31, 2005.

The expansion of the scope and nature of our business and the growth in the number of employees, customers and other third parties with whom we have relationships has placed and will continue to

place a significant strain on our management and our information systems and resources. To manage growth in our operations, we will need to increase the number of people we employ, upgrade or replace our existing financial and reporting systems as well as improve our business processes and controls. Failure to effectively manage growth could result in greater difficulty in completely filling customer orders, declines in product quality or increases in costs or other production and distribution difficulties, any of which could adversely impact our business performance and operating results.

The popularity of our* crocs *footwear may not continue to grow as rapidly as it has in the recent past or may decline, which would have a negative impact on our sales and results of operations.

Our recent growth is substantially attributable to sales of **crocs** footwear, which represented approximately 88% of our revenues in the three months ended March 31, 2005. We expect that footwear will constitute our principal product line for the foreseeable future. The footwear industry is subject to rapidly changing consumer demands and preferences and fashion trends, and our **crocs** footwear may not remain popular or we may fail to develop additional models that appeal to consumers. If the popularity of our **crocs** footwear declines or does not expand in the future, we may experience, among other things:

- lower sales;
- loss of retail customers;
- excess inventories;
- inventory markdowns and discounts provided to retailers;
- deterioration of our brand image; and
- lower gross and operating margins.

Given the limited history of our **crocs** brand, it is especially difficult to evaluate whether our products will hold long-term consumer appeal.

We are dependent on sales of a small number of products and the absence of continued market demand for these products would have a significant adverse effect on our operating results.

We generated approximately 88% of our revenues for the three months ended March 31, 2005 from sales of our **crocs** footwear, which currently consists of seven models, plus a children's version of one of our models. Sales of our Beach model accounted for approximately 82% of our footwear revenues in the three months ended March 31, 2005. Most of our **crocs** footwear models are developed from the same base design as our Beach model, and we expect to continue to derive a substantial portion of our revenues from these models or related products in the foreseeable future. Because we are dependent on a line of footwear models that have substantial similarities, factors such as changes in consumer preferences and general market conditions in the footwear industry may have a disproportionately greater impact on us than on our competitors. In addition, other footwear companies have introduced products that are substantially similar to our footwear models, which may reduce sales of our footwear products. In the event that consumer preferences evolve away from our footwear models or from casual lifestyle footwear in general, or our retail customers purchase similar products sold by our competitors, the resulting loss of sales, increase in inventories and discounting of our products are likely to be significant, and this could have a material and adverse impact on our business and operations.

Expanding our* crocs *footwear product line may be difficult and expensive, and if we are unable to successfully continue such expansion, our brand may be adversely affected, and we may not achieve our planned sales growth.

Our growth strategy is founded primarily on the continued growth in sales of **crocs** footwear, and we intend to continue to expand the number of models offered in our **crocs** footwear product line to broaden the appeal of our products to consumers. To successfully expand our footwear product line, we must anticipate, understand and react to the rapidly changing tastes of footwear consumers and provide appealing merchandise in a timely manner. New footwear models that we introduce may not be successful with consumers or our brand may fall out of favor with consumers. If we are unable to anticipate, identify or react appropriately to changes in consumer preferences, we may not grow as fast as we plan or our sales may decline, and our brand image and operating performance may suffer.

Furthermore, achieving market acceptance for new products will likely require us to exert substantial product development and marketing efforts, which could result in a material increase in our selling, general and administrative expense, and there can be no assurance that we will have the resources necessary to undertake such efforts. Material increases in our selling, general and administrative expense could adversely impact our results of operations.

We may also encounter difficulties in producing new **crocs** footwear models that we did not anticipate during the development stage. Our development schedules for new products are difficult to predict and are subject to change as a result of shifting priorities in response to consumer preferences and competing footwear products. If we are not able to efficiently manufacture newly-developed products in quantities sufficient to support retail distribution, we may not be able to recoup our investment in the development of new models, and we would continue to be subject to the risks inherent in having a limited product line. Even if we develop and manufacture new footwear products that consumers find appealing, the ultimate success of a new model may depend on our product pricing. We have a limited history of introducing new products, and we may set the prices of new models too high for the market to bear. Failure to gain market acceptance for new footwear products that we introduce could impede our growth, reduce our profits, adversely affect the image of our brands, erode our competitive position and result in long term harm to our business.

Due to limited manufacturing capacity and high demand for our products, we have typically only partially filled orders placed by our customers, which limits sales of our products and may result in a decrease in sales and a deterioration in our customer relationships.

Due to our limited manufacturing capacity and the inability of our third party manufacturers to produce quantities of our products sufficient to meet the rapid growth in demand we have experienced over the past year, we have typically only partially filled orders placed by our customers. If we cannot procure sufficient quantities of our products to meet customer demand in a timely manner, customers may cancel orders, refuse shipments, negotiate for reduced purchase prices or purchase our competitors' products, any of which could have a material adverse effect on our customer relationships and operating results. In addition, difficulties in filling customer orders could adversely impact future order volume and our customers may purchase similar products from our competitors.

The audit of our financial statements for each of the years ended December 31, 2002, 2003 and 2004, identified material weaknesses in our internal control over financial reporting, and if not corrected, these material weaknesses could result in a material misstatement of our results of operations or financial condition, which could harm our business and reputation and cause the price of our common stock to decline.

In connection with the audit of our financial statements for each of the years ended December 31, 2002, 2003 and 2004, our independent registered public accounting firm identified material weaknesses in our internal control over financial reporting with respect to:

- our financial closing and reporting process;
- our inventory costing and tracking methodology;
- our documentation supporting our accounting records; and
- our contemporaneous documentation of significant, non-routine transactions.

A material weakness is a reportable condition in which the design or operation of one or more accounting controls and procedures does not reduce to a relatively low likelihood the risk that a material misstatement of the annual or interim financial statements will not be prevented or detected within a timely period by employees in the normal course of performing their assigned functions.

The material weakness in our financial closing and reporting process resulted from a combination of the following factors:

- our failure to accurately account for complex transactions;
- our failure to monitor and apply new and emerging accounting principles generally accepted in the U.S., or GAAP;
- our lack of formal processes related to the consolidation of financial information and the financial statement preparation process; and
- our failure to reconcile our accounts in a timely and accurate manner.

The material weakness in our inventory tracking and costing methodology related to the method by which we had accounted for certain inventory related costs in each of 2002, 2003 and 2004. In these years, we did not appropriately capitalize these costs in inventory which resulted in adjustments to our financial statements. In addition, we also did not have a formal process for tracking our inventory.

The material weakness with respect to our accounting records related to our lack of supporting documentation that should have been readily available to evidence routine transactions, principally in 2002 and 2003.

The material weakness in the documentation of significant and non-routine transactions related specifically to a lack of contemporaneous documentation for certain of our equity compensation arrangements in 2002 through 2004 and our acquisition of Foam Creations in 2004.

We are in the process of addressing each of these material weaknesses. However, because these material weaknesses exist, there is a heightened risk that a material misstatement of our annual or

interim financial statements will not be prevented or detected. In addition, the remediation steps we have taken, are taking, or plan to take may not effectively remediate the material weaknesses, in which case our accounting controls and procedures in these particular areas will continue to be ineffective. Furthermore, once we become a public company, we will be required to comply with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 for the year ended December 31, 2006 and subsequent periods. See "—We will incur significant time and expense in documenting, testing and certifying our internal control over financial reporting, and any deficiencies in our internal controls could adversely affect our business." In the event that we do not adequately remedy these material weaknesses, our business, reputation and financial condition may be adversely affected, there may be a negative reaction in the financial markets due to a loss of confidence in the reliability of our financial statements, which could cause the price of our common stock to decline.

We will incur significant time and expense in documenting, testing and certifying our internal control over financial reporting, and any deficiencies in our internal controls could adversely affect our business.

SEC rules require that, as a publicly-traded company following completion of this offering, our chief executive officer and chief financial officer periodically certify the existence and effectiveness of our internal control over financial reporting. Our independent auditors will then be required, beginning with our Annual Report on Form 10-K for our fiscal year ending on December 31, 2006, to attest to our officers' assessment of our internal controls. This process generally requires significant documentation of policies, procedures and systems, review of that documentation by our internal accounting staff and our outside auditors, and testing of our internal control over financial reporting by our internal accounting staff and our outside auditors. Documentation and testing of our internal controls, which we have not undertaken in the past, will involve considerable time and expense, and may strain our internal resources and have an adverse impact on our costs.

During the course of our testing, we may identify deficiencies which we may not be able to remediate in time to meet the deadline imposed by SEC rules for certification of our internal control over financial reporting. As a consequence, we may have to disclose in periodic reports we file with the SEC any significant deficiencies or material weaknesses in our system of internal controls. For example, the audit of our financial statements for the years ended December 31, 2002, 2003 and 2004 identified material weaknesses in our internal control over financial reporting. The existence of such material weaknesses would preclude management from concluding that our internal control over financial reporting is effective and would preclude our independent auditors from issuing an unqualified opinion that internal controls are effective. In addition, disclosures of this type in our SEC reports could cause investors to lose confidence in our financial reporting and may negatively affect the price of our common stock. Moreover, effective internal controls are necessary to produce reliable financial reports and to prevent fraud. If we have deficiencies in our internal control over financial reporting it may negatively impact our business, results of operations and reputation.

Our current management information systems are insufficient for our business, and planned system improvements may not be successfully implemented on a timely basis or be sufficient for our growing business.

We do not have an integrated management information system. For certain business planning, finance and accounting functions, we rely on manual processes that are difficult to control and are subject to human error. We expect to use approximately $2.0 million of the net proceeds from this offering to upgrade our financial reporting systems and to implement new information technology systems to better track our business, streamline our financial reporting, and improve our internal controls. We may experience difficulties in transitioning to new or upgraded systems, including loss of data and decreases in productivity as our personnel become familiar with new systems. In addition, our management information systems will require modification and refinement as we grow and our business needs change, which could prolong difficulties we experience with systems transitions, and we may not always

employ the most effective systems for our purposes. If we experience difficulties in implementing new or upgraded information systems or experience significant system failures, or if we are unable to successfully modify our management information systems to respond to changes in our business needs, our ability to properly run our business could be adversely affected.

Because we depend on third party manufacturers, we face challenges in maintaining a sufficient supply of goods to meet sales demand, and we may experience interruptions in our supply chain. Any shortfall in the supply of our products may decrease our sales and have an adverse impact on our customer relationships.

In the three months ended March 31, 2005, third party manufacturers produced approximately 64% of our footwear products as measured by number of units, and one such manufacturer produced approximately 51% of our footwear products. Currently, we have footwear manufacturing arrangements with third party manufacturers located in China, Florida, Italy and Mexico. We depend on these manufacturers' ability to finance the production of goods ordered and to maintain adequate manufacturing capacity. We do not exert direct control over the third party manufacturers, so we may be unable to obtain timely delivery of acceptable products.

Due to the rapid growth in popularity of our **crocs** footwear, one or more of our third party manufacturers may not have sufficient capacity to enable it to increase production to meet demand for our products. Moreover, some of our third party manufacturers have manufacturing engagements with companies that are much larger than we are and whose production needs are much greater than ours. As a result, one or more manufacturers may choose to devote additional resources to the production of products other than ours if capacity is limited.

In addition, we do not have long-term contracts with most of these third party manufacturers, and any of them may unilaterally terminate their relationship with us at any time or seek to increase the prices they charge us. As a result, we are not assured of an uninterrupted supply of products of an acceptable quality and price from our third party manufacturers. We may not be able to offset any interruption or decrease in supply of our products by increasing production in our company-operated manufacturing facilities due to capacity constraints, and we may not be able to substitute suitable alternative third party manufacturers in a timely manner or at acceptable prices. Any disruption in the supply of products from our third party manufacturers may harm our business and could result in a loss of sales and an increase in production costs, which would adversely affect our results of operations.

Our business could suffer if our third party manufacturers violate labor laws or fail to conform to generally accepted ethical standards.

We generally require our third party manufacturers to meet our standards for working conditions and other matters before we are willing to place business with them. As a result, we may not always obtain the lowest cost production. Moreover, we do not control our third party manufacturers or their respective labor practices. If one of our third party manufacturers violates generally accepted labor standards by, for example, using forced or indentured labor or child labor, failing to pay compensation in accordance with local law, failing to operate its factories in compliance with local safety regulations, or diverging from other labor practices generally accepted as ethical, we likely would cease dealing with that manufacturer, and we could suffer an interruption in our product supply. In addition, such a manufacturer's actions could result in negative publicity and may damage our reputation and the value of our brand and discourage retail customers and consumers from buying our products.

We manufacture a portion of our* crocs *products, and any difficulties or disruptions in our manufacturing operations could adversely affect our sales and results of operations.

We produce some of our products at our company-operated manufacturing facilities in Canada and Mexico. In the three months ended March 31, 2005, we produced approximately 36% of our **crocs** footwear production at our Canadian facility, and we recently commenced production at our company-operated facility in Mexico. The manufacturing of our products from our proprietary closed-cell resin requires the use of a complex process, and we may experience difficulty in producing footwear that meets our high quality control standards. We will be required to absorb the costs of manufacturing and disposing of products that do not meet our quality standards. These costs are primarily incurred in connection with the initial production of new products, although we may also experience increases in training costs when we initiate production of new products. Additionally, we may incur increased costs as a result of the introduction of new manufacturing equipment such as molds and injection molding machines. Any increases in our manufacturing costs could adversely impact our margins. Furthermore, our manufacturing capabilities are subject to many of the same risks and challenges noted above with respect to our third party manufacturers, including our ability to scale our production capabilities to meet the needs of our customers, and our manufacturing may be disrupted for reasons beyond our control, including work stoppages, fires, earthquakes, floods or other natural disasters. Any disruption to our manufacturing operations will hinder our ability to deliver products to our customers in a timely manner, and could have a material and adverse effect on our business.

We established our own manufacturing facility in Mexico by acquiring the assets of an existing footwear manufacturer in April 2005, and we have leased adjacent facilities and ordered additional equipment to increase production capacity at this facility. Prior to April 2005, we had never independently established our own manufacturing facility, and this newly-established facility may not be as efficient or as productive as our other company-operated or third party manufacturing operations. Moreover, the expansion of our company-operated manufacturing capabilities will increase our fixed cost base, and could adversely impact our margins and results of operations in the event our sales decline or do not continue to grow.

We depend on a limited number of suppliers for key production materials, and any disruption in the supply of such materials could interrupt product manufacturing and increase product costs.

We depend on a limited number of sources for the materials used to make our **crocs** footwear. We source the elastomer resins that constitute the primary raw materials used in our proprietary closed-cell resin that we use to produce our footwear products from one supplier. We do not have any formal purchase agreement with the provider of the elastomer resins, and we purchase these elastomer resins on a purchase order basis. If the supplier we rely on for elastomer resins were to cease production of these materials, we may not be able to obtain suitable substitute materials in time to avoid interruption of our production cycle, if at all. We may also have to pay materially higher prices in the future for the elastomer resins or any substitute materials we use, which would increase our production costs and could have a materially adverse impact on our margins and results of operations.

Additionally, a single third party processor in Italy compounded all of the proprietary closed-cell resin we used in producing **crocs** footwear in 2004, and we expect that this third party processor will continue to provide at least a majority of our requirements for the foreseeable future. Although we have arranged for another third party processor to compound our resin and we expect to begin compounding our own proprietary closed-cell resin in 2005, the compounding process is complex and difficult to perfect on a large scale, and neither we nor our new third party processor may be able to compound meaningful quantities of our proprietary closed-cell resin in the near future.

If we are unable to obtain suitable elastomer resins or if we are unable to procure sufficient quantities of our proprietary closed-cell resin, we may not be able to meet our production requirements in a timely manner. Such failure could result in lost potential sales, delays in shipments to customers, strained relationships with customers and diminished brand loyalty.

If we are unable to assimilate our new managers and recruit and retain key personnel necessary to operate our business, our ability to successfully develop and market our products may be harmed.

Several of our executive officers have recently joined us and therefore have limited experience in managing our company. For example, we hired Ronald Snyder, our President and Chief Executive Officer, in June 2004, and Caryn Ellison, our Chief Financial Officer, in November 2004. We may experience difficulty assimilating our recently hired managers, which may adversely impact our business.

To expand our business we will also need to attract, retain and motivate highly skilled design, development, management, accounting, sales, merchandising, marketing and customer service personnel. We plan to hire additional personnel in all areas of our business. Competition for many of these types of personnel is intense. As a result, we may be unable to successfully attract or retain qualified personnel. Additionally, any of our officers or employees can terminate their employment with us at any time, and we do not maintain key person life insurance on any of our employees, including any member of our management team. The loss of any key employee or our inability to attract or retain other qualified employees could harm our business and results of operations.

We rely on a single third party for a significant portion of our warehouse, distribution and fulfillment operations. If this party is unwilling or unable to continue providing services to us, our business could be materially harmed.

We have recently engaged Expeditors International of Washington, Inc. to operate our warehouse, distribution and fulfillment process for a significant portion of our domestic sales. We are dependent on Expeditors to manage inventory, process orders and distribute products to our customers in a timely manner. We do not have a long-term contract with Expeditors and they may unilaterally terminate their relationship with us at any time or seek to increase the prices they charge us. Any disruption in our relationship with Expeditors could cause significant delays in the fulfillment of our customers' orders, and we may not be able to locate another distributor that can provide comparable warehouse, distribution and fulfillment services in a timely manner or on acceptable commercial terms. Additionally, any serious disruption to the services provided to us by Expeditors could harm our ability to supply products to our customers, including:

- damage or destruction to Expeditors's warehouse and distribution center used for our products due to fire, earthquake or any other natural disaster;
- work stoppages, disputes or difficulties between Expeditors and its employees;
- malfunctions in Expeditors's information systems; or
- disruptions in Expeditors's shipping channels.

In the event that the distribution of our products by Expeditors is interrupted for any reason, our business may be materially and adversely affected.

We are in the process of establishing our own warehouse, distribution and fulfillment capabilities, and are also developing relationships with additional third parties to conduct similar services for us. Any additional expenses incurred in connection with, or any disruption in the supply of our products that is caused by, such changes in our logistical infrastructure could adversely affect our business.

We have recently established a company-operated warehouse and order processing and customer order facility in Niwot, Colorado that manages all Internet, apparel and accessories orders and shipments. We have established or are in the process of establishing additional company-operated warehouse and fulfillment operations in Mexico, China, Canada, the Netherlands, and Singapore, and are developing relationships with third parties in Australia, China and Mexico to provide such services to us. We believe these warehousing, distribution and fulfillment services will enable us to ship our products from the facilities that manufacture our products directly to our customers, rather than remaining dependent on Expeditors's distribution facility in Colorado. The transition from Expeditors to another vendor or to a company-operated warehousing, distribution and fulfillment operation could result in significant delays and disruptions in the supply of our products and could require that we make significant additional expenditures that may adversely impact our operating results.

Moreover, until recently we had never engaged in the warehousing of our products or provided order fulfillment for our retail customers or consumers. As such, we cannot ensure that we will be able to successfully conduct these activities, or that other third parties will be able to conduct these activities for us in a satisfactory manner. Additionally, these warehouse, distribution and fulfillment operations subject us to many of the same risks that our current relationship with Expeditors does, as noted above. In the event that we or a third party are unable to conduct warehousing, distribution and fulfillment activities in a cost effective, timely, and accurate manner, the distribution of our products may be adversely affected, which could result in harm to our relationships with our retail customers and consumers, a reduction in demand for our products, and additional expenses to us.

We face significant competition and if we are unable to compete effectively, sales of our products may decline and our business could be harmed.

The footwear industry is highly competitive. Recent growth in the market for casual footwear has encouraged the entry of new competitors into the marketplace and has increased competition from established companies. Some of our competitors are offering products that are substantially similar, in design and materials, to our **crocs** -branded footwear. Most of the raw materials required to make our proprietary closed-cell resin are readily available for purchase. In addition, access to offshore manufacturing is also making it easier for new companies to enter the markets in which we compete.

Our competitors include most major athletic and footwear companies, branded apparel companies and retailers with their own private labels. A number of our competitors:

- have significantly greater financial resources than we have;
- have more comprehensive product lines than ours;
- have broader market presence than we have in, or have their own, retail outlets;
- have longer-standing relationships with retailers than we have;
- have a longer operating history than ours;
- have greater distribution capabilities than we have;

- have stronger brand recognition than we have; and
- spend substantially more on product advertising and sales than we do.

Our competitors' greater capabilities in these areas may enable them to better withstand periodic downturns in the footwear industry, compete more effectively on the basis of price and production and more quickly develop new products. If we fail to compete successfully in the future, our sales and profits may decline, our financial condition may deteriorate and the market price of our common stock is likely to fall.

If we are unable to establish and protect our trademarks and other intellectual property rights, competitors may sell products that are substantially similar to our* crocs *footwear, or may produce counterfeit versions of our products, and such competing or counterfeit products could divert sales and may damage our brand image.

We believe our trademarks, trade names, copyrights, trade secrets, pending patents, trade dress and designs are valuable and integral to our success and competitive position. Given the increased popularity of our **crocs** brand, we believe there is a high likelihood that counterfeit products or other products infringing on our intellectual property rights will emerge, seeking to benefit from the consumer demand for **crocs** footwear. From time to time, we have identified competitors selling products that are very similar in design to certain of our **crocs** footwear models, and that are manufactured from what may be comparable materials to our products. In order to protect our brand, we may be required to spend significant resources to monitor and police our intellectual property rights. We may not be able to detect infringement and may lose our competitive position in the market before we are able to do so. In addition, enforcing rights to our intellectual property may be difficult and expensive, and we may not be successful in combating counterfeit products and stopping infringement of our intellectual property rights, particularly in some foreign countries, which could make it easier for competitors to capture market share. Intellectual property rights may also be unavailable or limited in some foreign countries. Furthermore, our efforts to enforce our trademark and other intellectual property rights may be met with defenses, counterclaims and countersuits attacking the validity and enforceability of our trademark and other intellectual property rights. If we are unsuccessful in protecting and enforcing our intellectual property rights, continued sales of such competing products by third parties could harm our brand and adversely impact our business, financial condition and results of operations.

We have registered **crocs** as a trademark in Australia, Japan, New Zealand and Panama. We have also applied to register **crocs** as a trademark in the U.S., Brazil, China, the European Union, Israel, Mexico and South Africa, but such applications have not been approved. In many of the countries in which we are doing or intend to do business, however, we have not yet applied to register as trademarks **crocs** , our company logos, the individual brand names for our products or our marketing slogans. In addition, we have not extended the scope of all of our trademark registrations and applications to cover non-footwear products. Furthermore, we may not obtain trademark registrations in connection with any applications that we do file and trademark protection, whether registered or common law, may not be available in every country in which we offer or intend to offer our products. Failure to adequately protect our trademark rights could damage or even destroy our **crocs** brand, expose us to trademark liability and impair our ability to compete effectively. In addition, defending or enforcing our trademark rights could result in the expenditure of significant financial and managerial resources.

We believe our success also depends in part on our ability to obtain and enforce patent protection for our products, both in the U.S. and other countries, to prevent our competitors from developing, manufacturing and marketing similar products. Currently, we have only been issued four Community

Design Registrations and one Community Multiple Design Registration in the European Union, but have not been issued any utility patents or design patents in the U.S. or any other countries. We do not know whether any of our pending or future patent applications will result in the issuance of patents, and competitors may challenge the validity or scope of these patent applications. The scope and extent of patent protection for our products is uncertain and we cannot predict the breadth of claims that will be allowed and issued in patents. If such patents are issued, we cannot predict how the claims will be construed or enforced, and such patents may not provide us with any competitive advantages, or may be challenged by third parties.

We also rely upon trade secrets, confidential information and other unpatented proprietary information, related to, among other things, the formulation of our proprietary closed-cell resin and product development, especially where we do not believe patent protection is appropriate or obtainable. Using third party manufacturers may increase risk of misappropriation of our trade secrets, confidential information and other unpatented proprietary information. The agreements we use to try to protect our intellectual property, confidential information and other unpatented proprietary information may not effectively protect such intellectual property and information and may not be sufficient to prevent unauthorized use or disclosure of such trade secrets and information. A party to one of these agreements may breach the agreement and we may not have adequate remedies for such breach. As a result, our trade secrets, confidential information and other unpatented proprietary information may become known to others, including our competitors. Furthermore, as with any trade secret, confidential information or other proprietary information, others, including our competitors, may independently develop or discover such trade secrets and information, which would render them less valuable to us.

Third parties may claim that we are infringing their intellectual property rights, and such claims may be costly to defend, may require us to pay licensing fees, damages, or other amounts, and may prevent, or otherwise impose limitations on, the manufacture, distribution or sale of our products.

From time to time, third parties may claim that we are infringing upon their intellectual property rights, and we may be found to infringe those intellectual property rights. While we do not believe that any of our products infringe the valid intellectual property rights of third parties, we may be unaware of the intellectual property rights of others that may cover some of our technology or products. If we are forced to defend against such third party claims, whether or not such claims are resolved in our favor, we could encounter expensive and time consuming litigation which could divert our management and key personnel from business operations. Further, if we are found to be infringing on the intellectual property rights of others, we may be required to pay damages or ongoing royalty payments, or comply with other unfavorable terms. Additionally, if we are found to be infringing on the intellectual property rights of others, we may not be able to obtain license agreements on terms acceptable to us, and this may prevent us from manufacturing, marketing or selling our products. Thus, such third party claims may significantly reduce the sales of our products or increase our cost of goods sold. Any such reductions in sales or cost increases could be significant, and could have a material and adverse affect on our business.

Our financial success may be limited to the strength of our relationships with our retail customers and to the success of such retail customers.

Our financial success is significantly related to the willingness of our retail customers to continue to carry our products and to the success of such customers. We do not have long term contracts with any of our retail customers, and sales to our retail customers are generally on an order-by-order basis and are subject to rights of cancellation and rescheduling by the customer. If we cannot fill our retail customers' orders in a timely manner, the sales of our products and our relationships with those customers may suffer, and this could have a material adverse effect on our product sales and ability to grow our product line.

In the three months ended March 31, 2005, our ten largest retail customers accounted for approximately 39% of our revenues, with Dillard's, our largest customer for the quarter, accounting for approximately 12% of our revenues. If any of our major retail customers experiences a significant downturn in their business or fails to remain committed to our products or brand, then these customers may reduce or discontinue purchases from us. In addition, we extend credit to our customers based on an evaluation of each customer's financial condition. If a significant customer to whom we have extended credit experiences financial difficulties, our bad debt expense may increase relative to revenues in the future. Any significant increase in our bad debt expense relative to revenues would adversely impact our net income and cash flow and could affect our ability to pay our own obligations as they become due.

Furthermore, many of our retail customers compete with each other, and if they perceive that we are offering their competitors better pricing and support, they may reduce purchases of our products. In addition, we compete directly with our retail customers by selling our products to consumers via the Internet and through our company-operated kiosks. If our retail customers believe that our direct sales to consumers divert sales from their stores, this may weaken our relationships with such customers and cause them to reduce purchases of our products.

If we do not accurately forecast consumer demand, we may have excess inventory to liquidate or have greater difficulty filling our customers' orders, either of which could adversely affect our business.

The footwear industry is subject to cyclical variations and declines in performance, as well as fashion risks and rapid changes in consumer preferences, the effects of weather, general economic conditions and other factors affecting demand. Because our business has relatively long lead times for design and production, we must commit to production tooling and production volumes many months before consumer demands become apparent. If we overestimate demand for our products, we may be forced to liquidate excess inventories at a discount to customers, resulting in markdowns and lower gross margins. Conversely, if we underestimate consumer demand, we could have inventory shortages, which can result in lost potential sales, delays in shipments to customers, strains on our relationships with customers and diminished brand loyalty. Moreover, because our product line is limited, we may be disproportionately affected by cyclical downturns in the footwear industry, changes in consumer preferences and other factors affecting demand, which may make it more difficult for us to accurately forecast our production needs, exacerbating these risks. A decline in demand for our products, or any failure on our part to satisfy increased demand for our products, could adversely affect our business and results of operations.

We may fail to successfully expand our distribution network or introduce our products internationally, and this may cause our results of operations to fall short of expectations.

As part of our growth strategy, we plan to expand our distribution network and expand the sales of our products into new locations internationally. Successfully executing this strategy will depend on many factors, including:

- the strength of the **crocs** brand and competitive conditions in new markets that we attempt to enter;
- our ability to attract and retain qualified distributors or agents or to develop direct sales channels;
- our ability to use and protect the **crocs** brand, and our other intellectual property, in these new markets and territories; and

- our ability to successfully enter and compete in markets and territories, especially internationally, where we have little distribution experience and where our **crocs** brand is not well known.

If we are unable to successfully expand our distribution channels and sell our **crocs** -branded products internationally, our business may fail to grow, our brand may suffer and our results of operations may be adversely impacted.

We conduct, and in the future expect to conduct, a significant portion of our activities outside the U.S., and therefore we are subject to the risks of international commerce.

We use third party manufacturers located in foreign countries, we operate manufacturing facilities located in Canada and Mexico, and we sell our products to retailers outside of the U.S. Foreign manufacturing and sales activities are subject to numerous risks, including the following:

- tariffs, import and export controls and other non-tariff barriers such as quotas and local content rules;
- increased transportation costs due to distance, energy prices or other factors;
- delays in the transportation and delivery of goods due to increased security concerns;
- foreign currency fluctuations, for which we do not currently engage in any material hedging transactions;
- restrictions on the transfer of funds;
- changing economic conditions;
- restrictions, due to privacy laws, on the handling and transfer of consumer and other personal information;
- changes in governmental policies and regulations;
- political unrest, terrorism or war, any of which can interrupt commerce;
- expropriation and nationalization;
- difficulties in managing foreign operations effectively and efficiently from the U.S.; and
- difficulties in understanding and complying with local laws, regulations and customs in foreign jurisdictions.

Furthermore, our manufacturing activity outside of the U.S., including the production of our products by third party manufacturers, is subject to risks of poor infrastructure, shortages of equipment, and labor unrest, in addition to those risks noted above. Once our products are manufactured, we may also suffer delays in distributing our products due to work stoppages, strikes or lockouts at the ports where our products arrive. Such labor disruptions could result in product shortages and delays in distributing our products to retailers. These factors and the failure to properly respond to them could make it difficult to obtain adequate supplies of quality products when we need them, resulting in reduced sales and harm to our business.

Additionally, although sales outside of the U.S. did not constitute a significant portion of our revenues in 2004, we expect to expand our international sales and marketing operations in the future. Our ability to capitalize on growth in new international markets and to maintain the current level of operations in our existing international markets is subject to risks associated with international sales operations, as noted above, as well as the difficulties associated with promoting products in unfamiliar cultures.

We are subject to various environmental laws and regulations that could impose substantial costs on us and may adversely affect our business and results of operations.

Some of our operations use substances regulated under various federal, state, local and international environmental and pollution laws, including those relating to the storage, use, discharge, disposal and labeling of, and human exposure to, hazardous and toxic materials. Compliance with current or future environmental laws and regulations could restrict our ability to expand our facilities or require us to acquire additional expensive equipment, modify our manufacturing processes, or incur other significant expenses. In addition, we could incur costs, fines and civil or criminal sanctions, third party property damage or personal injury claims, or could be required to incur substantial investigation or remediation costs, if we were to violate or become liable under any environmental laws. Liability under environmental laws can be joint and several and without regard to comparative fault. There can be no assurance that violations of environmental laws or regulations have not occurred in the past and will not occur in the future as a result of our inability to obtain permits, human error, equipment failure or other causes, and any such violations could harm our business and financial condition.

We are required to comply with government regulation of the Internet and e-commerce, and any failure to do so could harm our business.

We conduct a portion of our business through direct sales to consumers via our Internet website, which subjects us to regulations and laws governing the Internet and e-commerce. Existing and future laws and regulations may impede the growth of our Internet sales, and may cover, among other things, taxation, user privacy, data protection, pricing, content, copyrights, distribution, electronic contracts and other communications, and the provision of online payment services. In particular, Internet privacy and data protection laws in certain jurisdictions in which we conduct or expect to conduct sales through our website require us to adopt and comply with a formal privacy policy, to accommodate the privacy preferences of our consumers and to take certain other actions to protect our customers' personal information. To the extent that we do not comply with laws governing the Internet and e-commerce, including privacy and data protection laws, we may be subject to legal challenges, enforcement actions, court orders, penalties and negative publicity, any of which could harm our business.

Sales of our products may be subject to seasonal variations, which could increase the volatility of the price of our common stock.

The footwear industry generally is characterized by significant seasonality of sales. Due to the growth in sales of our products in the past two years, we cannot assess with any certainty the degree to which sales of our footwear products will be subject to seasonal variation, but we expect some degree of seasonality in the future. For example, extended periods of unusually cold weather during the spring and summer could reduce demand for our footwear. Seasonal variations in consumer demand may result in fluctuations in our results of operations from quarter to quarter, and the effect of favorable or unfavorable weather on sales may be significant enough to materially affect our quarterly results. Wide variations in our quarterly operating results may increase the volatility of the price of our common stock.

We may face product liability claims or product recalls that are costly and create adverse publicity, and this could harm our business.

The products we sell may, from time to time, contain defects which could subject us to product liability claims and product recalls. Our products are often used in outdoor activities, and consumers of our products expect them to be well designed and durable. We have not experienced any expense as a result of product liability claims or product recalls, but we may incur expenses in connection with such claims or recalls in the future. Any product liability claim or product recall could generate negative publicity for, and harm, our **crocs** brand, and could adversely affect our business and results of operations.

Any acquisitions may be difficult to identify and successfully integrate into our business and could have other adverse consequences.

We have made, and may in the future make, acquisitions of, or investments in, other companies. For example, in June 2004, we acquired Foam Creations, and in April 2005, we acquired the manufacturing operations of a footwear producer in Mexico. We expect to consider other opportunities to acquire or make investments in other businesses and products that could enhance our manufacturing capabilities, complement our current products or expand the breadth of our markets or customer base. The pursuit of acquisitions may divert the attention of management and cause us to incur various expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. In the event we finance acquisitions by issuing equity or convertible debt securities, our stockholders may be diluted.

In addition, we have limited experience in acquiring other businesses. If we acquire additional businesses, we may not be able to integrate the acquired operations successfully with our business or effectively manage the combined business following completion of the acquisition. We may also not achieve the anticipated benefits from the acquired business due to any of the following factors:

- unanticipated costs associated with the acquisition;
- diversion of management's attention from our core business;
- harm to our existing business relationships with manufacturers and customers as a result of the acquisition;
- the potential loss of key employees; or
- risks associated with entering new product lines or markets in which we have little or no prior experience.

If we are unable to integrate any new business successfully, we could be required either to dispose of the acquired operations or to undertake changes to the acquired operations in an effort to integrate them with our business. If we experience any of the difficulties noted above, our business and financial condition could be materially and adversely affected.

We intend to make substantial expenditures to expand our operations and remain competitive in the rapidly changing footwear industry, and we may not be able to secure adequate financing to meet the needs of our business.

Our future success may depend on our ability to obtain additional financing and capital to support our continued growth and operations, including our working capital needs. We may seek to raise capital by:

- issuing additional common stock or other equity securities;

- issuing debt securities; or
- borrowing funds under a credit facility.

We may not be able to obtain additional capital when we want or need it, and capital may not be available to us on satisfactory terms. If we issue additional equity or convertible debt securities to raise capital, it may be dilutive to your ownership interest. Furthermore, any additional financing and capital may have terms and conditions that adversely affect our business, such as restrictive financial or operating covenants. If we fail to secure adequate financing on acceptable terms for our maintenance or growth, our business could be materially harmed.

We can issue shares of preferred stock without stockholder approval, which could adversely affect the rights of common stockholders.

Our certificate of incorporation permits us to establish the rights, privileges, preferences and restrictions, including voting rights, of future series of our preferred stock and to issue such stock without approval from our stockholders. The rights of holders of our common stock may suffer as a result of the rights granted to holders of preferred stock that we may issue in the future. In addition, we could issue preferred stock to prevent a change in control of our company, depriving common stockholders of an opportunity to sell their stock at a price in excess of the prevailing market price.

Our certificate of incorporation, bylaws and Delaware law contain provisions that could discourage a third party from acquiring us and consequently decrease the market value of an investment in our stock.

Our certificate of incorporation, bylaws and Delaware corporate law each contain provisions that could delay, defer or prevent a change in control of our company or changes in our management. Among other things, these provisions:

- authorize us to issue preferred stock that can be created and issued by the board of directors without prior stockholder approval, with rights senior to those of common stock;
- do not permit cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- prohibit stockholders from calling special meetings of stockholders;
- prohibit stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- allow the authorized number of directors to be changed only by resolution of the board of directors;
- establish advance notice requirements for submitting nominations for election to the board of directors and for proposing matters that can be acted upon by stockholders at a meeting; and
- classify our board of directors so that only some of our directors are elected each year.

These provisions could discourage proxy contests and make it more difficult for our stockholders to elect directors and take other corporate actions, which may prevent a change of control or changes in our management that a stockholder might consider favorable. In addition, Section 203 of the Delaware General Corporation Law may discourage, delay, or prevent a change in control of us. Any delay or

prevention of a change of control or change in management that stockholders might otherwise consider to be favorable could cause the market price of our common stock to decline.

Risks Related to this Offering

Our common stock has no prior market, and the price of our common stock may be volatile.

Prior to the offering, there has been no public market for our common stock, and a regular trading market may not develop after the offering. The initial public offering price of our common stock will be determined through negotiations between the underwriters, the selling stockholders and us, but the market price of our common stock may decline below the initial public offering price in the future. Numerous factors, many of which are beyond our control, may cause the market price of our common stock to fluctuate significantly. These factors include:

- our earnings releases, actual or anticipated changes in our earnings, fluctuations in our operating results or our failure to meet the expectations of financial market analysts and investors;
- significant developments relating to our manufacturing or distribution relationships;
- price and volume fluctuations in the overall stock market from time to time;
- customer orders of new products from us and our competitors;
- investor perceptions of the footwear and apparel industries in general and our company in particular;
- the operating and stock performance of comparable companies;
- general economic conditions and trends;
- major catastrophic events;
- changes in accounting standards, policies, guidance, interpretation or principles;
- loss of external funding sources;
- sales of stock by our executive officers; or
- departures of key personnel.

In addition, the timing of orders by our customers may cause quarterly fluctuations of our results of operations that may, in turn, affect the market price of the common stock.

Future sales of our common stock could depress our stock price.

We expect that all of our stockholders and optionholders, including all of our executive officers and directors, will agree not to sell shares of our common stock for a period of 180 days following this offering, subject to extension for up to 35 days under specified circumstances at the option of Piper Jaffray and Thomas Weisel Partners. However, Piper Jaffray and Thomas Weisel Partners may waive this restriction and allow any such stockholders to sell shares at any time. Shares of common stock subject to these lockup agreements will become eligible for sale in the public market upon expiration of these lock-up agreements, subject to limitations imposed by Rule 144 under the Securities Act of 1933. See "Shares Eligible for Future Sale." Sale of shares of our common stock by our stockholders, or the

perception that such stockholders may sell shares of our common stock, could have an adverse impact on the market price for our common stock.

We will incur increased costs as a public company, which could adversely affect our financial condition and results of operations.

As a public company, we will incur significant legal, accounting and other expenses that we do not incur as a privately-owned company. In addition, the Sarbanes-Oxley Act of 2002, as well as new rules subsequently implemented by the SEC and Nasdaq, have required changes in the corporate governance practices of public companies. We expect these new rules and regulations will increase our legal and financial compliance costs and make some activities more time-consuming and costly. In addition, we will incur additional costs associated with our public company reporting requirements. We also expect these new rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. Any of these circumstances could adversely affect our business, financial condition or results of operations.

If you purchase shares of common stock sold in this offering, you will experience immediate dilution.

If you purchase shares of our common stock in this offering, you will experience significant immediate dilution because the price that you pay will be substantially greater than the net tangible book value per share of the shares you acquire. You will experience additional dilution upon the exercise of stock options, including those stock options currently outstanding and those granted in the future and any issuance of restricted stock or other equity awards under our equity incentive plan. See "Dilution."

We do not anticipate paying cash dividends on our shares of common stock in the foreseeable future.

We intend to retain any future earnings to fund the operation and expansion of our business and, therefore, we do not anticipate paying cash dividends on our shares of common stock in the foreseeable future. As such, you may only realize a return on your investment upon a sale of our common stock, if at all.

We will have broad discretion in the use of proceeds from this offering and may not obtain a significant return on the use of these proceeds.

We plan to use the net proceeds from this offering to repay the outstanding balance on our revolving credit facility and for working capital and other general corporate purposes. However, we will have broad discretion in determining how we apply much of the net proceeds from this offering and you may not agree with such uses. Also, we may not be successful in investing the net proceeds from this offering to yield a favorable return. For more information, see "Use of Proceeds."

A SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. The forward-looking statements are contained principally in the sections entitled "Summary," "Risk Factors," "Use of Proceeds," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business." These statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements. These risks and uncertainties include, but are not limited to, the following:

- our limited operating history;
- our significant recent expansion;
- changing fashion trends;
- our reliance on market acceptance of the small number of products we sell;
- our ability to develop and sell new products;
- our limited manufacturing capacity and distribution channels;
- our reliance on third party manufacturing and logistics providers for the production and distribution of our products;
- our reliance on a single-source supply for certain raw materials;
- our management and information systems infrastructure;
- our ability to obtain and protect intellectual property rights;
- the effect of competition in our industry;
- our ability to attract and retain management talent; and
- other factors described in this prospectus under the heading "Risk Factors."

In some cases, you can identify forward-looking statements by terms such as "anticipates," "believes," "could," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "projects," "should," "would" and similar expressions intended to identify forward-looking statements. Forward-looking statements reflect our current views with respect to future events, are based on assumptions and subject to risks and uncertainties. Given these uncertainties, you should not place undue reliance on these forward-looking statements. Also, forward-looking statements represent our estimates and assumptions only as of the date of this prospectus. You should read this prospectus and the documents that we reference in this prospectus, or that we have filed as exhibits to the registration statement of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from what we expect.

Except as required by law, we assume no obligation to update any forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in any forward-looking statements, even if new information becomes available in the future.

USE OF PROCEEDS

We estimate that the net proceeds from the sale of common stock offered by us will be approximately $ million, assuming a public offering price of $ per share and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us in connection with this offering. All shares of our common stock that are subject to the underwriters' over-allotment option will be sold to the underwriters by the selling stockholders. We will not receive any proceeds from the sale of shares to be sold by the selling stockholders.

We will use approximately $5.0 million of the net proceeds we receive from the sale of our common stock in this offering to repay all amounts outstanding under our bank credit facility. The amount payable under the credit facility at June 30, 2005 was $5.0 million. Interest on this credit facility accrues at the higher of the Bank of America prime rate plus 1.0% or the Federal Funds Rate plus 1.5%. The interest rate as of June 30, 2005 was 7.28% per annum. Interest accrues on the credit facility monthly and is paid at the end of each month. The credit facility matures on April 8, 2006. We are required to repay the credit facility in full in the event we complete a public offering of our common stock, including this offering. Upon repayment of the credit facility with a portion of the proceeds of this offering, the facility will terminate. We used a portion of the proceeds of borrowings under the credit facility to fund the distribution of $3.0 million in cash to members as of December 31, 2004 of our predecessor limited liability company pursuant to the operating agreement for that entity. In addition, we used $1.3 million for the purchase of our manufacturing operation in Mexico and associated operating assets in April 2005 and $700,000 for working capital purposes.

We intend to use the remainder of the net proceeds we receive from this offering for working capital and general corporate purposes, including approximately $2.0 million to expand and upgrade our existing information technology systems, and a portion of the remainder to further develop our international operations and to increase our marketing activities. In addition, we may use a portion of the net proceeds to acquire or invest in complementary businesses or products or to obtain additional manufacturing facilities. We have no commitments with respect to any acquisition or investment, and we are not involved in negotiations with respect to any similar transaction.

Pending application of the net proceeds we receive from this offering, we will invest the proceeds in government securities and other short-term, investment-grade interest bearing securities.

DIVIDEND POLICY

We currently intend to retain all future earnings for the operation and expansion of our business and do not anticipate paying cash dividends on our shares of common stock in the foreseeable future. Any payment of cash dividends in the future will be at the discretion of our board of directors and will depend upon our results of operations, earnings, capital requirements, contractual restrictions, outstanding indebtedness and other factors that our board of directors deems relevant.

CAPITALIZATION

The following table sets forth our capitalization as of March 31, 2005:

- on an actual basis; and
- on a pro forma, as adjusted, basis to give effect to:
  - conversion of all outstanding shares of Series A preferred stock into 31,900 shares of common stock;
  - the issuance of 1,832 shares of common stock to employees and consultants on June 29, 2005 and July 1, 2005; and
  - the sale by us of shares of common stock in this offering at an assumed initial public offering price of $ per share; our receipt of the estimated net proceeds of the offering of $, after deducting underwriting discounts and commissions and estimated offering expenses payable by us; and repayment of certain indebtedness as set forth in "Use of Proceeds."

You should read the information below in conjunction with our consolidated financial statements and their notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Use of Proceeds" included elsewhere in this prospectus.

	As of March 31, 2005	
	Actual	Pro Forma As Adjusted
	(dollars in thousands)	
	(unaudited)	
Long-term debt	$ 2,822	$
Redeemable common shares [1]	1,800	
Redeemable convertible preferred stock, par value $0.001 per share, 7,000,000 shares authorized: [2]		
Series A:		
31,900 shares issued and outstanding, actual; and 0 shares pro forma as adjusted	5,500	
Stockholders' equity:		
Common Stock, par value $0.001 per share; 25,000,000 shares authorized; 107,932 shares issued and outstanding, actual; and shares issued and outstanding, pro forma as adjusted	1	
Additional paid-in capital	4,467	
Deferred compensation	(4,208)	
Accumulated deficit	(1,344)	
Accumulated other comprehensive income	529	
Total stockholders' deficit	(555)	
Total capitalization	$ 9,567	$

(1) In connection with the completion of this offering, the redemption feature associated with these shares will expire and these shares will be reclassified to stockholders' equity.

(2) All of our outstanding redeemable convertible preferred stock will be converted into 31,900 shares of our common stock upon completion of this offering.

DILUTION

If you invest in our common stock in this offering, upon the completion of this offering your ownership interest will be diluted to the extent of the difference between the initial public offering price per share and the pro forma net tangible book value per share of our common stock. Our pro forma net tangible book value as of March 31, 2005 was approximately $ million, or approximately $ per share. Pro forma net tangible book value per share is determined by dividing the excess of our pro forma total tangible assets over our pro forma total liabilities by the pro forma total number of shares of common stock outstanding. Our pro forma total tangible assets and pro forma total liabilities include the incurrence of $5.0 million of indebtedness under our credit facility in April 2005, and our use of the proceeds therefrom to pay a distribution of $3.0 million in cash to members as of December 31, 2004 of our predecessor limited liability company pursuant to the operating agreement for that entity, to purchase our manufacturing operations in Mexico and associated assets for $1.3 million in cash in April 2005, and $700,000 for working capital purposes. The pro forma total number of shares of common stock outstanding includes the effect of the conversion of all shares of our outstanding Series A preferred stock into common stock in connection with this offering.

Investors participating in this offering will incur immediate, substantial dilution. After giving effect to our sale and issuance of common stock in this offering at the initial public offering price of $ per share, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma net tangible book value as of March 31, 2005 would have been approximately $ million, or $ per share of common stock. This represents an immediate increase in net tangible book value of $ per share to existing stockholders and an immediate dilution of $ per share to new investors purchasing shares of common stock in this offering at the initial offering price. The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share		$
Pro forma net tangible book value per share at March 31, 2005	$	
Increase in pro forma net tangible book value per share attributable to this offering	$	
Pro forma net tangible book value per share after this offering		$
Dilution per share to new investors		$

The following table sets forth on a pro forma basis as of March 31, 2005, the total number of shares of common stock purchased from us, the total consideration paid to us for these shares and the average price per share paid to us by our existing stockholders and by new investors, before deducting underwriting discounts and commissions and estimated offering expenses payable by us at an assumed initial public offering price of $ per share.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders		%	$	%	$
New investors		%	$	%	$
Total		100%	$	100%	$

Sales by the selling stockholders in this offering will cause the number of shares held by existing stockholders to be reduced to , or % of the total number of shares of our common stock outstanding after this offering, and will increase the total number of shares held by new investors to

, or % of the total number of shares of our common stock outstanding after this offering. If the underwriters' over-allotment option is exercised in full, the number of shares held by existing stockholders after this offering, including the effect of sales by the selling stockholders, would be reduced to , or % of the total number of shares of our common stock outstanding after this offering, and the number of shares held by new investors would increase to , or % of the total number of shares of our common stock outstanding after this offering.

To the extent options are exercised or shares of common stock are issued pursuant to restricted stock award agreements or other awards under our 2005 Equity Incentive Plan, there will be further dilution to investors in this offering.

SELECTED CONSOLIDATED FINANCIAL DATA

You should read the selected consolidated financial data presented below in conjunction with our consolidated financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus.

The selected financial data presented below under the heading "Consolidated Statement of Operations Data" for the years ended December 31, 2002, 2003 and 2004 and the selected financial data presented below under the heading "Consolidated Balance Sheet Data" as of December 31, 2003 and 2004 have been derived from, and are qualified by reference to, the consolidated financial statements included elsewhere in this prospectus. The selected financial data presented below under the headings "Consolidated Statement of Operations Data" and "Consolidated Balance Sheet Data" for the three months ended and as of March 31, 2004 and 2005 are unaudited, have been derived from unaudited consolidated financial statements that are included elsewhere in this prospectus and have been prepared on the same basis as the annual consolidated financial statements. The selected consolidated financial data as of and for the year ended December 31, 2002 are derived from our unaudited financial statements. The selected financial data presented below also includes unaudited pro forma financial information under the heading "Pro Forma for acquisition of Foam Creations Year Ended December 31, 2004" to reflect the acquisition of Foam Creations as if it had occurred on January 1, 2004. Such unaudited pro forma financial information does not necessarily reflect the results of operations that may have actually resulted had the acquisition occurred on January 1, 2004, and should not be taken as necessarily indicative of our future results of operations. The unaudited pro forma financial information has been derived from, and is qualified by reference to, the "Unaudited Pro Forma Condensed Combined Consolidated Statement of Operations" included in this prospectus. In the opinion of management, the unaudited selected financial data presented below under the headings "Consolidated Statement of Operations Data" and "Consolidated Balance Sheet Data" reflect all adjustments, which include only normal and recurring adjustments, necessary to present fairly our results of operations for and as of the periods presented. Historical results are not necessarily indicative of the results of operations to be expected for future periods.

	Year Ended December 31,			Pro Forma for acquisition of Foam Creations Year Ended	Three Months Ended March 31,	
	2002 [1]	2003	2004	December 31, 2004 [2]	2004	2005 [5]
	(in thousands, except per share and operating data)					
Consolidated Statement of Operations Data						
Revenues	$ 24	$ 1,165	$ 13,520	$ 16,921	$ 973	$ 10,958
Cost of sales	16	891	7,162	8,529	694	4,119
Gross profit	8	274	6,358	8,392	279	6,839
Selling, general and administrative expense (including stock-based compensation expense of $240, $356, $1,792, $1,792, $793 and $699, respectively)	453	1,471	7,929	9,325	1,272	4,096
Income (loss) from operations	(445)	(1,197)	(1,571)	(933)	(993)	2,743
Interest expense	—	3	47	101	1	37
Other expense—net	—	—	19	19	—	17
Income (loss) before income taxes	(445)	(1,200)	(1,637)	(1,053)	(994)	2,689
Income tax expense (benefit)	—	—	(143)	31	—	293
Net income (loss)	(445)	(1,200)	(1,494)	(1,084)	(994)	2,396
Dividends on redeemable convertible preferred shares [3]	—	—	142	275	—	68
Net income (loss) attributable to common stockholders	$ (445)	$ (1,200)	$ (1,636)	$ (1,359)	$ (994)	$ 2,328
Income (loss) per common share:						
Basic	$ (12.54)	$ (13.44)	$ (15.51)	$ (12.88)	$ (9.71)	$ 21.60
Diluted	$ (12.54)	$ (13.44)	$ (15.51)	$ (12.88)	$ (9.71)	$ 15.97
Weighted average common shares:						
Basic	35,479	89,271	105,479	105,479	102,378	107,765
Diluted	35,479	89,271	105,479	105,479	102,378	150,020
Pro forma income per common share [4]						
Basic						$ 16.67
Diluted						$ 15.52
Pro forma weighted average shares outstanding [4]						
Basic						139,665
Diluted						150,020
Operating Data						
Pairs of **crocs** footwear sold	1,500	76,000	649,000		58,000	641,000

	As of December 31,			As of March 31,	
	2002 [1]	2003	2004	2004	2005
	(in thousands)				
Consolidated Balance Sheet Data					
Cash and cash equivalents	$ 73	$ 326	$ 1,054	$ 54	$ 1,751
Total assets	454	1,304	16,224	1,487	23,704
Long-term obligations	—	400	3,660	400	3,789
Redeemable common shares	—	1,800	1,800	1,800	1,800
Redeemable convertible preferred shares	—	—	5,500	—	5,500
Total stockholders' deficit	389	(1,642)	(3,591)	(1,488)	(555)

(1) We were founded in 1999 but did not commence operations until 2002, when we began selling footwear in the United States. As a result, there were no material operations prior to 2002.

(2) Pro forma to reflect our acquisition of Foam Creations as if it had occurred on January 1, 2004.

(3) Dividends accrued in 2004 were paid to holders of our Class C convertible preferred membership units. Our Class C membership units were, converted into shares of our Series A preferred stock in connection with our conversion from a limited liability company to a corporation on January 4, 2005.

(4) Pro forma income per common share for the three months ended March 31, 2005 reflects the conversion of our shares of Series A preferred stock to shares of common stock upon completion of this offering.

(5) On January 4, 2005, the Company converted from a limited liability company to a taxable corporation. For the tax years beginning on January 1, 2005 and afterward, we will be subject to corporate-level U.S. federal and state income taxes. Additionally, the statement of operations for the three months ended March 31, 2005 reflects a one-time income tax benefit of $723,000 to record the net deferred tax assets at the date of conversion.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our financial statements and related notes included elsewhere in this prospectus. This discussion and analysis contains forward-looking statements based on our current expectations, assumptions, estimates and projections. These forward-looking statements involve risks and uncertainties. See "Special Note Regarding Forward-Looking Statements." Our actual results could differ materially from those indicated in these forward-looking statements as a result of various factors, as more fully discussed below and elsewhere in this prospectus, particularly in the section entitled "Risk Factors."

Overview

We are a rapidly growing designer, manufacturer and marketer of footwear for men, women and children under the **crocs** brand. We have been marketing and distributing footwear products since November 2002, shortly after completing the modification and improvement of a shoe produced by Foam Creations. In June 2004, we acquired Foam Creations, including its manufacturing operations, product lines and rights to the proprietary closed-cell resin. All of our footwear products incorporate our proprietary closed-cell resin, which enables us to produce a soft and lightweight, non-marking, slip- and odor-resistant shoe that retails at attractive price points ranging from $29.99 to $59.99. In addition to our footwear products, we recently introduced a line of **crocs** -branded apparel and accessory items. We also use our proprietary closed-cell resin to manufacture non-branded products that we sell to original equipment manufacturers.

We currently sell our **crocs** -branded products throughout the U.S. and in over 20 countries worldwide. Outside the U.S., we sell our products directly to retailers, or through distributors where we believe they offer a preferable alternative to direct sales. We also sell directly to consumers through our website and our company-operated kiosks. The broad appeal of our footwear has allowed us to market our products to a wide range of distribution channels in the U.S., including traditional footwear retailers as well as a variety of specialty channels. As of July 31, 2005, our retail customer base included approximately 2,700 accounts that represented over 4,700 retail store locations selling our products.

We have achieved significant growth since our inception, driven largely by the popularity of our footwear products and our ability to significantly expand the breadth and depth of our distribution network. Since we started marketing our first footwear model in November 2002, we have increased our unit volumes from 76,000 pairs of footwear sold in 2003 to 649,000 pairs of footwear sold in 2004. We sold 641,000 pairs of footwear in the three months ended March 31, 2005. As a result, our revenues have increased from $1.2 million in 2003 to $13.5 million in 2004, and we recorded $11.0 million of revenues in the three months ended March 31, 2005. Sales of non-branded products by Foam Creations, which we acquired in June 2004, accounted for $1.0 million of our revenues for the three months ended March 31, 2005, and $2.7 million of our revenues in 2004. Our net income for the three months ended March 31, 2005 was $2.4 million, compared to a loss of $994,000 for the three months ended March 31, 2004. Continued growth of our revenues and profitability will depend substantially on the continued popularity of our existing footwear products, our ability to continue to introduce new models of footwear that meet the evolving demands of our retail customers and end consumers, our ability to effectively manage our sales and distribution network, and our ability to maintain sufficient product supply to meet expected growth in demand.

We have achieved strong gross profit margins since commencing sales of our **crocs** footwear. For the three months ended March 31, 2005, our gross profit was $6.8 million, or 62% of revenues, compared to $279,000, or 29% of revenues, for the three months ended March 31, 2004. We believe a number of

factors have contributed to our ability to achieve gross profit margins at these levels. Generally, we have not discounted the purchase price of our **crocs** footwear due to high levels of demand for our products. In addition, the year-round appeal of our products has resulted in limited returns from our customers. Additionally, our use of third party manufacturers as well as company-operated manufacturing facilities has allowed us to maintain a relatively low cost structure while enabling us to achieve significant production flexibility. We continue to refine our supply, manufacturing and distribution strategies to improve our operating efficiencies and reduce our costs. However, gross profit margins will be affected by our ability to accurately forecast demand and avoid excess inventory, our ability to control our supply, manufacturing and distribution costs, and by changes in the mix of products we sell.

We currently manufacture our footwear products and accessories, and all of our non-branded products for original equipment manufacturers, at Foam Creations's facility in Quebec City, Canada. We also manufacture our footwear products at our company-operated facility located in Mexico. In addition, we contract with third party manufacturers in China, Florida, Italy and Mexico for the production of our footwear products. For the three months ended March 31, 2005, one of our third party manufacturers located in China produced approximately 51% of our footwear unit volume. We believe our in-house production capabilities enable us to make rapid changes to manufacturing schedules, providing us the flexibility to quickly ship in-demand models and colors, while outsourcing allows us to lower our capital investment and retain the cost-effectiveness of using third party manufacturing.

The popularity of our footwear has often resulted in our inability to produce shoes in sufficient volumes to satisfy the demands of our retail customers and consumers. We have been attempting to meet this demand by actively expanding our company-operated manufacturing capacity, as well as increasing the number of shoes produced for us by third party manufacturers. We are in the process of expanding our manufacturing capacity at the facility we operate in Mexico, and we have also recently added third party manufacturing capacity in Mexico. In addition, we are in the process of expanding production capacity at our third party manufacturers located in China. We expect the additional production capacity at these facilities in Mexico and China will be fully available before the end of 2005. In the event we are successful in further growing our brand and increasing sales of our products, we will need to continue to increase our supply of raw materials and our manufacturing capacity in our company-operated and third party facilities, as well as handle increased shipments through our distribution facilities.

We intend to continue to diversify our product line with new footwear models in order to capitalize on a growing market for casual lifestyle footwear. Successful introduction of new products will require us to identify and address changing consumer preferences and will also require us to devote additional resources to product development and marketing. In addition, in order to capitalize on what we believe to be a growing market for our products, we intend to expand our distribution network and increase sales to our existing retail customers, which will require us to expand our sales and marketing activities.

Revenues represent sales booked upon shipment of products and freight income from customers, less an estimated reserve for sales returns and allowances. Because we use internal manufacturing as well as contract with third parties to manufacture our products, our cost of sales represents our costs to manufacture products in our own facilities, including raw materials costs and all overhead expenses related to production, as well as the cost to purchase finished products from our third party manufacturers. Cost of sales also includes the cost to transport these products to our facilities and all warehouse and outbound freight expenses. Our selling, general and administrative expense consists primarily of selling, marketing, wages and related payroll and employee benefit costs, travel and insurance expenses, research and development costs, depreciation, amortization, professional fees, facility expenses, bank charges and non-cash charges for stock based compensation.

We were organized as a limited liability company and until January 4, 2005 were treated as a partnership for U.S. federal and state income tax purposes for each of the tax years ended December 31, 2002, 2003 and 2004. Under U.S. tax law, partnerships are treated as pass-through entities and are not subject to direct taxation. However, partners are subject to income tax on their allocable share of the partnership's income. On January 4, 2005, we converted from a limited liability company to a taxable corporation. For tax years beginning on January 1, 2005 and afterward, we will be subject to corporate-level U.S. federal and state income taxes. In addition, our foreign operations will be subject to foreign taxes.

From 2002 through 2004, we issued three classes of equity interests in our predecessor limited liability company, designated as Class A and Class B membership interests or units and Class C convertible preferred membership units. Upon our conversion to a corporation on January 4, 2005, Class A and B membership units were converted into shares of our common stock, and Class C membership units were converted into shares of our Series A preferred stock, which will convert into shares of our common stock on a one-for-one basis in connection with the completion of this offering.

In connection with the audit of our financial statements for each of the years ended December 31, 2002, 2003 and 2004, our independent registered public accounting firm identified material weaknesses in our internal control over financial reporting with respect to:

- our financial closing and reporting process;
- our inventory costing and tracking methodology;
- our documentation supporting our accounting records; and
- our contemporaneous documentation of significant, non-routine transactions.

A material weakness is a reportable condition in which the design or operation of one or more accounting controls and procedures does not reduce to a relatively low likelihood the risk that a material misstatement of the annual or interim financial statements will not be prevented or detected within a timely period by employees in the normal course of performing their assigned functions.

The material weakness in our financial closing and reporting process resulted from a combination of the following factors:

- our failure to accurately account for complex transactions;
- our failure to monitor and apply new and emerging accounting principles generally accepted in the United States of America, or GAAP;
- our lack of formal processes related to the consolidation of financial information and the financial statement preparation process; and
- our failure to reconcile our accounts in a timely and accurate manner.

The material weakness in our inventory tracking and costing methodology related to the method by which we had accounted for certain inventory related costs in each of 2002, 2003 and 2004. In these years, we did not appropriately capitalize these costs in inventory which resulted in adjustments to our financial statements. In addition, we also did not have a formal process for tracking our inventory.

The material weakness with respect to our accounting records related to our lack of supporting documentation that should have been readily available to evidence routine transactions, principally in 2002 and 2003.

The material weakness in the documentation of significant and non-routine transactions related specifically to a lack of contemporaneous documentation for certain of our equity compensation arrangements in 2002 through 2004 and our acquisition of Foam Creations in 2004.

As a result of these weaknesses, we are in the process of implementing detailed procedures for documenting transactions, consolidating financial information, reconciling accounts and preparing financial statements, including additional levels of review by our existing corporate accounting staff, as part of our quarter- and year-end close process beginning in the second quarter of 2005. In addition, we have revised the methodology by which we track and cost inventory.

We recently hired our Chief Financial Officer, a corporate controller responsible primarily for external financial reporting and technical accounting matters, including consolidations, an assistant controller with responsibility for accounts payable, general ledger and payroll, an experienced accountant with responsibility for inventory tracking and costing methodology, a tax and treasury manager and approximately nine other employees with accounting or financial reporting expertise. We plan to hire additional employees with technical accounting and external financial reporting expertise to further strengthen our corporate accounting staff.

Additionally, we are in the process of implementing procedures as part of our quarter- and year-end close process beginning in the second quarter of 2005, and are using the additional financial reporting resources identified above to strengthen our review process of significant and complex financial reporting areas and financial statement preparation processes. Furthermore, we intend to use a portion of the proceeds of this offering to upgrade our existing information technology systems to, among other matters, strengthen our accounting and financial reporting and consolidation capabilities. We expect these systems to be in place during 2006. See "Risk Factors—Risks Related to Crocs, Inc.—The audit of our financial statements for each of the years ended December 31, 2002, 2003 and 2004, identified material weaknesses in our internal control over financial reporting, and if not corrected, these material weaknesses could result in a material misstatement of our results of operations of financial condition, which could harm our business and reputation and cause the price of our common stock to decline" and "—We will incur significant time and expense in documenting, testing and certifying our internal control over financial reporting, and any deficiencies in our internal controls could adversely affect our business."

Acquisition of Foam Creations

Foam Creations has developed and manufactured consumer products from specialty resins since 1995. In November 2002, we began marketing and distributing in the U.S., under the **crocs** brand, a footwear model that was manufactured by Foam Creations. Due to the popularity of this shoe and our successful launch in the U.S., we expanded our sales infrastructure, strengthened our senior management team and developed relationships with a range of retailers in the U.S. In June 2004, we acquired Foam Creations, including its manufacturing operations, product lines and rights to the proprietary closed-cell resin for a total cash purchase price of $5.2 million and the assumption of $1.7 million of long-term debt. To fund our purchase of Foam Creations, we issued $5.5 million of preferred securities in connection with the acquisition. The consolidated financial statements referred to in this prospectus reflect the acquisition of Foam Creations as of June 29, 2004, the date of acquisition. Pro forma financial information presented in this prospectus for the year ended December 31, 2004 reflects

our results of operations and financial condition as if our acquisition of Foam Creations had occurred on January 1, 2004.

As a result of the acquisition, our consolidated statements of operations included amortization of intangible assets related to the acquisition. In addition, as a result of purchase accounting, the fair values of Foam Creations's assets, including inventory, on the date of the acquisition became their new "cost" basis. As a result, cost of sales for the six months following the acquisition include $195,000 of additional cost due to the purchase accounting adjustment related to the on-hand inventory that was then sold during the following six months. Expenses attributable to amortization of intangible assets resulting from the acquisition will continue to adversely affect our results of operations in the future. As set forth in note 6 to the consolidated financial statements included elsewhere in this prospectus, the estimated expense of amortizing these intangible assets is approximately $1.0 million annually in 2005 through 2008, $600,000 in 2009 and $400,000 thereafter.

Subsequent Events

On April 8, 2005, we entered into a $5.0 million secured revolving credit facility, under which we had $5.0 million in borrowings outstanding as of June 30, 2005. The credit facility requires that we repay the outstanding borrowings in full, plus accrued and unpaid interest, in the event we complete a public offering of our common stock, including this offering. The credit facility will terminate upon repayment. See "Use of Proceeds."

In April 2005, we acquired the business of one of our kiosk retailers, who operated three kiosks in shopping malls in Colorado, for $50,000. During the three months ended March 31, 2005, sales to this retailer totaled $218,000, making the retailer our eighth largest customer for the period. The acquisition was part of our strategy to expand our direct retail sales efforts. We believe that kiosks will provide an effective means to showcase our product line and product extensions and enhance our brand awareness. As of July 31, 2005, we operated 12 kiosks and anticipate opening additional kiosks by the end of 2005.

In April 2005, as part of our strategy to increase our internal manufacturing capacity, we acquired a manufacturing operation and related assets in Mexico for a total purchase price of $1.3 million. We have also leased property adjacent to this facility and purchased additional production equipment in order to expand our production capacity at this facility. We recently initiated production of our footwear products at this facility, and we expect this facility to be fully operational before the end of 2005. We expect that this acquisition and subsequent expansion will allow us to increase our internal production capacity, diversify our geographic production capabilities and improve our internal production cost structure. However, this newly-established facility may not be as efficient or productive as our other company-operated or third party manufacturing operations, and any reductions in efficiency or production in comparison to our other company-operated or third party manufacturing operations could adversely affect our results of operations.

In May 2005, we reacquired the distribution rights to our **crocs** products in the State of Hawaii from one of our directors for approximately $50,000. See "Certain Relationships and Related Party Transactions."

Seasonality

Due to our short operating history and significant sales growth since our inception, we cannot assess with any certainty the degree to which sales of our footwear products will be subject to seasonality. However, we expect that our business, similar to other vendors of footwear and related merchandise, will be subject to seasonal variation. Quarterly results of operations may fluctuate significantly as a result of a variety of factors, including the timing of new model introductions, weather or general

economic or consumer conditions. Accordingly, results for any one quarter are not necessarily indicative of results to be expected for any other quarter or for any year, and revenues for any particular period may decrease. See "Risk Factors—Risks Related to Our Business—Sales of our products may be subject to seasonal variations, which could increase the volatility of the price of our common stock."

Results of Operations

Three Months Ended March 31, 2005 and 2004

Revenues. Revenues increased $10.0 million, to $11.0 million, in the three months ended March 31, 2005, from $1.0 million in the three months ended March 31, 2004. This increase was primarily a result of significantly higher unit sales of our footwear products, which increased to 641,000 pairs for the three months ended March 31, 2005, from 58,000 pairs for the three months ended March 31, 2004. The higher unit sales resulted from a significant increase in the number of retail stores of approximately 1,400 selling our products and strong sales to our existing customers. In addition, during the three months ended March 31, 2005, our results included revenues of $1.0 million from sales by Foam Creations, which were not included in our results of operations during the three months ended March 31, 2004. We expect our sales to continue to grow and our revenues to increase as we enter new markets and introduce new products. Our revenues from international sales were not material through March 31, 2005, but we expect international sales to grow in the future.

Gross profit. Gross profit increased $6.5 million, to $6.8 million, in the three months ended March 31, 2005, from $279,000 in the three months ended March 31, 2004. Our gross profit margin improved to 62.4% in the three months ended March 31, 2005, from 28.7% in the three months ended March 31, 2004. The increase in gross profit margin was due primarily to lower unit costs resulting from the addition of a third party manufacturer located in China, from which we did not obtain footwear products in the three months ended March 31, 2004. In the three months ended March 31, 2005, this manufacturer produced 51% of our footwear products.

Selling, general and administrative expense. Selling, general and administrative expense increased $2.8 million, to $4.1 million in the three months ended March 31, 2005, from $1.3 million in the three months ended March 31, 2004. This increase was primarily a result of higher costs associated with increased sales volumes, including an increase in selling and marketing expenses of $802,000, increases in personnel expenses of $845,000 and the associated facility expansion costs of $54,000 required to support our growth. The absorption of Foam Creations's selling, general and administrative expense contributed an additional $794,000 to this increase, of which $251,000 relates to the amortization of intangibles associated with this acquisition. In addition, stock-based compensation expense was $699,000 for the three months ended March 31, 2005, compared to $793,000 for the three months ended March 31, 2004. As a percentage of revenues, selling, general and administrative expense decreased to 37.4% in the three months ended March 31, 2005, from 130.7% in the three months ended March 31, 2004, primarily due to substantially higher revenues in 2005, with comparatively lower increases in headcount and administrative expenses. We expect our selling, general and administrative expense will increase as we hire additional personnel and incur increased costs related to our growth. In addition, we expect to recognize increased legal, accounting and personnel costs associated with operating as a public company.

Interest expense. Interest expense was $37,000 in the three months ended March 31, 2005, compared to $1,000 in the three months ended March 31, 2004. The increase in interest expense is related to the long term debt at our subsidiary Foam Creations, which we acquired in June 2004.

Other expense, net. Other expense was $17,000 in the three months ended March 31, 2005, compared to no recorded expense in the three months ended March 31, 2004. The increase was primarily related to foreign currency transaction losses associated with Foam Creations, which we acquired in June 2004.

Income tax expense (benefit). In the three months ended March 31, 2005, income tax expense was $293,000, representing an effective income tax rate of 10.9%. In the three months ended March 31, 2004, we were not a tax-paying entity for U.S. income tax purposes and therefore did not record any income tax expense. We recognized a tax benefit of $723,000 in the three months ended March 31, 2005 to record deferred tax assets in connection with our conversion from a limited liability company to a taxable corporation.

Dividends on redeemable convertible preferred stock. Dividends on our outstanding redeemable convertible preferred stock were $68,000 for the period ended March 31, 2005 compared to no recorded dividends for the period ended March 31, 2004. We first issued equity with preferred liquidation and dividend provisions in June 2004, when we sold our Class C membership units. In connection with our conversion from a limited liability company to a corporation, our Class C membership units converted into shares of our Series A preferred stock. Our Series A preferred stock provides for a dividend at the rate of five percent per annum on the initial investment amount per share. The Series A preferred stock will convert into shares of our common stock in connection with the completion of this offering.

Comparison of the Years Ended December 31, 2004 and 2003

Revenues. Revenues increased $12.3 million, to $13.5 million, in 2004 from $1.2 million in 2003, primarily as a result of higher unit sales. Sales of our footwear products increased to 649,000 pairs in 2004 from 76,000 pairs in 2003. The higher sales volume in 2004 was primarily a result of the popularity of our Beach model, which accounted for 82% of our footwear sales in 2004, and a significant increase in the number of retail stores of approximately 1,118 selling our products. Our results in 2004 include $2.7 million of revenues from sales by Foam Creations of our non-branded products.

Gross profit. Gross profit increased by $6.1 million, to $6.4 million, in 2004, from $274,000 in 2003. Gross profit margin improved to 47.0% in 2004 from 23.5% in 2003. The increase in gross profit margin was due primarily to lower unit costs associated with production efficiencies resulting from higher sales volumes. In addition, gross profit in 2004 included approximately $1.0 million from sales by Foam Creations of our non-branded products. Gross profit margin for our non-branded products was approximately 40.0% for the six months ended December 31, 2004.

Selling, general and administrative expense. Selling, general and administrative expense increased $6.4 million, to $7.9 million, in 2004, from $1.5 million in 2003. This increase was primarily a result of higher costs associated with increased sales volumes, including an increase in selling and marketing expenses of $2.3 million, personnel expenses of $1.6 million, a portion of which was included in selling and marketing expenses, and the associated facility expansion costs of $125,000 required to support our growth. The absorption of Foam Creations's selling, general and administrative expense contributed an additional $1.5 million to this increase of which $487,000 relates to the amortization of intangibles associated with this acquisition. Depreciation and amortization expense increased to $586,000 in 2004 from $18,000 in 2003, primarily as a result of amortization of intangibles associated with our acquisition of Foam Creations. Stock-based compensation expense was $1.8 million in 2004 compared to $356,000 in 2003. This increase was due to a greater number of awards granted to employees, directors and consultants, along with higher equity values for such awards. Additionally, a number of awards were granted in 2004 with immediate vesting, and as a result, we recognized the entire expense associated

with those grants at the time of the grant. As a percentage of revenues, selling, general and administrative expense decreased to 58.6% in 2004 from 126.3% in 2003, largely due to substantially higher revenues generated in 2004, with comparatively lower increases in headcount and administrative expenses.

Interest expense. Interest expense was $47,000 in 2004, compared to $3,000 in 2003. The increase in interest expense was primarily the result of an increase in long term debt that was assumed as part of our acquisition of Foam Creations in June 2004.

Other expense, net. Other expense was $19,000 in 2004, and we did not recognize any other income or expenses, net, in 2003. The increase in other income was primarily related to the foreign currency transaction gains that arose after our acquisition of Foam Creations in June 2004.

Income tax expense (benefit). We recorded a tax benefit of $143,000 in 2004, compared to no recorded tax benefit or expense in 2003. Prior to our conversion from a limited liability company to a corporation on January 4, 2005, we were not a taxpaying entity for U.S. federal and state income tax purposes. However, we acquired Foam Creations, a Canadian corporation, in June 2004. During the period subsequent to the acquisition, Foam Creations recorded a tax benefit of $143,000.

Dividends on redeemable convertible preferred stock. Dividends on our Class C membership units were $142,000 in 2004. No dividends were recorded in 2003. We sold Class C membership units in June and July 2004 that provided for a dividend at the rate of five percent per annum on the initial investment amount per share.

Comparison of the Years Ended December 31, 2003 and 2002

We commenced operations in July 2002 and began marketing and distributing our products in November 2002 with the introduction of our Beach model at a regional trade show. Sales of our products at the trade show represented our only sales for 2002.

Revenues. Revenues increased $1.2 million, to $1.2 million, in 2003, from $24,000 in 2002, as a result of higher unit volumes associated with a full year of operations. Sales of our footwear products increased to 76,000 pairs in 2003 from 1,500 pairs in 2002.

Gross profit. Gross profit increased by $266,000, to $274,000, in 2003, from $8,000 in 2002. Our gross profit margin decreased to 23.5% in 2003 from 33.3% in 2002 due to higher costs associated with hiring a third party for warehousing, fulfillment and logistics services, and an increase in shipping costs associated with expanding our retail customer base nationwide.

Selling, general and administrative expense. Selling, general and administrative expense increased by $1.0 million, to $1.5 million, in 2003, from $453,000 in 2002. This increase was related to costs associated with our significant growth, and a full year of operations in 2003 compared to operations for only a portion of 2002. Stock-based compensation expense was $356,000 in 2003 compared to $240,000 in 2002.

Interest expense. Interest expense was $3,000 in 2003 compared to no recorded expense in 2002.

Income tax expense (benefit). We operated as a limited liability company in 2003 and 2002. As a result, we did not record a tax liability for either of those years.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements other than operating leases. See "Contractual Obligations and Commercial Commitments" below. We do not believe these operating leases are material to our current or future financial condition, results of operations, liquidity, capital resources or capital expenditures.

Liquidity and Capital Resources

Our principal sources of liquidity have been sales of our securities, borrowings under our credit facility and cash provided by operating activities. We raised a total of $7.1 million, which is net of repurchases of $162,000, from the sale of equity interests and units from 2002 through 2004. In April 2005, we borrowed a total of $5.0 million on our secured revolving credit facility, as discussed below. The remainder of our liquidity needs have been met from cash provided by operating activities of $540,000 through March 31, 2005.

Our principal uses of cash have been for our acquisition of Foam Creations in June 2004 for $5.2 million, for the distribution in April 2005 of $3.0 million in cash to the members of our predecessor limited liability company pursuant to the operating agreement for that entity, for the purchase of our manufacturing operation in Mexico and associated operating assets in April 2005 for approximately $1.3 million, and for capital expenditures of $2.3 million through March 31, 2005. We expect our principal uses of cash in the future to be for working capital purposes to support our planned growth and for capital expenditures related to increasing our manufacturing capacity of approximately $7.0 million and improving our infrastructure, including approximately $2.0 million for expanding and upgrading our information technology systems. We also plan to repay amounts outstanding under our credit facility upon completion of this offering, as described in "Use of Proceeds."

The significant components of our working capital are cash, accounts receivable and inventory, reduced by accounts payable and accrued expenses. Capital requirements related to manufacturing include compounding and injection molding equipment for facilities we operate, as well as footwear molds used in our company-operated facilities or purchased for our third party manufacturers. We expect cash flows from operations and the proceeds from this offering to be sufficient to meet our foreseeable cash requirements for at least the next twelve months.

Cash provided by, or used in, operating activities consists primarily of net income or net loss adjusted for certain non-cash items including depreciation, amortization, deferred income taxes, provision for bad debts, stock compensation expense and for the effect of changes in working capital and other activities. Cash provided by operating activities in the three months ended March 31, 2005 was $645,000 and was primarily related to income from operations of $2.4 million, partially offset by increases in working capital resulting from significant increases in inventory of $2.1 million and accounts receivables of $3.3 million related to our sales growth. Cash used in operating activities for the three months ended March 31, 2004 was $597,000, reflecting a loss from operations of $994,000 and an increase in our working capital components, including an increase in accounts receivable of $210,000 and inventory of $256,000, in connection with the growth of our business. Cash provided by operating activities in 2004 was $777,000, primarily related to non-cash expenses for stock-based compensation of $1.8 million and depreciation and amortization of $700,000 that offset our net loss of $1.5 million. Cash used in operating activities was $439,000 in 2003 and $443,000 in 2002, primarily related to a loss from operations in each of these years offset by working capital changes.

Cash used in investing activities for the three months ended March 31, 2005 was $317,000, which was related to capital expenditures for molds and tooling. Capital expenditures for the three months ended

March 31, 2004 was $30,000. Cash used in investing activities in 2004 was $6.7 million, primarily related to the acquisition of our wholly owned subsidiary, Foam Creations, for $5.2 million and capital expenditures of $1.6 million related to an increase in our manufacturing capacity. Cash used in investing activities was $321,000 in 2003 and $78,000 in 2002, primarily related to capital expenditures.

Cash provided by financing activities was $326,000 for the three months ended March 31, 2005, primarily as a result of indebtedness incurred of $445,000 offset by dividend payments of $119,000. Cash provided by financing activities was $6.6 million in 2004, consisting primarily of $6.0 million in equity financing, and the remainder from indebtedness incurred in connection with purchases of capital equipment. Cash provided by financing activities was $1.0 million in 2003 and $594,000 in 2002 related to $1.2 million in equity financing and $400,000 of member loan proceeds in those years.

On April 8, 2005 we entered into a $5.0 million secured revolving credit facility. The total amount available at any time is subject to a borrowing base calculation based on various percentages of accounts receivable, inventory and fixed assets. As of June 30, 2005, we had $5.0 million in borrowings outstanding under the revolving credit facility. We used a portion of the proceeds of borrowings under the credit facility to fund the distribution of $3.0 million in cash to members as of December 31, 2004 of our predecessor limited liability company pursuant to the operating agreement for that entity, and of the remaining $2.0 million, we used $1.3 million for the purchase of our manufacturing operation in Mexico and associated operating assets in April 2005 and $700,000 for working capital purposes. The revolving credit facility bears interest at floating rates based on the higher of the Bank of America prime rate plus 1.0% or the Federal Funds Rate plus 1.5%. The effective interest rate was 7.28% per annum as of June 30, 2005. Our obligations under the revolving credit facility are secured by substantially all of our property, including, among other things, our accounts receivable, inventory, equipment and fixtures. We pay an annual fee of 0.35% of any unused amount under our revolving credit facility. The credit facility also contains financial covenants that require us to meet certain specified financial ratios and thresholds, including a consolidated fixed charge coverage ratio, consolidated leverage ratio, and consolidated earnings before interest, income taxes, depreciation and amortization. We were in compliance with all covenants as of June 30, 2005. The revolving credit facility will expire on April 8, 2006. The credit facility requires that we repay the credit facility in full in the event we complete a public offering of our common stock, including this offering. See "Use of Proceeds." The credit facility will terminate upon repayment.

Contractual Obligations and Commercial Commitments

The following table describes our commitments to settle contractual obligations as of December 31, 2004:

	Payments due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
	(dollars in thousands)				
Long-term debt [1]	$ 1,732	$ 323	$ 1,293	$ 116	$ —
Notes payable [2]	655	655	—	—	—
Operating leases [3]	1,003	411	591	1	—
Redeemable common shares [5]	808	—	808	—	—
Redeemable convertible preferred shares [4]	5,500	—	—	5,500	—
Purchase obligations	2,325	900	1,425	—	—
Members' distribution	3,000	3,000	—	—	—
Contractual severance commitment	672	168	336	168	—
Total contractual obligations	$ 15,695	$ 5,457	$ 4,453	$ 5,785	$ —

(1) Loan with Development Bank of Canada, excluding interest which accrues at variable rates.

(2) Bank demand note in Canada, excluding interest which accrues at variable rates.

(3) Operating leases for real property, vehicles, and equipment, excluding operating leases entered into after December 31, 2004 totaling $714,000 of future cash commitments.

(4) Excluding dividends payable of $275,000 per year on shares of our Series A preferred stock, which is redeemable commencing on July 1, 2009 at the option of a majority the holders, to the extent not previously converted. All outstanding Series A preferred stock will convert to common stock in connection with the completion of this offering.

(5) The redeemable common shares are redeemable commencing in the second quarter of 2006 at the option of the holder. Under the terms of the agreements, the purchase price is the greater of the holder's original investment or the holder's then current percentage ownership in Crocs, Inc. multiplied by the aggregate of the prior three fiscal years' net income. The amount in this table represents the original investment which is our current contractual obligation.

Critical Accounting Policies and Estimates

Our financial statements have been prepared in accordance with accounting principles generally accepted in the U.S., which require us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure at the date of our financial statements. On an ongoing basis, we evaluate our estimates and judgments, including those related to revenue, intangible assets, and stock compensation. We base our estimates and judgments on historical experience and on various other factors that we believe to be reasonable under the circumstances, the results of which form the basis of our judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results or changes in the estimates or other judgments of matters inherently uncertain that are included within these accounting policies could result in a significant change to the information presented in the consolidated financial statements. We believe that the estimates and assumptions below are among those most important to an understanding of our consolidated financial statements contained in this prospectus.

We consider certain accounting policies related to revenue recognition, allocation of the purchase price we paid for Foam Creations, valuation of intangible assets and goodwill, and stock-based compensation to be critical policies due to the estimates and judgments involved in each.

Revenue Recognition. Our revenues are derived principally from wholesale sales to retailers. Our standard arrangement for our customers includes a valid purchase order or contract with no customer acceptance provisions. We recognize revenues from sales of products when:

- we enter into a legally binding arrangement with a customer;
- delivery has occurred;
- customer payment is deemed fixed or determinable and free of contingencies or significant uncertainties; and
- collection is reasonably assured.

Title passes generally upon shipment or upon receipt by the customer depending on the country of the sale and the arrangement with the customer. Allowances for estimated returns and claims are provided for when related revenue is recorded. We base our estimates on historical rates of product returns and claims, and specific identification of outstanding claims and outstanding returns not yet received from customers. Since inception, actual returns and claims have not exceeded our reserves. However, actual returns and claims in any future period are inherently uncertain and thus may differ from our estimates. If actual returns and claims exceed reserves, we would need to reduce our revenues at the time of such determination.

Allocation of Purchase Price for Foam Creations Pursuant to Purchase Accounting. Our purchase of substantially all of the issued and outstanding shares of capital stock of Foam Creations constituted a purchase transaction. Under the purchase accounting rules set forth in Statement of Financial Accounting Standards (SFAS) No. 141, *Business Combinations* , we have allocated the net purchase price to the acquired assets and liabilities of Foam Creations based on the estimated fair values as of the date of the transaction. In accordance with SFAS No. 141, our financial statements as of and for all periods after June 29, 2004 reflect the new basis of the assets and liabilities acquired from Foam Creations at that date. We engaged a third party appraisal firm to assist us in determining the fair values of the assets acquired and the liabilities assumed. Our management was responsible for determining the key assumptions used in determining the fair values of the assets acquired and the liabilities assumed. These valuations required us to make significant estimates and assumptions, especially with respect to intangible assets.

The critical estimates we used in allocating the purchase price and valuing specific intangible assets include the discount rate used, future expected cash flows from customers, customer lists, useful lives of long-lived assets, and brand awareness and market position of acquired products. Our estimates of fair value at the time when they were made were based upon assumptions that we believed to be reasonable, but which are inherently uncertain and unpredictable. If we were to make different assumptions, the estimated fair value of our intangible assets could differ materially from our estimates.

Goodwill and Intangible Assets. We periodically evaluate intangible assets and goodwill in accordance with Statement of Financial Accounting Standards SFAS No. 142, *Goodwill and Other Intangible Assets* , for indications of impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Intangible assets include goodwill, patents and trademarks, customer relationships, and core technology.

Factors we consider important that could result in an impairment review include significant under-performance relative to historical or projected future operating results, significant changes in the manner in which we use the acquired assets or the strategy for our overall business, or significant negative industry or economic trends. SFAS No. 142 also requires an annual impairment test for goodwill. In testing for a potential impairment of goodwill, SFAS No. 142 requires the application of a fair value based test at the reporting unit level. Our impairment test of goodwill compares the fair value of the applicable reporting unit to its carrying value. If the carrying value of the reporting unit

exceeds the estimate of fair value, impairment is calculated as the excess of the carrying value of goodwill over its implied value. Intangible assets that are determined to have definite lives are amortized over their useful lives and are measured for impairment only when events or circumstances indicate the carrying value to be impaired in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets.* There was no impairment of goodwill as of December 31, 2004.

Stock-Based Compensation. We have elected to follow the intrinsic value-based method prescribed by Accounting Principles Board Opinion (APB) No. 25, *Accounting for Stock Issued to Employees* , and the related interpretations in accounting for employee stock options rather than adopting the alternative fair value accounting provided under SFAS No. 123, *Accounting for Stock Based Compensation.* Therefore, we do not record any compensation expense for stock options we grant to our employees where the exercise price equals the fair market value of the stock options on the date of grant and the exercise price, number of shares eligible for issuance under the options and vesting period are fixed. We comply with the disclosure provisions of SFAS No. 123 and SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure*, which require that we disclose our pro forma net income or loss and net income or loss per common share attributable to common stockholders as if we had expensed the fair value of the options. In calculating fair values of our options, we use assumptions of estimated option life, dividend policy, volatility and interest rates.

The fair value of equity units granted from October 2002 through December 2004 was originally estimated by our board of directors based upon the best information available to them on the dates of grant, including third party sales of equity units. We did not obtain contemporaneous valuations by valuation specialists because, at the time of the issuances of stock options during this period, our efforts were focused on acquiring new customers, developing our operational infrastructure and executing our business plan. We engaged an independent third party valuation specialist to perform a valuation of common stock at December 31, 2004. We also engaged a third party valuation specialist to perform a valuation of common stock at April 30, 2005 in connection with the grant of options to purchase shares of our common stock to employees, consultants and members of our board of directors. Our estimates of fair value of our stock were based on assumptions that we believe are reasonable. The fair value of our stock is affected by a number of assumptions and judgments including the timing of sales of equity instruments, the negotiated value of those sales, the timing of our third party valuations and significant assumptions included in those valuations, including our estimates of our future performance, discount factors used and comparable companies and transactions selected, among others. If we were to make different assumptions, the estimated value of our stock could differ materially from our estimates.

As discussed below under "Recent Accounting Pronouncements," the FASB has issued SFAS No. 123(R), which we expect to be required to implement beginning January 1, 2006. We are evaluating the impact that adoption of SFAS No. 123(R) will have on our financial statements.

Quantitative and Qualitative Disclosures About Market Risk

We recently entered into a $5.0 million line of credit with a lender. As of June 30, 2005, we had $5.0 million outstanding on this facility and expect that we will continue to borrow under this line, or a new line, in the future. To the extent we borrow under our revolving credit facility, which bears interest at floating rates based either on the Federal Funds Rate or Bank of America's prime rate, we are exposed to market risk related to changes in interest rates. At June 30, 2005, we had borrowings under our credit facility at an interest rate of 7.28% per annum. If applicable interest rates were to increase by 100 basis points, for every $1.0 million outstanding on our revolving credit facility, our income before income taxes would be reduced by approximately $10,000 per year. We are not party to any

material derivative financial instruments. Our credit facility will be repaid upon consummation of this offering.

We pay our overseas third party manufacturers in U.S. dollars and have not had significant revenues from foreign sales in past periods. As a result, we have not faced, and do not currently face, any material risk relating to fluctuations in foreign currency exchange rates. In the event our foreign sales increase and are denominated in currencies other than the U.S. dollar, our operating results may be affected by fluctuations in the exchange rate of currencies we receive for such sales.

Recent Accounting Pronouncements

In November 2004, the FASB issued SFAS No. 151, *Inventory Costs—An Amendment of ARB No. 43, Chapter 4.* SFAS No. 151 amends the guidance in ARB No. 43, Chapter 4, *Inventory Pricing,* to clarify the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage), and requires that such items be recognized as current-period charges regardless of whether they meet the "so abnormal" criterion outlined in ARB No. 43. SFAS No. 151 also introduces the concept of "normal capacity" and requires the allocation of fixed production overheads to inventory based on normal capacity of the production facilities. Unallocated overheads must be recognized as an expense in the period incurred. SFAS 151 is effective for inventory costs incurred during fiscal years beginning after June 15, 2005 and is required to be adopted in the first quarter of fiscal year 2006. We have not yet determined the effect of adopting this pronouncement.

In December 2004, the FASB issued SFAS No. 123(revised 2004), *Share-Based Payment,* which is a revision of SFAS No. 123. SFAS No. 123 (R) supersedes APB Opinion No. 25, and amends SFAS No. 95, *Statement of Cash Flows.* Generally, the approach in SFAS No. 123(R) is similar to the approach described in SFAS No. 123. However, SFAS No. 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. Pro forma disclosure is no longer an alternative.

SFAS No. 123(R) and the related interpretations must be adopted no later than January 1, 2006. We expect to adopt SFAS No. 123(R) on January 1, 2006.

SFAS No. 123(R) permits companies to adopt its requirements using one of two methods:

- A "modified prospective" method in which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS No. 123(R) for all share-based payments granted after the effective date and (b) based on the requirements of SFAS No. 123 for all awards granted to employees prior to the effective date of SFAS No. 123(R) that remain unvested on the effective date.

- A "modified retrospective" method which includes the requirements of the modified prospective method described above, but also permits entities to restate based on the amounts previously recognized under SFAS No. 123 for purposes of pro forma disclosures either (a) all prior periods presented or (b) prior interim periods of the year of adoption.

We have not yet determined the method of adoption or the effect of adopting this pronouncement.

In December 2004, the FASB issued SFAS No. 153, *Exchanges of Non-Monetary Assets.* The statement refines the measurement of exchanges of non-monetary assets between entities. The provisions of this statement are effective for fiscal periods beginning after June 15, 2005. Historically, we have not

transacted significant exchanges of non-monetary assets, but future such exchanges would be accounted for under the standard, when effective.

In March 2005, the FASB issued FASB Interpretation No. 47, *Accounting for Conditional Asset Retirement Obligations* . FIN 47 clarifies that the term conditional asset retirement obligation as used in FASB Statement No. 143, *Accounting for Asset Retirement Obligations* , refers to a legal obligation to perform an asset retirement activity in which the timing and (or) method of settlement are conditional on a future event that may or may not be within the control of the entity. The obligation to perform the asset retirement activity is unconditional even though uncertainty exists about the timing and (or) method of settlement. Uncertainty about the timing and (or) method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. FIN 47 also clarifies when an entity would have sufficient information to reasonably estimate the fair value of an asset retirement obligation. FIN 47 is effective no later than the end of fiscal years ending after December 15, 2005. We will adopt FIN 47 in its fiscal year 2006. We are currently evaluating the effect that the adoption of FIN 47 will have on our consolidated results of operations and financial condition.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections* (SFAS 154), which replaces APB No. 20, "Accounting Changes" and SFAS No. 3, *Reporting Accounting Changes in Interim Financial Statements—An Amendment of APB Opinion No. 28.* SFAS 154 provides guidance on the accounting for and reporting of accounting changes and error corrections. It establishes retrospective application, or the latest practicable date, as the required method for reporting a change in accounting principle and the reporting of a correction of an error. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. This pronouncement is required to be adopted by us in the first quarter of 2006. We are currently evaluating the effect that the adoption of SFAS 154 will have on our consolidated results of operations and financial condition but does not expect it to have a material impact.

BUSINESS

Overview

We are a rapidly growing designer, manufacturer and marketer of footwear for men, women and children under the **crocs** brand. All of our footwear products incorporate our proprietary closed-cell resin material which enables us to produce a soft and lightweight, non-marking, slip- and odor- resistant shoe. We believe our proprietary closed-cell resin, combined with our unique styling, represents a substantial innovation in footwear comfort and functionality, allowing us to offer a differentiated line of products in the casual lifestyle footwear category at attractive retail price points ranging from $29.99 to $59.99. We currently offer seven footwear models in up to 17 different colors and plan to introduce two new models and four additional colors during the remainder of 2005. We market our footwear products to a broad range of distribution channels and currently sell our products in approximately 4,700 retail locations in the United States and internationally in over 20 countries. In addition to our footwear products, we market a line of **crocs** -branded apparel and accessory items that are intended to increase awareness of our brand and our products. We also selectively use our proprietary closed-cell resin to manufacture a variety of other non-branded products, such as spa pillows and kayak seats, which are marketed to original equipment manufacturers.

Industry Trends

In recent years, footwear manufacturers have increasingly offered more casual shoes in response to growing consumer demand. We believe that the market for casual footwear is expanding and that several factors are driving this trend, including a desire for more comfortable and functional shoes, the incorporation of athletic features into casual shoes, and a general fashion trend towards more casual attire.

We believe that continuing consolidation among retailers, as well as consumers' demand for unique products at attractive prices, has resulted in an increasingly competitive environment for footwear retailers. Retailers continually strive to more efficiently stock limited floor space, improve their sales volumes and profit margins and reduce risk of over or under-stocked inventory. As a result, most footwear retailers seek unique and differentiated footwear products at attractive retail price points to increase consumer traffic and improve sales per square foot in their stores. Additionally, retailers seek footwear models that offer strong profit margins and have broad demographic appeal. We also believe that retailers have recently strategically reduced the number of footwear vendors with whom they work and have attempted to enhance their relationships with their remaining vendors. Specifically, retailers are looking to establish more efficient, just-in-time supplier relationships, allowing for more effective inventory management, increased inventory turns and reduced inventory risk.

Business Strategy

We seek to differentiate the **crocs** brand and our product offerings by focusing on several core strategies. Our principal strategies are to:

- *Continue to highlight the unique characteristics of* **crocs** *footwear*. We believe consumers associate the **crocs** brand with broad functionality in a comfortable, stylish shoe. Our footwear is made primarily from our proprietary closed-cell resin, which contributes many of the functional characteristics of our products. This resin enables us to manufacture shoes that weigh approximately three to 10 ounces, which is significantly lighter than traditional casual shoes. In addition to being lightweight, our shoes have non-marking, slip-resistant soles and respond to body heat by softening and conforming to the wearer's feet. These distinct characteristics make our footwear ideal for casual wear and for recreational uses such as boating, hiking, fishing or gardening, as well as for wearing after exercise.

Additionally, the soft and lightweight nature of our footwear increases their appeal to people whose jobs require them to stand for long periods of time, such as those in the medical and food service industries. We intend to expand the range of uses of our footwear products with the introduction of new models, reinforcing our reputation for producing broadly functional and comfortable footwear. Although we believe our fun styles are an important element of our products and our brand image, we believe that the functionality and comfort of our products are key competitive advantages in the market.

- *Maintain a flexible, low-cost manufacturing model.* Our strategy is to maintain a flexible, globally diversified, low-cost manufacturing base. We manufacture a portion of our footwear product volume in facilities that we operate in North America and obtain the remainder from third party manufacturers located around the world. We believe this enables us to rapidly change our production schedule to meet changing customer demand throughout the year, while capitalizing on the efficiencies and cost benefits of contract manufacturing. In addition, by October 2005, we plan to begin compounding a portion of our supply of proprietary closed-cell resin to further reduce costs in our supply chain and to provide maximum flexibility in our manufacturing process such as quickly increasing production of in demand colors to meet consumer preferences. We believe that this production strategy will enable us to continue to minimize our production costs, shorten production and development times to better serve our retail customers and increase overall operating efficiencies.

- *Focus on product design innovation.* We believe we have introduced an innovative range of footwear products that is highly differentiated from lines of products offered by our competitors in terms of functionality, comfort and style. We believe continued product innovation will be required to maintain differentiation of our products and will be key to maintaining a competitive advantage in the marketplace. By refining existing models and introducing new models, we expect to continue to offer our consumers and retailers a broad selection of fun and functional styles that remain current with consumer trends. We also believe product innovation will enable us to successfully expand the **crocs** brand into additional footwear categories.

- *Enhance our* **crocs** *brand.* Our initial focus has been to introduce a range of innovative footwear products that appeal to a broad group of men, women and children, and we have taken a grassroots approach to marketing our products in defined target markets. A core element of our strategy is to expand our brand by capitalizing on market opportunities arising from the versatility of our proprietary closed-cell resin, while offering our existing consumer base an expanded line of **crocs** products. We also intend to employ targeted marketing strategies to continue to expand market awareness of our **crocs** products, and we have recently introduced a line of branded apparel and accessories to further support our marketing efforts.

- *Provide a compelling value proposition to retailers.* We believe we offer our customers a compelling value proposition that helps to differentiate us from other footwear vendors. We offer retailers a line of footwear products that we believe have year-round appeal, are unique in appearance and functionality, and retail at attractive price points yet provide compelling profit margins for our retailers. We believe our attractive, space-efficient merchandising display and our brightly colored products can result in increased consumer traffic and high sales per square foot for our retail customers. Additionally, we expect that our flexible production model will enable us to offer our customers timely inventory fulfillment of high-demand products throughout the year. We believe this enables our retail

customers to experience less time out of stock of key products and to maximize their inventory turns and sales volumes. We expect these factors will allow us to continue to add new customers and to extend our relationships with our current retailers into additional store locations and expanded shelf space.

Growth Strategy

We seek to increase our market share and drive further growth in our business by pursuing the following strategies:

- *Introduce new footwear models* . Since we began marketing our first model in November 2002, we have expanded our footwear product portfolio to include seven models in up to 17 different colors, and we expect to introduce two new models and four additional colors during the remainder of 2005. We plan to continue introducing new models and additional colors at various price points in order to meet the evolving needs of consumers and our retail customers. Our new footwear models will also be designed to further expand the appeal of our products to diverse demographic audiences. As a part of this strategy, we intend to offer refined versions of our existing models, such as the Aspen, a revised and updated version of our Highland model, as well as expand into new footwear categories with models such as the Islander, a water resistant deck shoe with a stitched leather upper, and the Georgie, a calf-high rain boot.

- *Expand domestic distribution* . We believe we have significant opportunities to add new retailers and to increase sales to existing retail customers at additional store locations. We intend to continue to expand our domestic distribution by augmenting our domestic sales force, extending our product offering and providing high quality service to our customers. We also intend to expand our direct retail sales domestically by opening additional company-operated kiosks in malls and other strategic locations throughout the U.S.

- *Further develop international distribution* . We believe that international markets represent a significant opportunity for our products and our brand. We continue to establish a sales presence in major foreign markets and have recently initiated direct sales efforts in 12 countries, including Australia, the United Kingdom, Germany and Japan and other parts of Asia. We also market our products in 12 countries through third party distributors, and we will continue to establish distributor relationships in countries where we believe they offer a preferable alternative to a direct sales force.

- *Expand complementary apparel and accessories offerings.* Apparel and accessories present us with an attractive opportunity to increase awareness of the **crocs** brand by leveraging our distribution network. We have recently introduced branded accessory items, including a line of **crocs** sunglasses, and branded apparel such as t-shirts, sweatshirts, hats and socks.

Product Overview

Our primary product line is **crocs** -branded footwear for men, women and children, which we first introduced in 2002 with a single model in six colors. We have since expanded our line of footwear to include seven models in up to 17 different colors, representing over 900 stock keeping units, or SKUs, and we intend to continue diversifying our footwear portfolio with new model introductions. In addition, we have introduced **crocs** branded apparel and accessories, and we also selectively use our proprietary closed-cell resin to manufacture a variety of other non-branded products, such as spa pillows and kayak seats, for original equipment manufacturers.

Footwear

A key differentiating feature of our footwear products is our proprietary closed-cell resin, which is uniquely suited for comfort and functionality. We have carefully formulated our proprietary closed-cell resin to be of a density that creates a comfortable shoe with a high coefficient of friction, allowing for slip-resistant, non-marking footwear that is extremely lightweight. For example, a size large Beach weighs approximately six ounces, which is significantly lighter than more traditional casual footwear products. Our proprietary closed-cell resin softens as it warms to better conform to the wearer's feet. Our shoes are also non-absorbent, which makes them water resistant and virtually odor-free, and allows them to be cleaned simply with water or bleach.

We have combined the unique properties of our proprietary closed-cell resin with designs that are intended to be functional across a broad range of activities. As a result, we believe our products appeal to a wide range of consumers. We introduced **crocs** as a footwear brand in the U.S. with the launch of our Beach model in 2002. Based on our initial success, we made refinements to the Beach model and introduced a second generation of footwear (the Cayman, Highland and Metro models) that incorporated a broader range of sizing, provided different levels of ventilation for various climates and offered slightly different styling. Recently, we have further broadened our footwear line into new product categories, such as the Athens, a flip-flop with a soft footbed; the Nile, an open toe model designed for women; and the Islander, a deck shoe integrating a base made from our proprietary closed-cell resin with a stitched leather upper.

We currently sell our shoes in an assortment of colors, styles and sizes to provide consumers and retailers a wide variety of options at suggested retail prices ranging from $29.99 to $59.99. We have designed our shoes to offer a number of beneficial structural features to provide maximum comfort and functionality, such as Italian-designed orthotic heels, built-in arch supports and tarsal bars. We also offer models that are based on either general shoe sizing ranging from XS through XXL, or specific shoe sizing ranging from children's 8-9 through men's 13. This allows retailers to offer a complete range of sizes or carry a more limited number of SKUs, enabling them to tailor their offerings to their particular clientele and more efficiently allocate limited floor space.

We currently produce and market seven footwear models:

Beach
MSRP: $29.99

The Beach model was our original shoe and is now available in 17 vibrant colors and a simple sizing scheme for men, women and children. Ports on the top and sides of the shoe help keep feet ventilated and comfortable. The Beach, like several of our other models, features a heel strap that may also be rolled forward to create a slip-on option.
Colors: Black, Butter, Chocolate, Coral, Emerald, Fuchsia, Khaki, Light Blue, Lime, Navy, Pearl White, Pink, Purple, Red, Sage, Sea Blue, and Yellow
Sizes: XS, S, M, L, XL, XXL

Cayman
MSRP: $29.99

The Cayman, available in 17 colors, represents our second generation of footwear and was designed to incorporate more specific sizing and a slightly narrower footbed. Unlike the Beach, which comes in sizes from XS to XXL, the Cayman comes in individual shoe sizes.
Colors: Black, Butter, Chocolate, Coral, Emerald, Fuchsia, Khaki, Light Blue, Lime, Navy, Pearl White, Pink, Purple, Red, Sage, Sea Blue, and Yellow
Sizes: 5-13 Men, 3-12 Women

Our Highland model, available in five colors, was developed for consumers seeking a warmer and more water-resistant design. Unlike the Beach and the Cayman, the Highland does not incorporate ports and has a completely closed upper.
Colors: Black, Emerald, Khaki, Navy and Pearl White
Sizes: XS, S, M, L, XL, XXL

Highland
MSRP: $34.99

The Metro, available in eight colors, is a hybrid of our Cayman and Highland models. The Metro protects the foot by eliminating the ports on top of the shoe while retaining them around the side of the foot to maintain ventilation.
Colors: Black, Butter, Chocolate, Khaki, Light Blue, Navy, Pearl White, and Sage
Sizes: 5-13 Men, 3-12 Women

Metro
MSRP: $39.99

The Nile, available in 16 colors, is specifically designed for women who want the comfort and functionality of **crocs** footwear in an open toe design.
Colors: Black, Butter, Coral, Emerald, Fuchsia, Khaki, Light Blue, Lime, Navy, Pearl White, Pink, Purple, Red, Sage, Sea Blue, and Yellow
Sizes: 4-11 Women

Nile
MSRP: $29.99

The Athens, available in 16 colors, combines our lightweight proprietary closed-cell resin with an ultra-suede flip-flop footbed that wicks moisture away from the foot.
Colors: Black, Butter, Coral, Emerald, Fuchsia, Khaki, Light Blue, Lime, Navy, Pearl White, Pink, Purple, Red, Sage, Sea Blue, and Yellow
Sizes: 3-13 Men, 5-12 Women

Athens
MSRP: $29.99

The Islander is an innovative deck shoe integrating a base made from our proprietary closed-cell resin with a stitched leather upper.
Colors: Variety of available color combinations
Sizes: 4-13 Men, 6-12 Women

Islander
MSRP: $59.99

We also recently introduced a line of footwear for children based on our Cayman model. Our children's footwear is sold in 13 colors and in sizes 8-9, 10-11, 12-13, 1, 2, and 3 for a suggested retail price of $29.99.

As part of our strategy of expanding into new footwear categories, we are continually designing new footwear using our in-house design team as well as recognized footwear design experts. We currently have two new models that we anticipate releasing prior to the end of 2005.

Apparel and Accessories

We have introduced several **crocs** -branded accessory items that complement the fun styling, colors and image of our footwear and that we believe will appeal to a similar demographic base. We have developed a line of **crocs** sunglasses that we intend to market to larger retail customers where we believe accessories will appeal to the retailer's customer base and complement the retailer's merchandising strategy for our footwear. We also intend to develop additional **crocs** accessories for certain targeted markets. For example, we have developed a line of lightweight, colorful kneepads made from our proprietary closed-cell resin, which we are marketing to gardening retailers and hardware

stores. Our strategy is to develop accessory items that benefit from our unique material and complement the market positioning of our **crocs** footwear.

As part of our strategy to increase awareness of our brand, we have also introduced a line of branded logo apparel which is complementary to our footwear line and embodies the functional and fun aspects of the **crocs** brand. These products include t-shirts, sweatshirts, hats, beanies and socks, all of which come in various colors and prominently feature the **crocs** logo.

Other Products

Our proprietary closed-cell resin is well suited to a number of other applications and, in many cases, is superior to materials currently used in such applications. Foam Creations, our wholly owned subsidiary, manufactures spa pillows for the home spa market, as well as seats and pads for use in kayaks and canoes. Our proprietary closed-cell resin is also highly functional for other water sports products such as scuba diving fins and recreational flotation devices, and we currently produce these items for several original equipment manufacturers. These products employ our proprietary closed-cell resin, but we do not market them under the **crocs** brand name.

Sales and Distribution

Domestic Sales

In the U.S., we sell our products through over 4,700 domestic retail store locations representing approximately 2,700 customer accounts. Our footwear is currently sold through traditional retail channels, including specialty footwear stores such as Brown's Shoe Fit and Journeys, sporting goods and outdoor retailers such as The Sports Authority, Dick's Sporting Goods, REI, Bass Pro Shops and West Marine, and department stores, including Dillard's and Nordstrom. Sales to Dillard's accounted for approximately 12% of our revenues during the three months ended March 31, 2005. No other customer accounted for more than 10% of our revenues during the three months ended March 31, 2005. Our products are also sold through a variety of other specialty channels, including gift shops, independent bicycle dealers, specialty food retailers, health and beauty stores, catalogs and uniform suppliers. As we have introduced new models in new footwear categories, we have strategically aligned ourselves with retailers whom we believe have the reputation for quality and style that will reinforce the high level of quality, performance and functionality associated with the **crocs** brand.

Our domestic accounts are primarily serviced through a network of 11 independent sales representatives, who focus on selling the appropriate mix and quantity of our products to our retail accounts, ensuring that our products are displayed effectively at retail locations and educating our retailers about our **crocs** brand and the quality of our products. We compensate our independent sales representatives on a commission basis, which we believe provides them with strong incentives to promote our products. We are typically the exclusive footwear brand sold by these representatives, who may also sell complementary products, such as sunglasses or apparel, from other companies. For certain of our larger retail accounts and distributors, we manage the sales relationship through in-house sales executives rather than through independent sales representatives.

International Sales

Outside of the U.S., we sell our products through over 300 international retail store locations. Our strategy is to sell through a broad range of sporting goods and department stores, as well as through specialty retailers, similar to the retail sales channels we have established in the U.S. We intend to continue to establish a direct sales presence in major foreign markets, rather than rely on distributors, which we believe will improve our margins and allow us to better control our marketing and

distribution. We have established direct operations in Australia, the Netherlands, Germany, France, the U.K., Austria, and Japan and other parts of Asia.

We also use distributors in select foreign markets where we believe such arrangements are preferable to direct sales. In markets where we use third party distributors, these distributors purchase products pursuant to a price list and are granted the right to resell such products in a defined territory, usually a country or group of countries. Our typical distribution agreements have terms of one to four years, are terminable upon 60 days' notice prior to the end of the term or upon six months prior notice at any time, and require our distributors to meet a minimum sales threshold.

Our international accounts are primarily serviced through our international offices and a network of sales agents and distributors. In addition, we employ two in-house sales executives who serve as key account managers for several of our largest customers.

Retail Sales

We are currently expanding our direct sales efforts to consumers. We believe that direct sales provide us with an opportunity to showcase our entire line of footwear, apparel and accessory offerings, and believe this strategy will serve as an important and effective means to enhance our product and brand awareness. We also believe that our direct sales initiatives require low levels of capital investment while enabling us to sell our products at retail, rather than wholesale prices, resulting in higher potential gross margins.

Retail Sites. As of July 31, 2005, we operated 12 retail kiosks located in malls and other high foot traffic areas. With bright and colorful displays, efficient use of retail space and limited initial capital investment, we believe that kiosks are an effective outlet for selling our products. Kiosks enable us to highlight a wide range of our product offering, more effectively interact with potential consumers and enhance our brand awareness among both consumers and local retailers. We plan to continue to open and operate additional kiosk sites in select, high foot traffic locations.

Internet. We currently offer our products domestically and internationally through our website at www.crocs.com. Our Internet presence enables us to educate consumers about our products and brand. As we expand our international marketing efforts, we intend to create local websites targeting consumers in each major market we enter.

Distribution and Logistics

We distribute a substantial portion of our products in the U.S. through a distribution center in Aurora, Colorado, which is operated by Expeditors International of Washington, Inc., a global supply chain management and logistics provider. We have negotiated the use of up to 150,000 square feet of the distribution center to accommodate fluctuations in our inventory. We do not have a long-term contract with Expeditors, and the relationship may be terminated at will by either party.

A substantial portion of our products are shipped to Expeditors's distribution center in Aurora. From there, we generally ship by package express or truck to our customers, depending upon size of order, customer location and availability of inventory. In select cases, large customers may receive shipments of footwear directly from the manufacturing facilities. We have established or are in the process of establishing additional company-operated warehouse and fulfillment operations in Mexico, China, Canada, the Netherlands, and Singapore, and are developing relationships with third parties in Australia, China and Mexico to provide such services to us. In addition, we have recently established a company-operated warehouse facility and customer order facility in Niwot, Colorado, and we are currently processing our Internet, accessories and apparel orders from this facility. We believe that

these warehousing, distribution and fulfillment services will enable us to ship our products from facilities adjacent to our manufacturing operations directly to our customers, rather than through Expeditors's distribution facility in Colorado.

Raw Materials

Our proprietary closed-cell resin is the primary raw material used in all of our footwear and non-branded products, including spa pillows and seats and pads for kayaks and canoes. Our proprietary closed-cell resin is also used in our **crocs** -branded accessory items, such as our line of sunglasses and kneepads. We have formulated our proprietary closed-cell resin to offer a number of unique properties that make our material suitable for a wide range of commercial uses including those mentioned above. Our material is soft and durable and is of a density that provides a high coefficient of friction allowing our material to be slip-resistant and non-marking in addition to being extremely lightweight. Additionally, the closed-cell nature of our resin makes it resistant to the bacteria and fungus that cause shoe and foot odor. We continue to invest in research and development in order to refine our materials to enhance these properties as well as target the development of new properties for specific applications.

Our proprietary closed-cell resin is produced by compounding elastomer resins that we or one of our third party processors purchase from a major chemicals manufacturer together with certain other production inputs, such as color dyes. We have historically contracted to have our closed-cell resin compounded by our third party manufacturer in Italy, and we have recently engaged a processor in Canada to compound a portion of our resin requirements. We also plan to begin compounding resin at our manufacturing facility in Quebec City, Canada by October 2005. We believe that in-house production of our proprietary closed-cell resin will lower our production costs, reduce the risk of supply shortages from our third party processors and provide us with greater production flexibility to meet changing retail demand.

Manufacturing and Sourcing

Our strategy is to maintain a flexible, globally diversified, low-cost manufacturing base. We operate our own production facilities in North America, and we also contract with third party manufacturers located around the world. We believe our in-house manufacturing capabilities enable us to rapidly make changes to production, providing us with the flexibility to quickly respond to orders for high-demand models and colors throughout the year, while outsourcing allows us to capitalize on the efficiencies and cost benefits of using contract manufacturing. We believe that this production strategy will enable us to continue to minimize our production costs and increase overall operating efficiencies as well as shorten production and development times to better serve our retail customers.

The process for manufacturing our footwear was developed over an eight year period of continual refinement to improve consistency, softness, durability and yield. Prior to October 2004, all of our footwear was manufactured at Foam Creations's facility in Quebec City. In the three months ended March 31, 2005, we manufactured approximately 36% of our footwear products in our Quebec City facility and plan to increase our internal manufacturing capacity through our recent acquisition, and subsequent expansion, of a manufacturing operation in Mexico. We obtain the remainder of our footwear products from third party manufacturers in China, Florida, Italy and Mexico. In the three months ended March 31, 2005, a supplier in China produced approximately 51% of our footwear unit volume. We have long-term contracts with third party manufacturers in Italy and Florida. Our manufacturing facility in Quebec City produces our non-footwear products made from our proprietary closed-cell resin, such as kayak seats and spa pillows. We purchase our apparel and accessories from various suppliers in the U.S. that source our products from manufacturers in Guatemala, Honduras and South Korea.

All of our manufacturers and suppliers of our apparel and accessories must comply with our high quality standards, which are an integral component of the reputation of the **crocs** brand. We have instituted pre-production and post-production inspections to meet or exceed the high quality demanded by consumers of our products and to ensure consistent product quality regardless of the location of production. Our quality assurance program includes on-site inspection throughout the entire production process in our Quebec City facility as well as spot inspections of our third party manufacturers. We also inspect our products upon arrival at our U.S. distribution center.

Product Design and Development

Our primary goal in product design and development is to create and introduce new and innovative footwear products that combine our standards of comfort, functionality and style and enhance the awareness of the **crocs** brand. Our footwear product line is designed by a combination of our internal design and development staff supported by outside designers. By introducing outside sources to the design process, we believe we are able to capture a variety of different design perspectives on a cost-efficient basis and anticipate trends more quickly. We are committed to continuing to dedicate significant resources to product design and development to sustain our brand's commitment to innovation, execute on our growth strategy and support our goal of becoming a well recognized global brand.

We develop footwear models based on what we identify as opportunities in the marketplace. Once a design has been identified and demand in the marketplace has been validated, the designs are then translated into product specifications by our developers and made into prototypes in our facility in Quebec City, Canada or by one of our third party manufacturers in Italy or China. Our designers and developers work closely with each other to develop product prototypes, test and refine products and provide quality assurance throughout the manufacturing process. Our design and development process is highly collaborative as members of the design team frequently meet with our sales and marketing staff, production and supply managers and certain of our retail customers to further refine our products to meet the particular needs of our target market. We continually strive to improve our development function so that we can bring products to market quickly and reduce costs while maintaining product quality.

Backlog

As of June 30, 2005, our backlog was approximately $20.8 million compared to $0.5 million as of June 30, 2004. Although orders in the backlog are subject to cancellation by customers, we have not yet experienced any material levels of cancellation of orders by our customers and believe that substantially all of the orders will be shipped in 2005. For a variety of reasons, including our short operating history, continued growth in customer demand for our products, the addition of new customers in each of our channels, the timing of production and shipments, seasonality, product mix of customer orders, and a shift toward shorter lead times for orders, backlog may not be a reliable measure of future sales for any succeeding period. In addition, our historical cancellation experience may not be indicative of future cancellation rates.

Marketing

We have been successfully building product and brand awareness and generating sales growth through grassroots efforts and a limited marketing budget. To date, we have primarily relied on trade shows, word of mouth, public relations efforts promoting our products in various trade publications and media outlets, and our website to build awareness of our brand. We exhibit at both domestic and international trade shows, including the World Shoe Show, Outdoor Retailer, FFANY, International Trade Fair for Sports Equipment and Fashion, and Fredrickshafen Outdoor Show, where we have the opportunity to

showcase our product line to important retail buyers. We also promote our products and our brand on our website at www.crocs.com. Our website allows us to present important and relevant information on our products and to provide consumers with information regarding retail store locations that sell our products.

As we continue to grow, we intend to increase our marketing efforts and expenditures to continue to build **crocs** into a well recognized global brand. We have recently hired an advertising firm to coordinate our marketing efforts and further develop our long-term brand strategy. As part of our marketing strategy, we plan to use traditional media channels, including print advertising, event promotions and sponsorship, as well as athlete or celebrity sponsorship to reach our target consumer markets. Our marketing efforts will be customized for each product category and target market, but the core message will be consistent and integrated with our overall corporate brand strategy.

We plan to support our marketing efforts with a public relations strategy that is intended to garner positive and accurate editorial comments regarding our company and secure product placement in key magazines, trade journals and publications. We have recently hired a well-known public relations firm to refine our communication strategy.

Competition

The global casual footwear and apparel industry is highly competitive. The principal elements of competition in this industry include brand awareness, product functionality, design, quality, pricing, marketing and distribution. We believe that our unique footwear designs, proprietary closed-cell resin and our expanding product offering and distribution network position us well in the marketplace. However, some companies in the casual footwear and apparel industry have substantially greater financial, distribution and marketing resources than we have. Furthermore, the unique designs and resulting success of our footwear products have attracted new players in the market with imitation products that are similar to ours, and we face competition from these new market entrants.

Intellectual Property and Trademarks

We rely on a combination of trademark, copyright, trade secret, trade dress and patent protection to establish, protect and enforce our intellectual property rights in our product designs, brand, materials and research and development efforts, although no such methods can afford complete protection.

We own a variety of trademarks, including the **crocs** trademark, in a number of countries around the world. Our trademarks are used on all of our **crocs** -branded footwear, apparel and accessory products. We have registered our **crocs** trademark in Australia, Japan, New Zealand and Panama. As of July 31, 2005, we had 13 pending applications for our trademarks in the United States, including an application for the **crocs** trademark, and we had 12 pending trademark applications in foreign jurisdictions, including Brazil, Canada, China, European Union, Israel, Mexico, and South Africa. Trademarks registered outside of the United States generally have a duration of ten years depending upon the jurisdiction and are also generally subject to an indefinite number of renewals for a like period upon appropriate application. We believe our trademarks are crucial to the successful marketing and sale of our products, and we attempt to vigorously prosecute and defend our rights throughout the world.

As of July 31, 2005, we had three utility patent applications and nine design patent applications that are pending in the U.S. We also have European Union Community Design Registrations covering our Beach, Highland, Nile, Metro, Islander and a number of planned future shoe models, and as of July 31, 2005, had 12 foreign design patent applications pending covering our Beach, Highland and Nile models in foreign jurisdictions including Brazil, China, India, and Korea. In addition, as of July 31, 2005, we

had 14 utility patent applications pending in several foreign jurisdictions, including Japan, Canada, Europe, India, China, Brazil, and Australia. We will continue to pursue patent protection on our inventions that are significant to our business and pursue other intellectual property protection where applicable.

We consider the formulation of our proprietary closed-cell resin used to produce our products to be a valuable trade secret, and we employ various means to protect this trade secret. We believe the comfort and utility of our shoes depend on the properties achieved from the compounding of our proprietary closed-cell resin, and through considerable effort we have developed know-how in this area that we believe is not generally available elsewhere. We believe that our proprietary closed-cell resin is a key competitive advantage in the market, and we intend to vigorously protect this trade secret.

We actively combat counterfeiting through monitoring of the global marketplace. We use our employees, sales representatives, distributors and retailers to police against infringing products by encouraging them to notify us of any suspect products and to assist law enforcement agencies. Our sales representatives are also educated on our pending patents and trade dress and assist in preventing potentially infringing products from obtaining retail shelf space. The laws of certain countries do not protect intellectual property rights to the same extent or in the same manner as do the laws of the United States, and therefore we may have difficulty obtaining legal protection for our intellectual property in certain jurisdictions.

Privacy Policy

In the course of our business we collect information about our customers, including customer data submitted to us in connection with purchases of our products via our website. The customer information includes names, addresses, phone numbers and e-mail addresses, as well as credit card information. We respect the privacy of our customers and take steps to safeguard the confidentiality of the information that they provide to us. We do not sell or license customer information to third parties.

We have published a formal privacy policy on our website, and we allow our customers to opt-out of marketing practices that make use of their personal information. However, the laws in jurisdictions where we now conduct or expect to conduct sales through our website may require us to take additional steps to safeguard customer information and to accommodate the privacy preferences of our customers. To the extent that we do not comply with privacy laws, we may be subject to legal challenges, enforcement actions, court orders and penalties.

Legal Proceedings

In January 2005, we filed a lawsuit, through Foam Creations, against Holey Soles Holdings Ltd. in the Federal Court in Toronto, Canada. The complaint alleges trademark and copyright infringement relating to the design of some of their shoe models. We are seeking a permanent injunction with respect to any further acts of infringement of our intellectual property, as well as damages and attorneys' fees.

In August 2005, Holey Soles filed a lawsuit against us in the United States District Court for the Southern District of New York. Holey Soles seeks a declaratory judgment that we do not have any valid copyright or trade dress rights with respect to the design of our footwear. In addition, Holey Soles seeks a declaratory judgment that the manufacture, sale and distribution of its footwear products does not constitute unfair competition and does not infringe upon our copyrights or trade dress rights.

Although we are subject to litigation from time to time in the ordinary course of our business, we are not party to any pending legal proceedings that we believe will have a material adverse impact on our business.

Employees

As of July 31, 2005, we employed approximately 172 full-time employees in the U.S. and 293 full-time employees in Canada. Our U.S. employees are not represented by a union. 197 of our Canadian employees are represented by the Teamsters union. We believe our relationship with our employees is good.

Properties

Our principal executive and administrative offices are located at 6273 Monarch Park Place, Niwot, Colorado. We also operate a 76,000 square foot manufacturing facility in Quebec City, Canada and a 65,000 square foot manufacturing facility in San Francisco del Rincon, Mexico. We lease, rather than own, all of our facilities and our leases will all expire in 2007. Our distribution center, which is operated by Expeditors International of Washington, Inc., our third party logistics provider, is located in Aurora, Colorado. We consider our facilities to be suitable for our needs.

The general location, use and approximate size of our principal properties are given below:

Location	Use	Approximate Square Feet
Niwot, Colorado	Corporate offices/warehouse	49,000
Quebec City, Canada	Manufacturing facility	76,000
San Francisco del Rincon, Mexico	Manufacturing facility	65,000

We also maintain small branch sales offices in Hong Kong, Tokyo, Melbourne, Singapore and The Hague. All of these sales offices are leased.

MANAGEMENT

Executive Officers and Directors

Set forth below is information concerning our executive officers and the members of our board of directors, as of July 31, 2005.

Name	Age	Position(s)
Ronald R. Snyder	48	Chief Executive Officer, President and Director
Caryn D. Ellison	53	Chief Financial Officer, Treasurer
Lyndon V. "Duke" Hanson, III	43	Vice President—Manufacturing
Michael C. Margolis	54	Vice President—Sales & Marketing
John P. McCarvel	49	Vice President—Asian & Australian Operations
George B. Boedecker, Jr.	43	Director
Raymond D. Croghan	55	Director
Michael E. Marks	54	Director
Mark A. Retzloff	56	Director
Richard L. Sharp	58	Chairman of the Board of Directors
Thomas J. Smach	45	Director
Brad L. Stoffer	48	Director

Ronald R. Snyder has served as our Chief Executive Officer since January 2005, was appointed as our President and a director in June 2004, and served as a consultant from October 2003 to June 2004. From March 2004 to December 2004, he was Chief Executive Officer of Vinci Corporation, a home theater equipment company. From April 2000 to December 2003, Mr. Snyder served as a senior executive with Flextronics, Inc., a Nasdaq-listed electronics equipment manufacturer, where he was most recently President of the Flextronics Design division. Mr. Snyder joined Flextronics upon its acquisition of The Dii Group, Inc., of which he was a founder and officer and where he had previously led various groups, including manufacturing operations, mergers and acquisitions, and sales and marketing.

Caryn D. Ellison has served as our Chief Financial Officer since November 2004. From February 2001 through October 2004, Ms. Ellison was President of Classic Sport Companies, Inc., a branded sporting goods manufacturing company. From 1997 through 2000, Ms. Ellison served as the Chief Executive Officer of McZand Herbal Inc., which was sold to Botanical Laboratories, Inc. From 1992 through 1996, she served as the Chief Financial Officer and Vice President of Alfalfa's Markets, Inc., an 11 store chain of natural foods supermarkets, which merged with Wild Oats Markets, Inc. From 1983 to 1992, Ms. Ellison held various finance positions with Celestial Seasonings, Inc., including Chief Financial Officer and Vice President.

Lyndon V. "Duke" Hanson, III is one of our co-founders, served as our Chief Operating Officer from July 2002 though January 2005, and has served as our Vice President—Manufacturing since February 2005. From 1998 to March 2002, Mr. Hanson served as Vice President of Contour Systems Group, Inc., a start-up manufacturing company where he co-managed day-to-day sales efforts and operational activities. From 1986 through 1997, Mr. Hanson held various sales and management positions with several software and technology companies.

Michael C. Margolis has served as our Vice President—Sales & Marketing since January 2005, and led our sales group as an independent consultant from October 2003 to December 2004. From May 1995 to December 2004, Mr. Margolis was a founder and served as Vice President of Source Solutions, Inc., an apparel and merchandising company. He also successfully founded and ran a number of sporting goods

and apparel companies prior to Source Solutions, and has extensive experience establishing and maintaining sales relationships with large retail chains.

John P. McCarvel has served as Vice President—Asian & Australian operations since January 2005, after providing consulting services to us during 2004. From October 2001 to January 2005, Mr. McCarvel served as Vice President for the Design, Test and Semiconductor division of Flextronics, Inc., where he was responsible for building Flextronics's engineering infrastructure in Asia and growing Flextronics's business in the region. From 1999 to October 2001, he served as President of U.S. Operations and Senior Vice President of Worldwide Sales and Marketing for Singapore Technology Assembly Test Services Ltd., a semiconductor services company. He previously worked in executive level positions with Micron Custom Manufacturing Services, Inc. and The Dii Group, Inc.

George B. Boedecker, Jr. has served as a member of our board of directors since June 2002. Mr. Boedecker was one of our co-founders and served as our Chief Executive Officer from July 2002 through December 2004. From 1996 to February 2002, Mr. Boedecker served as an executive with Quiznos Corporation, most recently serving as Executive Vice President. He is also a founder and managing member of Oregon Food Concepts LLC, a franchise sales and support company that owns and manages Quiznos franchise locations in Oregon and Washington.

Raymond D. Croghan has served as a member of our board of directors since August 2004. Since 1999, Mr. Croghan has been retired. From 1991 to 1999, Mr. Croghan ran Croghan & Associates, Inc., a healthcare information technology consulting firm, which merged with Margolis Health Enterprise to form The TriZetto Group. Mr. Croghan serves on the boards of directors of several privately-held companies, and is a member of the board of trustees at Doane College in Crete, Nebraska.

Michael E. Marks has served as a member of our board of directors since August 2004. Since January 1994, Mr. Marks has served as the Chief Executive Officer of Flextronics, Inc. and has served as a member of the board of directors of Flextronics since 1991 and served as Chairman of the Board of Flextronics from 1993 to January 2003. Mr. Marks also serves as a director of KLA-Tencor Corporation, SanDisk Corporation and Schlumberger Limited.

Mark A. Retzloff has served as a member of our board of directors since August 2004. He is co-founder, President, Chief Organic Officer and a director of Aurora Dairy Corporation, a privately owned company that operates as Aurora Organic Dairy. From July 2001 to September 2004, he was Chief Executive Officer of Rudi's Organic Bakery, LLC, an organic foods company. Mr. Retzloff co-founded Horizon Organic Holding Corp. and served in various capacities with Horizon Organic from 1991 to August 2002, including as Chairman of the Board and President. He currently serves as a director of Wild Oats Markets, Inc. He is also a founding member and General Partner of Greenmont Capital Partners, a private equity firm that invests in natural products and broader wellness industries.

Richard L. Sharp has served as the Chairman of our board of directors since April 2005. From 1982 to 2002, Mr. Sharp served in various positions with Circuit City Stores, Inc., a consumer electronics and personal computer retailer, most recently as President from 1984 to 1997, Chief Executive Officer from 1986 to 2000 and Chairman of the Board from 1994 to 2002. He is also Chairman of the Board of Flextronics, Inc. and of Carmax, Inc., the nation's largest specialty retailer of used cars and light trucks.

Thomas J. Smach has served as a member of our board of directors since April 2005. Since January 2005, Mr. Smach has served as the Chief Financial Officer of Flextronics, Inc. From April 2000 to December 2004, Mr. Smach served as Senior Vice President—Finance of Flextronics. From 1997 to April 2000, he served as the Senior Vice President, Chief Financial Officer and Treasurer of The Dii

Group, Inc. Mr. Smach is a certified public accountant. Mr. Smach serves on the board of directors of ADVA AG Optical Networking.

Bradley L. Stoffer has served as a member of our board of directors since August 2004. Since 1999, Mr. Stoffer has been a managing member of Oregon Food Concepts LLC, a franchise sales and support company that owns and manages Quiznos franchise locations in Oregon and Washington. Mr. Stoffer previously served as a sales and marketing executive for 16 years with Smith Brothers Office Environments, Inc., the largest furniture dealer in Oregon.

Board of Directors; Committees

Our board of directors consists of eight members. Under our bylaws, each of our directors holds office until their successors have been elected and qualified or until their earlier death, resignation, disqualification or removal. In connection with this offering, we have divided the terms of office of the directors into three classes. Class I consists of Messrs. Boedecker, Retzloff and Stoffer, whose terms will expire at the annual meeting of stockholders to be held in 2006. Class II consists of Messrs. Croghan, Marks and Sharp, whose terms will expire at the annual meeting of stockholders to be held in 2007. Class III consists of Messrs. Smach and Snyder, whose terms will expire at the annual meeting of stockholders to be held in 2008.

At each annual meeting of stockholders, the successors to directors whose terms expire at such meetings will be elected and will serve from the time of election and qualification until the third annual meeting following election and until their successors are duly elected and qualified. The authorized number of directors may be changed by resolution of the board. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. Vacancies on the board can be filled by resolution of the board of directors. The classification of the board of directors may have the effect of delaying or preventing changes in control or management of our company.

Rules of the Nasdaq National Market require that our board of directors have a majority of independent directors. All members of the board of directors except Messrs. Snyder, Boedecker and Retzloff are independent directors as defined by Rule 4200(a)(15) of the National Association of Securities Dealers listing standards. Our board has established the following committees:

Audit Committee. Messrs. Smach (Chairman) and Croghan are the current members of our audit committee. Within one year after the effectiveness of this offering, we intend to appoint a third independent director to the audit committee. The functions of the audit committee include oversight of the integrity of our financial statements, our compliance with legal and regulatory requirements, the performance, qualifications and independence of our independent auditors and the performance of our internal audit function. Our audit committee is directly responsible, subject to stockholder ratification, for the appointment, retention, compensation, evaluation, termination and oversight of the work of any independent auditor engaged for the purpose of preparing or issuing an audit report or related work. The purpose and responsibilities of our audit committee are set forth in the Audit Committee Charter approved by our board of directors on June 30, 2005.

All of the members of the audit committee are, or will be when appointed, independent as determined in accordance with the rules of the Nasdaq National Market and relevant federal securities laws and regulations. Our board of directors has determined that Mr. Smach qualifies as an "audit committee financial expert" as defined by the applicable regulations of the SEC.

Compensation Committee. Our compensation committee consists of Messrs. Marks (Chairman) and Croghan. The compensation committee has overall responsibility for evaluating and approving our executive officer incentive compensation, benefit, severance, equity-based or other compensation plans, policies and programs. The compensation committee will also be responsible for producing an annual report on executive compensation for inclusion in our proxy statement. The purpose and responsibilities of our compensation committee are set forth in the Compensation Committee Charter approved by our board of directors on June 30, 2005. All of the members of the compensation committee are, or will be when appointed, independent as determined in accordance with the rules of the Nasdaq National Market and relevant federal securities laws and regulations.

Nominating and Governance Committee. Our nominating and governance committee consists of Messrs. Sharp (Chairman) and Stoffer. The nominating and governance committee will assist our board of directors in promoting our best interests and the best interests of our stockholders through the implementation of sound corporate governance principles and practices. In furtherance of this purpose, the nominating and governance committee will identify individuals qualified to become board members and recommend to our board of directors the director nominees for the next annual meeting of stockholders. It will also review the qualifications and independence of the members of our board of directors and its various committees on a regular basis and make any recommendations the committee members may deem appropriate from time to time concerning any recommended changes in the composition of our board of directors and its committees. The nominating and governance committee will also recommend to our board of directors the corporate governance guidelines and standards regarding the independence of outside directors applicable to our company and review such guidelines and standards and the provisions of the nominating and governance committee charter on a regular basis to confirm that such guidelines, standards and charter remain consistent with sound corporate governance practices and with any legal or regulatory requirements of the Nasdaq National Market. The nominating and governance committee will also monitor our board of directors and our compliance with any commitments made to our regulators or otherwise regarding changes in corporate governance practices and lead our board of directors in its annual review of our board of directors' performance.

The purpose and responsibilities of our nominating and governance committee are set forth in the Nominating and Governance Committee Charter approved by our board of directors on June 30, 2005. All of the members of the nominating and governance committee are, or will be when appointed, independent as determined in accordance with the rules of the Nasdaq National Market.

Limitation of Liability and Indemnification

Our certificate of incorporation limits the personal liability of our board members for breaches by them of their fiduciary duties. Our bylaws also require us to indemnify our directors and officers to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except:

- any breach of their duty of loyalty to us or our stockholders;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases, redemptions or other distributions; and
- any transaction from which the director derived an improper personal benefit.

Such limitation of liability may not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission. In addition and in accordance with Delaware law, our bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in such capacity, regardless of whether indemnification would be permitted under Delaware law. We currently maintain liability insurance for our directors and officers.

We have entered into agreements to indemnify our directors and executive officers, in addition to the indemnification provided for in our certificate of incorporation and bylaws. These agreements, among other things, provide for indemnification of our directors and executive officers for certain expenses (including attorneys' fees), judgments, fines and settlement amounts incurred by any such person in any action or proceeding, including any action by or in the right of the Company, arising out of such person's services as a director or executive officer of ours, any subsidiary of ours or any other company or enterprise to which the person provided services at our request. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers.

Compensation of Directors

We grant our non-employee directors options to purchase 500 shares of our common stock upon their initial election to our board of directors and options to purchase an additional 125 shares of our common stock for each year of service. The Chairman of the board of directors also receives options to purchase an additional 250 shares of our common stock upon his initial election as Chairman. The options are granted at the fair market value of our common stock on the date of grant and have a term of seven years. Each option grant will vest annually over four years, so long as such person remains a director, therefore, the option will be fully vested on the fourth anniversary of the date of grant. In addition, all directors are reimbursed for their reasonable out-of-pocket expenses incurred in attending meetings of the board of directors and committees.

Corporate Governance

We believe that shortly after completion of this offering, we will comply with all Nasdaq National Market corporate governance and listing requirements and all applicable federal and state securities laws and regulations. In the interim, we will rely on transition periods available to companies in conjunction with their initial public offering.

Compensation Committee Interlocks and Insider Participation

None of our compensation committee members has been our executive officer or employee, and none of our executive officers will serve on the compensation committee or board of directors of any other company of which any of the members of our compensation committee or any of our directors is an executive officer.

During the fiscal year ended December 31, 2004, we did not have a compensation committee, and Messrs. Snyder and Boedecker were members of our board of directors and were concurrently our officers and employees. As members of the board, Messrs. Snyder and Boedecker participated in deliberations of our board of directors concerning executive officer compensation.

Executive Compensation

Summary of cash and other compensation

The following summary compensation table indicates the cash and non-cash compensation earned by our executive officers, to whom we refer to as the named executive officers, during the fiscal year ended December 31, 2004. The compensation described in this table does not include medical, group life insurance or other benefits that are generally available to all of our salaried employees.

Summary Compensation Table

		Annual Compensation		Long-Term Compensation Awards	
Name and Principal Position	Year	Salary	Bonus	Securities Underlying Options (#)	All Other Compensation [1]
Ronald R. Snyder Chief Executive Officer and President	2004	$ 95,000[2]	$ 90,000	2,000	$ 500,000[3]
George B. Boedecker, Jr. Former Chief Executive Officer	2004	96,000	90,000	—	—
Lyndon V. "Duke" Hanson, III Vice President—Manufacturing	2004	95,300	15,150	—	105,420[4]

(1) We have omitted perquisites and other personal benefits that do not exceed the lesser of $50,000 or 10% of the executive officer's annual salary and bonus disclosed in this table.

(2) Mr. Snyder began his employment with us in June 2004. In accordance with an arrangement with Vinci Corporation, an entity controlled by Mr. Snyder, we paid an additional $65,000 (including payroll taxes) to Mr. Snyder for services performed by Mr. Snyder on behalf of Vinci Corporation while he was employed by us. Vinci Corporation reimbursed us for these expenses.

(3) Includes 1,500 Class B membership units with a fair market value of $150,000, which converted into 1,500 shares of our common stock, transferred to Mr. Snyder by Mr. Boedecker as compensation for consulting services rendered to us prior to the commencement of his employment with us in June 2004. Also includes 1,500 Class B membership units with a fair market value of $150,000, which converted into 1,500 shares of our common stock, transferred to Mr. Snyder by Anthony Kruse, a holder of more than 5% of our common stock, as compensation for consulting services rendered to us prior to the commencement of his employment with us in June 2004. Also includes 2,000 Class B membership units with a fair market value of $200,000, which converted into 2,000 shares of our common stock, and were granted to Mr. Snyder for consulting services.

(4) Includes sales commissions of $19,213. Also includes 500 Class B membership units with a fair market value of $86,207, which converted into 500 shares of our common stock, as compensation for services.

The following table sets forth certain information concerning option grants to the named executive officers during 2004.

Option Grants in 2004

	Individual Grants				Potential Realizable Value at Assumed Rates of Stock Price Appreciation for Option Term	
Name	Number of Securities Underlying Options Granted	Percent of Total Options Granted to Employees in Fiscal Year	Exercise Price	Expiration Date	5%	10%
Ronald R. Snyder	2,000	100%	$ 237.78	09/01/11	$	$

All options were granted outside of our 2005 Equity Incentive Plan. The options have a term of seven years and 25% of the options vest on September 1, 2005. The remaining 75% vest in 36 equal monthly

installments thereafter. The options are subject to termination prior to the expiration date in the event of the optionee's death, disability or termination of employment, as set forth in the option agreement.

The options were granted at an exercise price equal to the fair market value of our common stock on the date of grant, as determined in good faith by our board of directors. Because there was no public market for our stock prior to this offering, our board of directors determined the fair market value of our common stock by considering a number of factors, including, but not limited to, our financial performance and prospects for our future growth and profitability.

In accordance with the rules of the SEC, the amounts shown on this table represent hypothetical gains that could be achieved for the options if exercised at the end of the option term. These gains are based on assumed rates of stock appreciation of 5% and 10%, compounded annually, and do not reflect our estimates or projections of the future price of our common stock. These amounts represent assumed rates of appreciation in the value of our common stock from the initial public offering price, assuming an initial public offering price of $ per share. The gains shown are net of the option exercise price, but do not include deductions for taxes or other expenses associated with the exercise. Actual gains, if any, on stock option exercises will depend on the future performance of our common stock, the option holder's continued employment through the option period, and the date on which the options are exercised.

The following table sets forth information concerning the number and value of exercisable and unexercisable options held by the named executive officers who held options as of December 31, 2004. The value of unexercised in-the-money options at December 31, 2004 represents an amount equal to the difference between the assumed initial public offering price of $ per share and the option exercise price, multiplied by the number of unexercised in-the-money options. An option is in-the-money if the fair market value of the underlying shares exceeds the exercise price of the option.

Aggregated Option Exercises in 2004 and Year-End Option Values

			Number of Securities Underlying Unexercised Options at Fiscal Year-End		Value of Unexercised In-The-Money Options at Fiscal Year-End [1]	
Name	Number of Shares Acquired on Exercise	Value Realized	Exercisable	Unexercisable	Exercisable	Unexercisable
Ronald R. Snyder	—	$ —	—	2,000	$	$

(1) The value of unexercisable in-the-money options is based on an assumed initial public offering price of $ per share, minus the actual exercise price.

Equity Compensation Plans

2005 Equity Incentive Plan

On April 27, 2005, our board of directors adopted the 2005 Equity Incentive Plan, referred to as the 2005 Plan, and we expect that it will be approved by our stockholders prior to the completion of this offering. The 2005 Plan provides for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, to our employees, and nonstatutory stock options, restricted stock, performance units, and other stock based awards to our employees, directors, and consultants.

Number of Shares of Common Stock Available Under the 2005 Plan. A total of 25,000 shares of our common stock were reserved for issuance pursuant to our 2005 Plan. If an option, grant of restricted stock, performance unit, or other stock based award, each referred to as an award, expires or is terminated or canceled without having been exercised or settled in full, is forfeited back to or

repurchased by us, the terminated portion of the award (or forfeited or repurchased shares subject to the award) will become available for future grant or sale under our 2005 Plan (unless our 2005 Plan has terminated).

Administration of the 2005 Plan. The compensation committee of our board of directors will administer our 2005 Plan. In the case of awards intended to qualify as "performance based compensation" within the meaning of Section 162(m) of the Internal Revenue Code, the committee will consist of two or more "outside directors" within the meaning of Section 162(m). The administrator has the power to determine the terms of the awards, including the exercise price (which may be changed by the administrator after the date of grant), the number of shares subject to each award, the exercisability of the awards and the form of consideration payable upon exercise.

Stock Options. A stock option is the right to purchase shares of our common stock at a fixed exercise price for a fixed period of time. The administrator will determine the exercise price of options granted under our 2005 Plan, but the exercise price generally must be at least equal to the fair market value of our common stock on the date of grant. After termination of one of our employees, directors or consultants, he or she may exercise his or her option for the period of time stated in the option agreement. If termination is due to death, the option will remain exercisable, to the extent vested or on an accelerated basis as determined by the administrator, until the expiration of its term. If termination is due to disability or retirement, the option will remain exercisable, to the extent vested at such time or on an accelerated basis as determined by the administrator, for a period of one year from the date of termination or until the expiration of its stated term, whichever is shorter. If the participant dies within this period, the option, to the extent then vested, will remain exercisable until the expiration of its term. If a participant is terminated due to cause, all options then held by the participant will immediately terminate. In all other cases, the option will remain exercisable, to the extent then vested or on an accelerated basis as determined by the administrator, whichever is shorter. If the participant dies within this period, the option, to the extent then vested, will remain exercisable until the expiration of its term. In all other cases, the option generally will remain exercisable for three months. However, an option may never be exercised later than the expiration of its term. The term of an incentive stock option may not exceed ten years, except that with respect to any participant who owns 10% of the voting power of all classes of our outstanding capital stock, the term must not exceed five years and the exercise price must equal at least 110% of the fair market value on the date of grant. The administrator determines the term of all other options.

A stock option award agreement may provide that a participant can elect to exercise the option as to any part or all of the shares of our common stock subject to such option prior to its full vesting schedule. Any unvested shares of our common stock that are purchased under this provision may be subject to repurchase right in favor of us or to any other restriction as determined by the administrator. Any repurchase right will not be exercised until at least six months following the exercise of the unvested options, unless the agreement otherwise provides.

Restricted Stock. Restricted stock awards are awards of shares of our common stock that vest in accordance with terms and conditions established by the administrator. The administrator may impose whatever conditions to vesting it determines to be appropriate. The administrator will determine the number of shares of restricted stock granted to any employee. The administrator determines the purchase price of any grants of restricted stock and, unless the administrator determines otherwise, shares that do not vest typically will be subject to forfeiture or to our right of repurchase, which we may exercise upon the voluntary or involuntary termination of the purchaser's service with us for any reason including death or disability.

Performance Units. Performance units are awards that will result in a payment to a participant only if performance goals established by the administrator are achieved or the awards otherwise vest. The administrator will establish performance goals in its discretion, which, depending on the extent to which they are met, will determine the number and/or the value of performance units to be paid out to participants. The performance goals may be based upon the achievement of company-wide, divisional or individual goals (including solely continued service), applicable securities laws or other basis determined by the administrator. Payment for performance units may be made in cash or in shares of our common stock with equivalent value, or in some combination, as determined by the administrator.

Other Stock Based Awards. The administrator has the authority to create awards under the 2005 Plan in addition to those specifically described in the 2005 Plan. These awards must be valued in whole or in part by reference to, or must otherwise be based on, the shares of our common stock.

Transferability of Awards. Unless the administrator determines otherwise, our 2005 Plan does not allow for the transfer of awards other than by will or by the laws of descent and distribution, and only the participant may exercise an award during his or her lifetime.

Adjustments upon Merger or Change in Control. Our 2005 Plan provides that, unless otherwise provided in an award agreement, in the event of a merger with or into another corporation or our "change in control," including the sale of all or substantially all of our assets, awards under the 2005 Plan will fully vest and become immediately exercisable and fully earned, as applicable.

Amendment and Termination of Our 2005 Plan. Our 2005 Plan will automatically terminate in 2015, unless we terminate it sooner. In addition, our board of directors has the authority to amend, suspend or terminate our 2005 Plan provided it does not adversely affect any award previously granted under our plan.

Stock Awards Granted. On April 27, 2005, we granted options to purchase 880 shares of our common stock under the 2005 Plan to our employees and options to purchase 475 shares of our common stock under the 2005 Plan to our consultants, with an exercise price of $790.00 per share. One-fourth of these options will vest on May 1, 2006 and the remainder will vest in 36 equal and successive monthly installments. On April 27, 2005, we also granted options to purchase 1,250 shares of our common stock under the 2005 Plan to members of our board of directors with an exercise price of $790.00 per share. One-fourth of the options granted to the board members will vest on May 1, 2006 and remainder will vest in three equal annual increments on May 1 of each year. In June and July 2005 we issued 1,832 shares of our common stock under the 2005 Plan to employees as restricted stock awards as compensation for services under restricted stock award agreements. None of the shares issued under the restricted stock award agreements are subject to repurchase.

We have not granted any other options or other awards under the 2005 Plan and 20,663 shares of our common stock remain available for future grant, 5,519 shares of which have been reserved for future issuances to employees under restricted stock award agreements. The recipients of these awards will be issued the shares as compensation for services at various dates in the future and will not be required to pay a purchase price for the shares. None of these awards will be subject to repurchase after issuance.

We expect to grant options to purchase a total of up to shares of our common stock under the 2005 Plan to our management and certain of our directors effective in connection with the completion of this offering, with an exercise price equal to the offering price.

Other Stock Option Grants

From time to time, we have granted nonqualified stock options to our directors, employees and consultants outside of our 2005 Plan. As of July 31, 2005, non-plan options to purchase 5,500 shares of our common stock at a weighted average exercise price of $281.48 per share were outstanding, none of which are exercisable.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Set forth below are transactions between us and our officers, directors and principal stockholders from January 1, 2002 to the present in which the amount involved exceeded or will exceed $60,000. We intend that all future transactions between us and our officers, directors, principal stockholders and their affiliates will be approved by a majority of our independent and disinterested directors, and will be on terms no less favorable to us than we could obtain from unaffiliated third parties.

Transactions with Directors and Executive Officers

Agreements with Ronald Snyder

In June 2004, we entered into an oral arrangement with Vinci Corporation, a company controlled by Ronald Snyder, our President and Chief Executive Officer, to pay monthly compensation, together with payroll taxes, in the aggregate amount of $133,425 to employees and consultants of Vinci Corporation, including Mr. Snyder and Anthony Kruse. Vinci Corporation reimbursed us for these payments and we entered into this arrangement for the administrative convenience of Vinci Corporation because Mr. Snyder was performing services for both companies.

Agreements with Michael Margolis

In October 2003, we entered into an oral agreement with Source Solutions, Inc., an entity controlled by Michael Margolis, to perform sales and marketing services for us. Under the terms of this agreement, we agreed to pay Source Solutions a five percent commission on all sales. We also entered into an oral agreement with Mr. Margolis pursuant to which he agreed to provide consulting services to us in exchange for equity compensation. In 2004, we paid sales commissions in the aggregate amount of $287,388 to Source Solutions and granted Mr. Margolis 333 Class B membership units for consulting services. Mr. Margolis was hired as our Vice President—Sales & Marketing in January 2005.

Agreements with George Boedecker

From April 15, 2003 to July 14, 2003, we borrowed $400,000 from George Boedecker, one of our directors and our former Chief Executive Officer, pursuant to certain promissory notes. The entire principal balances outstanding under the notes were repaid between July 2004 and October 2004, prior to maturity. No interest was paid on the notes.

On January 1, 2005, we entered into a separation and release agreement with Mr. Boedecker, relating to his resignation as our Chief Executive Officer. In exchange for certain releases granted by Mr. Boedecker, we agreed to pay him a severance amount of $600,000, less all legally required deductions and withholdings, in 16 equal quarterly installments at the beginning of each calendar quarter for a four year period. The agreement provides that Mr. Boedecker is entitled to participate in our standard medical benefits package until December 31, 2009, and that Mr. Boedecker is entitled to a reimbursement of business expenses he incurred before January 1, 2005. In accordance with the terms of the agreement, Mr. Boedecker remained on our board of directors, but there is no agreement requiring us to nominate him to the board in any future period.

Under the terms of the separation and release agreement, on April 1, 2005, we entered into a distribution agreement with Crocodile Distribution, LLC, an entity controlled by Mr. Boedecker, which granted Crocodile Distribution the exclusive right to distribute our products in Mexico, the Dominican Republic, Costa Rica and, to the extent it complies with United States law in the future, Cuba. The initial term of the agreement is 10 years from July 1, 2005 and it is renewable on a non-exclusive basis for an additional five year term. The exclusivity portion of the agreement may be terminated by us if Crocodile Distribution fails to purchase certain minimum amounts of our products. Crocodile

Distribution will receive a discount from our standard wholesale list price for the purchase of our products.

Under the terms of the separation and release agreement, on July 1, 2005, we entered into a kiosk agreement with Crocodile Kiosk, LLC, an entity controlled by Mr. Boedecker, which granted Crocodile Kiosk exclusive rights to license or sell certain **crocs** -related franchises to third parties. The license or franchise rights will give the licensee or franchisee the right to establish retail kiosks in airport locations. The term of the license agreement is ten years but the termination of the kiosk agreement will not have an effect on a licensee's or franchisee's right to operate the kiosk for a term of up to 15 years. If Crocodile Kiosk fails to license or franchise a minimum number of kiosks during the term, the agreement will become non-exclusive.

Agreements with Caryn Ellison

On October 18, 2004, we entered into an at-will employment arrangement with Caryn Ellison, our Chief Financial Officer and Treasurer. The arrangement calls for Ms. Ellison to be compensated at a rate of $16,000 per month and provides that we will pay six months severance in the event Ms. Ellison's employment is terminated by us. The arrangement also provides for Ms. Ellison to receive certain equity awards, as described below under "Equity Grants to Executive Officers and Directors."

Agreements with Mark Retzloff

In April 2003, we entered into an oral distribution arrangement with St. Vrain Trading, LLC, an entity controlled by Mark Retzloff, a member of our board of directors, which granted St. Vrain the exclusive right to distribute our footwear products in Hawaii. Under the arrangement, St. Vrain purchased our footwear products at a discount to our standard wholesale prices.

On May 19, 2005, we purchased all of the assets of St. Vrain Trading for a net amount in cash equal to $55,563, and the assumption of a lease agreement and other liabilities. The purchased assets consisted of $81,707 in cash and accounts receivable, inventory valued at $39,910 and $1,750 of other assets.

In connection with Mr. Retzloff's purchase of 2,000 Class B membership units of our predecessor limited liability company, which were converted into 2,000 shares of our common stock, from Mr. Boedecker, we granted Mr. Retzloff the right to require us to purchase his shares of common stock at any time after May 7, 2006 at his original purchase price or a multiple based upon our performance, whichever is greater. This right will terminate in connection with the completion of this offering.

Mr. Retzloff transferred all of his shares to the Retzloff Family Company, Ltd. Mr. Retzloff is the beneficial owner and managing partner of the Retzloff Family Company and he exercises voting and investment power over such shares.

Agreements with Anthony Kruse

In connection with the exchange of Anthony Kruse's 20% membership interest in our predecessor limited liability company for 18,000 Class B membership units, which converted into 18,000 shares of our common stock, and a cash payment of $12,000, we granted Mr. Kruse the right to require us to purchase his shares of common stock at any time after May 12, 2006 at his original purchase price or a price based upon our performance, whichever is greater. This right will terminate in connection with the completion of this offering. Mr. Kruse has retained 13,200 of his 18,000 shares.

Agreements with Affiliates of Michael Roberts

In connection with the exchange by Sandstone Ventures, LLC, an entity controlled by Michael Roberts, of a 10% membership interest in our predecessor limited liability company for 8,000 Class B membership units, which converted into 8,000 shares of our common stock, we granted Sandstone Ventures the right to require us to purchase its shares of common stock at any time after May 21, 2006 at its original purchase price or a price based upon our performance, whichever is greater. In connection with the purchase by the Michael J. Roberts Trust of 2,000 Class B membership units, which converted into 2,000 shares of our common stock, from Mr. Boedecker we granted the trust the right to require us to purchase its shares of common stock at any time after May 21, 2006 at its original purchase price or a price based upon our performance, whichever is greater. These rights will terminate in connection with the completion of this offering.

Equity Grants to Executive Officers and Directors

Executive Officers

In January 2004, Mr. Boedecker and Mr. Kruse each transferred 1,500 Class B membership units of our predecessor limited liability company, each of which converted into 1,500 shares of our common stock, to Mr. Snyder as compensation for services in lieu of an equity grant from us. The fair market value of the 3,000 Class B membership units at the time of transfer was $300,000. In March 2004, pursuant to the terms of a consulting agreement, we issued Mr. Snyder 2,000 Class B membership units, which converted into 2,000 shares of our common stock, with a fair market value of $200,000. In September 2004, we granted Mr. Snyder an option to purchase 2,000 shares of our common stock at an exercise price of $237.78 per share. In June 2005, we entered into a restricted stock award agreement with Mr. Snyder pursuant to which Mr. Snyder will be entitled to receive an issuance of 1,000 shares of our common stock over the next three years, subject to continued service as our employee, of which 333 shares will be issued on September 1, 2005 and the remainder will be issued in 24 equal and successive monthly installments. This agreement memorialized our commitment to grant these shares to Mr. Snyder made in September 2004. We also entered into a restricted stock award agreement with Kimberly Snyder, Mr. Snyder's spouse and our Director of Apparel and Accessories, pursuant to which Ms. Snyder will be entitled to receive 200 shares of our common stock over the next two years, subject to her continued service as our employee.

In June 2005, we entered into a restricted stock award agreement with Caryn Ellison, our Chief Financial Officer, pursuant to which Ms. Ellison is entitled to receive 1,500 shares of our common stock over a three-year period, with 500 shares being issued on each of October 1, 2005, 2006, and 2007, subject to continued service as our employee. This agreement was entered into pursuant to the terms of our employment arrangement with Ms. Ellison.

In October 2002, we issued a 5% non-voting profit interest, which converted into 4,500 shares of our common stock, as compensation for services to Duke Hanson, our Vice President—Manufacturing. In June 2004, we issued 500 Class B membership units with a fair market value of $86,207 to Mr. Hanson, which converted into 500 shares of our common stock, as compensation for services. In January 2005, we granted Mr. Hanson an option to purchase 250 shares of our common stock at an exercise price of $398.00 per share outside of our 2005 Equity Incentive Plan.

In July 2004, we issued 333 Class B membership units with a fair market value of $57,414 to Michael Margolis, which converted into 333 shares of our common stock, as compensation for consulting services and in July 2005, we issued 333 shares of our common stock to Mr. Margolis, with a fair market value of $263,070, as compensation for services pursuant to a restricted stock award agreement we entered into with Mr. Margolis on June 30, 2005. The shares issued are not subject to repurchase

by us. The restricted stock award agreement memorialized the terms of a grant we made to Mr. Margolis in June 2004. Under the terms of the restricted stock award agreement, Mr. Margolis is also entitled to receive an award of 334 shares of our common stock on July 1, 2006, subject to his continued service as our employee.

In March, 2004, we issued 500 Class B membership units with a fair market value of $50,000, to John McCarvel, our Vice President—Asian & Australian Operations, which converted into 500 shares of our common stock, as compensation for consulting services. In July 2005, we issued 333 shares of our common stock, with a fair market value of $263,070, to Mr. McCarvel as compensation for services pursuant to a restricted stock award agreement we entered into with Mr. McCarvel on June 30, 2005. The shares issued are not subject to repurchase by us. The restricted stock award agreement memorialized the terms of a grant we made to Mr. McCarvel in September 2004. Under the terms of the restricted stock award agreement, Mr. McCarvel is also entitled to receive an award of 333 shares of our common stock on July 1, 2006 and 334 shares of our common stock on July 1, 2007, subject to his continued service as our employee.

Directors

In September 2004, we granted options to purchase 500 Class B membership units, which converted into 500 shares of our common stock, to each of Messrs. Croghan, Marks, Retzloff and Stoffer, all of whom are members of our board of directors, at an exercise price of $237.78 per share. In January 2005, we granted Mr. Boedecker an option to purchase 500 shares of our common stock at an exercise price of $398.00 per share.

In April 2005, we granted Thomas Smach options to purchase 500 shares of our common stock at an exercise price of $790.00 per share. At the same time, we also granted Richard Sharp, the Chairman of our board of directors, options to purchase 750 shares of our common stock at $790.00 per share.

The fair market value of all of our equity grants to executive officers and directors was determined by our board of directors. For more information regarding the grant of stock options to directors and executive officers, please see "Management—Compensation of Directors" and "—Executive Compensation."

Loans to Directors and Executive Officers

We do not have any outstanding loans to any of our directors or executive officers.

Indemnification and Insurance

Our bylaws and certificate of incorporation require us to indemnify our directors and executive officers to the fullest extent permitted by Delaware law. We have also entered into indemnification agreements with all of our directors and executive officers and have purchased directors' and officers' liability insurance. In addition, our certificate of incorporation limits the personal liability of our board members for breaches by the directors of their fiduciary duties. For more information regarding director and officer indemnification, see "Management—Limitation of Liability and Indemnification."

Financings Involving Executive Officers, Directors and Principal Stockholders

The following table summarizes sales of our non-voting membership interests, Class B membership interests or units and Class C membership units to certain of our directors, executive officers and holders of more than 5% of our voting securities, and their affiliated entities, in private placement financings since January 1, 2002. We sold non-voting profit sharing interests in October 2002 and January 2003 for an aggregate purchase price of $420,000. Our non-voting membership interests were

exchanged for Class B membership interests between April and June 2003. We sold our Class B membership interests at various times between October 2003 and February 2004 for an aggregate purchase price of $1.1 million. In February 2004, all of our Class B membership interests were converted to Class B membership units at a rate of 1,000 units for each percentage membership interest. We sold our Class C membership units in June and July 2004 for an aggregate purchase price of $5.5 million. In connection with our conversion from a limited liability company to a corporation in January 2005, we converted all of the outstanding Class A and Class B membership units into shares of our common stock on a one-for-one basis and all of the outstanding Class C membership units of our predecessor company into shares of our Series A preferred stock on a one-for-one basis. Our Series A preferred stock is convertible into shares of our common stock on a one-for-one basis, and will be converted into shares of our common stock in connection with the completion of this offering. All shares are reported on an as-converted to common stock basis.

	Type of Security			
Name of Purchaser [1]	Non-voting Profit Sharing Interests (#)	Class B Membership Units (#)	Class C Membership Units (#)	Aggregate Consideration
5% Stockholders:				
Anthony Kruse	20,000	—	—	$ 120,000
WB Investors, LLC [2]	—	—	12,760	2,200,000
Michael J. Roberts [3]	11,740	—	—	200,000
Directors and Named Executive Officers:				
Raymond D. Croghan	—	—	3,190	550,000
Michael E. Marks [2]	—	—	12,760	2,200,000
Mark A. Retzloff	—	750	—	75,000
Ronald R. Snyder [4]	—	1,000	—	100,000
Bradley L. Stoffer	—	2,000	—	200,000

(1) See "Principal and Selling Stockholders" for additional information about ownership of shares held by these stockholders.

(2) Consists of 11,600 shares purchased by Epping Investment Holdings, LLC, an entity controlled by Mr. Marks and his spouse, and 1,160 shares purchased by two trusts for the benefit of Mr. Marks' minor children. Mr. Marks is the trustee of both trusts. 10,410 of such shares were subsequently transferred to WB Investors, LLC, an entity controlled by Mr. Marks.

(3) Consists of 10,000 shares purchased by Sandstone Ventures, LLC, an entity controlled by Michael J. Roberts and 1,740 shares purchased by the Michael J. Roberts Trust. Mr. Roberts is the trustee of the trust.

(4) Consists of 1,000 shares purchased by CNA Trust Corporation, Trustee f/b/o Ronald Snyder, which shares are now held by Union Bank of California, Trustee f/b/o Ronald Snyder.

PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock as of July 31, 2005, and after the sale of shares in this offering, by:

- each person who is known by us to own beneficially more than 5% of our voting securities;
- each current director;
- each of the named executive officers;
- all directors and executive officers as a group; and
- each selling stockholder participating in this offering.

Beneficial ownership is determined in accordance with the SEC's rules. In computing percentage ownership of each person, shares of common stock subject to options held by that person that are currently exercisable or convertible, or exercisable or convertible within 60 days of July 31, 2005, are deemed to be outstanding and beneficially owned by that person. In addition, shares that are required to be issued by us to any person pursuant a restricted stock award agreement within 60 days of July 31, 2005 are also deemed to be outstanding and beneficially owned by that person. None of these shares, however, are deemed outstanding for the purpose of computing the percentage ownership of any other person.

Except as indicated in this table and pursuant to applicable community property laws, each stockholder named in the table has sole voting and investment power with respect to the shares set forth opposite such stockholder's name. Percentage ownership is based on 141,664 shares of our common stock outstanding on July 31, 2005, which assumes the conversion of all preferred stock into common stock on a one-for-one basis. Unless otherwise indicated below, the address for each person or entity listed below is in care of Crocs, Inc., 6273 Monarch Park Place, Niwot, Colorado 80503.

	Beneficial Ownership Prior to Offering		Shares Being Offered	Beneficial Ownership After Offering	
Name and Address of Beneficial Owner	**Shares**	**Percent**		**Shares**	**Percent**
5% Stockholders [1] :					
Anthony Kruse [2]	13,200	9.3%			
Michael J. Roberts [3]	11,740	8.3%			
WB Investors, LLC [4]	10,410	7.3%			
Non-Employee Directors:					
George B. Boedecker, Jr. [5]	19,255	13.6%			
Raymond D. Croghan [6]	3,315	2.3%			
Michael E. Marks [7]	11,188	7.9%			
Mark A. Retzloff [8]	2,875	2.0%			
Richard L. Sharp [9]	3,537	2.5%			
Thomas J. Smach	58	*			
Bradley L. Stoffer [10]	4,125	2.9%			
Named Executive Officers:					
Ronald R. Snyder [11]	11,081	7.8%			
Lyndon V. "Duke" Hanson, III [12]	4,500	3.2%			
All directors and executive officers as a group (12 persons) [13]	62,558	43.8%			
Selling Stockholders:					

* Less than 1%

(1) Messrs. Boedecker, Marks and Snyder are listed below and also own beneficially more than 5% of our voting securities. The address for Mr. Boedecker appears in footnote 5 below.

(2) The address for Mr. Kruse is #107, 2601 S. Minnesota Ave., Suite 105, Sioux Falls, SD 57105.

(3) Includes 8,000 shares of common stock owned by Sandstone Ventures, LLC. Mr. Roberts is the manager of Sandstone Ventures, LLC and exercises voting and investment power over the shares beneficially owned by Sandstone Ventures, LLC. Also includes 2,000 shares of our common stock owned by the Michael J. Roberts Trust and 1,740 shares of our common stock issuable upon conversion of shares of Series A preferred stock owned by such trust. Mr. Roberts is the trustee of the trust and exercises voting and investment power over all of the shares. The address for Sandstone Ventures, LLC and the Michael J. Roberts Trust is 6684 Gunpark Drive East, Boulder, CO 80301.

(4) Consists of 10,410 shares of common stock issuable upon conversion of preferred stock. Mr. Marks is the managing member of WB Investors, LLC and exercises voting and investment power over the shares beneficially owned by WB Investors, LLC. The address for WB Investors, LLC is c/o Morgan Stanley & Co., Attn: James Boon, 700 Corporate Park Drive, Suite 500, St. Louis, MO 63105.

(5) Includes 255 shares held as custodian for Mr. Boedecker's three minor children under the Colorado Uniform Gifts to Minors Act, over which Mr. Boedecker exercises voting and investment power. The address for Mr. Boedecker is 4450 Arapahoe Avenue, Suite 100, Boulder, CO 80303.

(6) Includes 2,900 shares of common stock issuable upon conversion of preferred stock and 125 shares subject to options exercisable within 60 days of July 31, 2005. Also includes an aggregate of 290 shares of common stock owned by two trusts for the benefit of Mr. Croghan's two daughters. Mr. Croghan's spouse is the trustee of both trusts and she exercises sole voting and investment power over the shares. Mr. Croghan disclaims beneficial ownership of such shares.

(7) Includes 125 shares subject to options exercisable within 60 days of July 31, 2005 and 10,410 shares of common stock issuable upon conversion of preferred stock beneficially owned by WB Investors, LLC. Mr. Marks is the managing member of WB Investors, LLC and exercises voting and investment power over the shares beneficially owned by WB Investors, LLC.

(8) Includes 125 shares subject to options exercisable within 60 days of July 31, 2005 and 2,750 shares of our common stock owned by Retzloff Family Company, Ltd. Mr. Retzloff is the managing partner of Retzloff Family Company, Ltd. and exercises voting and investment power over all of these shares.

(9) Includes 250 shares beneficially owned by BES & RS, LLC, 250 shares beneficially owned by EGG & RS, LLC, and 250 share beneficially owned by RBG & RS, LLC. Mr. Sharp is the sole manager of BES & RS, LLC, EGG & RS, LLC, and RBG & RS, LLC and exercises voting and investment power over the shares beneficially owned by each company. Also includes 250 shares of our common stock beneficially owned by Mr. Sharp's spouse and Mr. Sharp disclaims beneficial ownership of such shares. The address for Mr. Sharp is 9020 Stony Point Parkway, #180, Richmond, VA 23235.

(10) Includes 125 shares subject to options exercisable within 60 days of July 31, 2005 and 2,000 shares held as custodian for Mr. Stoffer's two minor children under the Oregon Uniform Gifts to Minors Act. Mr. Stoffer exercises voting and investment power over all of these shares.

(11) Includes 400 shares subject to options exercisable within 60 days of July 31, 2005 and 250 shares that will be issued pursuant to a restricted stock award agreement within 60 days of July 31, 2005. Also includes 1,000 shares held in the name of Union Bank of California, Trustee f/b/o Ronald Snyder and 403 shares held as custodian for Mr. Snyder's six children and stepchildren under the Colorado Uniform Gifts to Minors Act. Mr. Snyder exercises voting and investment power over all of these shares.

(12) Includes 100 shares held of record by two trusts for the benefit of Mr. Hanson's two minor children. Mr. Hanson is the trustee of both trusts and exercises sole voting and investment power over the shares.

(13) Includes 500 shares of common stock subject to options issued to four non-employee directors and 650 shares of common stock subject to options or restricted stock award agreements issued to one executive officer that are exercisable or issuable within 60 days of July 31, 2005.

DESCRIPTION OF CAPITAL STOCK

Upon consummation of this offering, our authorized capital stock will consist of shares of common stock, par value $0.001 per share, and shares of preferred stock, par value $0.001 per share. A description of the material terms and provisions of our certificate of incorporation and bylaws affecting the rights of the common stock is set forth below. The description is intended as a summary and is qualified in its entirety by reference to the form of our certificate of incorporation and the form of our bylaws to be adopted prior to completion of this offering filed with the registration statement relating to this prospectus.

Common Stock

Holders of our common stock are entitled to one vote per share in the election of directors and on all other matters on which stockholders are entitled or permitted to vote. Holders of common stock are not entitled to cumulative voting rights. Therefore, holders of a majority of the shares voting for the election of directors can elect all the directors. Subject to the terms of any outstanding series of preferred stock, the holders of common stock are entitled to dividends in amounts and at times as may be declared by the board of directors out of funds legally available therefor. Upon our liquidation or dissolution, holders of common stock are entitled to share ratably in all net assets available for distribution to stockholders after payment of any liquidation preferences to holders of preferred stock. Holders of common stock have no redemption, conversion or preemptive rights.

Upon consummation of this offering, all the outstanding shares of our common stock will be legally issued, fully paid and nonassessable.

We have applied to have our common stock approved for listing on the Nasdaq National Market under the symbol "CROX."

Preferred Stock

Upon completion of this offering, our certificate of incorporation will permit us to issue up to shares of preferred stock, from time to time, in one or more series and with such designation and preferences for each series as are stated in the resolutions providing for the designation and issue of each such series adopted by our board of directors. Our certificate of incorporation authorizes our board of directors to determine the voting, dividend, redemption and liquidation preferences and limitations pertaining to such series. The board of directors, without stockholder approval, may issue preferred stock with voting rights and other rights that could adversely affect the voting power of the holders of our common stock and could have certain anti-takeover effects. We have no present plans to issue any shares of preferred stock. The ability of the board of directors to issue preferred stock without stockholder approval could have the effect of delaying, deferring or preventing a change in control of our company or the removal of existing management.

Anti-Takeover Effects

Provisions of Delaware law, our certificate of incorporation and our bylaws could have the effect of delaying or preventing a third party from acquiring us, even if the acquisition would benefit our stockholders. These provisions are intended to enhance the likelihood of continuity and stability in the composition of our board of directors and in the policies formulated by the board of directors and to discourage types of transactions that may involve our actual or threatened change of control. These provisions are designed to reduce our vulnerability to an unsolicited proposal for a takeover that does not contemplate the acquisition of all of our outstanding shares, or an unsolicited proposal for the restructuring or sale of all or part of us.

Delaware Anti-Takeover Statute.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law, an anti-takeover law. Subject to exceptions, the statute prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- Prior to such date, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- Upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding, those shares owned (1) by persons who are directors and also officers and (2) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- On or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders and not by written consent, by the affirmative vote of at least 66 $^{2}/_{3}$% of the outstanding voting stock which is not owned by the interested stockholder.

For purposes of Section 203, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, with an "interested stockholder" being defined as a person who, together with affiliates and associates, owns, or within three years prior to the date of determination whether the person is an "interested stockholder," did own, 15% or more of the corporation's voting stock.

In addition, certain provisions of our certificate of incorporation and bylaws may have an anti-takeover effect. These provisions may delay, defer or prevent a tender offer or takeover attempt of our company that a stockholder might consider in his or her best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders. The following summarizes these provisions.

Election, Appointment and Removal of Directors.

Our certificate of incorporation includes provisions classifying our board of directors into three classes with staggered three-year terms. Accordingly, only one-third of our board of directors will be elected at each annual meeting. Only our board of directors is authorized to fill vacant directorships or increase the size of our board. Directors may only be removed for cause by holders of a majority of the shares entitled to vote at an election of directors.

Stockholder Action; Special Meeting of Stockholders.

Our certificate of incorporation eliminates the ability of stockholders to act by written consent. Our bylaws provide that special meetings of our stockholders may be called only by the Chairman of the Board or by a majority of our board of directors.

Advance Notice Requirements for Stockholders Proposals and Directors Nominations.

Our bylaws provide that stockholders seeking to bring business before an annual meeting of stockholders, or to nominate candidates for election as directors at an annual meeting of stockholders, must provide us with timely written notice of their proposal. To be timely, a stockholder's notice must be delivered to or mailed and received at our principal executive offices not less than 120 days before the date in the current year that corresponds to the date of the previous year's annual meeting. If, however, no meeting was held in the prior year or the date of the annual meeting has been changed by more than 30 days from the date contemplated in the notice of annual meeting, notice by the stockholder in order to be timely must be received no later than the close of business on the tenth day following the day on which the date of the annual meeting is publicly announced. Our bylaws also specify requirements as to the form and content of a stockholder's notice. These provisions may preclude stockholders from bringing matters before an annual meeting of stockholders or from making nominations for directors at an annual meeting of stockholders.

Authorized But Unissued Shares.

Our authorized but unissued shares of common stock and preferred stock are available for our board to issue without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of our authorized but unissued shares of common stock and preferred stock could render more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger or other transaction.

Amendment of Bylaws.

Our directors are expressly authorized to amend our bylaws.

Transfer Agent and Registrar

Computershare Trust Company, Inc. has been appointed as the transfer agent and registrar for our common stock.

Indemnification of Certain Persons

Our bylaws require us to indemnify our directors and officers to the fullest extent permitted by Delaware law. We have entered into indemnification agreements with all of our directors and executive officers. We currently maintain and intend to continue to maintain directors' and executive officers' liability insurance.

Limitations of Director Liability

Our certificate of incorporation limits personal liability of our directors for breaches by the directors of their fiduciary duties to the fullest extent provided by Delaware law. Such provisions eliminate the personal liability of directors for damages occasioned by breach of fiduciary duty, except for liability based on the director's duty of loyalty to us or our stockholders, liability for acts or omissions not made in good faith, liability for acts or omissions involving intentional misconduct or knowing violation of law, liability based on payments of improper dividends, liability based on a transaction from which the director derives an improper personal benefit, liability based on violation of state securities laws and liability for acts occurring prior to the date such provision was added. Any amendment to, or repeal of, such provisions will not adversely affect any right or protection of a director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

SHARES ELIGIBLE FOR FUTURE SALE

Based upon the number of shares of our common stock outstanding as of July 31, 2005, upon the completion of the offering, we will have shares of our common stock outstanding. Of these shares, the shares of our common stock sold in this offering will be freely tradable without restriction under the Securities Act of 1933, except that any shares of our common stock purchased by our affiliates, as that term is defined in Rule 144 under the Securities Act, may generally only be sold in compliance with the limitations of Rule 144 described below.

The remaining shares of our common stock outstanding upon completion of this offering are deemed "restricted shares" under Rule 144 or Rule 701 under the Securities Act. Upon expiration of the lock-up agreements described below, 180 days after the date of this prospectus, an additional shares of our common stock will be eligible for sale in the public market pursuant to Rule 144 or Rule 701.

Rule 144. In general, under Rule 144 under the Securities Act, a person (or persons whose shares are required to be aggregated, including our affiliates) who has beneficially owned shares of our common stock for at least one year would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of common stock then outstanding, which will equal shares immediately after this offering, or
- the average weekly trading volume of our common stock on the Nasdaq National Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Sales under Rule 144 are generally subject to certain manner of sale provisions and notice requirements as to the availability of current public information about us.

Rule 144(k). Under Rule 144(k), a person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least two years, including the holding period of any prior owner other than one of our affiliates, is entitled to sell the shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. Shares of our common stock will qualify as "144(k)" shares within 180 days of the date of this prospectus.

Rule 701. Rule 701 permits resales of shares in reliance upon Rule 144 but without compliance with some restrictions of Rule 144, including the holding period requirement. Most of our employees, officers, directors or consultants who purchased shares under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701, but all holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling their shares pursuant to the Rule.

Lock-Up Agreements. We will, and we also expect that all of our stockholders and optionholders, including all of our officers and directors, will enter into lock-up agreements. Under these agreements, subject to exceptions, we may not issue any new shares of common stock and those holders of stock and options may not, directly or indirectly, offer, sell, contract to sell, pledge or otherwise dispose of or hedge any common stock or securities convertible into or exchangeable for shares of common stock, or publicly announce the intention to do any of the foregoing, without the joint prior written consent of Piper Jaffray and Thomas Weisel Partners for a period of 180 days from the date of this prospectus, subject to extension for up to 35 days under specified circumstances at the option of Piper Jaffray and Thomas Weisel Partners. Piper Jaffray and Thomas Weisel Partners may agree at their joint discretion and at any time or from time to time, without notice, to release all or any portion of the shares subject to the lock-up agreements listed above.

U.S. FEDERAL TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a discussion of the material U.S. federal income and estate tax considerations of the acquisition, ownership and disposition of our common stock acquired pursuant to this prospectus by a beneficial owner that, for U.S. federal income tax purposes, is a "non-U.S. holder" as we define that term below. We assume in this discussion that non-U.S. holders will hold our common stock as a capital asset, generally, property held for investment. As used in this discussion, the term "non-U.S. holder" means a beneficial owner of our common stock that is not, for U.S. federal income tax purposes:

- an individual, who is a citizen or resident of the U.S.;
- a corporation, including any entity treated as a corporation for U.S. tax purposes, organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate, the income of which is includible in gross income for U.S. tax purposes regardless of its source; or
- a trust, in general, if (i) a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have authority to control all substantial decisions of the trust or (ii) the trust was in existence on August 20, 1996, was treated as a U.S. person prior to such date and validly elected to continue to be so treated.

This discussion does not consider U.S. state or local or non-U.S. tax consequences and it does not consider all aspects of U.S. federal taxation that may be important to particular non-U.S. holders in light of their individual circumstances, such as special tax rules that may apply to a non-U.S. holder that is a dealer in securities or foreign currencies, financial institution, bank, insurance company, tax-exempt organization, former citizen or former long-term resident of the United States, or that holds our common stock as part of a "straddle," "hedge," "conversion transaction," "synthetic security," or other integrated investment. We also do not discuss the U.S. federal tax treatment of beneficial owners that are partnerships or other entities treated as partnerships or flow-through entities for U.S. federal income tax purposes.

If a partnership is a beneficial owner of our common stock, the treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. A beneficial owner of our common stock that is a partnership and partners in such a partnership should consult their tax advisors about the U.S. federal income tax consequences of acquiring, owning and disposing of our common stock.

The following discussion is based on provisions of the Internal Revenue Code, applicable U.S. Treasury regulations and administrative and judicial interpretations, all as in effect on the date of this prospectus. All of these authorities are subject to change or differing interpretations, retroactively or prospectively. **Prospective investors are urged to consult their own advisors regarding the U.S. federal, state, local and non-U.S. income, estate and other tax considerations with respect to acquiring, owning and disposing of our common stock.**

Distributions on Common Stock

As described under "Dividend Policy" above, we do not anticipate paying dividends on our common stock in the foreseeable future. However, if we make cash distributions on our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our

current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Distributions in excess of earnings and profits will constitute a return of capital that is applied against and reduces the non-U.S. holder's adjusted tax basis in our common stock. Any remaining excess will be treated as gain realized on the sale or other disposition of the common stock and will be treated as described under "—Gain on Sale, Exchange or other Disposition of Common Stock" below.

Dividends paid to a non-U.S. holder that are not effectively connected with the non-U.S. holder's conduct of a trade or business in the United States will generally be subject to withholding of U.S. federal income tax at the rate of 30 percent, or if an income tax treaty applies, a lower rate specified by the treaty. Non-U.S. holders should consult their tax advisers regarding their entitlement to benefits under a relevant income tax treaty.

Under applicable U.S. Treasury regulations, for purposes of the withholding discussed above and for purposes of determining the applicability of an income tax treaty rate, a non-U.S. holder who claims the benefit of an applicable income tax treaty rate generally will be required to satisfy certain certification and other requirements. Special rules determine whether, for purposes of determining the applicability of an income tax treaty, dividends paid to a non-U.S. holder that is an entity should be treated as paid to the entity or those holding interest in the entity, and additional certifications may be required.

Dividends that are effectively connected with a non-U.S. holder's conduct of a trade or business in the United States and, if an income tax treaty applies, attributable to a permanent establishment or fixed base maintained by the non-U.S. holder in the United States, are taxed on a net income basis at the regular graduated U.S. federal income tax rates in much the same manner as if the non-U.S. holder were a resident of the United States. In such cases, we will not have to withhold U.S. federal income tax if the non-U.S. holder complies with applicable certification and disclosure requirements. In addition, a "branch profits tax" may be imposed at a 30 percent rate, or a lower rate under an applicable income tax treaty, on dividends received by a foreign corporation that are effectively connected with the conduct of a trade or business in the United States.

To claim the benefit of an income tax treaty or an exemption from withholding because the income is effectively connected with the conduct of a trade or business in the United States, a non-U.S. holder must provide a properly executed Internal Revenue Service, or IRS, Form W-8BEN for treaty benefits or W-8ECI for effectively connected income, before the payment of dividends. These forms must be periodically updated. Non-U.S. holders may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund.

Gain on Sale, Exchange or other Disposition of Common Stock

A non-U.S. holder generally will not be subject to U.S. federal income tax or any withholding thereof with respect to gain realized on a sale, exchange or otherwise taxable disposition of our common stock unless one of the following applies:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States and, if an income tax treaty applies, is attributable to a permanent establishment or a fixed base maintained by the non-U.S. holder in the United States; in this case, the non-U.S. holder will generally be taxed on its net gain derived from the disposition at the regular graduated U.S. federal income tax rates and in much the same manner as is applicable to U.S. persons and, if the non-U.S. holder is a foreign corporation, the additional "branch profits tax" described above may also apply; or

- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of the disposition and meets certain other requirements; in this case, the non-U.S. holder will be subject to a 30% tax on the gain derived from the disposition (which may be offset by U.S. source capital losses of the non-U.S. holder, if any); or

- we are or have been, at any time during the five year period preceding such disposition (or the non-U.S. holder's holding period, if shorter) a "U.S. real property holding corporation" within the meaning of Section 897(c)(2) of the Internal Revenue Code of 1986, unless our common stock is regularly traded on an established securities market and the non-U.S. holder holds no more than 5% of our outstanding common stock, directly or indirectly, during the relevant period. If we are determined to be a U.S. real property holding corporation and the foregoing exception does not apply, then a purchaser may withhold 10% of the proceeds payable to a non-U.S. holder from a sale of our common stock and the non-U.S. holder generally will be taxed on its net gain derived from the disposition at the regular graduated U.S. federal income tax rates and in much the same manner as is applicable to U.S. persons and, if the non-U.S. holder is a foreign corporation, the additional "branch profits tax" described above may also apply.

We believe that we have not been and are not currently a U.S. real property holding corporation and we do not expect to become a U.S. real property holding corporation in the future. However, no assurances can be made in this regard. Furthermore, no assurances can be provided that our stock will be considered to be regularly traded on an established securities market for purposes of Section 897 of the Internal Revenue Code of 1986.

Information Reporting and Backup Withholding

We must report annually to the IRS and to each non-U.S. holder the amount of dividends paid to that holder and the tax withheld from those dividends. These reporting requirements apply regardless of whether withholding was reduced or eliminated by an applicable tax treaty. Copies of the information returns reporting those dividends and withholding may also be made available to the tax authorities in the country in which the non-U.S. holder is a resident under the provisions of an applicable income tax treaty or agreement.

Under some circumstances, U.S. Treasury regulations require additional information reporting and backup withholding on reportable payments on common stock. The gross amount of dividends paid to a non-U.S. holder that fails to certify its non-U.S. holder status in accordance with applicable U.S. Treasury regulations generally will be reduced by backup withholding at the applicable rate, currently 28%. In general, backup withholding will not apply to dividends on our common stock paid by us or our paying agents, in their capacities as such, to a non-U.S. holder if such non-U.S. holder has provided the required certification and neither we nor our paying agent has actual knowledge to the contrary

The payment of the proceeds of the sale or other disposition of common stock by a non-U.S. holder to or through the U.S. office of any broker, U.S. or foreign, generally will be reported to the IRS and reduced by backup withholding, unless the non-U.S. holder either certifies its status as a non-U.S. holder under penalties of perjury or otherwise establishes an exemption and the broker has no actual knowledge to the contrary. The payment of the proceeds of the disposition of common stock by a non-U.S. holder to or through a non-U.S. office of a non-U.S. broker will not be reduced by backup withholding or reported to the IRS, unless the non-U.S. broker has certain enumerated connections with the United States. In general, the payment of proceeds from the disposition of common stock to

or through a non-U.S. office of a broker that is a U.S. person or has certain enumerated connections with the United States will be reported to the IRS and may be reduced by backup withholding at the applicable rate, currently 28%, unless the broker receives a statement from the non-U.S. holder that certifies its status as a non-U.S. holder under penalties of perjury or the broker has documentary evidence in its files that the holder is a non-U.S. holder and the broker has no actual knowledge to the contrary.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. holder can be refunded or credited against the non-U.S. holder's U.S. federal income tax liability, if any, provided that the required information is furnished to the IRS in a timely manner. These backup withholding and information reporting rules are complex and non-U.S. holders are urged to consult their own advisors regarding the application of these rules to them.

U.S. Federal Estate Tax

Common stock owned or treated as owned by an individual who is not a citizen or resident of the United States, as specifically defined for U.S. federal estate tax purposes at the time of death will be included in the individual's gross estate for U.S. federal estate tax purposes unless an applicable estate tax or other treaty provides otherwise and, therefore, may be subject to U.S. federal estate tax.

The foregoing discussion of U.S. federal income and estate tax considerations is not tax advice. Accordingly, each prospective non-U.S. holder of our common stock should consult its own tax adviser with respect to the U.S. federal income and estate tax consequences of holding and disposing of our common stock in light of their particular situations, as well as any consequences arising under the laws of any state, local or foreign taxing jurisdiction or under any applicable tax treaty.

UNDERWRITING

General

The underwriters named below have agreed to buy, subject to the terms of the underwriting agreement, the number of shares listed opposite their names below. Piper Jaffray & Co. and Thomas Weisel Partners LLC are acting as joint book-running managers for this offering and as representatives of the underwriters. The underwriters are committed to purchase and pay for all of the shares if any are purchased.

Underwriters	Number of Shares
Piper Jaffray & Co.	
Thomas Weisel Partners LLC	
SG Cowen & Co., LLC	
Total	

The underwriters have advised us and the selling stockholders that they propose to offer the shares of our common stock to the public at $ per share. The underwriters propose to offer the shares to certain dealers at the same price less a concession of not more than $ per share. The underwriters may allow and the dealers may reallow a concession of not more than $ per share on sales to certain other brokers and dealers. After the offering, these figures may be changed by the underwriters.

The selling stockholders have granted to the underwriters an option to purchase up to an additional shares of common stock, on a pro rata basis, at the same price to the public, and with the same underwriting discount, as set forth in the table above. The underwriters may exercise this option at any time during the 30-day period after the date of this prospectus, but only to cover over-allotments, if any. To the extent the underwriters exercise the option, each underwriter will become obligated, subject to the terms of the purchase agreement, to purchase approximately the same percentage of additional shares as it was obligated to purchase under the purchase agreement.

The following table shows the underwriting fees to be paid to the underwriters in connection with this offering. These amounts are shown assuming both no exercise and full exercise of the over-allotment option.

	No Exercise	Full Exercise
Per Share	$	$
Total	$	$

We and the selling stockholders have agreed to indemnify the underwriters against certain liabilities, including civil liabilities under the Securities Act, or to contribute to payments that the underwriters may be required to make in respect of those liabilities.

We, and each of our directors, officers, and all of the selling stockholders, will agree to certain restrictions on our ability to sell additional shares of our common stock for a period of 180 days after the date of this prospectus, subject to extension for up to 35 days under specified circumstances at the option of Piper Jaffray and Thomas Weisel Partners. We also expect that all of our stock and option holders will agree to such restrictions. We have agreed not to directly or indirectly offer for sale, sell, contract to sell, grant any option for the sale of, or otherwise issue or dispose of, any shares of common stock, options or warrants to acquire shares of common stock, or any related security or instrument, without the prior written consent of Piper Jaffray and Thomas Weisel Partners. The

agreements provide exceptions for (1) sales to underwriters pursuant to the underwriting agreement, (2) our sales in connection with the exercise of options granted and the granting of options to purchase up to an additional shares under our existing stock option plans and agreements and (3) certain other exceptions.

At our request, the underwriters have reserved up to 5% of the shares of common stock being sold in this offering for sale to our directors, officers, friends, business associates and other related persons at the initial public offering price through a directed share program. The number of shares of our common stock available for sale to the general public in this offering will be reduced to the extent that these reserved shares are purchased by these persons. Any reserved shares not purchased by these persons will be offered by the underwriters to the general public on the same basis as the other shares in this offering.

Investors purchasing shares pursuant to the directed share program will not be required to enter into lock-up agreements with the underwriters. However, our directors and officers and all of our stockholders prior to this offering, including the selling stockholders, will enter into lock-up agreements with the underwriters that are unrelated to the direct share program and, to the extent that any of these persons purchases shares in the directed share program, those shares will also be subject to the terms of the lock-up agreements.

Prior to the offering, there has been no established trading market for our common stock. The initial public offering price for the shares of common stock offered by this prospectus was negotiated by us and the underwriters. The factors considered in determining the initial public offering price include the history of and the prospects for the industry in which we compete, our past and present operations, our historical results of operations, our prospects for future earnings, the recent market prices of securities of generally comparable companies and the general condition of the securities markets at the time of the offering and other relevant factors. There can be no assurance that the initial public offering price of the common stock will correspond to the price at which the common stock will trade in the public market subsequent to this offering or that an active public market for the common stock will develop and continue after this offering.

To facilitate the offering, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock during and after the offering. Specifically, the underwriters may over-allot or otherwise create a short position in the common stock for their own account by selling more shares of common stock than have been sold to them by us and the selling stockholders. The underwriters may elect to cover any such short position by purchasing shares of common stock in the open market or by exercising the over-allotment option granted to the underwriters. In addition, the underwriters may stabilize or maintain the price of the common stock by bidding for or purchasing shares of common stock in the open market and may impose penalty bids. If penalty bids are imposed, selling concessions allowed to syndicate members or other broker-dealers participating in the offering are reclaimed if shares of common stock previously distributed in the offering are repurchased, whether in connection with stabilization transactions or otherwise. The effect of these transactions may be to stabilize or maintain the market price of the common stock at a level above that which might otherwise prevail in the open market. The imposition of a penalty bid may also affect the price of the common stock to the extent that it discourages resales of the common stock. The magnitude or effect of any stabilization or other transaction is uncertain. These transactions may be effected on the Nasdaq National Market or otherwise and, if commenced, may be discontinued at any time.

In connection with this offering, some underwriters and selling group members may also engage in passive market making transactions in the common stock on the Nasdaq National Market. Passive market making consists of displaying bids on the Nasdaq National Market limited by the prices of independent market makers and effecting purchases limited by those prices in response to order flow. Rule 103 of Regulation M promulgated by the SEC limits the amount of net purchases that each passive market maker may make and the displayed size of each bid. Passive market making may stabilize the market price of the common stock at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

LEGAL MATTERS

Faegre & Benson LLP, Boulder, Colorado will pass upon the validity of the shares of common stock offered by this prospectus and other legal matters for us. Wilson Sonsini Goodrich & Rosati, Professional Corporation, Palo Alto, California will pass upon certain legal matters for the underwriters.

EXPERTS

The consolidated financial statements of Crocs, Inc. (formerly Western Brands LLC) as of December 31, 2004 and 2003 and for the three years in the period ended December 31, 2004 included in this prospectus have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein, and are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

The financial statements of Finproject N.A., Inc. as of December 31, 2003 and 2002 and for the two years in the period ended December 31, 2003 included in this prospectus have been audited by Samson Belair Deloitte & Touche s.e.n.c.r.l., an independent registered public accounting firm, as stated in their report appearing herein, and are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed a registration statement on Form S-1 with the SEC for the stock we are offering by this prospectus. This prospectus does not include all of the information contained in the registration statement. You should refer to the registration statement and its exhibits for additional information. Whenever we make reference in this prospectus to any of our contracts, agreements or other documents, the references are not necessarily complete and you should refer to the exhibits attached to the registration statement for copies of the actual contract, agreement or other document. When we complete this offering, we will also be required to file annual, quarterly and special reports, proxy statements and other information with the SEC.

You can read our SEC filings, including the registration statement, over the Internet at the SEC's website at *http://www.sec.gov* . You may also read and copy any document we file with the SEC at its public reference facilities at 100 F Street, NE, Washington, D.C. 20549. You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, NE, Washington, DC 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities. Our SEC filings are also available at the office of the Nasdaq National Market. For further information on obtaining copies of our public filings at the Nasdaq National Market, you should call (212) 656-5060.

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Report of Independent Registered Public Accounting Firm

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Consolidated Statements of Operations of Crocs, Inc. for the years ended December 31, 2002, 2003 and 2004 and the quarters ended March 31, 2004 (unaudited) and March 31, 2005 (unaudited)

Consolidated Statements of Stockholders' Deficit of Crocs, Inc. for the years ended December 31, 2002, 2003 and 2004 and the quarter ended March 31, 2005 (unaudited)

Consolidated Statements of Cash Flows of Crocs, Inc. for the years ended December 31, 2002, 2003 and 2004 and the quarters ended March 31, 2004 (unaudited) and March 31, 2005 (unaudited)

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Unaudited Pro Forma Condensed Combined Consolidated Statements of Operations

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Crocs, Inc. (formerly Western Brands LLC)
Niwot, Colorado

We have audited the accompanying consolidated balance sheets of Crocs, Inc. and subsidiaries (formerly Western Brands LLC) (the "Company") as of December 31, 2003 and 2004, and the related consolidated statements of operations, stockholders' deficit and cash flows for each of the three years in the period ended December 31, 2004. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2003 and 2004, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2004, in conformity with accounting principles generally accepted in the United States of America.

Denver, Colorado
August 14, 2005

CROCS, INC.

CONSOLIDATED BALANCE SHEETS

(In thousands)

	December 31, 2003	December 31, 2004	March 31, 2005 (Unaudited)	Pro Forma March 31, 2005 (Note 2) (Unaudited)
ASSETS				
Current assets:				
Cash and cash equivalents	$ 326	$ 1,054	$ 1,751	$ 1,751
Accounts receivable, less allowance for doubtful accounts of $24, $159, $265 and $265, respectively	178	3,252	7,030	7,030
Inventories	448	2,414	4,457	4,457
Deferred tax assets	—	—	372	372
Prepaid expenses and other current assets	9	350	535	535
Total current assets	961	7,070	14,145	14,145
Property and equipment—net	318	3,726	3,924	3,924
Goodwill	—	326	324	324
Intangible assets—net	10	5,102	4,889	4,889
Deferred tax assets	—	—	407	407
Other assets	15	—	15	15
Total	$ 1,304	$ 16,224	$ 23,704	$ 23,704
LIABILITIES AND STOCKHOLDERS' DEFICIT				
Current liabilities:				
Accounts payable	$ 431	$ 3,048	$ 5,070	$ 5,070
Members' distribution payable	—	3,000	3,000	3,000
Accrued expenses and other liabilities	315	1,829	3,756	3,756
Notes payable and current installments of long-term debt	—	978	1,344	1,344
Total current liabilities	746	8,855	13,170	13,170
Long-term debt	—	1,409	1,478	1,478
Deferred tax liabilities	—	1,783	1,834	1,834
Other liabilities	400	468	477	477
Total liabilities	1,146	12,515	16,959	16,959
Commitments and contingencies (notes 12, 15, 16, 17 and 18)				
Redeemable common shares, 36,000 shares issued and outstanding	1,800	1,800	1,800	—
Redeemable convertible preferred shares, par value $0.001 per share; 7,000,000 shares authorized, 31,900 shares issued and outstanding in 2004 and 2005—preference in liquidation of $5,500	—	5,500	5,500	—

Stockholders' deficit:				
Common shares, par value $0.001 per share; 25,000,000 shares authorized, 71,932 shares issued and outstanding, in 2005	—	—	1	1
Members' interest—Class A	394	14	—	—
Members' interest—Class B	—	1,905	—	—
Additional paid-in capital	—	—	4,467	11,767
Deferred compensation	—	(2,358)	(4,208)	(4,208)
Accumulated deficit	(2,036)	(3,672)	(1,344)	(1,344)
Accumulated other comprehensive income	—	520	529	529
Total stockholders' deficit	(1,642)	(3,591)	(555)	6,745
Total	$ 1,304	$ 16,224	$ 23,704	$ 23,704

See notes to consolidated financial statements.

CROCS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except share and per share data)

	Year Ended December 31,			Three Months Ended March 31,	
	2002	2003	2004	2004	2005
				(Unaudited)	
Revenues	$ 24	$ 1,165	$ 13,520	$ 973	$ 10,958
Cost of sales	16	891	7,162	694	4,119
Gross profit	8	274	6,358	279	6,839
Selling, general and administrative expense (including stock-based compensation expense of $240, $356, $1,792, $793, and $699, respectively)	453	1,471	7,929	1,272	4,096
Income (loss) from operations	(445)	(1,197)	(1,571)	(993)	2,743
Interest expense	—	3	47	1	37
Other expense—net	—	—	19	—	17
Income (loss) before income taxes	(445)	(1,200)	(1,637)	(994)	2,689
Income tax expense (benefit)	—	—	(143)	—	293
Net income (loss)	(445)	(1,200)	(1,494)	(994)	2,396
Dividends on redeemable convertible preferred shares	—	—	142	—	68
Net income (loss) attributable to common stockholders	$ (445)	$ (1,200)	$ (1,636)	$ (994)	$ 2,328
Income (loss) per common share:					
Basic	$ (12.54)	$ (13.44)	$ (15.51)	$ (9.71)	$ 21.60
Diluted	$ (12.54)	$ (13.44)	$ (15.51)	$ (9.71)	$ 15.97
Weighted average common shares:					
Basic	35,479	89,271	105,479	102,378	107,765
Diluted	35,479	89,271	105,479	102,378	150,020
Unaudited pro forma income per common share (Note 2)					
Basic					$ 16.67
Diluted					$ 15.52

Unaudited pro forma weighted average shares outstanding (Note 2)	
Basic	139,665
Diluted	150,020

See notes to consolidated financial statements.

CROCS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
FOR THE YEARS ENDED DECEMBER 31, 2002, 2003 AND 2004 AND THREE MONTH PERIOD ENDED MARCH 31, 2005
(In thousands)

	Members' Interest											
	Voting	Non-Voting	Class A	Class B	Total	Common Stock	Additional Paid in Capital	Deferred Compensation	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Deficit	Comprehensive Income (Loss)
BALANCE—January 1, 2002	$ —	$ —	$ —	$ —	$ —	$ —	$ —	$ —	$ —	$ —	$ —	
Members' investments	394	200	—	—	594	—	—	—	—	—	594	
Deferred equity compensation	—	300	—	—	300	—	—	(300)	—	—	—	
Amortization of equity compensation	—	200	—	—	200	—	—	40	—	—	240	
Net loss	—	—	—	—	—	—	—	—	(445)	—	(445)	$ (445)
Total comprehensive loss												$ (445)
BALANCE—December 31, 2002	394	700	—	—	1,094	—	—	(260)	(445)	—	389	
Conversion of membership interest	(394)	(700)	394	700	—	—	—	—	—	—	—	
Members' investments	—	—	—	625	625	—	—	—	—	—	625	
Repurchase of members' investment	—	—	—	(12)	(12)	—	—	—	—	—	(12)	
Reclassification of redeemable members' investment	—	—	—	(1,409)	(1,409)	—	—	—	(391)	—	(1,800)	
Amortization of equity compensation	—	—	—	96	96	—	—	260	—	—	356	
Net loss	—	—	—	—	—	—	—	—	(1,200)	—	(1,200)	$ (1,200)
Total comprehensive loss												$ (1,200)
BALANCE—December 31, 2003	—	—	394	—	394	—	—	—	(2,036)	—	(1,642)	
Members' investments	—	—	—	525	525	—	—	—	—	—	525	
Repurchase of members' investment	—	—	—	(150)	(150)	—	—	—	—	—	(150)	
Accrued distribution to members	—	—	(380)	(2,620)	(3,000)	—	—	—	—	—	(3,000)	
Deferred equity compensation	—	—	—	2,686	2,686	—	—	(2,686)	—	—	—	
Amortization of equity compensation	—	—	—	1,464	1,464	—	—	328	—	—	1,792	
Accrued preferred dividend	—	—	—	—	—	—	—	—	(142)	—	(142)	
Net loss	—	—	—	—	—	—	—	—	(1,494)	—	(1,494)	$ (1,494)
Foreign currency translation	—	—	—	—	—	—	—	—	—	520	520	520
Total comprehensive loss												$ (974)
BALANCE—December 31, 2004	—	—	14	1,905	1,919	—	—	(2,358)	(3,672)	520	(3,591)	
Conversion to C corporation (unaudited)	—	—	(14)	(1,905)	(1,919)	1	1,918	—	—	—	—	
Deferred stock compensation (unaudited)	—	—	—	—	—	—	2,516	(2,516)	—	—	—	
Amortization of stock compensation (unaudited)	—	—	—	—	—	—	33	666	—	—	699	
Accrued preferred dividend (unaudited)	—	—	—	—	—	—	—	—	(68)	—	(68)	
Net income (unaudited)	—	—	—	—	—	—	—	—	2,396	—	2,396	$ 2,396
Foreign currency translation (unaudited)	—	—	—	—	—	—	—	—	—	9	9	9
Total comprehensive income (unaudited)												$ 2,405
BALANCE—March 31, 2005 (unaudited)	$ —	$ —	$ —	$ —	$ —	$ 1	$ 4,467	$ (4,208)	$ (1,344)	$ 529	$ (555)	

See notes to consolidated financial statements.

CROCS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

	Year Ended December 31,			Three Months Ended March 31,	
	2002	2003	2004	2004	2005
				(Unaudited)	
Cash flows from operations:					
Net income (loss)	$ (445)	$ (1,200)	$ (1,494)	$ (994)	$ 2,396
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:					
Depreciation and amortization	7	75	700	33	355
Deferred tax benefit	—	—	(191)	—	(723)
Share based compensation	240	356	1,792	793	699
Changes in operating assets and liabilities—net of effect of acquired business:					
Accounts receivable	(121)	(57)	(1,101)	(210)	(3,270)
Inventories	(117)	(331)	(859)	(256)	(2,058)
Prepaid expenses and other assets	(72)	37	(287)	8	(279)
Accounts payable	6	425	1,499	(94)	1,320
Accrued liabilities and other liabilities	59	256	718	123	2,205
Cash provided by (used in) operations	(443)	(439)	777	(597)	645
Cash flows from investing activities:					
Purchases of property and equipment	(78)	(321)	(1,551)	(30)	(317)
Acquisition of Foam Creations	—	—	(5,166)	—	—
Cash used in investing activities	(78)	(321)	(6,717)	(30)	(317)
Cash flows from financing activities:					
Proceeds from note payable	—	—	314	—	368
Proceeds from long-term debt	—	—	853	—	77
Payment of preferred dividends	—	—	—	—	(119)
Proceeds from members' investments	594	625	525	355	—
Repurchase of members' investments	—	(12)	(150)	—	—
Proceeds from issuance of Class C convertible preferred membership units	—	—	5,500	—	—
Proceeds from (payments on) member loan	—	400	(400)	—	—
Cash provided by financing activities	594	1,013	6,642	355	326
Effect of exchange rate changes on cash	—	—	26	—	43
Net increase (decrease) in cash and cash equivalents	73	253	728	(272)	697
Cash and cash equivalents—beginning year	—	73	326	326	1,054
Cash and cash equivalents—end of year	$ 73	$ 326	$ 1,054	$ 54	$ 1,751
Supplemental disclosure of cash flow information—cash paid during the year for:					
Interest	$ —	$ 3	$ 73	$ 1	$ 38
Income taxes	$ —	$ —	$ 585	$ —	$ 61
Supplemental disclosure of noncash, investing, and financing activities:					
In conjunction with the acquisition of Foam Creations, liabilities were assumed as follows:					
Fair value of assets acquired	$ —	$ —	$ 9,936	$ —	$ —
Cash paid for capital stock	—	—	5,166	—	—
Liabilities assumed	$ —	$ —	$ 4,770	$ —	$ —

Accrued members' distribution	$ —	$ —	$ 3,000	$ —	$ —
Accrued preferred stock dividends	$ —	$ —	$ 142	$ —	$ 68

See notes to consolidated financial statements.

1. FORMATION AND BUSINESS OF THE COMPANY

Crocs, Inc. and its subsidiaries (the "Company") are engaged in the design, development and manufacturing of consumer products from specialty resins. The Company was organized as a limited liability company in Colorado in 1999 under the name of Western Brands, LLC. In January 2005, the Company renamed itself and converted to a Colorado C corporation. The Company was reincorporated in Delaware in June 2005.

The Company's wholly owned subsidiary, Foam Creations, Inc. (formerly Finproject N.A. Inc.), located in Quebec, Canada, has designed, developed, and manufactured consumer products from specialty resins since 1995. In 2000, Foam Creations completed the formulation of, and began manufacturing, a footwear model made from the proprietary closed-cell resin the Company currently uses in its footwear product line. In 2002, the Company established a business relationship with Foam Creations to distribute footwear in the U.S. In October 2002, the Company modified and improved the design of this shoe and began marketing and distributing it under the Crocs brand in the U.S. In June 2004, the Company acquired Foam Creations, including its manufacturing operations, product lines and rights to the proprietary closed-cell resin used in its products.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Consolidation —The consolidated financial statements include the accounts of Crocs, Inc. and its subsidiaries. All significant intercompany transactions and balances are eliminated in consolidation.

Variable Interest Entities —Under Financial Accounting Standards Board (FASB) Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities* , all variable interest entities are consolidated for which we are the primary beneficiary.

Unaudited Interim Financial Information —The interim financial information for the three months ended March 31, 2004 and 2005 is unaudited and has been prepared on the same basis as the audited financial statements. In the opinion of management, such unaudited information includes all adjustments, consisting of normal recurring adjustments, necessary for fair presentation of the interim financial information. Operating results for the interim periods are not necessarily indicative of results for any subsequent periods. Certain information in the footnote disclosure normally included in annual financial statements has been condensed or omitted for the interim periods presented, in accordance with the rules and regulations of the Securities and Exchange Commission for interim financial statements.

Recognition of Revenues —Revenues are recognized when products are shipped and the customer takes title and assumes risk of loss, collection of relevant receivables are probable, persuasive evidence of an arrangement exists and the sales price is fixed or determinable. Title passes upon shipment or upon receipt by the customer depending on the country of the sale and the agreement with the customer. Allowances for estimated returns and discounts are recognized when related revenue is recorded.

Amounts billed for shipping and handling costs are recorded as a component of revenues and totaled $1,000, $69,000 and $678,000 for the years ended December 31, 2002, 2003 and 2004, respectively and $71,000 and $280,000 for the three months ended March 31, 2004 and 2005, respectively. Related costs paid to third party shipping companies are recorded in cost of sales and totaled $4,000, $124,000 and $1.2 million for the years ended December 31, 2002, 2003 and 2004, respectively and $145,000 and $364,000 for the three months ended March 31, 2004 and 2005, respectively.

Income (Loss) per Share —Basic income (loss) per common share ("EPS") is computed by dividing the net income (loss) available to common stockholders by the weighted average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution from securities that could share in the earnings of the Company. Antidilutive securities are excluded from diluted EPS (in thousands, except share and per share data).

	December 31			Three Months Ended March 31	
	2002	2003	2004	2004	2005
				(Unaudited)	
Net income (loss) attributable to common stockholders	$ (445)	$ (1,200)	$ (1,636)	$ (994)	$ 2,328
Preferred dividend	—	—	—	—	68
Net income for dilutive computation	$ (445)	$ (1,200)	$ (1,636)	$ (994)	$ 2,396
Basic income (loss) per common share:					
Weighted average common shares outstanding	35,479	89,271	105,479	102,378	107,765
Basic income (loss) per common share	$ (12.54)	$ (13.44)	$ (15.51)	$ (9.71)	$ 21.60
Diluted income (loss) per common share:					
Weighted average common shares outstanding	35,479	89,271	105,479	102,378	107,765
Dilutive effect of preferred stock	—	—	—	—	31,900
Dilutive effect of stock options	—	—	—	—	2,659
Dilutive effect of unvested stock	—	—	—	—	7,696
Weighted average diluted common shares outstanding	35,479	89,271	105,479	102,378	150,020
Diluted income (loss) per common share	$ (12.54)	$ (13.44)	$ (15.51)	$ (9.71)	$ 15.97

The effect of assumed conversion of the Class C preferred units was antidilutive in 2004. Stock options, preferred stock and restricted units that are antidilutive due to the Company's net loss for the year ended December 31, 2004, included approximately 19,545 stock options and preferred stock and restricted units respectively, and approximately 333 and 0 antidilutive share equivalents for the three months ended March 31, 2004 (unaudited) and 2005 (unaudited), respectively were excluded from the

diluted income (loss) per common share computations as their inclusion would be antidilutive. There were no antidilutive share equivalents in the year ended December 31, 2002 and 2003.

For purposes of computing income (loss) per common share for 2002, 2003 and the period in 2004 prior to the conversion of membership interests to units, the Company computed the equivalent units based on that conversion.

Cash and Cash Equivalents —Cash and cash equivalents represent cash and short-term, highly liquid investments with maturities of three months or less at date of purchase. The carrying amounts reflected in the consolidated balance sheet for cash and cash equivalents approximate fair value due to the short maturities.

Inventories —Raw materials and supplies are valued at the lower of cost and replacement cost. Work in process and finished goods are valued at the lower of cost and net realizable value. Cost is determined on the first in, first out basis. The cost of work in process and finished goods consists of the cost of raw materials and an applicable share of the cost of labor and manufacturing overhead.

Property and Equipment —Depreciation of machinery and equipment is computed using the straight-line method based on estimated useful lives ranging from 3 to 5 years. Leasehold improvements are amortized on the straight-line basis over their estimated economic useful lives or the lease term, whichever is shorter.

Intangible Assets —Intangible assets are comprised of core technology and customer relationships acquired in the acquisition of Foam Creations (see Note 5) and capitalized costs related to pending patents that the Company is pursuing related to its technology.

Goodwill —Goodwill consists of the excess purchase price paid over the fair value of the assets acquired and liabilities assumed in the acquisition of Foam Creations (see Note 5). In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets,* the Company does not amortize goodwill. Goodwill is evaluated at least annually for impairment, or more often if circumstances indicate there may be an impairment. There was no impairment of goodwill at December 31, 2004.

Impairment of Long-Lived Assets —In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* , the Company estimates the future undiscounted cash flows to be derived from an asset to assess whether or not a potential impairment exists when events or circumstances indicate the carrying value of a long-lived asset may be impaired. If the carrying value exceeds the estimate of future undiscounted cash flows, the Company calculates the impairment as the excess of the carrying value of the asset over the estimate of its fair market value. There were no impairments recorded during 2002, 2003 or 2004.

Foreign Currency Translation and Foreign Currency Transactions —The U.S. dollar is the Company's functional currency. Assets and liabilities of foreign operations denominated in local currencies are

translated at the rate of exchange at the balance sheet date. Revenues and expenses are translated at the weighted average rate of exchange during the applicable period. Adjustments resulting from translating foreign functional currency financial statements into U.S. dollars are included in the foreign currency translation adjustment, a component of accumulated other comprehensive income (loss) in stockholders' equity (deficit). Gains and losses generated by transactions denominated in a currency different from the functional currency of the applicable entity are recorded in selling, general and administrative expense in the period in which they occur.

Stock-Based Compensation —The Company measures compensation expense to employees using the intrinsic value method in accordance with Accounting Principles Board ("APB") Opinion No. 25, *Accounting for Stock Issued to Employees* , as permitted by SFAS No. 123, *Accounting for Stock-Based Compensation* . Accordingly, as allowable under SFAS No. 123, the Company does not recognize compensation expense for options granted to employees when the exercise price equals or exceeds the fair value of common stock as of the grant date. The Company records compensation expense related to non-employees in accordance with FASB issued Interpretation No. 44 ("FIN 44"), *Accounting for Certain Transaction Involving Stock Compensation* —an Interpretation of APB Opinion No. 25, and Emerging Issues Task Force ("EITF") Issue No. 00-23, *Issues Related to the Accounting for Stock Compensation Under APB Opinion No. 25 and FASB Interpretation No. 44* .

As required by SFAS No. 123 and amended by SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure* , the Company has computed, for pro forma disclosure purposes, the fair value of options granted using the Black-Scholes option pricing model. In order to calculate the fair value of the options, certain assumptions are made regarding components of the model, including risk-free interest rate, volatility, expected dividend yield rate, and expected option life. Changes to the assumptions could cause significant adjustments to the valuation. Expected volatility was not considered as the Company was a non-public entity at the grant date of these options. The Company factored in expected retention rates combined with vesting periods to determine the average expected life. The risk-free interest rate for periods within the contractual life of the options is based on the U.S. Treasury yield curve in effect at the time of each grant. The assumptions used are as follows:

	Years Ended December 31			Three Months Ended March 31,	
	2002	2003	2004	2004	2005
				(Unaudited)	
Dividend yield	—	—	—	—	—
Risk-free interest rate	—	—	3.36%	—	3.71%
Weighted average expected life (in years)	—	—	5	—	5

If the Company had accounted for these stock options issued to employees in accordance with SFAS No. 123, the Company's pro forma net income (loss) and pro forma income (loss) per common share would have been reported as follows (in thousands except per share data):

	Years Ended December 31			Three Months Ended March 31,	
	2002	2003	2004	2004	2005
				(Unaudited)	
Net income (loss) as reported	$ (445)	$ (1,200)	$ (1,636)	$ (994)	$ 2,328
Add: Share-based employee compensation expense included in reported net income—net of tax	—	—	53	—	148
Deduct: Total share-based employee compensation expense under fair-value-based method for all awards—net of tax	—	—	(13)	—	(10)
Pro forma net income (loss)	$ (445)	$ (1,200)	$ (1,596)	$ (994)	$ 2,466
Income (loss) per share:					
Basic—as reported	$ (12.54)	$ (13.44)	$ (15.51)	$ (9.71)	$ 21.60
Basic—pro forma	$ (12.54)	$ (13.44)	$ (15.13)	$ (9.71)	$ 22.88
Diluted—as reported	$ (12.54)	$ (13.44)	$ (15.51)	$ (9.71)	$ 15.97
Diluted—pro forma	$ (12.54)	$ (13.44)	$ (15.13)	$ (9.71)	$ 16.89

The pro forma effects of applying SFAS No. 123 may not be representative of the effects on reported net income (loss) and income (loss) per share for future years since options vest over several years and additional awards are made each year.

Income Taxes —Prior to the Company's conversion to a C-corporation on January 4, 2005, the Company was not a taxpaying entity for U.S. federal and state income tax purposes. In June 2004, the Company acquired Foam Creations, Inc., a Canadian company. Foam Creations is subject to federal and provincial level income taxes in Canada. The Company accounts for income taxes using the asset and liability method. This approach requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of other assets and liabilities. The Company provides for current income taxes on Canadian income at a rate of 31% after adjustments for certain items that are not taxable or deductible for taxation purposes. See Note 11 for further discussion.

Management Estimates —Management of the Company has made certain estimates and assumptions relating to the reporting of assets, liabilities, net sales and expenses and the disclosure of contingent assets and liabilities to prepare these consolidated financial statements in conformity with accounting principles generally accepted in the U.S. Significant areas requiring the use of management estimates relate to the allowance for doubtful accounts, returns and discounts, impairment assessments and charges, deferred taxes, stock-based compensation expense, fair value of acquired intangibles and useful

lives assigned to long-lived assets. Actual results could differ from these estimates and the differences could be material.

Concentration of Risk —The Company's cash and cash equivalents are maintained in several different financial institutions in amounts that typically exceed federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to significant credit risk.

The Company considers its concentration risk related to accounts receivable to be mitigated by the Company's credit policy, the significance of outstanding balances owed by each individual customer at any point in time and the geographic dispersion of these customers.

The Company relies on both internal and external manufacturers for each of its products. Establishing a replacement source for our product offerings could require significant additional time and expense.

Unaudited Pro Forma Information —In connection with the Company's initial public offering, a series of transactions will occur upon the consummation thereof. The unaudited pro forma balance sheet as of March 31, 2005 and unaudited pro forma net income per share attributable to common stockholders for the three months ended March 31, 2005 have been presented to give effect to these transactions as if they occurred on March 31, 2005. The transactions included in the unaudited pro forma information are as follows:

- each redeemable convertible preferred share will be exchanged for one common share; and
- the put options on the redeemable common shares will terminate in connection with the closing of the proposed initial public offering.

	Three Months Ended March 31, 2005 (Unaudited)
Pro forma net income attributable to common stockholders and income for pro forma dilutive computation	$ 2,328
Basic pro forma income per common share:	
Weighted average common shares outstanding	107,765
Conversion of redeemable convertible preferred shares to common shares	31,900
Pro forma weighted average common shares outstanding	139,665
Basic pro forma income per common share	$ 16.67
Dilutive pro forma income per common share:	
Pro forma weighted average common shares outstanding	139,665
Dilutive effect of stock options	2,659
Dilutive effect of unvested stock	7,696
Weighted average diluted common shares outstanding	150,020
Diluted income per common share	$ 15.52

Recent Accounting Pronouncements —In November 2004, the FASB issued SFAS No. 151, *Inventory Costs* —an amendment of ARB No. 43, Chapter 4. SFAS No. 151 amends the guidance in ARB No. 43, Chapter 4, *Inventory Pricing* , to clarify the accounting of abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage), and requires that such items be recognized as current-period charges regardless of whether they meet the "so abnormal" criterion outlined in ARB No. 43. SFAS No. 151 also introduces the concept of "normal capacity" and requires the allocation of fixed production overheads to inventory based on normal capacity of the production facilities. Unallocated overheads must be recognized as an expense in the period incurred. SFAS No. 151 is effective for inventory costs incurred during fiscal years beginning after June 15, 2005, and is required to be adopted in the first quarter of fiscal year 2006. The Company has not yet determined the effect of adopting this pronouncement.

In December 2004, the FASB issued SFAS No. 123 (revised 2004), *Share-Based Payment* , which is a revision of SFAS No. 123. SFAS No. 123(R) supersedes APB Opinion No. 25, and amends SFAS No. 95, *Statement of Cash Flows* . Generally, the approach in SFAS No. 123 (R) is similar to the approach described in SFAS No. 123. However, SFAS No. 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. Pro forma disclosure is no longer an alternative.

SFAS No. 123(R) and the related interpretations must be adopted no later than January 1, 2006. The Company expects to adopt SFAS No. 123 (R) on January 1, 2006.

SFAS No. 123(R) permits companies to adopt its requirements using one of two methods:

1. A "modified prospective" method in which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS No. 123(R) for all share-based payments granted after the effective date and (b) based on the requirements of SFAS No. 123 for all awards granted to employees prior to the effective date of SFAS No. 123(R) that remain unvested on the effective date.

2. A "modified retrospective" method which includes the requirements of the modified prospective method described above, but also permits entities to restate based on the amounts previously recognized under SFAS No. 123 for purposes of pro forma disclosures either (a) all prior periods presented or (b) prior interim periods of the year of adoption.

The Company has not yet determined the method of adoption or the effect of adopting this pronouncement.

In December 2004, the FASB issued SFAS No. 153, *Exchanges of Non-Monetary Assets* . The statement refines the measurement of exchanges of non-monetary assets between entities. The provisions of this statement are effective for fiscal periods beginning after June 15, 2005. Historically, the Company has

not transacted significant exchanges of non-monetary assets, but future such exchanges would be accounted for under the standard, when effective.

In March 2005, the FASB issued FASB Interpretation No. 47, *Accounting for Conditional Asset Retirement Obligations* . FIN 47 clarifies that the term conditional asset retirement obligation as used in FASB Statement No. 143, *Accounting for Asset Retirement Obligations* , refers to a legal obligation to perform an asset retirement activity in which the timing and (or) method of settlement are conditional on a future event that may or may not be within the control of the entity. The obligation to perform the asset retirement activity is unconditional even though uncertainty exists about the timing and (or) method of settlement. Uncertainty about the timing and (or) method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. FIN 47 also clarifies when an entity would have sufficient information to reasonably estimate the fair value of an asset retirement obligation. FIN 47 is effective no later than the end of fiscal years ending after December 15, 2005. The Company will adopt FIN 47 in its fiscal year 2006. The Company is currently evaluating the effect that the adoption of FIN 47 will have on its consolidated results of operations and financial condition.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections* , which replaces Accounting Principles Board Opinions No. 20, *Accounting Changes* , and SFAS No. 3, *Reporting Accounting Changes in Interim Financial Statements* —an amendment of APB Opinion No. 28." SFAS No. 154 provides guidance on the accounting for and reporting of accounting changes and error corrections. It establishes retrospective application, or the latest practicable date, as the required method for reporting a change in accounting principle and the reporting of a correction of an error. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. This pronouncement is required to be adopted by the Company in the first quarter of 2006. The Company is currently evaluating the effect that the adoption of SFAS No. 154 will have on its consolidated results of operations and financial condition but does not expect it to have a material impact.

3. INVENTORIES

Inventories by major classification are as follows (in thousands):

	December 31		March 31,
	2003	2004	2005
			(Unaudited)
Finished goods	$ 448	$ 1,259	$ 3,408
Work-in-progress	—	35	94
Raw materials	—	1,120	955
	$ 448	$ 2,414	$ 4,457

4. PROPERTY AND EQUIPMENT

Property and equipment includes the following (in thousands):

	December 31		March 31, 2005
	2003	2004	(Unaudited)
Machinery and equipment	$ 401	$ 4,235	$ 4,700
Leasehold improvements	—	26	53
	401	4,261	4,753
Less accumulated depreciation and amortization	(83)	(535)	(829)
	$ 318	$ 3,726	$ 3,924

Depreciation expense of $7,000, $74,000, $211,000, $33,000 and $102,000 was recorded for the years ended December 31, 2002, 2003, 2004, and the three months ended March 31, 2004 (unaudited) and 2005 (unaudited), respectively.

5. ACQUISITION

On June 29, 2004, the Company purchased all of the issued and outstanding shares of the capital stock of Finproject N.A., Inc. ("Foam Creations"), a Canadian corporation. Foam Creations manufactures, and distributes our **crocs** -branded footwear products. Foam Creations also produces spa pillows and other products for original equipment manufacturers. The Company acquired Foam Creations including its manufacturing operations, product lines and rights to the proprietary closed-cell resin used in its products to expand its business. The acquisition was accounted for under the purchase method of accounting in accordance with SFAS No. 141, *Business Combinations*. The cash purchase price, including acquisition costs, was approximately $5.2 million. The Company retained approximately $150,000 as security against any breaches of the purchase agreement including representations and warranties of the sellers. The retained funds shall be released to the sellers on the two-year anniversary of the execution of the purchase agreement less any deductions.

All assets and liabilities of Foam Creations have been recorded in the Company's consolidated balance sheet based on their estimated fair values at the date of acquisition. Identifiable intangible assets and goodwill relating to the purchase approximated $5.0 million and $294,000, respectively. Identifiable intangible assets include $3.6 million for core technology that has a five-year life, and $1.4 million for customer relationships that have a seven-year life. The purchase accounting included a deferred tax liability of $1.8 million recorded for the book-tax difference in future tax consequences for the acquired identifiable intangible assets.

The following table summarizes the fair value of the assets and liabilities assumed at the date of acquisition (in thousands):

Current assets	$ 2,818
Property and equipment	1,823
Goodwill	294
Intangible assets	5,001
Current liabilities	(2,251)
Long-term debt	(739)
Deferred tax liability	(1,780)
Net assets acquired	$ 5,166

The results of Foam Creations operations have been included in the consolidated financial statements since the date of the acquisition.

The following table summarizes supplemental statement of operations information for the year ended December 31, 2003 and 2004, on a pro forma basis as if the acquisition of Foam Creations had occurred on January 1, 2003 (in thousands):

	December 31	
	2003	2004
Net sales	$ 5,628	$ 16,921
Gross profit	2,365	8,392
Operating loss	(1,543)	(933)
Net loss	(1,464)	(1,084)

6. GOODWILL AND INTANGIBLE ASSETS

Intangible assets that are determined to have finite lives are amortized over their useful lives on a straight-line basis. The following table summarizes the Company's identifiable intangible assets as of December 31, 2003 and 2004 (in thousands):

	2003			2004		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Amortized intangible assets:						
Patents and trademarks	$ 11	$ 1	$ 10	$ 67	$ 2	$ 65
Customer relationships	—	—	—	1,521	107	1,414
Core technology	—	—	—	4,028	405	3,623
Total	$ 11	$ 1	$ 10	$ 5,616	$ 514	$ 5,102

Amortization expense of intangible assets with finite lives, which is included in selling, general and administrative expense, was $1,000 and $488,000 for the years ended December 31, 2003 and 2004, respectively. Estimated future annual amortization of intangible assets is as follows (in thousands):

Fiscal years ending December 31,	
2005	$ 1,023
2006	1,023
2007	1,023
2008	1,023
2009	618
Thereafter	392
Total	$ 5,102

The following table summarizes the activity in the Company's goodwill account during the year ended December 31, 2004 (in thousands):

	2004
Balance—beginning of year (January 1, 2004)	$ —
Acquisition of Foam Creations	294
Foreign currency translation adjustments	32
Balance—end of year (December 31, 2004)	$ 326

7. ACCRUED EXPENSES AND OTHER LIABILITIES

Accrued expenses and other liabilities include the following (in thousands):

	December 31		March 31, 2005
	2003	2004	(Unaudited)
Accrued compensation and benefits	$ 81	$ 872	$ 1,158
Income tax	—	—	978
Professional services	158	340	538
Fulfillment and freight	9	80	294
Insurance	—	—	149
Preferred dividends	—	142	91
Other	67	395	548
	$ 315	$ 1,829	$ 3,756

8. NOTES PAYABLE

The Company has a demand note payable from a bank in the amount of up to $1.2 million, bearing interest at base rate plus 0.50% (actual rate of 4.75% at December 31, 2004). At December 31, 2004 and March 31, 2005, $655,000 and $1.0 million, respectively, was outstanding on the loan. The Company also has an authorized credit line of $208,000 for currency exchanges and a credit line of $17,000 for credit cards. No amounts were outstanding on these lines as of December 31, 2004 or March 31, 2005. All of the bank loans are secured by the accounts receivable and inventories associated with its' Canadian operations. Under the terms of the bank loans, the Company must satisfy certain restrictive covenants as to minimum financial ratios. At December 31, 2004, the minimum working capital ratio of 1.3:1 for Foam Creations was not met; however, the Company obtained a waiver from the bank.

The carrying amounts reflected in the consolidated balance sheet for notes payable approximate fair value due to the short maturities and market rate of interest.

9. LONG-TERM DEBT

Long-term debt consists of the following (in thousands):

	December 31		March 31, 2005
	2003	2004	
			(Unaudited)
Loan from Development Bank of Canada, payable in monthly installments of $35,895 plus interest starting on April 1, 2005, at the one-month London InterBank Offered Rate ("LIBOR") plus 3.50%, less 0.2% per year, maturing March 2011. An authorized amount of $850,000 relating to this loan had not been disbursed and was available to the Company as of December 31, 2004. Loan is secured by a first mortgage on all of the assets of the Company, subordinated only with respect to the assignment of the accounts receivable and inventories pertaining to the bank notes payable (see Note 8)	$ —	$ 1,732	$ 1,799
Less current portion	—	323	321
	$ —	$ 1,409	$ 1,478

The fair value of the Company's long-term debt, including current portion, approximates carry value at December 31, 2004, due to the note carrying a market rate of interest.

Long-term debt maturities in each of the next five years are as follows (in thousands):

Years Ending December 31	
2005	$ 323
2006	431
2007	431
2008	431
2009	116
Total	$ 1,732

10. RESERVE ANALYSIS

The reserve analysis for the two years ended December 31, 2003 and 2004 (there was no reserve activity in 2002), is as follows (in thousands):

	Balance at Beginning of Year	Additions	Deductions	Balance at End of Year
Year ended December 31, 2003:				
Allowance for doubtful accounts	$ —	$ 89	$ 65	$ 24
Reserve for sales returns and allowances	—	—	—	—
Year ended December 31, 2004:				
Allowance for doubtful accounts	24	193	58	159
Reserve for sales returns and allowances	—	46	—	46

11. INCOME TAXES

Prior to the Company's conversion to a C corporation in January 2005, the Company was treated as a partnership for U.S. federal and state income tax purposes. Under U.S. tax law, partnerships are treated as flow-through entities and are not subject to direct taxation.

In June 2004, the Company acquired Foam Creations, Inc., a Canadian company. Foam Creations is subject to federal and provincial level income taxes in Canada.

The provision for income taxes consisted of the following (in thousands):

	December 31, 2004	March 31, 2005 (Unaudited)
Current—U.S.	$ —	$ 976
Current—foreign	48	40
Total current income taxes	48	1,016
Deferred—U.S.	—	(723)
Deferred—foreign	(191)	—
Total deferred income taxes	(191)	(723)
Total income tax expense (benefit)	$ (143)	$ 293

Reconciliations of the statutory federal income tax rate to the Company's actual rates based on income or loss before income tax are summarized as follows:

	December 31, 2004	March 31, 2005 (Unaudited)
Consolidated pre tax book income	35.0%	35.0%
State taxes	—	3.3
Deferred tax benefit from conversion to C Corporation	—	(26.9)
Foreign rate differential	(0.1)	(0.5)
Partnership income not subject to tax	(26.2)	—
	8.7%	10.9%

The Company's deferred income tax assets and liabilities are as follows (in thousands):

	December 31, 2004	March 31, 2005 (Unaudited)
Current deferred tax assets:		
Accrued expenses	$ —	$ 268
Inventory	—	104
	$ —	$ 372
Long-term deferred tax assets:		
Other liabilities	$ —	$ 178
Stock compensation expense	—	229
	$ —	$ 407
Total deferred tax assets	$ —	$ 779
Long-term deferred tax liabilities:		
Property and equipment	$ 260	$ 316
Intangible assets	1,523	1,518
Total deferred tax liabilities	$ 1,783	$ 1,834

Deferred tax liabilities arise from temporary differences in the remaining depreciable basis of assets for financial and tax reporting purposes. The purchase of Foam Creations, Inc. gave rise to adjustments to the asset values upon allocation of the purchase price for financial reporting purposes. These adjustments are not recorded for income tax reporting purposes. As a result, the Company will record greater depreciation and amortization on the acquired assets for financial reporting purposes than they will for tax reporting purposes and consequently has recorded a deferred tax liability for purchase price adjustments of $1.5 million.

On January 3, 2005, the Company converted from a limited liability company to a C corporation. For tax years beginning and subsequent to January 1, 2005, the Company will be subject to corporate-level U.S. federal and state income taxes. The Company recognized an income tax benefit of $723,000 in the first quarter of 2005 related to the net deferred tax assets of the partnership existing as of December 31, 2004.

12. COMMITMENTS AND CONTINGENCIES

The Company leases space for certain of its offices, warehouses, vehicles and equipment under leases expiring at various dates through 2009. Rent expense was $11,000, $28,000 and $208,000 for the years ended December 31, 2002, 2003 and 2004, respectively and $16,000 and $103,000 for the three months ended March 31, 2004 and 2005, respectively. Amounts of minimum future annual rental commitments

under non-cancelable operating leases in each of the five years ending December 31, 2005 through 2009 are $411,000, $410,000, $179,000, $2,000 and $1,000, respectively.

On September 17, 2004, the Company entered into a Manufacturing Supply Agreement with MDI Products, LLC ("MDI"), a Florida limited liability company where the Company agrees to purchase 15,000 pairs of shoes per month for 36 months to maintain exclusivity. The pricing will be agreed upon every twelve months. Termination fees apply for losses incurred by MDI for premature termination by the Company.

On June 30, 2004, the Company entered in to a four year Supply Agreement with Finproject S.P.A., the former majority owner of Foam Creations, where the Company has the exclusive right to purchase the material for the manufacture of finished shoe products, except for certain current customer dealings (including boot manufacturers). Based upon the supply agreement, the Company has contractual purchase requirements to maintain exclusivity in the first two years. The pricing is to be agreed upon each quarter and fluctuates based on order volume, currency fluctuations and raw material prices.

The Company indemnifies certain of its vendors and its directors and executive officers for specified claims. To date, the Company has not paid or been required to defend any indemnification claims, and accordingly, has not accrued any amounts for our indemnification obligations.

13. RELATED PARTIES

The Company entered into the following related party transactions (in thousands):

	December 31			March 31	
	2002	2003	2004	2004	2005
				(Unaudited)	
Founder:					
Note payable	$ —	$ 36	$ 39	$ —	$ 18
Fee agreement	—	82	—	—	—
Crocs Hawaii (owned by board member):					
Year-end accounts receivable balance due to the Company	—	—	117	—	103
Sales	—	8	142	5	82

The Company executed a separation agreement with the former chief executive officer on January 1, 2005. The terms of the arrangement were agreed to by the Company and the former chief executive officer as of December 31, 2004, consequently, the Company has recorded the present value of the severance and health insurance continuation in the 2004 financial statements. The total amount recorded was $606,000, which has been reflected in selling, general and administrative expenses. The amount recorded has been discounted over the future payment terms at 6%. The corresponding

liability is recorded in other non-current liabilities, for amounts due in 2006 and beyond, and accrued expenses and other liabilities for amounts due in 2005.

In connection with the separation agreement discussed above, the Company and former chief executive officer entered into an exclusive distribution agreement that commenced July 1, 2005. The distribution agreement is for specified territories in Central America and has an initial term of two years. The agreement provides for renewal periods at the former chief executive officer's option, if specified sales volumes are attained. Pricing under this agreement is set at a discount off the Company's then current wholesale pricing. Additionally, effective July 1, 2005, the Company and the former chief executive officer entered into an agreement providing him the right to license and/or franchise airport kiosks selling the Company's products for a period of 10 years, subject to the Company's right to terminate the agreement if specified numbers of kiosks are not opened in timeframes specified.

In 2003, the Company's former chief executive officer loaned $400,000 under a non-interest bearing note which was repaid during 2004. The impact of discounting this loan was not material.

In May 2005, the Company reacquired the distribution rights of their products in the State of Hawaii (Crocs Hawaii) from one of their directors for a cash purchase price of approximately $50,000.

14. EQUITY

In 1999, the Company was established by three partners, all owning an equal percentage interest in the Company. The Company was inactive until June 2002, when one of the partners bought out the interest of the other two partners taking full ownership interest in the Company. During 2002 and 2003, the Company issued interests for cash and equity based compensation to employees and non-employees.

In 2004, membership interests in the Company were converted to membership units at a rate of 1,000 units for each percentage membership interest in the Company. As of December 31, 2004, a total of 117,000 units were authorized for issuance. A total of 106,932 units were outstanding and an additional 8,018 units represented unvested Class B units, representing the 114,950 units that were issued. At December 31, 2004, 2,050 units were authorized but not issued.

For purposes of computing income (loss) per common share, the Company has reflected the conversion of the membership interests into units in the 2002 and 2003 computation of shares outstanding.

Class A Membership Units —As of December 31, 2004, the Company had 20,000 Class A membership units outstanding. Class A members had to approve any transfer of shares. In addition, any changes to the equity plan had to obtain Class A membership approval.

Class B Membership Units —As of December 31, 2004, the Company had issued 94,950 units of Class B membership units of which 8,018 units were unvested. This class did not carry any preferences in regards to transfer of shares or voting.

Equity-Based Compensation —In connection with certain equity grants to employees and non-employees, the Company recognized equity based compensation expenses as follows (in thousands):

	Year Ended December 31			Three Months Ended March 31	
	2002	2003	2004	2004	2005
				(Unaudited)	
Employees	$ 240,000	$ 356,000	$ 783,000	$ 53,000	$ 699,000
Non-employees	—	—	1,009,000	740,000	—
Total	$ 240,000	$ 356,000	$ 1,792,000	$ 793,000	$ 699,000

The Company issues stock grants to employees and non-employees with vesting schedules of varying lengths. Typically, these grants range from immediately vesting to vesting periods of up to four years. Compensation expense is recognized over the vesting term for employees and non-employees on a straight-line basis. Deferred compensation represents the unvested portion of employee grants and is recorded as a reduction of equity. The fair value of employee grants is fixed at date of grant, or the measurement date, if later, while grants to non-employees are remeasured to fair value at each reporting period until vesting occurs. During 2004, the Company granted 2,350 restricted units for which the measurement date did not occur until April 27, 2005. Consequently, the value of these grants is remeasured at each reporting period, based on the fair value of the underlying stock, until such measurement date. The related compensation expense is recognized over the vesting period.

Additionally, the Company's founder and another significant stockholder granted certain equity interests to independent contractors in 2004. As a result, the Company recorded $350,000 of equity issued compensation to non-employees in 2004 related to these grants.

The fair value of the equity units granted from October 2002 through September 2004 was estimated by the Company's board of directors based upon the best information available to them on the dates of grant, including third party sales of these units. The Company did not obtain contemporaneous valuations by valuation specialists because, at the time of the issuances of stock options during this period, our efforts were focused on acquiring new customers, developing our operational infrastructure and executing our business plan. The Company engaged an independent third party valuation specialist to perform a retrospective valuation of common stock at December 31, 2004. Additionally, the Company engaged a third party valuation specialist to perform a contemporaneous valuation of common stock at April 30, 2005.

Stock Options —The Company granted 4,000 stock options during 2004 for which the measurement date did not occur until April 2005. The exercise price was set at the estimated fair value of the Company's common stock at date of grant of $237.78. The estimated grant date fair value of the options was $146,000. The value of these grants is remeasured at each reporting period, based on the fair value of the underlying stock less the exercise price of the option, until the measurement date occurs. The

related compensation expense is recognized over the vesting period on a straight-line basis. These stock options vest over four years and have a term of seven years. At December 31, 2004 and March 31, 2005, none of these options have vested and the remaining contractual term was 6.7 years and 6.4 years, respectively.

The Company granted 1,500 options in January 2005 for which the measurement date did not occur until April 2005. The exercise price was set at the estimated fair value of the Company's common stock at date of grant of $398.00. The estimated grant date fair value of the options was $100,000. The value of these grants is remeasured at each reporting period, based on the fair value of the underlying stock less the exercise price of the option, until the measurement date occurs. These stock options vest over four years. 1,000 of these options have a 10 year term and 500 have a seven year term. At March 31, 2005, none of these options have vested and the weighted average remaining contractual term is 8.8 years.

Distribution —In 2004, the Company declared a distribution to members in the amount of $3.0 million. This amount has been accrued in the financial statements at December 31, 2004 and was paid in April 2005.

15. REDEEMABLE CONVERTIBLE PREFERRED SHARES

As of December 31, 2004, the Company had 31,900 Class C Redeemable Convertible Preferred Membership Units ("Class C Units") authorized and shares outstanding. These units were issued in June 2004 in the aggregate amount of $5.5 million. The proceeds were used to fund the acquisition of Foam Creations (see Note 5). Holder of Class C Units are entitled to receive out of the net profits of the Company, a dividend at the rate of five percent (5%) per annum on their initial investment payable semi-annually on the first day of June and December of each year beginning December 1, 2004; the dividends are cumulative and payable before any dividend or distribution is set apart or paid on Class A or Class B membership units. On July 1, 2009, the Company is obligated to redeem any Class C Units that have not then been converted by paying to the holders the original purchase price for the units plus any accrued but unpaid dividends.

The Class C preferred units have a preference in liquidation equal to the amount of the initial investment, $5.5 million plus all accumulated and unpaid dividends. The units are convertible at any time at the option of the holder for Class B units on a one for one basis.

Because the Class C Units include a redemption feature that is outside of the control of the Company, the Company has classified the Class C Units outside of stockholders' equity in accordance with Emerging Issues Task Force ("EITF") Topic D-98, "Classification and Measurement of Redeemable Securities." In accordance with EITF Topic D-98, the fair value at date of issuance, $5.5 million was recorded outside of stockholders' equity in the accompanying balance sheet. Dividends on the Class C Units are reflected as a reduction of net income (loss) attributable to common stockholders. In January 2005, in connection with the change from an LLC to a C corporation, the Company

redesignated the Class C Units as Series A Redeemable Preferred Stock ("Series A Stock"). The rights and privileges of the Series A Stock are substantially the same as those of the Class C Units, except as follows. The redemption feature of the Series A Stock consists of the right of the holder, commencing on July 1, 2009, to put any unconverted Series A Stock to the Company for the original issuance amount plus all accumulated and unpaid dividends. Additionally, in connection with the redesignation, the conversion of Series A Stock to common stock will occur automatically upon completion of an initial public offering. The redesignation had no impact of the Company's accounting for this issuance.

16. REDEEMABLE COMMON SHARES

In May 2003, the Company granted certain holders of its Class B units the right to put the units back to the Company commencing in the second quarter of 2006. Under the terms of the agreements, the purchase price is the greater of the holder's original investment or the holder's then current percentage ownership of the Company multiplied by the aggregate of the prior three fiscal years' net income. At the date of the agreements, the aggregate repurchase price was $808,000. At December 31, 2004 and 2003, the aggregate repurchase obligation is $808,000. A total of 36,000 units are subject to this put right, in accordance with EITF Topic D-98, the Company reclassified the estimated fair value of these units, of $1.8 million, outside of stockholders' equity as of the date of the agreements. In connection with an initial public offering of the Company's common stock, this put right will expire and these units will be reclassified to stockholders' equity. In connection with the reclassification, there was a deficit of the carrying value of Class B units in the amount of $391,000 which has been recorded in accumulated deficit.

17. OPERATING SEGMENTS AND RELATED INFORMATION

The Company primarily designs, manufactures, and markets footwear under the CROCS brand. The acquisition of Foam Creations in 2004 (see Note 5) added an additional line of products for the spa and boat industries. All products are manufactured using the same manufacturing process. Operating results are assessed on an aggregate basis to make decisions about necessary resources and in assessing performance. Consequently, as permitted by the provisions of SFAS No. 131, "Disclosure About Segments of an Enterprise and Related Information", the Company has one reportable segment for financial statement purposes. All significant revenues from external customers and long-lived assets were located in North America for the years ended December 31, 2002, 2003, and 2004 and the quarters ended March 31, 2004 and 2005. The Company's sales outside of the United States were not material in the periods presented.

Revenues from one customer totaled 12% of consolidated revenues during the quarter ended March 31, 2005. There were no customers who represented 10% or more of consolidated revenues in the quarter ended March 31, 2004 or the years ended December 31, 2002, 2003 and 2004.

The Company's sales by product line are as follows (in thousands):

	December 31,			March 31,	
	2002	2003	2004	2004	2005
				(Unaudited)	
Shoes	$ 24	$ 1,165	$ 10,250	$ 973	$ 9,689
Other	—	—	3,270	—	1,269
	$ 24	$ 1,165	$ 13,520	$ 973	$ 10,958

18. LEGAL PROCEEDINGS

In January 2005, the Company filed a lawsuit, through Foam Creations, against Holey Soles Holdings LTD. in the Federal Court in Toronto, Canada. The complaint alleges trademark and copyright infringement relating to the design of some of their shoe models. The Company is seeking a permanent injunction with respect to any further acts of infringement of our intellectual property, as well as damages and attorneys' fees.

In August 2005, Holey Soles Holdings filed a lawsuit against the Company in the United States District Court for the Southern District of New York. Holey Soles Holdings seeks a declaratory judgment that the Company does not have any valid copyright or trade dress rights with respect to the design of our footwear. In addition, Holey Soles Holdings seeks a declaratory judgment that its manufacture, sale and distribution of its footwear products does not constitute unfair competition and does not infringe the Company's copyrights or trade dress rights. Holey Soles Holdings also seeks to recover its costs and attorneys' fees.

Although we are subject to litigation from time to time in the ordinary course of our business, we are not party to any pending legal proceedings that we believe will have a material adverse impact on our business.

19. SUBSEQUENT EVENTS (UNAUDITED)

In April 2005, the Company entered into a $5.0 million secured revolving credit facility. The total amount available at any time is subject to a borrowing base calculation based on various percentage of accounts receivable, inventory and fixed assets. The revolving credit facility bears interest at floating rates based on the higher of the lender's prime rate plus 1.0% or the Federal Funds rate plus 1.5%. As of June 30, 2005, $5.0 million in borrowings were outstanding on this line. The funds were drawn primarily to fund accrued members' distributions, purchase the manufacturing operation in Mexico, and to make inventory purchases.

In April 2005, the Company acquired a manufacturing facility and related assets in Mexico, for a total purchase price of $1.3 million. The Company also leased property adjacent to this facility and purchased additional production equipment in order to expand production capacity at this facility. This

facility will be dedicated to footwear production and the Company expects this facility to be fully operational in the second half of 2005.

On April 27, 2005, the Company's Board of Directors adopted the 2005 Equity Incentive Plan, referred to as the 2005 plan. The 2005 Plan provides for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, to our employees, and nonstatutory stock options, restricted stock, performance units, and other stock-based awards to our employees, directors, and consultants. A total of 25,000 shares of the Company's common stock were reserved for issuance pursuant to the 2005 plan.

In May and June 2005, the Company signed new lease agreements for additional office and manufacturing space expiring in 2007. Under terms of these operating leases, the minimum payments required in each of the next three years ending December 31, 2005 through 2007 are $169,000, $292,000, and $75,000, respectively.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
Finproject N.A. Inc.:

We have audited the balance sheets of Finproject N.A. Inc. as at December 31, 2002 and 2003 and the statements of earnings, retained earnings (deficit) and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with Canadian generally accepted auditing standards and the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2002 and 2003 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.

The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Chartered Accountants
Quebec, Canada
August 11, 2005

FINPROJECT N.A. INC.

STATEMENTS OF EARNINGS

FOR THE YEARS ENDED DECEMBER 31, 2002 AND 2003

(in Canadian dollars)

	2002	2003
Sales	$ 5,742,121	$ 7,282,128
Cost of sales	3,448,796	4,447,059
Gross margin	2,293,325	2,835,069
Expenses:		
Selling	170,044	193,079
Administrative (Note 5)	1,405,604	1,534,057
Financial	240,070	342,921
Total expenses	1,815,718	2,070,057
	477,607	765,012
Other revenues (Note 14)	102,625	58,500
Share of profit (loss) of *Les Plastiques Fintech inc.*	22,379	(361)
Earnings before income taxes	602,611	823,151
Income taxes:		
Current	128	196,786
Future	232,150	84,728
Total income taxes	232,278	281,514
Net earnings	$ 370,333	$ 541,637

See notes to financial statements.

FINPROJECT N.A. INC.

STATEMENTS OF RETAINED EARNINGS (DEFICIT)

FOR THE YEARS ENDED DECEMBER 31, 2002 AND 2003

(in Canadian dollars)

	2002	2003
Deficit—Beginning of year	$ (869,810)	$ (499,477)
Net earnings	370,333	541,637
Retained earnings (deficit)—End of year	$ (499,477)	$ 42,160

See notes to financial statements.

FINPROJECT N.A. INC.

BALANCE SHEETS

AS AT DECEMBER 31, 2002 AND 2003

(in Canadian dollars)

	2002	2003
ASSETS		
Current assets:		
Cash	$ 1,416	$ 303,083
Accounts receivable, net (Note 3)	1,495,286	1,617,977
Inventories (Note 4)	654,667	846,192
Prepaid expenses	44,764	57,038
	2,196,133	2,824,290
Long-term investments (Note 5)	22,807	22,446
Fixed assets, net (Note 6)	1,512,181	1,742,646
Intangible assets, net (Note 7)	86,178	71,688
Total	$ 3,817,299	$ 4,661,070
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Bank loan (Note 8)	$ 675,000	$ 600,000
Accounts payable and accrued liabilities (Note 9)	686,104	825,163
Income tax payable	—	196,786
Current portion of long-term debt (Note 10)	142,812	301,823
Retractable class D shares (Note 12)	100,000	—
Current portion of loan from the parent company (Note 11)	127,306	—
Total current liabilities	1,731,222	1,923,772
Loan from the parent company (Note 11)	273,574	—
Long-term debt (Note 10)	531,956	830,386
Future income taxes liabilities	232,150	316,878
Total liabilities	2,768,902	3,071,036
Shareholders' equity		
Share capital (Note 12)	1,523,874	1,523,874
Contributed surplus	24,000	24,000
Retained earnings (deficit)	(499,477)	42,160
Total stockholders' equity	1,048,397	1,590,034
Total	$ 3,817,299	$ 4,661,070

See notes to financial statements.

FINPROJECT N.A. INC.

STATEMENTS OF CASH FLOWS

FOR THE YEARS ENDED DECEMBER 31, 2002 AND 2003

(in Canadian dollars)

	2002	2003
Operating activities:		
Net earnings	$ 370,333	$ 541,637
Adjustments for:		
Depreciation of fixed assets	373,772	445,023
Amortization of intangible assets	60,169	46,490
Gain on disposal of fixed assets	(2,580)	—
Share of (profit) loss of Les Plastiques Fintech inc.	(22,379)	361
Abandonment of advances to the subsidiary	33,010	6,069
Future income taxes	232,150	84,728
	1,044,475	1,124,308
Changes in non-cash operating working capital items:		
Increase in accounts receivable	(90,180)	(122,691)
Increase in inventories	(296,485)	(191,525)
Increase in prepaid expenses	(23,157)	(12,274)
Increase (decrease) in accounts payable and accrued liabilities	(284,553)	139,059
Increase in income tax payable	—	196,786
	(694,375)	9,355
Cash flows from operating activities	350,100	1,133,663
Investing activities:		
Variation of tax credits recoverable	8,986	—
Acquisition of long-term investment in subsidiary	(33,010)	(6,069)
Acquisition of fixed assets	(569,086)	(675,488)
Disposal of fixed assets	5,520	—
Acquisition of intangible assets	(34,200)	(32,000)
Cash flows from investing activities	(621,790)	(713,557)
Financing activities:		
Net variation in bank loan	214,313	(75,000)
Repayment of the loan from the parent company	—	(400,880)
Redemption of Class D shares	—	(100,000)
Proceeds from long-term debt	135,000	1,149,043
Repayment of long-term debt	(127,542)	(691,602)
Cash flows from financing activities	221,771	(118,439)
Increase (decrease) in cash and cash equivalents	(49,919)	301,667
Cash and cash equivalents—beginning of year	51,335	1,416
Cash and cash equivalents—end of year	$ 1,416	$ 303,083
Complementary information—interests paid	$ 215,217	$ 161,588

Cash and cash equivalents include cash and bank loans with maturities of three months or less.

See notes to financial statements.

FINPROJECT, N.A. INC.

NOTES TO THE FINANCIAL STATEMENTS

YEAR ENDED DECEMBER 31, 2002 AND 2003

(in Canadian dollars)

1. DESCRIPTION OF BUSINESS

The Company, incorporated under the *Canada Business Corporations Act* , manufactures mould-injected EVA products.

2. SIGNIFICANT ACCOUNTING POLICIES

The financial statements are prepared by management in accordance with Canadian generally accepted accounting principles, and except as described in Note 18, conform in all material respects with accounting principles generally accepted in the United States. The significant accounting policies followed by the Company are as follows:

Long-term Investments —Investments in entities in which the Company has a significant ownership interest but does not exercise control are accounted for using the equity method. The investment in the subsidiary that has ceased its operations during the year 2000 is recorded at equity value.

Inventories —Raw materials and supplies are valued at the lower of cost and replacement cost. Work in process and finished goods are valued at the lower of cost and net realizable value. Cost is determined on the first in, first out basis.

Fixed Assets —Fixed assets are recorded at cost. Depreciation and amortization, which are based on cost less the residual value over the estimated useful lives of the assets, are calculated using the following methods and annual rates:

Machinery and equipment	*Declining balance*	*20%*
Moulds and dies	*Declining balance*	*30%*
Office furniture and warehouse equipment	*Declining balance*	*20%*
Leasehold improvements	*Straight-line*	*Shorter of length of the lease or useful life*
Computer equipment	*Declining balance*	*30%*

Grants related to fixed assets are recorded against the cost of these assets and amortized over the same number of years as the assets to which they pertain.

Intangible Assets —Development expenses represent the cost of developing a new product prior to its commercial production. These expenses are stated at cost and amortized over a three-year period under the straight-line method, beginning the year after their acquisition.

Foreign Currency —Monetary assets and liabilities are translated at the exchange rates in effect at the balance sheet date. Non-monetary assets and liabilities are translated at historical rates. Revenues and expenses are translated at the exchange rate at the date of the transaction except for amortization

which is translated at historical rates. Translation gains or losses are included in the statements of earnings.

Income Taxes —The Company follows the liability method of accounting for income taxes. Under this method, future income taxes are recognized based on the expected future tax consequences of differences between the carrying amount of balance sheet items and their corresponding tax basis, using enacted income tax rates for the years in which the differences are expected to reverse.

Cash and Cash Equivalents —Cash and cash equivalents include cash and short-term investments with maturities of three months or less.

Revenue Recognition —The Company recognizes revenue when persuasive evidence of an arrangement exists, delivery has occurred, the price to the buyer is fixed or determinable and collection is reasonably assured.

Use of Estimates —Management of the Company has made certain estimates and assumptions relating to the reporting of assets, liabilities, sales and expenses to prepare these financial statements in conformity with accounting principles generally accepted in Canada. Significant areas requiring the use of management estimates relate to the allowance for doubtful accounts, returns and discounts, impairment assessments and charges, deferred taxes and useful lives assigned to long-lived assets. Actual results could differ from these estimates and the differences could be material.

3. ACCOUNTS RECEIVABLE, NET

	2002	2003
Receivable from *Les Plastiques Fintech inc.*	$ 182,750	$ 92,254
Trade	1,494,753	1,373,224
Allowance for doubtful accounts	(255,924)	(85)
Parent company	—	51,599
Other	73,707	100,985
	$ 1,495,286	$ 1,617,977

4. INVENTORIES

	2002	2003
Raw materials and supplies	$ 303,109	$ 435,236
Work in process	19,477	18,957
Finished goods	332,081	391,999
Total	$ 654,667	$ 846,192

5. LONG-TERM INVESTMENTS

	2002	2003
Subsidiary—at equity value		
Finproject Maine, Inc.		
50 Common shares	$ 1	$ 1

This subsidiary has ceased its operations during the year 2000. Also, the Company abandoned the advances made to the subsidiary. Administrative expenses include a forgiveness of advances to the subsidiary for an amount of $6,069 ($33,010 in 2002).

Investment in a significantly-influenced company

Les Plastiques Fintech inc., 50% of the shares issued		
Balance at beginning	$ 427	$ 22,806
Share of (loss) profit for the year	22,379	(361)
Balance at end	22,806	22,445
	$ 22,807	$ 22,446

6. FIXED ASSETS, NET

	Cost	Accumulated depreciation	Net Book Value 2002	Cost	Accumulated depreciation	Net Book Value 2003
Machinery and equipment	$ 2,444,223	$ 1,531,689	$ 912,534	$ 2,821,146	$ 1,751,437	$ 1,069,709
Moulds and dies	1,155,437	637,093	518,344	1,404,606	826,092	578,514
Office furniture and warehouse equipment	12,059	6,763	5,296	16,629	8,279	8,350
Leasehold improvements	29,416	14,923	14,493	35,555	22,923	12,632
Computer equipment	128,069	46,992	81,077	166,757	77,665	89,092
Total	3,769,204	2,237,460	1,531,744	4,444,693	2,686,396	1,758,297
Grant	100,000	80,437	19,563	100,000	84,349	15,651
Total	$ 3,669,204	$ 2,157,023	$ 1,512,181	$ 4,344,693	$ 2,602,047	$ 1,742,646

Depreciation and amortization during the year are $445,023 ($373,772 in 2002).

7. INTANGIBLE ASSETS, NET

	Cost	Accumulated amortization	Net Book Value 2002	Cost	Accumulated amortization	Net Book Value 2003
Development expenses	$ 235,558	$ 149,380	$ 86,178	$ 170,775	$ 99,087	$ 71,688

During the year, $32,000 was capitalized as development expenses ($34,200 in 2002) and the amortization amounts to $46,490 ($60,169 in 2002).

8. BANK LOAN

The authorized bank loan of $900,000, at base rate plus 0.75% is due on demand and is subject to certain thresholds pertaining to the accounts receivable and inventories balances. As at December 31, 2003, an amount of $600,000 ($675,000 in 2002) of the bank loan is used. The Company also has an authorized credit line of $250,000 for currency exchanges and a credit line of $20,000 for credit cards. All of the authorized bank loans are secured by a movable hypothec of $1,500,000 on the accounts receivable and inventories, and a $200,000 life insurance policy for one of the shareholders.

9. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

	2002	2003
Parent company	$ 205,637	$ 213,493
Suppliers	336,625	378,316
Accrued expenses	138,875	233,246
Capital tax	4,967	108
Total	$ 686,104	$ 825,163

10. LONG-TERM DEBT

	2002	2003
Movable hypothec on equipment, interest at base rate plus 1.75%, repaid in full during the year	$ 56,241	$ —
Loan from Development Bank of Canada, payable in monthly instalments of US$18,500 plus interest until November 2005 and in monthly instalments of US$9,100 plus interest from December 2005 to November 2009 and a final payment of US$300 in December 2009, at US Libor 1 month rate plus 3.50% less 0.2% per year on the unpaid capital portion. Loan is secured by a second mortgage on certain fixed assets and patents	—	1,118,209
Loan from Development Bank of Canada, payable in monthly instalments of $2,000 plus interest and a final payment of $8,000 in April 2004, at a rate of 9.10% plus supplementary interests based on 1.2628% of the sales (0.20% of the sales exceeding 125% of the 1996 forecast). Loan is secured by a second mortgage on certain fixed assets and patents	38,000	14,000
Loan from Development Bank of Canada, interest at Lender Operational Rate plus 0.85%, repaid in full during the year	442,850	—
Loan from Development Bank of Canada, interest at Lender Operational Rate plus 2%, repaid in full during the year	123,750	—
Loan from "Fonds d'aide aux entreprises", interest at a rate of 7.05%, repaid in full during the year	13,927	—
	674,768	1,132,209
Current portion	142,812	301,823
	$ 531,956	$ 830,386

Capital payments required in each of the next five years are as follows:

2004	2005	2006	2007	2008	Thereafter
$ 301,823	$ 275,636	$ 141,578	$ 141,578	$ 141,578	$ 130,016

Interest paid on this debt during the year amounts to $109,784 ($92,911 in 2002).

11. LOAN FROM THE PARENT COMPANY

	2002	2003
Promissory note, 6%, repaid in full during the year	$ 400,880	$ —
Current portion	127,306	—
	$ 273,574	$ —

12. SHARE CAPITAL

Authorized

An unlimited number of Class A, B and C shares, voting and participating

An unlimited number of Class D shares, non-voting, without par value, non-cumulative dividend varying from 3% to 6%, non otherwise participating, redeemable by the Company or the shareholder at the issue price.

	2002	2003
Issued		
54,320 Class A shares	$ 175,000	$ 175,000
52,000 Class B shares	123,874	123,874
135,316 Class C shares	725,000	725,000
500,000 Class D shares	500,000	500,000
	$ 1,523,874	$ 1,523,874
—Class D shares classified as liabilities (100,000 in 2002)	$ 100,000	$ —

In 2002, the Company issued 600,000 class D shares at a value of $600,000 following the conversion of a loan from the parent company. Also, the parent company undertook to not retract more than 100,000 of these shares at the issue price.

During the current year, 100,000 Class D shares were redeemed in consideration of $100,000 in cash.

13. COMMITMENTS

Lease Commitments —The Company is committed, under operating leases for its premises and for vehicles, to pay $101,664.

Minimum payments required in each of the next four years are as follows:

2004	2005	2006	2007
$ 62,977	$ 23,532	$ 10,519	$ 4,636

14. OTHER REVENUES

	2002	2003
Machinery rental	$ 28,000	$ 21,000
Fees for services	72,045	37,500
Gain on disposal of fixed assets	2,580	—
	$ 102,625	$ 58,500

15. RELATED PARTY TRANSACTIONS

	Parent Company	Les Plastiques Fintech inc
Revenues:		
Sales	$ 28,039	$ —
Machinery rental	—	21,000
Fees for services	—	37,500
Expenses:		
Purchase of raw materials	1,089,190	12,050
Interest	19,607	—
Management fees	28,000	—
Royalties	—	83,411
Fixed assets:		
Purchase of machinery	307,509	—
Purchase of moulds	5,586	—

These transactions are recorded at market price.

16. FINANCIAL INSTRUMENTS

Currency Risk —The Company realizes more than 90% of its sales principally in U.S. dollars and is thus exposed to foreign exchange fluctuations. However, the accounts receivable from export sales are secured by insurance. These risks are partially hedged by its import purchases and through contracts for foreign currency.

Credit Risk —The Company provides credit to its customers in the normal course of its operations. It carries out, on a continuing basis, credit checks on its customers and maintains provisions for contingent credit losses. 58% of the Company's trade receivable are from three customers as at December 31, 2003. However, those trade receivables are secured by insurance.

Interest Rate Risk —Long-term debt generally bears variable interest rate. Consequently, the cash flow exposure is significant. The effective average interest rate on the loans with variable interest rates was approximately 5.6% for the year.

Fair Value —The fair value of accounts receivable, the bank loan and accounts payable and accrued liabilities is approximately equal to their carrying values due to their short-term maturity.

The fair value of long-term debt is determined using the present value of future cash flows under current financing agreements, based on the Company's current estimated borrowing rate for loans with similar terms and conditions. The fair value of the long-term debt is approximately equal to its carrying value due to its variable interest rates.

17. SUBSEQUENT EVENTS

In January 2004, the Company contracted two contracts for foreign currency of US$500,000 each. These contracts are in effect for the period from January to June 2004. US dollars exchange rates under these contracts range from a minimum of 1.3050 to a maximum of 1.34. Furthermore, the Company contracted five monthly foreign exchange contracts of US$100,000 each. These contracts are in effect for the period from January to May 2004. US dollars exchange rates under these contracts range from a minimum of 1.3126 to a maximum of 1.3352.

In February 2004, the Company redeemed 50,000 Class D shares in consideration of $50,000 in cash.

In July 2004, pursuant to a change of control, the Company changed its name to " *Foam Creations Inc.* ".

In January and February 2005, the Company entered into the following foreign exchange contracts:

- Foreign exchange contract of a nominal value of US $350,000 in effect for the period from January to March 2005. US dollars exchange rates under this contract ranges from a minimum of 1.2150 to a maximum of 1.2450.
- Foreign exchange contract of a nominal value of US $650,000 in effect for the period from January to March 2005. US dollars exchange rates under this contract ranges from a minimum of 1.2105 to a maximum of 1.2405.
- Foreign exchange contract of a nominal value of a total of euros 500,000 in effect for the period from February to April 2005. EURO/US dollars exchange rates under this contract ranges from a minimum of 1.2850 to a maximum of 1.3185.

In February 2005, the Company purchased machinery and equipment for a total purchase price of euros 400,000. These acquisitions were financed through a demand loan of CDN $81,000, bearing interest at prime rate plus 1% and repayable before March 1, 2006 and a letter of credit in the amount of euros 350,000 with issuing fees of 0.90%, maturing in March 2006. A first ranking hypothec of CDN $650,000 on the machinery and equipment was provided as security to these financing.

In February 2005, the Company purchased machinery and equipment for a total purchase price of US $817,350. This acquisition, including related costs, was financed through a loan from Development

Bank of Canada of US $850,000 that was authorized and was available to the Company as at December 31, 2004.

On March 4, 2005, the Company signed a new lease agreement, ending in March 2007, for additional space at a new location. Under the terms of this operating lease, the minimum payments required in each of the next three years are as follows:

2005	2006	2007
$ 93,359	$ 160,044	$ 66,685

18. SUMMARY OF SIGNIFICANT DIFFERENCES BETWEEN GENERALLY ACCEPTED ACCOUNTING PRINCIPLES IN CANADA AND THE UNITED STATES

As a wholly owned subsidiary of an American company, the Company is required to reconcile its financial statements for significant differences between generally accepted accounting principles in Canada (Canadian GAAP) and those applied in the United States (U.S. GAAP). While the information presented below is not a comprehensive summary of all differences between Canadian and U.S. GAAP, other differences are considered unlikely to have a significant impact. The following summarizes the material differences and/or additional disclosures between Canadian and U.S. GAAP and the effect on net earnings and shareholders' equity of the Company with explanations for the adjustments.

Year Ended December 31, 2002

	Canadian GAAP	Reconciling items a)	Reconciling items b)	U.S. GAAP
Sales	$ 5,742,121	$ —	$ —	$ 5,742,121
Cost of sales	3,448,796	—	(126,741)	3,322,055
Gross margin	2,293,325	—	126,741	2,420,066
Expenses:				
Selling	170,044	—	—	170,044
Administrative	1,405,604	(25,969)	16,468	1,396,103
Financial	240,070	—	—	240,070
	1,815,718	(25,969)	16,468	1,806,217
	477,607	25,969	110,273	613,849
Other revenues	102,625		(100,045)	2,580
Share of earnings (loss) of *Les Plastiques Fintech inc.*	22,379	—	(22,379)	—
Earnings before income taxes	602,611	25,969	(12,151)	616,429
Income taxes:				
Current	128	—	—	128
Future	232,150	8,310	—	240,460
	232,278	8,310	—	240,588
Net earnings before minority interest	370,333	17,659	(12,151)	375,841
Minority interest (net of tax) in *Les Plastiques Fintech inc.*	—	—	(5,114)	(5,114)
Net earnings	$ 370,333	$ 17,659	$ (17,265)	$ 370,727

Year Ended December 31, 2003

	Canadian GAAP	Reconciling items a)	Reconciling items b)	U.S. GAAP
Sales	$ 7,282,128	$ —	$ 12,050	$ 7,294,178
Cost of sales	4,447,059	—	(71,361)	4,375,698
Gross margin	2,835,069	—	83,411	2,918,480
Expenses:				
Selling	193,079	—	—	193,079
Administrative	1,534,057	(14,490)	2,166	1,521,733
Financial	342,921	—	—	342,921
	2,070,057	(14,490)	2,166	2,057,733
	765,012	14,490	81,245	860,747
Other revenues	58,500		(57,578)	922
Share of earnings (loss) of *Les Plastiques Fintech inc.*	(361)	—	361	—
Earnings before income taxes	823,151	14,490	24,028	861,669
Income taxes:				
Current	196,786	—	—	196,786
Future	84,728	4,637	—	89,365
	281,514	4,637	—	286,151
Net earnings before minority interest	541,637	9,853	24,028	575,518
Minority interest (net of tax) in *Les Plastiques Fintech inc.*	—	—	(11,834)	(11,834)
Net earnings	$ 541,637	$ 9,853	$ 12,194	$ 563,684

Shareholders's Equity —As a result of the adjustments to net earnings, significant differences with respect to shareholder's equity under U.S. GAAP are as follows:

Year ended December 31, 2002

Shareholders' equity	$ 1,048,397	$ (58,601)	$ (64,084)	$ 925,712

Year ended December 31, 2003

	Canadian GAAP	Reconciling items a)	Reconciling items b)	U.S. GAAP
Shareholders' equity	$ 1,590,034	$ (48,748)	$ (71,429)	$ 1,469,857

Reconciling items

a) Intangible assets

Development expenses represent the cost of developing a new product prior to its commercial production. Under Canadian GAAP, these expenses are stated at cost and amortized over a three-year period under the straight-line method, beginning the year after they are incurred. Under U.S. GAAP, these costs would be expensed as incurred. The adjustment reflects the charge to net earnings for development expenses, net of the amortization expense charged to net earnings for Canadian GAAP purposes and net of income taxes.

b) Consolidation of Les Plastiques Fintech inc.

Variable Interest Entities ("VIE") (which include but are not limited to, special purpose entities, trusts, partnerships, certain joint ventures, and other legal structures), as defined by the Financial Accounting Standards Board ("FASB") in FASB interpretation No. ("FIN") 46 (Revised 2003), "Consolidation of Variable Interest Entities—an interpretation of Accounting Research Bulletin No. 51" ("FIN 46R") are entities in which equity investors do not have the characteristics of a "controlling financial interest" or there is not sufficient equity at risk for the entity to finance its activities without additional subordinated financial support. VIEs are required to be consolidated under U.S. GAAP when it is determined that the Company will, as the primary beneficiary, absorb the majority of the VIEs expected losses and/or expected residual returns. Intercompany accounts and transactions are eliminated upon consolidation and unrealized intercompany gains and loss as are eliminated upon consolidation of VIEs. The investment in *Les Plastiques Fintech inc.* meets the criterias of a VIE and, as such, has been consolidated under U.S. GAAP.

Furthermore, as mentioned in item a) above, the adjustment to share of earnings of *Les Platiques Fintech inc.* reflects the net effect from the adjustment net of minority interest relating to intangible assets of this VIE.

Other items

a) Comprehensive income

Statement of Financial Accounting Standards ("SFAS") No. 130, "Reporting Comprehensive Income") ("SFAS 130") establishes standards for the reporting and display of comprehensive income and its components in a full set of general purpose financial statements. SFAS 130 requires that all items that are required to be recognized under accounting standards as components of comprehensive income be reported in a financial statement. The Company has no components of other comprehensive income.

b) Redeemable shares

Under Canadian GAAP, redeemable shares at the holder's option are presented as liabilities. Under U.S. GAAP, those redeemable shares would have been presented as a mezzanine level instrument which is reflected between liabilities and shareholders' equity.

19. COMPARATIVE FIGURES

Certain of the comparative figures have been reclassified to conform to the current year's presentation.

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UNAUDITED PRO FORMA
CONDENSED COMBINED CONSOLIDATED STATEMENT OF OPERATIONS

The following unaudited pro forma condensed combined consolidated statement of operations have been prepared to illustrate the acquisition of Finproject N.A., Inc. ("Foam Creations") in a transaction accounted for as a purchase in accordance with Statement of Financial Accounting Standards ("SFAS") No. 141, "Business Combinations." The unaudited pro forma condensed combined consolidated statement of operations combines our historical consolidated statement of operations for the year ended December 31, 2004 and Foam Creation's historical statement of earnings for the period from January 1, 2004 through June 29, 2004, each prepared in accordance with GAAP, giving effect to the acquisition as if it occurred as of January 1, 2004, reflecting only pro forma adjustments expected to have a continuing impact on the combined results.

The unaudited pro forma condensed combined consolidated statement of operations is for informational purposes only. It does not purport to present the results that would have actually occurred had the acquisition been completed on the assumed dates or for the periods presented, or which may be realized in the future. To produce the pro forma financial information, we allocated the purchase price of Foam Creations using our best estimates of fair value. These estimates are based on the most recently available information. To the extent there are significant changes to Foam Creation's business, the assumptions and estimates herein could change significantly. Accordingly, the purchase accounting adjustments reflected in the unaudited pro forma condensed combined consolidated statement of operations included herein is preliminary and subject to change. The pro forma financial information does not reflect any potential operating efficiencies. The unaudited pro forma condensed combined consolidated statement of operations should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our historical consolidated financial statements, covering these periods, which are included in this prospectus.

CROCS, INC.
UNAUDITED PRO FORMA CONDENSED COMBINED CONSOLIDATED STATEMENT OF OPERATIONS

	For the Year Ended December 31, 2004 (In thousands, except share and per share data)			
	Crocs, Inc.	Foam Creations—January 1, 2004 through June 29, 2004	Pro Forma Adjustments DR (CR)(1)	Pro Forma Combined
Revenues	$ 13,520	$ 4,606	$ (1,205)(A)	$ 16,921
Cost of sales	7,162	2,572	(1,205)(A)	8,529
Gross profit	6,358	2,034	—	8,392
Selling, general and administrative expense			490(B)	
	7,929	863	43(C)	9,325
Income (loss) from operations	(1,571)	1,171	(533)	(933)
Interest expense	47	54	—	101
Other (income) expense—net	19	—	—	19
Income (loss) before income taxes	(1,637)	1,117	(533)	(1,053)
Income tax expense (benefit)	(143)	339	(165)(D)	31
Net income (loss)	(1,494)	778	(368)	(1,084)
Distributions to Class C convertible preferred membership units	142	—	133(E)	275
Net income (loss) attributable to common stockholders	$ (1,636)	$ 778	$ (501)	$ (1,359)
Net income (loss) per common share:				
Basic	$ (15.51)			$ (12.88)
Diluted	$ (15.51)			$ (12.88)
Weighted average common shares:				
Basic	105,479			105,479
Diluted	105,479			105,479

(1) The letters refer to a description of the adjustments in Note 2.

The accompanying notes are an integral part of this unaudited pro forma condensed combined consolidated statement of operations

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED CONSOLIDATED STATEMENT OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 2004

1. Basis of presentation

On June 29, 2004, we purchased all of the issued and outstanding shares of the capital stock of Finproject N.A., Inc. ("Foam Creations"), a Canadian corporation. Foam Creations designs, manufactures, markets, and distributes footwear, spa pillows and other products to original equipment manufacturers. We acquired Foam Creations to obtain the rights to its proprietary technology and to expand its business. The acquisition was accounted for under the purchase method of accounting in accordance with SFAS No. 141, "Business Combinations ." The cash purchase price, including acquisition costs, was approximately $5.2 million. We retained approximately $150,000 as security against any breaches of the purchase agreement including representations and warranties of the sellers. The retained funds will be released to the sellers on the two-year anniversary of the execution of the purchase agreement less any deductions.

All assets and liabilities of Foam Creations have been recorded in our consolidated balance sheet based on their estimated fair values at the date of acquisition. Identifiable intangible assets approximated $5.0 million and goodwill relating to the purchase approximated $294,000. Identifiable intangible assets include $3.6 million for core technology that has a 5 year life, and $1.4 million for customer relationships that have a seven-year life. The purchase accounting included a deferred tax liability of $1.8 million recorded for the book-tax difference in future tax consequences for the acquired identifiable intangible assets.

The following table summarizes the fair value of the assets and liabilities assumed at the date of acquisition (in thousands):

Current assets	$	2,818
Property and equipment		1,823
Goodwill		294
Intangible assets		5,001
Current liabilities		(2,251)
Long-term debt		(739)
Deferred tax liability		(1,780)
Net assets acquired	$	5,166

The purchase consideration was allocated to the assets acquired and liabilities assumed based on the estimated fair value of Foam Creation's tangible and intangible assets and liabilities. An allocation of the purchase price has been made to major categories of assets and liabilities based on a third-party preliminary valuation.

In accordance with the SFAS No. 142, "Goodwill and Other Intangible Assets," goodwill resulting from business combinations completed subsequent to June 30, 2001 will not be amortized but instead will be tested for impairment at least annually (more frequently if certain indicators are present). In the event that management of the combined company determines that the value of goodwill has become impaired, the combined company will incur an accounting charge for the amount of impairment during the fiscal quarter in which the determination is made.

2. PRO FORMA ADJUSTMENTS

Pro forma adjustments are necessary to reflect significant intercompany balances or transactions, to reflect the amortization expense related to finite lived intangible assets, to reflect estimated deferred compensation amortization and to record dividends on the Class C redeemable convertible preferred membership units.

The pro forma adjustments included in the unaudited pro forma condensed combined consolidated statement of operations are as follows:

(A) Adjustments to eliminate intercompany sales and cost of sales between Crocs and Foam Creations during the period from January 1, 2004 through June 29, 2004

(B) Adjustment to record amortization expense on the intangible assets resulting from the acquisition for the period from January 1, 2004 through June 29, 2004

(C) Adjustment to record deferred compensation amortization on granted unvested units given to employees of Foam Creations

(D) Adjustment to record tax effect of 31% of the pro forma adjustments

(E) Adjustment to record dividends on the Class C redeemable convertible preferred membership units for the period January 1, 2004 to June 2004 issued to fund the acquisition

arch support
is built in
circulation nubs
stimulates circulation
orthotic heel cup
supports and protects heel
anatomy of crocs™ brand footwear
ventilated
toe box for cooling comfort
air, sand and water
filter through shoe
supportive
foot base
heel strap
keeps shoe on foot
strap can be rolled
forward for a slip-on
clog shoe
slip resistant
non-marking
& does not pick up debris

Shares

CROCS, INC.

Common Stock

PROSPECTUS

Until , 2005, all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Piper Jaffray **Thomas Weisel Partners LLC**

SG Cowen & Co.

, 2005

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

Expenses in connection with the issuance and distribution of the shares of common stock being registered hereunder, other than underwriting commissions and expenses, are estimated below.

SEC registration fee	$	17,067
NASD filing fee		15,000
Nasdaq National Market listing fee		100,000*
Legal fees and expenses		450,000*
Accounting fees and expenses		150,000*
Blue sky qualification fees and expenses		7,500*
Printing and engraving expenses		200,000*
Transfer agent and registrar fees and expenses		20,000*
Miscellaneous expenses		40,433*
Total	$	1,000,000

* Estimated.

Item 14. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law (the "DGCL") provides, in effect, that any person made a party to any action by reason of the fact that he is or was a director, officer, employee or agent of the Company may and, in some cases, must be indemnified by the Company against, in the case of a non-derivative action, judgments, fines, amounts paid in settlement and reasonable expenses (including attorneys' fees) incurred by him as a result of such action and in the case of a derivative action, against expenses (including attorneys' fees), if in either type of action he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. This indemnification does not apply, in a derivative action, to matters as to which it is adjudged that the director, officer, employee or agent is liable to the Company, unless upon court order it is determined that, despite such adjudication of liability, but in view of all the circumstances of the case, he is fairly and reasonably entitled to indemnity for expenses and, in a non-derivative action, to any criminal proceeding in which such person had no reasonable cause to believe his conduct was unlawful.

Our certificate of incorporation provides that no director shall be liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL. Our bylaws require us to indemnify our directors and officers to the fullest extent permitted by Delaware law. We have entered into indemnification agreements with all of our directors and executive officers and have purchased directors' and officers' liability insurance.

The Underwriting Agreement filed as Exhibit 1 to this Registration Statement provides for indemnification by the underwriters of us and our officers and directors for certain liabilities arising under the Securities Act of 1933, or otherwise.

Item 15. Recent Sales of Unregistered Securities

In 2005, the registrant effected a -for-one stock split of all outstanding shares of common stock. All references to shares of common stock in this Registration Statement reflect this reverse stock split.

Since January 1, 2002, we have issued and sold the following unregistered securities:

Conversion of Membership Units to Shares of Common Stock

In February 2004, we reclassified all of the outstanding membership interests and non-voting profit sharing interests of our predecessor limited liability company held by eight employees and investors by converting such interests into 72,000 Class A and Class B membership units. In connection with our conversion from a limited liability company to a corporation, on January 4, 2005, we converted all of the outstanding Class A and Class B membership units of our predecessor company into 106,932 shares of our common stock and all of the outstanding Class C membership units of our predecessor company into 31,900 shares of our Series A preferred stock. These conversions were deemed to be exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 3(a)(9) or in reliance on Section 4(2) of the Securities Act in that the issuance of securities to the recipients upon conversion did not involve a public offering.

Equity Grants

On October 12, 2002 and November 11, 2002, we granted non-voting profits interests, which represented 25% of our outstanding equity (which after dilution and certain redemptions converted into 21,500 shares of our common stock) as compensation for services to employees, executive officers and consultants. No consideration was paid for any profit interest and we do not believe that they had any value at the time of grant because each non-voting profit interest only represented an interest in future appreciation in the company.

On March 1, 2004, we issued 4,600 Class B membership units (which converted into 4,600 shares of our common stock) as compensation to employees, executive officers and consultants for services valued at $460,000 in the aggregate.

On June 28, 2004 and July 1, 2004, we issued 1,832 Class B membership units (which converted into 2,332 shares of our common stock) as compensation to employees, executive officers and consultants for services valued at $402,069 in the aggregate.

On September 1, 2004, we granted options to purchase 4,000 Class B membership units (which converted into 4,000 shares of our common stock) to one of our executive officers and four members of our board of directors with an exercise price of $237.78 per share. On January 4, 2005, we granted options to purchase 1,500 shares of our common stock to employees, executive officers and a member of our board of directors with an exercise price of $398.00 per share. All of these grants were made outside of our 2005 Equity Incentive Plan.

On March 1, 2005, we issued 1,000 shares of our common stock as compensation to a consultant for services valued at $360,438.

On April 27, 2005, we granted options to purchase 2,605 shares of our common stock under our 2005 Equity Incentive Plan to our employees, consultants and members of our board of directors with an exercise price of $790.00 per share. On April 27, 2005, we also granted the right to receive 7,351 shares of our common stock in the future to employees and executive officers under our 2005 Equity Incentive Plan pursuant to restricted stock award agreements. The recipients of these awards will be issued the shares as compensation for services at various dates in the future and will not be required to pay a purchase price for the shares.

Between June 29, 2005 and July 1, 2005, we issued 1,832 shares of our common stock as compensation to employees, executive officers and consultants for services valued at $1,447,280 in the aggregate.

The offers, sales and issuances of the options and our equity securities described above were deemed to be exempt from registration under the Securities Act in reliance on Rule 701 because the transactions were under compensatory benefit plans and contracts relating to compensation as provided under such rule or in reliance on Section 4(2) of the Securities Act because the issuance of securities to the recipients did not involve a public offering. The recipients of such options and equity securities were our employees, directors or bona fide consultants and received the securities as compensation for services. Appropriate legends have been affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions had adequate access, through employment, business or other relationships, to information about us.

Financings

Between November 11, 2002 and January 15, 2003 we issued certain voting and non-voting membership interests of our predecessor limited liability company (which converted into 34,500 shares of our common stock) to three accredited and/or sophisticated investors for an aggregate cash purchase price of $370,000 and for services valued at $50,000.

At various times between October 23, 2003 and February 19, 2004, we issued an aggregate of 11,000 Class B membership units (which converted into 11,000 shares of our common stock) to executive officers, directors and certain other accredited and/or sophisticated investors for an aggregate purchase price of $1,100,000.

Between June 24, 2004 and July 14, 2004, we issued an aggregate of 31,900 Class C membership units (which converted into 31,900 shares of our Series A preferred stock) to accredited investors and/or sophisticated investors for an aggregate purchase price of $5,500,000. Upon completion of this offering, these shares of Series A preferred stock will convert into 31,900 shares of our common stock. In June 2004, we also issued 500 Class B membership units (which converted into 500 shares of our common stock) pursuant to an antidilution agreement with one of our equity holders and no additional consideration was received for those units.

There were no underwriters employed in connection with any of the transactions set forth in Item 15.

We believe the offers, sales and issuances of the securities described above were exempt from registration under the Securities Act by virtue of Regulation D promulgated thereunder and/or Section 4(2) of the Securities Act because the issuance of securities to the recipients did not involve a public offering. Appropriate legends have been affixed to the securities issued in these transactions. Each of the recipients of securities in the transactions described above had adequate access, through employment, business or other relationships, to information about us.

Item 16. Exhibits and Financial Statement Schedules

(a) *Exhibits*

Exhibit No.	Description
1.1*	Proposed form of Underwriting Agreement.
3.1	Certificate of Incorporation of the Registrant.
3.2*	Form of Restated Certificate of Incorporation of the Registrant to be effective upon completion of this offering.
3.3	Bylaws of the Registrant.
3.4*	Form of Amended and Restated Bylaws of the Registrant to be effective upon completion of this offering.
4.1	Reference is made to Exhibits 3.1 through 3.4.

4.2*	Specimen common stock certificate.
5.1*	Opinion of Faegre & Benson LLP.
10.1	Form of Indemnity Agreement between the Registrant and each of its directors and executive officers.
10.2	Crocs, Inc. 2005 Equity Incentive Plan (the "2005 Plan").
10.3	Form of Notice of Grant of Stock Option under the 2005 Plan.
10.4	Form of Notice of Grant of Stock Option for Non-Exempt Employees under the 2005 Plan.
10.5	Form of Stock Purchase Agreement under the 2005 Plan.
10.6	Form of Stock Option Agreement under the 2005 Plan.
10.7	Form of Restricted Stock Award Grant Notice under the 2005 Plan.
10.8	Form of Restricted Stock Award Agreement under the 2005 Plan.
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10.10	Commercial Lease between DiiG, LLP and the Registrant dated as of December 26, 2004.
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10.12*	Lease Agreement between Societe Immobiliere Bruno Roussin Inc. and Foam Creations dated as of February 4, 2005.
10.13*	Lease Agreement between Jose Pablo Hernandez Gonzalez and Crocs Mexico, SRL de C.V. dated as of May 1, 2005 for the facility located in Emiliano Zapata, Primer Sector, No. 204, zona centro, C.P. 36400 in the city of Purísima del Rincón, Guanajuato.
10.14	Stock Purchase Agreement among 4246519 Canada, Inc., Finproject Group S.p.A., 3107019 Canada, Inc. and Daniel J. Hunter dated as of June 29, 2004.
10.15	Asset Purchase and Property Transfer Agreement between Hana Phylon Tech SA de C.V. and Crocs Mexico, SRL de C.V. dated as of April 23, 2005.
10.16	Asset Purchase and Property Transfer Agreement between St. Vrain Trading, LLC, d/b/a Crocs Hawaii, LLC and the Registrant dated May 19, 2005.
10.17	Credit Agreement between the Registrant and Bank of America, N.A., dated as of April 8, 2005.
10.18	Security Agreement between the Registrant and Bank of America, N.A., dated as of April 8, 2005.
10.19†	Distribution Agreement between Crocodile Distribution and the Registrant dated as of April 1, 2005.
10.20	Kiosk Agreement between Crocodile Kiosk, LLC and the Registrant dated as of July 1, 2005.
10.21†	Amended and Restated Agreement for Supply between Finproject S.p.A. and the Registrant dated as of July 26, 2005.
10.22	Separation and Release Agreement between George Boedecker and the Registrant dated as of January 1, 2005.
10.23	Employment Letter Agreement of Caryn D. Ellison.
10.24	Independent Contractor Agreement between Ronald Snyder and the Registrant dated as of October 1, 2003.
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21.1	List of subsidiaries of the Registrant.
23.1	Consent of Deloitte & Touche LLP.
23.2	Consent of Samson Belair Deloitte & Touche s.e.n.c.r.l.
23.3*	Consent of Faegre & Benson LLP (to be included in Exhibit 5.1).
24.1	Powers of Attorney (included with signature page).

* To be filed by amendment.

† The Registrant is applying for confidential treatment with respect to portions of these exhibits.

(b) *Financial Statement Schedules*

Item 17. Undertakings

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 provisions summarized in Item 14 above, 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.

The undersigned Registrant hereby undertakes to provide to the Underwriters, at the closing specified in the Underwriting Agreement, certificates in such denominations and registered in such names as required by the Underwriters to permit prompt delivery to each purchaser.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus 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.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Niwot, Colorado, on August 15, 2005.

CROCS, INC.

By /s/ RONALD R. SNYDER

Ronald R. Snyder
President and Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Ronald R. Snyder and Caryn D. Ellison and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments, exhibits thereto and other documents in connection therewith) to this Registration Statement and any subsequent registration statement filed by the registrant pursuant to Rule 462(b) of the Securities Act of 1933, as amended, which relates to this Registration Statement and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their, his, or her substitute or substitutes, may lawfully 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 on August 15, 2005 by the following persons in the capacities indicated.

Signature	Title
/s/ RONALD R. SNYDER Ronald R. Snyder	President and Chief Executive Officer and Director (Principal Executive Officer)
/s/ CARYN D. ELLISON Caryn D. Ellison	Vice President Finance and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ GEORGE B. BOEDECKER, JR. George B. Boedecker, Jr.	Director
/s/ RAYMOND D. CROGHAN Raymond D. Croghan	Director
/s/ MICHAEL E. MARKS Michael E. Marks	Director
/s/ MARK A. RETZLOFF Mark A. Retzloff	Director
/s/ RICHARD L. SHARP Richard L. Sharp	Chairman of the Board of Directors
/s/ THOMAS J. SMACH Thomas J. Smach	Director
/s/ BRAD L. STOFFER Brad L. Stoffer	Director

EXHIBIT INDEX

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* To be filed by amendment.

† The Registrant is applying for confidential treatment with respect to portions of these exhibits.

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 3.1

CERTIFICATE OF INCORPORATION
OF
CROCS, INC.

The undersigned incorporator, in order to form a corporate entity under the General Corporation Law of the State of Delaware, hereby sets forth the following Certificate of Incorporation:

ARTICLE I.

The name of this corporation is Crocs, Inc., (the " **Company** " or the " **Corporation** ").

ARTICLE II.

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law (" **DGCL** ").

ARTICLE IV.

A. The Company is authorized to issue two classes of stock to be designated, respectively, " **Common Stock** " and " **Preferred Stock** ." The total number of shares which the Company is authorized to issue is 32,000,000 shares, 25,000,000 shares of which shall be Common Stock (the " **Common Stock** ") and 7,000,000 shares of which shall be Preferred Stock (the " **Preferred Stock** "). The Preferred Stock shall have a par value of $.001 per share and the Common Stock shall have a par value of $.001 per share. Subject to any vote expressly required by this Certificate of Incorporation, authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation thereof, dividend rights, special voting rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the General Corporation Law of the State of Delaware. Without limiting the generality of the foregoing, and subject to the rights of any series of Preferred Stock then outstanding, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law.

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote (voting together on an as if converted basis, irrespective of the provisions of Section 242(b)(2) of the DGCL).

C. 7,000,000 of the authorized shares of Preferred Stock are hereby designated " **Series A Preferred Stock** " (the " **Series Preferred** ").

D. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. DIVIDEND RIGHTS .

(a) Holders of Series Preferred, in preference to the holders of Common Stock, shall be entitled to receive, when, as and if declared by the Board of Directors (the " **Board** "), but only out of funds that are legally available therefor, cumulative cash dividends at the rate of five percent (5%) of the Original Issue Price (as defined below) per annum, on each outstanding share of Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). All accrued but unpaid dividends on the Series Preferred shall be payable on the first day of June and the first day of December of each calendar year commencing June 1, 2005. Any dividend required to be paid on the Series Preferred may be waived by the holders of a least a majority of the outstanding Series Preferred.

(b) The " **Original Issue Price** " of the Series Preferred shall be $172.4138.

(c) So long as any shares of Series Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all dividends as set forth in Section 1(a) above on the Series Preferred shall have been paid or declared and set apart, except for:

(i) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Company; or

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares or pursuant to Section 6 hereof.

(d) In the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Series Preferred in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(e) The provisions of Sections 1(c) and 1(d) shall not apply to a dividend payable in Common Stock, or any repurchase of any outstanding securities of the Company that is approved by (i) the Board and (ii) the Series Preferred.

2. VOTING RIGHTS .

(a) General Rights. Each holder of shares of the Series Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series Preferred could be converted (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled (except as otherwise expressly provided herein or as required by law) to vote, together with holders of the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock with respect to any question upon which holders of Common Stock have the right to vote.

(b) Separate Vote of Series Preferred. For so long as any shares of Series Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written

consent of the holders of at least a majority of the outstanding Series Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation), that alters or changes the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series Preferred so as to affect them adversely;

(ii) Any increase or decrease in the authorized number of shares of Common Stock, Preferred Stock or Series Preferred;

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series Preferred in right of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series;

(iv) Any redemption, repurchase, payment of dividends or other distributions with respect to Common Stock (except for acquisitions of Common Stock by the Company permitted by Sections 1 and 6 hereof or in the exercise of the Company's right of first refusal upon a proposed transfer);

(v) Any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 4);

(vi) Any action that results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock (except as required by Section 1);

(vii) Any voluntary dissolution or liquidation of the Company;

(viii) Any issuance of indebtedness in excess of $500,000; or

(ix) Any increase or decrease in the authorized number of members of the Company's Board.

(c) Election of Board of Directors . The holders of Series Preferred, voting as a separate class on an as-if-converted basis, shall be entitled to elect two members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

3. LIQUIDATION RIGHTS .

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary (a " **Liquidation Event** "), before any distribution or payment shall be made to the holders of any Common Stock, the holders of Series Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such transaction, for each share of Series Preferred held by them, an amount per share of Series Preferred equal to the Original Issue Price plus all accrued and unpaid dividends on the Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). If, upon any such Liquidation Event, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series Preferred of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full liquidation preference of the Series Preferred as set forth in Section 3(a) above and any other distribution that may be required with respect to any series of Preferred Stock that may from time to time come into existence, the assets of the Company legally available for distribution in such Liquidation Event (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock.

4. ASSET TRANSFER OR ACQUISITION RIGHTS .

(a) An Acquisition or Asset Transfer (as hereinafter defined) will each be considered a Liquidation Event under Section 3 unless the holders of at least a majority of the Series Preferred elect otherwise by written notice given to the Company at least five days prior to the effective date of any such transaction.

(b) For the purposes of this Section 4: (i) " **Acquisition** " shall mean (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions (including, without limitation, any stock purchase, reorganization, merger or consolidation) to which the Company is a party in which in excess of 50% of the Company's voting power is transferred; *provided* that an Acquisition shall not include (x) any consolidation or merger effected exclusively to change the domicile of the Company, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and (ii) " **Asset Transfer** " shall mean a sale, lease or other disposition of all or substantially all of the assets of the Company.

(c) In any Acquisition or Asset Transfer, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors on the date such determination is made.

(d) The Company shall give each holder of record of Series Preferred written notice of any impending Acquisition or Asset Transfer not later than 10 days prior to the stockholders' meeting called to approve such transaction, or 10 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 4, and the Company shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 10 days after the Company has given the first notice provided for herein or sooner than 10 days after the Company has given any subsequent notice of any material changes as provided for herein; *provided , however* , that such periods may be shortened upon the written consent of the holders of Series Preferred that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series Preferred.

5. CONVERSION RIGHTS .

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the " **Conversion Rights** "):

(a) Optional Conversion . Subject to and in compliance with the provisions of this Section 5, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the " **Series Preferred Conversion Rate** " then in effect (determined as provided in Section 5(b)) by the number of shares of Series Preferred being converted.

(b) Series Preferred Conversion Rate . The conversion rate in effect at any time for conversion of the Series Preferred (the " **Series Preferred Conversion Rate** ") shall be the quotient obtained by dividing the Original Issue Price of the Series Preferred by the " **Series Preferred Conversion Price** ," calculated as provided in Section 5(c).

(c) Series Preferred Conversion Price . The conversion price for the Series Preferred shall initially be the Original Issue Price of the Series Preferred (the " **Series Preferred Conversion Price** "). Such initial Series Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series Preferred Conversion Price herein shall mean the Series Preferred Conversion Price as so adjusted.

(d) Mechanics of Conversion . Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any accumulated and unpaid dividends on the shares of Series Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(e) Adjustment for Stock Splits and Combinations . If at any time or from time to time after the date that the first share of Series Preferred is issued (the " **Original Issue Date** ") the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Series Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Series Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Common Stock Dividends and Distributions . If at any time or from time to time after the Original Issue Date the Company pays to holders of Common Stock a dividend or other distribution in additional shares of Common Stock without a corresponding dividend or other distribution to holders of Preferred Stock, the Series Preferred Conversion Price that is then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The Series Preferred Conversion Price shall be adjusted by multiplying the Series Preferred Conversion Price then in effect by a fraction equal to:

(A) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(ii) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

(g) Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation . If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or Asset Transfer treated as a Liquidation Event in accordance with Section 4 or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), in any such event each holder of Series Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(h) Certificate of Adjustment . In each case of an adjustment or readjustment of the Series Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 5, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred.

(i) Notices of Record Date . Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to

receive any dividend or other distribution, or (ii) any Acquisition or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least 10 days prior to the record date specified therein (or such shorter period approved by the holders of at least a majority of the outstanding Series Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(j) Automatic Conversion .

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Price, (A) at any time upon the affirmative election of the holders of at least a majority of the outstanding shares of the Series Preferred, or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least $10,000,000.

(ii) Upon the occurrence of either of the events specified in Section 5(j)(i) above, the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided , however ,* that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(k) Fractional Shares . No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash

equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined in good faith by the Board) on the date of conversion.

(l) Reservation of Stock Issuable Upon Conversion . The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred and issuing shares of Common Stock pursuant to the exercise of any option or warrant, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred and the exercise of all outstanding options and warrants, then, in addition to such other remedies as shall be available to the holders of the Series Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(m) Notices . Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(n) Payment of Taxes . The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

6. REDEMPTION .

(a) The Company shall be obligated to redeem the Series Preferred as follows:

(i) The holders of at least a majority of the then outstanding shares of Series Preferred, voting together as a separate class, may require the Company, to the extent it may lawfully do so, to redeem the Series Preferred on July 1, 2009 (each a " **Redemption Date** "); *provided* that the Company shall receive at least 90 days prior to the Redemption Date written notice of such consent or vote of the Series Preferred. The Company shall effect such redemption on the Redemption Date by paying in cash in exchange for the shares of Series Preferred to be redeemed a sum equal to the Original Issue Price per share of Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) plus all accrued and unpaid dividends with respect to such shares. The total amount to be paid for the Series Preferred is hereinafter referred to as the " **Redemption Price** ."

(ii) At least 30 days but no more than 60 days prior to the Redemption Date, the Company shall send a notice (a " **Redemption Notice** ") to all holders of Series Preferred to be redeemed setting forth (A) the Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed on the Redemption Date (including, if applicable, those to be redeemed at the option of the Company), then it shall so notify such holders and shall

redeem such shares *pro rata* (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or prior to the Redemption Date, the Company shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of $100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after the Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section 6(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 5 hereof no later than the fifth day preceding the applicable Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section 6(b) remaining unclaimed at the expiration of one (1) year following the Redemption Date shall be returned to the Company promptly upon its written request.

(c) On or after the Redemption Date, each holder of shares of Series Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Series Preferred are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein until redeemed.

(d) In the event of a call for redemption of any shares of Series Preferred, the Conversion Rights (as defined in Section 5) for such Series Preferred shall terminate as to the shares designated for redemption at the close of business on the fifth day preceding the Redemption Date, unless default is made in payment of the Redemption Price.

ARTICLE V.

The name and mailing address of the sole incorporator of the Corporation are Nathaniel G. Ford, c/o Faegre & Benson LLP, 3200 Wells Fargo Center, 1700 Lincoln Street, Denver, Colorado 80203-4532.

ARTICLE VI.

The Corporation is to have perpetual existence.

ARTICLE VII.

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal the Bylaws of the Corporation.

ARTICLE VIII.

Meetings of stockholders may be held within or outside the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation. Elections of directors need not be by written ballot unless the Bylaws of the Corporation so provide.

ARTICLE IX.

The Corporation shall indemnify, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as amended from time to time, each of its directors and officers. In addition, the Corporation may indemnify such of its employees, fiduciaries and agents as it may deem advisable. The personal liability of a director of the Corporation to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director shall be limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as it now exists or may hereafter be amended. Any repeal or modification of this Article IX by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or modification.

ARTICLE X.

The Corporation reserves the right to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation in the manner now or hereinafter prescribed herein and by the laws of the State of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation.

* * * *

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incorporation on the 15th day of April, 2005.

/s/ Nathaniel G. Ford

Nathaniel G. Ford, Sole Incorporator

QuickLinks

Exhibit 3.1

CERTIFICATE OF INCORPORATION OF CROCS, INC.
ARTICLE I.
ARTICLE II.
ARTICLE III.
ARTICLE IV.
ARTICLE V.
ARTICLE VI.
ARTICLE VII.
ARTICLE VIII.
ARTICLE IX.
ARTICLE X.

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 3.3

BYLAWS
OF
CROCS, INC.

ARTICLE I
Offices and Agent

1. *Principal Office* . The principal office of the Corporation may be located within or outside the State of Delaware, as designated by the Board of Directors (the "Board of Directors" or "Board"). The Corporation may have other offices and places of business at such places within or outside the State of Delaware as shall be determined by the directors.

2. *Registered Office* . The registered office of the Corporation shall be fixed in the Corporation's Certificate of Incorporation, as the same may be amended from time to time.

ARTICLE II
Meetings of Stockholders

1. *Annual Meetings* . The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date and at such time as determined by resolution of the Board of Directors. If, at the place of the meeting, this date shall fall upon a legal holiday, then such meeting shall be held on the next succeeding business day at the same hour. If no annual meeting is held in accordance with the foregoing provisions, the Board of Directors shall cause the meeting to be held as soon thereafter as convenient. If no annual meeting is held in accordance with the foregoing provisions, a special meeting may be held in lieu of the annual meeting, and any action taken at that special meeting shall have the same effect as if it had been taken at the annual meeting, and in such case all references in these Bylaws to the annual meeting of stockholders shall be deemed to refer to such special meeting.

2. *Special Meetings* . Special meetings of the stockholders of the Corporation may be called for any purpose at any time by the Chief Executive Officer, shall be called by the Secretary if directed by the Board of Directors, and shall be called by the Chief Executive Officer upon the written request of holders of shares entitled to cast not less than ten percent (10%) of the votes entitled to notice of and to vote at such special meeting. Such written request shall specify the purpose or purposes of, and a proposed date for, the meeting and shall be delivered to the Chief Executive Officer. Upon receipt of such written request, the Chief Executive Officer shall fix a date and time for such meeting, which date shall be within ten (10) business days of the proposed date specified in the written request.

3. *Place of Meetings* . All meetings of stockholders of the Corporation shall be held within or outside the State of Delaware as may be designated by the Board of Directors or the Chief Executive Officer, or, if not designated, at the registered office of the Corporation.

4. *Notice of Meeting* . Except as otherwise provided in these Bylaws or the General Corporation Law of the State of Delaware (the "Delaware Corporation Law"), written notice of any meeting of stockholders stating the place, date and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered personally, by mail or by electronic transmission to each

stockholder of record entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting, by or at the direction of the Board of Directors, the Chief Executive Officer or the Secretary. If mailed, such notice shall be deemed to be delivered as to any stockholder of record when deposited in the United States mail addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation, with postage prepaid. If sent by electronic transmission, such notice shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder

has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given, and stating the manner of such notice, shall in the absence of fraud be prima facie evidence of the facts stated therein. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

5. *Waiver of Notice* . Any stockholder, either before or after any stockholders' meeting, may waive in writing notice of the meeting, and his waiver shall be deemed the equivalent of giving notice. Attendance at a meeting by a stockholder shall constitute a waiver of notice, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

6. *Fixing of Record Date* . For the purpose of determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors of the Corporation may fix, in advance, a record date which shall be not more than sixty (60) days nor less than ten (10) days prior to the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed, the record date for determining the stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. The record date for determining the stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

7. *Stockholders' List* . The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

8. *Proxies* . A stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act

for him by proxy. No proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

9. *Voting Rights* . Each stockholder shall have one vote for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided in the Certificate of Incorporation.

Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon.

If shares having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary of the Corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (i) if only one votes, his act binds all; (ii) if more than one vote, the act of the majority so voting binds all; and (iii) if more than one vote, but the vote is evenly split on any particular matter, each fraction may vote the securities in question proportionately, or any person voting the shares or a beneficiary, if any, may apply to the Court of Chancery or any court of competent jurisdiction in the State of Delaware to appoint an additional person to act with the persons so voting the shares. The shares shall then be voted as determined by a majority of such persons and the person appointed by the Court. If a tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection shall be a majority or even-split in interest.

10. *Quorum and Required Vote* . Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws:

(a) the holders of a majority of the shares entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for the transaction of business; and

(b) if a quorum is present, the affirmative vote of a majority of the shares present or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders (except with respect to elections of directors, which shall be determined by plurality), and, if there are two or more classes of stock entitled to vote as separate classes, then, in the case of each such class, the affirmative vote of a majority of the shares of that class present or represented by proxy at the meeting shall be the vote of such class.

11. *Informal Action By Stockholders* . Except as otherwise provided in the Certificate of Incorporation, any action required by the provisions of the Delaware Corporation Law to be taken or any action which may be taken at a stockholders' meeting may be taken without a meeting, without prior notice and without a vote, if a consent in writing or by electronic transmission, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous consent shall be given to those stockholders who have not consented in writing. Any action taken pursuant to such written consent of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

ARTICLE III
Board of Directors

1. *Number, Qualifications and Term of Office* . Except as otherwise provided in the Certificate of Incorporation or the Delaware Corporation Law, the business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors consisting of one or more members. Directors need not be stockholders of the Corporation. The number of directors which shall constitute the full Board of Directors may be increased or decreased from time to time by resolution of the Board, subject to the provisions of the Certificate of Incorporation. Except as otherwise provided in the Certificate of Incorporation, each director shall be elected at each annual meeting of stockholders and shall hold such office until the next annual meeting of stockholders and until his successor shall be elected and shall qualify. No decrease in the number of directors shall have the effect of shortening the term of any incumbent director.

2. *Vacancies* . Unless and until filled by the stockholders of the Corporation, any vacancy in the Board of Directors, however occurring, including a vacancy resulting from an enlargement of the Board, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office, and a director chosen to fill a position resulting from an increase in the number of directors shall hold office until the next annual meeting of stockholders and until his successor is elected and qualified, or until his earlier death, resignation or removal.

3. *Resignation* . Any director may resign by delivering his written resignation to the Corporation at its principal office addressed to the Chief Executive Officer or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

4. *Removal* . Except as otherwise provided in the Certificate of Incorporation or the Delaware Corporation Law, any director or the entire Board of Directors may be removed with or without cause by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that whenever the holders of any class or series of stock are entitled to elect one or more directors by the provisions of the Corporation's Certificate of Incorporation, such director or directors may only be removed by the holders of a majority of the outstanding shares of such class or series of stock.

5. *Compensation* . Directors may be paid such compensation for their services and such reimbursements for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

ARTICLE IV
Meetings of the Board

1. *Place of Meetings* . The regular or special meetings of the Board of Directors or any committee designated by the Board shall be held at the principal office of the Corporation or at any other place within or outside the State of Delaware that a majority of the Board of Directors or any such committee, as the case may be, may designate from time to time by resolution.

2. *Regular Meetings* . The Board of Directors shall meet each year immediately after and at the same place as the annual meeting of the stockholders for the purpose of electing officers and transacting such other business as may come before the meeting. The Board of Directors or any committee designated by the Board may provide, by resolution, for the holding of additional regular meetings within or outside the State of Delaware without notice of the time and place of such meeting

other than such resolution; provided that any director who is absent when such resolution is made shall be given notice of said resolution.

3. *Special Meetings* . Special meetings of the Board of Directors or any committee designated by the Board may be held at any time and place, within or outside the State of Delaware, designated in a call by the Chairman of the Board, if any, by the Chief Executive Officer or by a majority of the members of the Board of Directors or any such committee, as the case may be.

4. *Notice of Special Meetings* . Except as otherwise provided by these Bylaws or the laws of the State of Delaware, written notice of each special meeting of the Board of Directors or any committee thereof setting forth the time and place of the meeting shall be given to each director by the Secretary or by the officer or director calling the meeting not less than three (3) days prior to the time fixed for the meeting, in the case of notices given by United States mail, or not less than twenty-four (24) hours prior to the time fixed for the meeting, in the case of notices given in any other manner permitted hereunder. Notice of special meetings may be either given personally, by telephone, or by sending a copy of the notice through the United States mail or by telegram, telex, telecopy or other form of electronic transmission, charges prepaid, to the address of each director appearing on the books of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage prepaid thereon. If notice is given by telegram, telex, telecopy or other form of electronic transmission, such notice shall be deemed to be delivered when sent. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

5. *Waiver of Notice* . A director may waive, in writing, notice of any special meeting of the Board of Directors or any committee thereof, either before, at, or after the meeting, and his waiver shall be deemed the equivalent of giving notice. By attending or participating in a regular or special meeting, a director waives any required notice of such meeting unless the director, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting.

6. *Quorum and Action at Meeting* . At meetings of the Board of Directors or any committee designated by the Board, a majority of the directors then in office, or a majority of the members of any such committee, as the case may be, shall constitute a quorum for the transaction of business; provided, however, that in no case shall less than one-third ($^{1}/_{3}$) of the total number of directors or committee members constitute a quorum. If a quorum is present, the act of the majority of directors in attendance shall be the act of the Board of Directors or any committee thereof, as the case may be, unless the act of a greater number is required by these Bylaws, the Certificate of Incorporation or the Delaware Corporation Law. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn that meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

7. *Presumption of Assent* . A director who is present at a meeting of the Board or a committee thereof when action is taken is deemed to have assented to the action taken unless: (i) he objects at the beginning of such meeting to the holding of the meeting or the transacting of business at the meeting; (ii) he contemporaneously requests that his dissent from the action taken be entered in the minutes of such meeting; or (iii) he gives written notice of his dissent to the presiding officer of such meeting before its adjournment or to the Secretary of the Corporation immediately after adjournment of such meeting. The right of dissent as to a specific action taken at a meeting of a Board or a committee thereof is not available to a director who votes in favor of such action.

8. *Committees* . The Board of Directors may, by a resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of

the committee present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the Delaware Corporation Law, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all such papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee (i) may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee, and (ii) may make rules for the conduct of its business, but, unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the Board of Directors.

9. *Informal Action by Directors* . Except as otherwise provided in the Certificate of Incorporation, any action required or permitted by the Delaware Corporation Law to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent to the action in writing or by electronic transmission, and the written consents and electronic transmissions are filed with the minutes of proceedings of the Board or committee.

10. *Telephonic Meetings* . Directors or members of any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting.

ARTICLE V
Officers and Agents

1. *Enumeration, Election and Term* . The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer and such other officers with such other titles as may be deemed necessary or desirable by the Board of Directors, including one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries and a Chairman of the Board. Any number of offices may be held by the same person and no officer need be a stockholder or a resident of the State of Delaware. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, each officer shall hold office until his successor is elected and qualified or until his earlier death, resignation or removal. The officers of the Corporation shall be elected annually by the Board of Directors at the first meeting of the Board held after each annual meeting of the stockholders.

2. *General Duties* . All officers and agents of the Corporation, as between themselves and the Corporation, shall have such authority and shall perform such duties in the management of the Corporation as may be provided in these Bylaws or as may be determined by resolution of the Board of Directors not inconsistent with these Bylaws. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Board of Directors, such officer, agent or employee shall follow the orders and instructions of the Chief Executive Officer.

3. *Vacancies* . The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave any vacancy unfilled for such period as it may determine. The officer so selected shall hold office until his successor is elected and qualified or until his earlier death, resignation or removal.

4. *Compensation* . The Board of Directors from time to time shall fix the compensation of the officers of the Corporation. The compensation of other agents and employees of the Corporation may

be fixed by the Board of Directors, or by any committee designated by the Board or by an officer to whom that function has been delegated by the Board.

5. *Resignation and Removal* . Any officer may resign by delivering his written resignation to the Corporation at its principal office addressed to the Chief Executive Officer or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any officer or agent of the Corporation may be removed, with or without cause, by a vote of the majority of the members of the Board of Directors whenever in its judgment the best interests of the Corporation may be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or an agent shall not of itself create contract rights.

6. *Chairman of the Board* . The Chairman of the Board, if any, shall preside as chairman at meetings of the stockholders and the Board of Directors. He shall, in addition, have such other duties as the Board may prescribe that he perform. At the request of the Chief Executive Officer, the Chairman of the Board may, in the case of the Chief Executive Officer's absence or inability to act, temporarily act in his place. In the case of death of the Chief Executive Officer or in the case of his absence or inability to act without having designated the Chairman of the Board to act temporarily in his place, the Chairman of the Board shall perform the duties of the Chief Executive Officer, unless the Board of Directors, by resolution, provides otherwise. If the Chairman of the Board shall be unable to act in place of the Chief Executive Officer, the President may exercise such powers and perform such duties as are provided in Section 8 below.

7. *Chief Executive Officer* . The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have general supervision of the business of the Corporation. In the event the position of Chairman of the Board shall not be occupied or the Chairman shall be absent or otherwise unable to act, the Chief Executive Officer shall preside at meetings of the stockholders (and of the directors, if he is a member of the Board of Directors) and shall discharge the duties of the presiding officer. At each annual meeting of the stockholders, the Chief Executive Officer shall give a report of the business of the Corporation for the preceding fiscal year and shall perform whatever other duties the Board of Directors may from time to time prescribe.

8. *President* . The President shall have such powers and perform such duties as the Board of Directors may from to time prescribe or as the Chief Executive Officer may from time to time delegate to him. At the request of the Chief Executive Officer, in the case of the Chief Executive Officer's absence or inability to act, the President may temporarily act in his place. In the case of the death of the Chief Executive Officer, or in the case of his absence or inability to act without having designated the President to act temporarily in his place, the Chairman of the Board, if any, shall exercise such powers and perform such duties, but if the Corporation has no Chairman of the Board, or if the Chairman is unable to act in place of the Chief Executive Officer, the President may exercise such powers and perform such duties.

9. *Vice Presidents* . Each Vice President shall have such powers and perform such duties as the Board of Directors may from to time prescribe or as the Chief Executive Officer may from time to time delegate to him.

10. *Secretary* . The Secretary shall keep or cause to be kept, in books provided for that purpose, the minutes of the meetings of the stockholders, executive committee, if any, and any other committees, and of the Board of Directors; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law; shall be custodian of the records and of the seal of the Corporation and see that the seal is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized and in accordance with the provisions of these Bylaws; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors or by the Chief Executive

Officer. In the absence of the Secretary or his inability to act, the Assistant Secretaries, if any, shall act with the same powers and shall be subject to the same restrictions as are applicable to the Secretary.

11. *Treasurer* . The Treasurer shall have custody of corporate funds and securities. He shall keep full and accurate accounts of receipts and disbursements and shall deposit all corporate monies and other valuable effects in the name and to the credit of the Corporation in the depository or depositories of the Corporation, and shall render an account of his transactions as Treasurer and of the financial condition of the Corporation to the Chief Executive Officer and/or the Board of Directors upon request. Such power given to the Treasurer to deposit and disburse funds shall not, however, preclude any other officer or employee of the Corporation from also depositing and disbursing funds when authorized to do so by the Board of Directors. The Treasurer shall, if required by the Board of Directors, give the Corporation a bond in such amount and with such surety or sureties as may be ordered by the Board of Directors for the faithful performance of the duties of his office. The Treasurer shall have such other powers and perform such other duties as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer. In the absence of the Treasurer or his inability to act, the Assistant Treasurers, if any, shall act with the same authority and shall be subject to the same restrictions as are applicable to the Treasurer.

12. *Delegation of Duties* . Whenever an officer is absent, or whenever, for any reason, the Board of Directors may deem it desirable, the Board may delegate the powers and duties of an officer to any other officer or officers or to any director or directors.

ARTICLE VI
Indemnification of Officers, Directors and Others

1. *Indemnification: Third Party Actions* . The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent or another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

2. *Indemnification: Derivative Actions* . The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent or another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the

court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

3. *Mandatory Indemnification* . To the extent that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article VI or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

4. *Authorization for Indemnification* . Any indemnification under Sections 1 and 2 of this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 1 and 2 of this Article VI. Such determination shall be made, with respect to a person who is a director or officer of the Corporation at the time of such determination, (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) by a committee of disinterested directors designated by a majority vote of a quorum of the disinterested directors, or (iii) if there are no such disinterested directors, or if such disinterested directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders.

5. *Advance Payment of Expenses* . Expenses (including attorneys' fees) incurred by an officer or director in defending a civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VI. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

6. *Non-Exclusive* . The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue, unless otherwise provided when authorized or ratified, as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

7. *Insurance* . The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VI.

8. *Definitions* . For purposes of this Article VI, the following terms shall have the following meanings:

(a) references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued;

(b) references to "other enterprises" shall include employee benefit plans;

(c) references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan;

(d) references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and

(e) a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VI.

ARTICLE VII
Capital Stock

1. *Certificates of Stock* . The shares of the Corporation shall be represented by certificates; provided that the Board of Directors of the Corporation may, by resolution, provide that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

2. *Issuance of Stock* . Unless otherwise voted by the stockholders and subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any unissued balance of the authorized capital stock of the Corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by resolution of the Board of Directors in such manner, for such consideration and on such terms as the Board of Directors may determine. Consideration for such shares of capital stock shall be expressed in dollars, and shall not be less than the par value or stated value therefor, as the case may

be. The par value for shares, if any, shall be stated in the Certificate of Incorporation, and the stated value for shares, if any, shall be fixed from time to time by the Board of Directors.

3. *Lost Certificates* . The Board of Directors may direct a new certificate to be issued in place of any previously issued certificate alleged to have been destroyed or lost if the owner makes an affidavit or affirmation of that fact and produces such evidence of loss or destruction as the Board may require. The Board, in its discretion, may as a condition precedent to the issuance of a new certificate require the owner to give the Corporation a bond as indemnity against any claim that may be made against the Corporation relating to the allegedly destroyed or lost certificate.

4. *Transfer of Shares* . Subject to applicable law, shares of stock of the Corporation may be transferred on its books upon the surrender to the Corporation or its transfer agent of the certificates representing such shares, if any, duly endorsed or accompanied by a written assignment or power of attorney duly executed and with such proof of authority or authenticity of signature as the Corporation or its transfer agent may reasonably require. In that event, the surrendered certificates shall be cancelled, new certificates issued to the persons entitled to them, if any, and the transaction recorded on the books of the Corporation.

5. *Registered Stockholders* . The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

6. *Stock Ledger* . An appropriate stock journal and ledger shall be kept by the Secretary or such registrars or transfer agents as the directors by resolution may appoint in which all transactions in the shares of stock of the Corporation shall be recorded.

7. *Restriction on Transfer of Shares* . Notice of any restriction on the transfer of the stock of the Corporation shall be placed on each certificate of stock issued or in the case of uncertificated shares contained in the notice sent to the registered owner of such shares in accordance with the provisions of the Delaware Corporation Law.

ARTICLE VIII
Dividends

Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think in the best interests of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE IX
Voting of Securities Owned by the Corporation

All stock and other securities of other business entities held by the Corporation for itself or for other parties in any capacity shall be voted, and all proxies with respect thereto shall be executed, by the person or persons authorized to do so by resolution of the Board of Directors, or in the absence of

such authorization, by the Chairman of the Board, the Chief Executive Officer, the President or a Vice President.

ARTICLE X
Seal and Fiscal Year

1. *Seal* . The Board of Directors may adopt a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

2. *Fiscal Year* . The fiscal year of the Corporation shall be determined by the Board of Directors and set forth in the minutes of the directors. Said fiscal year may be changed from time to time by the Board of Directors in its discretion.

ARTICLE XI
Amendments

Subject to repeal or change by action of the stockholders, the Board of Directors may amend, supplement or repeal these Bylaws or adopt new Bylaws, and all such changes shall affect and be binding upon the holders of all shares heretofore as well as hereafter authorized, subscribed for or offered.

ARTICLE XII
Miscellaneous

1. *Gender* . Whenever required by the context, the singular shall include the plural, the plural the singular, and one gender shall include all genders.

2. *Invalid Provision* . The invalidity or unenforceability of any particular provision of these Bylaws shall not affect the other provisions herein, and these Bylaws shall be construed in all respects as if such invalid or unenforceable provision was omitted.

3. *Governing Law* . These Bylaws shall be governed by and construed in accordance with the laws of the State of Delaware.

QuickLinks

Exhibit 3.3

BYLAWS OF CROCS, INC.
ARTICLE I Offices and Agent
ARTICLE II Meetings of Stockholders
ARTICLE III Board of Directors
ARTICLE IV Meetings of the Board
ARTICLE V Officers and Agents
ARTICLE VI Indemnification of Officers, Directors and Others
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ARTICLE X Seal and Fiscal Year
ARTICLE XI Amendments
ARTICLE XII Miscellaneous

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.1

INDEMNIFICATION AGREEMENT

AGREEMENT dated effective as of , 2005, between CROCS, Inc., a Delaware corporation (the "Company"), and (the "Indemnitee").

WHEREAS, it is essential to the Company to retain and attract as directors and officers the most capable persons available; and

WHEREAS, Indemnitee is or wishes to serve as a director and/or officer of the Company; and

WHEREAS, the Company's charter requires the Company to indemnify and advance expenses to its directors and officers to the full extent authorized and permitted by applicable law, and allows for the provision of additional indemnification rights to directors or officers by separate agreement; and

WHEREAS, Indemnitee has been serving and continues to serve, or will serve, as a director and/or officer of the Company in part in reliance on such provisions of the Company's charter; and

WHEREAS, in recognition of Indemnitee's need for substantial protection against personal liability in order to encourage Indemnitee's service to the Company in an effective manner, the Company wishes to provide in this Agreement for the indemnification of, and the advancing of expenses to, Indemnitee to the fullest extent (whether partial or complete) authorized and permitted by law and the Company's Certificate of Incorporation, and to such extent as may be provided for in this Agreement; and

WHEREAS, to the extent insurance is maintained the Company wishes to provide in this Agreement for the continued coverage of Indemnitee under the Company's directors' and officers' liability insurance policies.

NOW, THEREFORE, in consideration of the premises and of Indemnitee's service or continued service to the Company directly or, at its request, to any other Enterprise, and intending to be legally bound hereby, the parties hereto agree as follows:

1. *CERTAIN DEFINITIONS* . Capitalized words not otherwise defined herein shall have the following meanings:

   a. " *Change in Control* " shall be deemed to have occurred if:

      (i) a majority of the directors of the Company shall be persons other than persons (A) who were directors of the Company at the date hereof, (B) for whose election proxies shall have been solicited by the Board of Directors, or (C) who are then serving as directors appointed by the Board of Directors to fill vacancies on the Board of Directors caused by newly-created directorships or the death or resignation (but not removal) of a director; or

      (ii) on or after the date hereof, any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange

Act of 1934, as amended (the "Exchange Act")), other than the Company, a subsidiary of the Company or the person seeking indemnification, acquires or becomes the beneficial owner (as so defined in Exchange Act Rule 13d-3), directly or indirectly, of twenty percent or more of the voting power represented by the Company's then outstanding Voting Securities; or

(iii) the stockholders of the Company approve, and the Company consummates, a definitive agreement or plan to (A) merge or consolidate the Company with or into another corporation (other than (1) a merger or consolidation with a subsidiary of the Company, (2) a merger in which the Company is the surviving corporation and no outstanding Voting Securities of the Company (other than fractional shares) held by stockholders immediately prior to the merger are converted into cash, securities or other property, or (3) a merger effectuated with the purpose of changing the jurisdiction of incorporation of the Company), (B) exchange, pursuant to a statutory exchange of shares of voting stock of the Company held by stockholders of the Company immediately prior to the exchange, shares of one or more classes or series of voting stock of the Company for shares of another corporation, (C) sell or otherwise dispose of all or substantially all of the assets of the Company (in one transaction or a series of transactions), or (D) liquidate or dissolve the Company, unless a majority of the Voting Securities of the surviving corporation or of any corporation (or other entity) acquiring all or substantially all of the assets of the Company (in the case of a merger, consolidation or disposition of assets) or the Company (in the case of a statutory share exchange) is, immediately following the merger, consolidation, statutory share exchange or disposition of assets, beneficially owned by the person seeking indemnification or by a group of persons, including the person seeking indemnification, acting in concert; or

(iv) the Company enters into an agreement in principle or a definitive agreement relating to an event described in clause (i), (ii) or (iii) above which ultimately results in an event described therein, or a tender or exchange offer or proxy contest is commenced which ultimately results in an event described therein.

b. " *Claim* " shall mean any threatened, pending or completed action, suit or proceeding, or alternative dispute resolution mechanism, or any inquiry or investigation, whether instituted by the Company or any other party (including, without limitation, in the right of the Company).

c. " *Enterprise* " shall mean any enterprise other than the Company, including any corporation, partnership, joint venture, limited liability company, trust, employee benefit plan or other entity or enterprise.

d. " *Expenses* " shall mean (i) all costs, expenses and obligations (including attorneys' fees and costs, the fees and costs of consultants and experts, and reasonable out-of-pocket travel costs incurred by any of such persons or by Indemnitee), incurred in connection with investigating, defending, being a witness in, being interviewed in connection with, or participating in (including on appeal), or preparing to defend, to be a witness in, to be interviewed by, or to participate in, any Claim relating to any Indemnifiable Event, (ii) any judgment, fine, penalty or amount to be paid in settlement of any Claim relating to an Indemnifiable Event, (iii) any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) all interest, assessments and other charges paid or payable in connection with or in respect of any of the foregoing.

e. " *Indemnifiable Event* " shall mean any circumstance, event or occurrence related to the fact that Indemnitee is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, employee, trustee, agent or fiduciary of any other Enterprise, or by reason of anything done or not done, or alleged to have been done or not done, by Indemnitee in any such capacity.

f. " *Independent Legal Counsel* " shall mean an attorney or firm of attorneys, selected in accordance with the provisions of Section 3, who shall not have been retained by or otherwise performed services for the Company or Indemnitee within the previous three years (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements).

g. " *Reviewing Party* " shall mean, as to any situation in which Indemnitee is an officer or director at the time of the determination, (i) directors of the Company who are not parties to the Claim or a committee of such directors designated by majority vote of such directors (each of which shall make decisions by majority vote), (ii) if there are no such directors, or if such directors so direct, by Independent Legal Counsel, or (iii) such other person(s) who may be designated as provided by applicable law. " *Reviewing Party* " shall mean, as to any situation in which Indemnitee is not an officer or a director at the time of the determination, Independent Legal Counsel.

h. " *Voting Securities* " shall mean any securities of the Company which vote generally in the election of directors of the Company.

2. *BASIC INDEMNIFICATION ARRANGEMENT* .

a. *General Rules* . Subject to the provisions of Section 8 hereof, in the event Indemnitee was, is or becomes a party to or witness or other participant in, or is interviewed in connection with, or is threatened to be made a party to or witness or other participant in, a Claim by reason of (or arising in part out of) an Indemnifiable Event, the Company shall indemnify Indemnitee to the fullest extent authorized and permitted by applicable law, the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company and the terms of this Agreement, as soon as practicable but in any event no later than thirty (30) days after written demand is presented to the Company, against any and all Expenses associated with such Indemnifiable Event.

Notwithstanding the foregoing sentence, in no event shall Indemnitee be entitled to indemnification pursuant to this Agreement for any liability finally adjudged by a court of competent jurisdiction (and after the exhaustion or lapse of all rights of appeal) to have arisen in connection with (i) remuneration paid to or for the benefit of Indemnitee in violation of law; or (ii) any accounting of profits made from the purchase or sale by Indemnitee or any related person of the Company's securities within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments or similar provisions of any federal, state or local statutory law; or (iii) actions brought about or contributed to by the dishonesty of Indemnitee, if such adjudication establishes that acts of active and deliberate dishonesty were committed or attempted by Indemnitee with actual dishonest purpose and intent and were material to the adjudication; or (iv) actions based on or attributable to Indemnitee having gained any personal profit or advantage to which he was not entitled; or (v) any matter in respect of which such court determines that indemnification is unlawful; *provided, however* , to the extent any of the circumstances stated in (i) through (v) is raised as a defense to indemnification of Indemnitee, such defense shall be permitted only as to Claims specifically and solely involving the foregoing, and to the extent the indemnification request also involves Claims or portions of Claims not involving the foregoing or as to which the foregoing are only a part, the extent of Indemnitee's indemnification shall be governed by the provisions of Section 5 hereof. In addition, except as provided in Section 4, Indemnitee shall not be entitled to indemnification pursuant to this Agreement in connection with any proceeding initiated by Indemnitee against the Company or any director or officer of the Company unless (i) the Company has joined in or the Company's Board of Directors has consented to the initiation of such Proceeding; or (ii) the proceeding is instituted after a Change in Control (other than a Change in Control approved by a majority of the directors on the Board who were directors immediately prior to such Change in Control) and Independent Legal Counsel has approved its initiation.

In connection with the Company's obligation to indemnify Indemnitee pursuant to this Section 2(a), the Company shall advance all actual Expenses incurred by Indemnitee as soon as practicable but in any event no later than five business days after the Company is presented with a written demand by Indemnitee for payment of such Expenses (an "Expense Advance"), subject only to the reimbursement obligation of Indemnitee as provided in Section 2(b)(ii) and the provisions of Section 8(b)(i). Expenses incurred in defending any proceeding shall be advanced by the Company prior to the final disposition of the proceeding. In submitting any invoice for such Expenses, Indemnitee shall not be required to submit any information which Indemnitee has been advised by Indemnitee's counsel could reasonably be expected to result in the waiver of the attorney-client privilege or would constitute attorney work product.

b. *Conditions* . Indemnitee hereby agrees to furnish to the Company or the Company's Board of Directors any affirmations, undertakings, or similar assurances required by applicable law as a condition to indemnifying or making Expense Advances hereunder, and receipt of any such affirmations, undertakings, or similar assurances is an express condition to the Company's obligations pursuant to Section 2(a) hereof. In addition, notwithstanding the provisions of Section 2(a):

(i) the obligations of the Company to indemnify Indemnitee pursuant to Section 2(a) shall be subject to the condition that a Reviewing Party shall not have determined (in a written opinion (which may be a so-called "reasoned opinion") in any case in which Independent Legal Counsel is the Reviewing Party) that Indemnitee would not be permitted to be indemnified under applicable law, or under the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or this Agreement; and

(ii) the obligations of the Company to make an Expense Advance to Indemnitee pursuant to Section 2(a) shall be subject to the condition that, if, when and to the extent that a Reviewing Party determines that Indemnitee would not be permitted to be so indemnified under applicable law, or under the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or this Agreement, the Company shall be entitled to reimbursement by Indemnitee (who hereby agrees to reimburse the Company) for all such amounts theretofore paid; *provided, however* , that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee should be indemnified under applicable law, any determination made by a Reviewing Party that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expense Advance until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed).

c. *Selection of Reviewing Party; Judicial Review* . For purposes of Section 2(b) hereof, if there has not been a Change in Control, the Reviewing Party shall be selected by the Board of Directors, and if there has been a Change in Control (other than a Change in Control which has been approved by a majority of the Company's Board of Directors who were directors immediately prior to such Change in Control), the Reviewing Party shall be the Independent Legal Counsel referred to in Section 3 hereof. If there has been no determination by a Reviewing Party or if a Reviewing Party determines that Indemnitee substantively would not be permitted to be indemnified in whole or in part under applicable law, Indemnitee shall have the right to commence litigation in any court in the States of Colorado or Delaware having subject matter jurisdiction thereof and in which venue is proper seeking an initial determination by the court or challenging any such determination by a Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and the Company hereby consents to service of process and to appear in any such proceeding. Any determination by a Reviewing Party otherwise shall be conclusive and binding on the Company and Indemnitee.

3. *CHANGE IN CONTROL* . The Company agrees that if there is a Change in Control (other than a Change in Control which has been approved by a majority of the Company's Board of Directors who were directors immediately prior to such Change in Control) then with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnity payments and Expense Advances under this Agreement, the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or any other agreement now or hereafter in effect relating to Claims for Indemnifiable Events, the Company shall seek legal advice only from Independent Legal Counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld). Such Independent Legal Counsel, among other things, shall render its written opinion to the Company (which may be a so-called "reasoned opinion") and Indemnitee as to whether and to what extent Indemnitee would be permitted to be indemnified under applicable law. The Company agrees to pay the reasonable fees of such Independent Legal Counsel and to fully indemnify such Independent Legal Counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

4. *INDEMNIFICATION FOR ADDITIONAL EXPENSES* . The Company shall indemnify Indemnitee against any and all expenses (including attorneys' fees and costs, the fees and costs of consultants and experts, and reasonable out-of-pocket travel costs incurred by any of such persons or by Indemnitee), and, if requested by Indemnitee, shall (within two business days after such request) advance such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee (a) for indemnification or advance payment of Expenses by the Company under this Agreement, the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or any other agreement now or hereafter in effect relating to Claims for Indemnifiable Events, and (b) for recovery under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance expense payment or insurance recovery, as the case may be.

5. *PARTIAL INDEMNITY, ETC* . If Indemnitee is entitled under any provision of applicable law, the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or this Agreement to indemnification by the Company for some or a portion of the Expenses, judgments, fines, penalties and amounts reasonably paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties or amounts reasonably paid in settlement) of a Claim but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled. Moreover, notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any or all Claims relating in whole or in part to an Indemnifiable Event or in defense of any issue or matter therein, including dismissal without prejudice, Indemnitee shall be indemnified against all Expenses incurred in connection therewith; provided, however, that if such indemnification is specifically determined to be unlawful, then Indemnitee shall be entitled to a fair apportionment of Expenses so that Indemnitee receives indemnification to the maximum extent lawful.

6. *BURDEN OF PROOF* . In connection with any determination by a Reviewing Party or otherwise as to whether Indemnitee is entitled to be indemnified hereunder, the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

7. *PRESUMPTIONS* . For purposes of this Agreement, the termination of any Claim, action, suit or proceeding, by judgment, order or reasonable settlement (whether with or without court approval), shall create a presumption that Indemnitee is entitled to indemnification with respect to such Claim, action, suit or proceeding unless such judgment, order or settlement specifically provides or establishes that Indemnitee did not meet any particular standard of conduct or have any particular belief necessary to indemnification, or specifically states, in the case of a judgment or court-approved settlement, that the court has determined that indemnification is not permitted by applicable law. For purposes of this Agreement, the termination of any criminal action or proceeding upon a plea of nolo contendere or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that the court in such action or proceeding has determined that indemnification is not permitted by applicable law. In addition, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified under applicable law, neither the failure of a Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by a Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, shall be a defense to Indemnitee's claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief.

8. *NOTIFICATION OF ACTION, ETC.; ASSUMPTION BY COMPANY OF CONDUCT OR DEFENSE OF SAME* .

a. *Notification* . Promptly after receipt by Indemnitee or the Company, of any notice or document respecting the commencement of any action, suit, proceeding, inquiry or investigation which names, involves or may involve Indemnitee relating to any matter concerning which Indemnitee may be entitled to indemnification or advancement of Expenses pursuant to applicable law, the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or this Agreement, the party receiving such notice or document will promptly notify the other of the receipt of same; *provided, however* , that the failure on the part of Indemnitee to so notify the Company will not relieve the Company from any obligation or liability which it may have to Indemnitee for indemnification or advancement of Expenses pursuant to applicable law, the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or this Agreement.

b. *Expense Advance; Assumption of Conduct or Defense* . With respect to any such action, suit, proceeding, inquiry or investigation:

(i) if Indemnitee intends to request an Expense Advance, Indemnitee will provide the Company with not less than two business days' prior notice of Indemnitee's intention to incur Expenses and seek an Expense Advance and shall meet with an executive officer of the Company during such two business day period to discuss Indemnitee's incurring of Expenses if requested to do so; and

(ii) except as otherwise provided below, to the extent that it may deem desirable, the Company, individually, or jointly with any other indemnifying party, may assume the conduct or defense of such action, suit, proceeding, inquiry or investigation; *provided, however* , that if the Company elects to assume the conduct or defense thereof, it will notify Indemnitee of its choice of legal counsel and offer Indemnitee an opportunity to discuss such choice of legal counsel with one of the Company's executive officers. After notice from the Company to Indemnitee of the Company's election to assume the conduct or defense thereof, the Company will not be liable to Indemnitee under this Agreement for any legal fees or expenses of counsel or fees and costs of consultants or experts to Indemnitee subsequently incurred by Indemnitee in connection with the defense thereof, other than reasonable costs of investigation, except as otherwise approved by the Company or as provided below in clauses (A), (B) or (C) of this Section 8(b)(ii). Upon the Company's assumption of the conduct or defense of such action, suit, proceeding, inquiry or investigation as provided herein, Indemnitee shall have the right to employ counsel to represent Indemnitee in such action, suit, proceeding, inquiry or investigation but the fees and expenses of such counsel incurred after the Company's assumption of the conduct or defense thereof shall be at the expense of Indemnitee unless (A) there has been a Change in Control; (B) Indemnitee has reasonably concluded that there is a material conflict of interest between the Company and Indemnitee in the conduct or defense of such action, suit, proceeding, inquiry or investigation, and a Reviewing Party appointed by Indemnitee has concurred in Indemnitee's conclusion; or (C) the Company has not in fact employed counsel in a timely manner to assume the conduct or defense of such action, suit, proceeding, inquiry or investigation, or fails at any time to diligently act in the conduct or defense of such action, suit, proceeding, inquiry or investigation, in each of which cases the Expenses of Indemnitee shall be advanced or reimbursed in accordance with the provisions of this Agreement, provided, however, that in the case of any event or circumstance described in (B) or (C), the Company's obligation to advance or reimburse such Expenses shall be limited to Expenses incurred beginning on the date that the event or circumstance described in (B) or (C) has occurred. The Company shall not settle any action, suit, proceeding, inquiry or investigation in any manner which would impose on Indemnitee any penalty or limitation, financial or otherwise, or which does not result in an unconditional release of Indemnitee from all claims arising in connection with such action, suit, proceeding, inquiry or investigation, unless in any such case Indemnitee gives Indemnitee's written consent.

9. *NONEXCLUSIVITY, ETC* . The rights of Indemnitee hereunder shall be in addition to any other rights Indemnitee may have under the provisions of applicable law, the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or otherwise. To the extent that a change in applicable law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under the provisions of the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. In the event of any change in applicable law (whether by statute or judicial decision) which narrows the right of a corporation to indemnify a member of its board of directors or an officer, employee, agent or fiduciary, such change, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder. To the extent that there is a conflict between the Company's Certificate of Incorporation or any bylaws duly adopted by the Company and the provisions of this Agreement, it is the desire of the parties hereto that such conflict be resolved by affording Indemnitee the broadest indemnification permissible under applicable law, the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or the provisions of this Agreement. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though Indemnitee may have ceased to be an officer or director of the Company or to serve any capacity for which an Indemnifiable Event may occur.

10. *LIABILITY INSURANCE* . To the extent the Company maintains an insurance policy or policies providing directors' and officers' liability insurance, Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any Company director or officer.

11. *PERIOD OF LIMITATIONS* . No legal action shall be brought by the Company, and no cause of action shall be asserted by or in the right of the Company, against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of one year from the date such cause of action arises, and any claim or cause of action by or in the right of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such one-year period; *provided, however* , that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

12. *ATTRIBUTION OF OTHERS' ACTIONS OR CONDUCT* . In connection with determinations respecting Indemnitee's rights to indemnification and Expense Advances pursuant to applicable law, the Company's Certificate of Incorporation or any subsequent charter document, any bylaws duly adopted by the Company or this Agreement, or Indemnitee's rights to any other benefits conferred thereunder or hereunder, the actions or conduct of other persons, including officers of the Company or other members of the Company's Board of Directors, shall not be attributed to Indemnitee absent specific proof that Indemnitee had actual knowledge of such actions or conduct and specifically approved such actions or conduct in writing or at a properly called meeting at which minutes of proceedings were kept and votes of participants recorded.

13. *AMENDMENTS, ETC* . No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

14. *SUBROGATION* . In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all necessary documents and take all necessary action to enable the Company to exercise such rights.

15. *NO DUPLICATION OF PAYMENTS* . The Company shall not be liable under this Agreement to make any payment in connection with any Claim made against Indemnitee to the extent Indemnitee has otherwise actually received payment (under any insurance policy, bylaw or otherwise) of the amounts otherwise indemnifiable hereunder.

16. *BINDING EFFECT, ETC* . This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, spouses, heirs, executors and personal and legal representatives. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as an officer or director of the Company, or as a director, officer, employee, trustee, agent or fiduciary of any other Enterprise at the Company's request.

17. *SEVERABILITY* . The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable in any respect, and the validity and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired and shall remain enforceable to the fullest extent permitted by law.

18. *GOVERNING LAW* . This Agreement shall be governed by and construed and enforced in accordance with the laws applicable to contracts made and to be performed in the jurisdiction in which the Company is then incorporated, without giving effect to the principles of conflicts of laws.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

CROCS, INC.

By: _____

Name:
Title:

INDEMNITEE

_____

[Name]

QuickLinks

Exhibit 10.1

INDEMNIFICATION AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.2

CROCS, INC.
2005 EQUITY INCENTIVE PLAN

Section 1. Purpose; Definitions

The purpose of the Plan is to give the Company a competitive advantage in attracting, retaining and motivating officers, employees, directors and/or consultants and to provide the Company and its Subsidiaries and Affiliates with a stock plan providing incentives directly linked to the profitability of the Company's businesses and increases in Company shareholder value.

For purposes of the Plan, the following terms shall have the respective meanings indicated:

(a) " *Affiliate* " means a corporation or other entity controlled by, controlling or under common control with the Company.

(b) " *Award* " means a Stock Option, Restricted Stock, Performance Unit, or other stock-based award granted pursuant to the terms of the Plan.

(c) " *Award Agreement* " means any written or electronic agreement, contract or other instrument or document evidencing the grant of an Award, which may, but is not required to be, signed by a Participant.

(d) " *Award Cycle* " means a period of consecutive fiscal years or portions thereof designated by the Plan Administrator over which Performance Units are to be earned.

(e) " *Board* " means the Board of Directors of the Company

(f) " *Cause* " means, unless otherwise provided by the Plan Administrator in an Award Agreement, (i) "Cause" as defined in any Individual Agreement to which the Participant is a party, or (ii) if there is no such Individual Agreement or if it does not define Cause: (A) conviction of the Participant for committing a felony under federal law or the law of the state in which such action occurred, (B) fraud or dishonesty against the Company or in the course of fulfilling the Participant's employment duties, (C) willful and deliberate failure on the part of the Participant to perform his or her employment or service-provider duties in any material respect, (D) illegal drug use or alcohol abuse on Company premises or at a Company sponsored event, (E) conduct by the Participant which in the good faith and reasonable determination of the Plan Administrator demonstrates gross unfitness to serve, (F) intentional, material violation by the Participant of any contract between the employee and the Company or of any statutory duty of the Participant to the Company, or (G) prior to a Change in Control, such other events as shall be determined by the Plan Administrator. The Plan Administrator shall, unless otherwise provided in an Individual Agreement with the Participant, have the sole discretion to determine whether "Cause" exists, and its determination shall be final. The foregoing definition shall not in any way preclude or restrict the right of the Company to discharge or dismiss the Participant for any other acts or omissions, but such other acts or omissions shall not be deemed, for purposes of the Plan, to constitute grounds for termination for Cause.

(g) " *Change in Control* " shall have the meaning set forth in Section 9(b).

(h) " *Code* " means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

(i) " *Commission* " means the Securities and Exchange Commission or any successor agency.

(j) " *Common Stock* " means common stock, no par value, of the Company.

(k) " *Company* " means CROCS, INC., a Colorado corporation.

(l) " *Covered Employee* " means a Participant designated prior to the grant of Restricted Stock or Performance Units by the Plan Administrator who is or may be a "covered employee" within

the meaning of Section 162(m)(3) of the Code in the year in such Award is expected to be taxable to such Participant.

(m) " *Disability* " means, unless otherwise provided by the Plan Administrator, (i) "Disability" as defined in any Individual Agreement to which the Participant is a party, or (ii) if there is no such Individual Agreement or it does not define "Disability," (y) if applicable, permanent and total disability as determined under any Long Term Disability Plan maintained by the Company and applicable to the Participant, or otherwise (z) the inability of the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which is expected to result in death or has lasted or can be expected to last for a continuous period of twelve (12) months or more and shall be determined by the Plan Administrator on the basis of such medical evidence as the Plan Administrator deems warranted under the circumstances.

(n) " *Effective Date* " shall have the meaning set forth in Section 14.

(o) " *Eligible Individual* " mean any director, officer, employee and consultant (including advisors) of the Company or any of its Subsidiaries or Affiliates, and prospective employees and consultants who have accepted offers of employment or consultancy from the Company or its Subsidiaries or Affiliates, whom the Plan Administrator determines to be an Eligible Individual.

(p) " *Exchange Act* " means the Securities Exchange Act of 1934, as amended from time to time, and any successor thereto.

(q) " *Fair Market Value* " of a share of Common Stock means, except as otherwise provided by the Plan Administrator, as of any given date, the average of the highest and lowest per-share sales prices for a share of Common Stock during normal business hours on the Nasdaq National Market or the Nasdaq SmallCap Market, as appropriate (or such other national securities market or exchange as may at the time be the principal market for the Common Stock) or, in the absence of such markets, as determined in good faith by the Plan Administrator.

(r) " *Incentive Stock Option* " means any Stock Option designated as, and qualified as, an "incentive stock option" within the meaning of Section 422 of the Code.

(s) " *Individual Agreement* " means an employment, consulting or similar written agreement between a Participant and the Company or one of its Subsidiaries or Affiliates.

(t) " *NonQualified Stock Option* " means any Stock Option that is not an Incentive Stock Option.

(u) " *Option Price* " shall have the meaning set forth in Section 5(d).

(v) " *Outside Director* " means a director who qualifies as an "independent director" within the meaning of Nasdaq Marketplace Rule 4200(a)(15), as an "outside director" within the meaning of Section 162(m) of the Code, and as a "non-employee director" within the meaning of Rule 16b-3 promulgated under the Exchange Act.

(w) " *Participant* " means an Eligible Individual to whom an Award is or has been made in accordance with and pursuant to the Plan or, if applicable, and if permitted in accordance with the terms and provisions of the Plan, such other person who holds outstanding Award.

(x) " *Performance Goals* " means the performance goals established by the Plan Administrator in connection with the grant of an Award. In the case of Qualified Performance-Based Awards, (i) such goals shall be based on the attainment of specified levels of one or more of the following measures with respect to the Company or such subsidiary, division or department of the Company for or within which the Participant performs services: market share; sales; asset quality; non-performing assets; revenue growth; earnings before interest, taxes, depreciation, and

amortization; earnings before interest and taxes; operating income; pre- or after-tax income; earnings per share; cash flow; cash flow per share; return on equity; return on invested capital; return on assets; return on operating assets; economic value added (or an equivalent metric); share price performance; total shareholder return; improvement in or attainment of expense levels or cost savings; or improvement in or attainment of working capital levels and (ii) such Performance Goals shall be set by the Plan Administrator within the time period prescribed by Section 162(m) of the Code and related regulations. Such Performance Goals also may be based upon the attaining of specified levels of Company performance under one or more of the measures described above relative to the performance of other corporations.

(y) " *Permitted Transferee* " means, in the case of a Participant, (i) such Participant's children or family members, whether directly or indirectly or by means of a trust or partnership or otherwise or (ii) any transferee of all or a portion of such Participant's Award pursuant to a qualified domestic relations order as defined in the Code or Title 1 of the Employee Retirement Income Security Act of 1974, as amended. For purposes of this Plan, unless otherwise determined by the Plan Administrator, " *family member* " shall have the meaning given to such term in General Instructions A.1(a)(5) to Form S-8 under the Securities Act, or any successor thereto.

(z) " *Performance Units* " means an Award granted under Section 7.

(aa) " *Plan* " means this CROCS, INC. 2005 Equity Incentive Plan, as set forth herein and as hereinafter amended from time to time.

(bb) " *Plan Administrator* " means the Plan Administrator referred to in Section 2(a).

(cc) " *Qualified Performance-Based Award* " means an Award of Restricted Stock or Performance Units designated as such by the Plan Administrator at the time of grant, based upon a determination that (i) the recipient is or may be a "covered employee" within the meaning of Section 162(m)(3) of the Code in the year in which the Company would expect to be able to claim a tax deduction with respect to such Restricted Stock or Performance Units and (ii) the Plan Administrator wishes such Award to qualify for the Section 162 (m) Exemption.

(dd) " *Restricted Stock* " means an Award granted under Section 6.

(ee) " *Retirement* " means retirement from active employment with the Company, a Subsidiary or Affiliate at or after age 65.

(ff) " *Rule 16b-3* " means Rule 16b-3, as promulgated by the Commission under Section 16(b) of the Exchange Act, as amended from time to time.

(gg) " *Section 162(m) Exemption* " means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code.

(hh) " *Securities Act* " means the Securities Act of 1933, as amended.

(ii) " *Stock Option* " means an Award granted under Section 5.

(jj) " *Subsidiary* " means any corporation, partnership, joint venture or other entity during any period in which at least a 50% voting or profits interest is owned, directly or indirectly, by the Company or any successor to the Company.

(kk) " *Termination of Employment* " means the termination of the Participant's employment with, or performance of services for, the Company and any of its Subsidiaries or Affiliates. A change in the capacity in which the Participant renders services to the Company or a Subsidiary or Affiliate as a director, officer, employee or consultant or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or a Subsidiary or Affiliate, shall not constitute a

Termination of Employment. For example, a change in status from an employee of the Company to a consultant to a Subsidiary or Affiliate shall not constitute a Termination of Employment. A Participant employed by, or performing services for, a Subsidiary or an Affiliate shall be deemed to incur a Termination of Employment if the Subsidiary or Affiliate ceases to be such a Subsidiary or an Affiliate, as the case may be, and the Participant does not immediately thereafter become an employee of, or service-provider for, the Company or another Subsidiary or Affiliate. The Plan Administrator or the chief executive officer of the Company, in that party's sole discretion, may determine whether a Termination of Employment shall be considered to have occurred (and whether vesting in any outstanding Awards shall continue or be suspended) in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave.

Section 2. Administration

(a) The Plan shall be administered by (i) the Board or (ii) one or more committees of the Board to whom the Board has delegated all or part of its authority under the Plan (the " *Plan Administrator* "). If administration is delegated to a committee, the committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the committee is authorized to exercise (and references in the Plan to the Plan Administrator shall thereafter be to the subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish any committee at any time and revest in the Board the administration of the Plan. Any committee under clause (ii) hereof which makes grants to "officers" of the Company (as that term is defined in Rule 16a-1(f) promulgated under the Exchange Act) or which makes Awards that are intended to be Qualified Performance-Based Awards shall be composed solely of two or more Outside Directors. For purposes of the preceding provisions, if one or more members of the committee is not an Outside Director, but recuses himself or herself or abstains from voting with respect to a particular action taken by the committee, then the committee, with respect to the action, will be deemed to consist only of the members of the committee who have not recused themselves or abstained from voting.

(b) The Plan Administrator shall have plenary authority to grant Awards pursuant to the terms of the Plan to Participants.

(c) Among other things, the Plan Administrator shall have the authority, subject to the terms of the Plan:

(i) To select the Participants to whom Awards may from time to time be granted;

(ii) To determine whether and to what extent any type of Award is to be granted hereunder;

(iii) To determine the number of shares of Common Stock to be covered by each Award granted hereunder;

(iv) To determine the terms and conditions of any Award granted hereunder (including, but not limited to, the Option Price (subject to Section 5(a)), any vesting condition, restriction or limitation (which may be related to the performance of the Participant, the Company or any Subsidiary or Affiliate) and any vesting acceleration or forfeiture waiver regarding any Award and the shares of Common Stock relating thereto, based on such factors as the Plan Administrator shall determine);

(v) Subject to the terms of the Plan, including without limitation Section 11, to modify, amend or adjust the terms and conditions of any Award, at any time or from time to time, including but not limited to Performance Goals; provided, however, that the Plan Administrator may not adjust upwards the amount payable to a Covered Employee with respect to a Qualified

Performance-Based Award or waive or alter the Performance Goals associated therewith in a manner that would violate Section 162(m) of the Code;

(vi) To determine to what extent and under what circumstances Common Stock and other amounts payable with respect to an Award shall be deferred;

(vii) To effect, at any time and from time to time, with the consent of any adversely affected Participant, (1) the reduction of the exercise price of any outstanding Award under the Plan, (2) the cancellation of any outstanding Award under the Plan and the grant in substitution therefor of (A) a new Award under the Plan with a lower Option Price covering the same or a different number of shares of Common Stock, (B) the right to acquire restricted stock, and/or (C) cash, or (3) any other action that is treated as a " *repricing* " under generally accepted accounting principles; and

(viii) To determine under what circumstances an Award may be settled in cash or Common Stock under Section 5(l) and Section 7 (b)(iii).

(d) The Plan Administrator shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall from time to time deem advisable, to interpret the terms and provisions of the Plan and any Award issued under the Plan (and any agreement relating thereto) and to otherwise supervise the administration of the Plan. The Plan Administrator, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(e) The Plan Administrator may act only by a majority of its members then in office. Except to the extent prohibited by applicable law or the applicable rules of a stock exchange on which the Company's shares are traded, the Plan Administrator may (i) allocate all or any portion of its responsibilities and powers to any one or more of its members and (ii) delegate all or any part of its responsibilities and powers to any person or persons selected by it, provided that no such delegation may be made that would cause Awards or other transactions under the Plan to cease to be exempt from Section 16(b) of the Exchange Act or cause an Award designated as a Qualified Performance-Based Award not to qualify for, or to cease to qualify for, the Section 162(m) Exemption. Any such allocation or delegation may be revoked by the Plan Administrator at any time.

(f) Any determination made by the Plan Administrator with respect to any Award shall be made in the sole discretion of the Plan Administrator at the time of the grant of the Award or, unless in contravention of any express term of the Plan, at any time thereafter. All decisions made by the Plan Administrator or any appropriately delegated officer pursuant to the provisions of the Plan shall be final and binding on all persons, including the Company, its Affiliates, Subsidiaries, shareholders and Participants.

(g) Any authority granted to the Plan Administrator may also be exercised by the full Board, except to the extent that the grant or exercise of such authority would cause any Award or transaction to become subject to (or lose an exemption under) the short-swing profit recovery provisions of Section 16 of the Exchange Act or cause an Award designated as a Qualified Performance-Based Award not to qualify for, or to cease to qualify for, the Section 162(m) Exemption. To the extent that any permitted action taken by the Board conflicts with action taken by the Plan Administrator, the Board action shall control.

(h) To the maximum extent permitted by law, the Company shall indemnify each member of the Board who acts as a member of the Plan Administrator, as well as any other employee of the Company with duties under the Plan, against expenses and liabilities (including any amount paid in settlement) reasonably incurred by the individual in connection with any claims against the individual by reason of the performance of the individual's duties under the Plan, unless the losses are due to the individual's

gross negligence or lack of good faith. The Company will have the right to select counsel and to control the prosecution or defense of the suit. In the event that more than one person who is entitled to indemnification is subject to the same claim, all such persons shall be represented by a single counsel, unless such counsel advises the Company in writing that he or she cannot represent all such persons under applicable rules of professional responsibility. The Company will not be required to indemnify any person for any amount incurred through any settlement unless the Company consents in writing to the settlement.

Section 3. Common Stock Subject to Plan

(a) The maximum number of shares of Common Stock that may be delivered to Participants and their beneficiaries under the Plan shall be 25,000. Shares subject to an Award under the Plan may be authorized and unissued shares or may be treasury shares. The maximum number of shares of Common Stock that may be issued pursuant to Stock Options intended to be Incentive Stock Options shall be 25,000 shares.

(b) For purposes of this Section 3, if an Award entitles the holder thereof to receive or purchase shares, the number of shares of Common Stock covered by such Award or to which such Award relates shall be counted on the date of grant of such Award against the aggregate number of shares available for granting Awards under the Plan. If any Award is forfeited, or if any Stock Option terminates, expires or lapses without being exercised, shares of Common Stock subject to such Awards shall again be available for distribution in connection with Awards under the Plan. If the Option Price of any Stock Option is satisfied by delivering shares of Common Stock to the Company (by either actual delivery or by attestation), only the number of shares of Common Stock delivered to the Participant net of the shares of Common Stock delivered to the Company or attested to shall be deemed delivered for purposes of determining the maximum numbers of shares of Common Stock available for delivery under the Plan. To the extent any shares of Common Stock subject to an Award are not delivered to a Participant because such shares are used to satisfy an applicable tax-withholding obligation, such shares shall not be deemed to have been delivered for purposes of determining the maximum number of shares of Common Stock available for delivery under the Plan. If any shares of Common Stock issued to a Participant pursuant to an Award are forfeited back to or repurchased by the Company because of or in connection with the failure to meet a contingency or condition required to vest such shares in the Participant, the shares of Common Stock forfeited or repurchased under such Award shall revert to and again become available for issuance under the Plan.

(c) In the event of any change in corporate capitalization (including, but not limited to, a change in the number of shares of Common Stock outstanding), such as a stock split or a corporate transaction, such as any merger, consolidation, separation, including a spin-off, or other distribution of stock or property of the Company (including any extraordinary cash or stock dividend), any reorganization (whether or not such reorganization comes within the definition of such term in Section 368 of the Code) or any partial or complete liquidation of the Company, the Plan Administrator or Board may make such substitution or adjustments in the aggregate number and kind of shares reserved for issuance under the Plan, and the maximum limitation upon Stock Options and other Awards to be granted to any Participant, in the number, kind and Option Price of shares subject to outstanding Stock Options, in the number and kind of shares subject to other outstanding Awards granted under the Plan and/or such other equitable substitution or adjustments as it may determine to be appropriate in its sole discretion (including, without limitation, an amount in cash therefor); provided, however, that the number of shares subject to any Award shall always be a whole number.

(d) No fractional shares may be issued under the Plan. Cash shall be paid in lieu of any fractional share in settlement of an Award.

Section 4. Eligibility

Awards may be granted under the Plan to Eligible Individuals; provided, however, that a consultant shall not be eligible for the grant of an Award of a Stock Option or Restricted Stock if, at the time of grant, a Form S-8 Registration Statement under the Securities Act (" *Form S-8* ") is not available to register either the offer or the sale of the Company's securities to such consultant because of the nature of the services that the consultant is providing to the Company, because the consultant is not a natural person, or because of any other rule governing the use of Form S-8, unless the Plan Administrator determines both (i) that such grant (A) shall be registered in another manner under the Securities Act (*e.g* ., on a Form S-3 Registration Statement) or (B) does not require registration under the Securities Act in order to comply with the requirements of the Securities Act, if applicable, and (ii) that such grant complies with the securities laws of all other relevant jurisdictions.

Section 5. Stock Options

(a) Stock Options may be granted alone or in addition to other Awards granted under the Plan and may be of two types: Incentive Stock Options and NonQualified Stock Options. Any Stock Option granted under the Plan shall be in such form as the Plan Administrator may from time to time approve.

(b) The Plan Administrator shall have the authority to grant any Participant Incentive Stock Options, NonQualified Stock Options or both types of Stock Options; provided, however, that grants hereunder are subject to the limits on grants set forth in Section 3. To the extent that any Stock Option is not designated as an Incentive Stock Option or even if so designated does not qualify as an Incentive Stock Option on or subsequent to its grant date, it shall constitute a NonQualified Stock Option.

(c) Stock Options shall be evidenced by Award Agreements, the terms and provisions of which may differ. An Award Agreement shall indicate on its face whether it is intended to be an agreement for an Incentive Stock Option or a NonQualified Stock Option. The grant of a Stock Option shall occur on the date the Plan Administrator by resolution selects a Participant to receive a grant of a Stock Option, determines the number of shares of Common Stock to be subject to such Stock Option to be granted to such Participant and specifies the terms and provisions of the Stock Option. The Company shall notify a Participant of any grant of a Stock Option, and such Award shall be confirmed by, and subject to the terms of, an Award Agreement.

(d) Stock Options granted under the Plan shall be subject to the following terms and conditions and shall contain such additional terms and conditions as the Plan Administrator shall deem desirable:

(i) *Option Price* . The Plan Administrator shall determine the option price per share of Common Stock purchasable under a Stock Option (the "Option Price"). The Option Price per share of Common Stock subject to a Stock Option shall not be less than the Fair Market Value of the Common Stock subject to such Stock Option on the date of grant.

(ii) *Option Term* . The term of each Stock Option shall be fixed by the Plan Administrator, but no Incentive Stock Option shall be exercisable more than 10 years after the date the Stock Option is granted.

(iii) *Exercisability* . Except as otherwise provided herein, Stock Options shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Plan Administrator. If the Plan Administrator provides that any Stock Option is subject to vesting conditions, restrictions or limitations and therefore exercisable only in installments, the Plan Administrator may at any time waive such installment exercise provisions, in whole or in part, based on such factors as the Plan Administrator may determine. An Award Agreement may, but need not, include a provision whereby the Participant may elect at any time before the Participant's Termination of Employment to exercise the Stock Option as to any part or all of the

shares of Common Stock subject to the Stock Option prior to the full vesting of the Stock Option. Any unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Plan Administrator determines to be appropriate. The Company will not exercise its repurchase option until at least six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes) have elapsed following exercise of the Stock Option unless the Plan Administrator otherwise specifically provides in the Stock Option.

(iv) *Method of Exercise* . Subject to the provisions of this Section 5, Stock Options may be exercised, in whole or in part, at any time during the option term by giving written notice of exercise to the Company specifying the number of shares of Common Stock subject to the Stock Option to be purchased. Such notice shall be accompanied by payment in full of the Option Price by certified or bank check or such other instrument as the Company may accept. If approved by the Plan Administrator, payment, in full or in part, may also be made in the form of unrestricted Common Stock (by delivery of such shares or by attestation) already owned by the Participant of the same class as the Common Stock subject to the Stock Option (based on the Fair Market Value of the Common Stock on the date the Stock Option is exercised); provided, that such already owned shares have been held by the Participant for at least six months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes) at the time of exercise or had been purchased on the open market; and provided, further, that, in the case of an Incentive Stock Option, the right to make a payment in the form of already owned shares of Common Stock of the same class as the Common Stock subject to the Stock Option may be authorized only at the time the Stock Option is granted. If approved by the Plan Administrator, to the extent permitted by applicable law, payment in full or in part may also be made by delivering a properly executed exercise notice to the Company, together with a copy of irrevocable instructions to a broker to deliver promptly to the Company the amount of sale or loan proceeds necessary to pay the Option Price, and, if requested, the amount of any federal, state, local or foreign withholding taxes. To facilitate the foregoing, the Company may enter into agreements for coordinated procedures with one or more brokerage firms. No shares of Common Stock shall be delivered until full payment therefor has been made. Except as otherwise provided in this Section 5 below, a Participant shall have all of the rights of a shareholder of the Company holding the class or series of Common Stock that is subject to such Stock Option (including, if applicable, the right to vote the shares and the right to receive dividends), when the Participant has given written notice of exercise, has paid in full for such shares and, if requested by the Company, has given the representation described in Section 12(f).

(v) *Special Rules Applicable to Incentive Stock Options* . Notwithstanding the foregoing, the following terms shall be applicable to all Incentive Stock Options.

(A) Incentive Stock Options may only be granted to employees of the Company and its subsidiaries or parent corporation (within the meaning of Section 424(f) of the Code).

(B) The aggregate Fair Market Value of the shares of Common Stock (determined as of the respective date or dates of grant) for which one or more options granted to any employee under the Plan (or any other option plan of the Company or any subsidiaries or parent corporation) may for the first time become exercisable as Incentive Stock Options during any one (1) calendar year shall not exceed the sum of One Hundred Thousand Dollars ($100,000). To the extent an employee holds two (2) or more such options which become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as Incentive Stock Options shall be applied on the basis of the order in which such options are granted. Any Stock Options or portions thereof that exceed such limit shall be treated as NonQualified Stock Options, notwithstanding any other provision of an Award Agreement, but only to the extent of such excess.

(C) If any employee to whom an Incentive Stock Option is granted is the owner of stock (as determined under Code Section 424(d)) possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company (or any subsidiary or parent corporation (within the meaning of Section 424(f) of the Code)), then the option term shall not exceed five (5) years measured from the option grant date and the Option Price shall not be less than one hundred ten percent (110%) of the Fair Market Value of Common Stock on the option grant date.

(D) If an Incentive Stock Option is exercised after the post-termination exercise periods that apply for purposes of Section 422 of the Code, such Stock Option will thereafter be treated as a NonQualified Stock Option.

(e) *Nontransferability of Stock Options* . No Stock Option shall be transferable by the Participant other than (i) by will or by the laws of descent and distribution or any other testamentary distribution; or (ii) in the case of a NonQualified Stock Option, unless otherwise determined by the Plan Administrator, to a Permitted Transferee. All Stock Options shall be exercisable, subject to the terms of this Plan, only by the Participant, the guardian or legal representative of the Participant, or any person to whom such option is transferred pursuant to this paragraph, it being understood that the term "holder" and "Participant" include such guardian, legal representative and other transferee; provided, however, that Termination of Employment shall continue to refer to the Termination of Employment of the original Participant and provided further that any Award held by transferee shall continue to be subject to the same terms and conditions that were applicable to that Award immediately before the transfer to the transferee. Notwithstanding the foregoing, a Participant may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of death of the Participant, shall thereafter be entitled to exercise the Participant's Stock Options.

(f) *Termination by Death* . Unless otherwise determined by the Plan Administrator at the time of grant, if a Participant incurs a Termination of Employment by reason of death, any Stock Option held by such Participant may thereafter be exercised, to the extent then exercisable, or on such accelerated basis as the Plan Administrator may determine, until the expiration of the stated term of such Stock Option.

(g) *Termination by Reason of Disability* . Unless otherwise determined by the Plan Administrator at the time of grant or, if a longer period of exercise is desired, thereafter, if a Participant incurs a Termination of Employment by reason of Disability, any Stock Option held by such Participant (or the appointed fiduciary of such Participant) may thereafter be exercised by the Participant (or the appointed fiduciary of such Participant), to the extent it was exercisable at the time of termination, or on such accelerated basis as the Plan Administrator may determine, for a period of one year from the date of such Termination of Employment or until the expiration of the stated term of such Stock Option, whichever period is shorter; provided, however, that if the Participant dies within such period, any unexercised Stock Option held by such Participant shall, notwithstanding the expiration of such period, continue to be exercisable to the extent to which it was exercisable at the time of death until the expiration of the stated term of such Stock Option.

(h) *Termination by Reason of Retirement* . Unless otherwise determined by the Plan Administrator at the time of grant or, if a longer period of exercise is desired, thereafter, if a Participant incurs a Termination of Employment by reason of Retirement, any Stock Option held by such Participant may thereafter be exercised by the Participant, to the extent it was exercisable at the time of such Retirement, or on such accelerated basis as the Plan Administrator may determine, for a period of one year from the date of such Termination of Employment or until the expiration of the stated term of such Stock Option, whichever period is shorter; provided, however, that if the Participant dies within such period any unexercised Stock Option held by such Participant shall, notwithstanding the expiration

of such period, continue to be exercisable to the extent to which it was exercisable at the time of death for until the expiration of the stated term of such Stock Option.

(i) *Other Termination* . Unless otherwise determined by the Plan Administrator at the time of grant or, if a longer period of exercise is desired, thereafter: (A) if a Participant incurs a Termination of Employment for Cause, all Stock Options held by such Participant shall thereupon terminate; and (B) if a Participant incurs a Termination of Employment for any reason other than death, Disability, Retirement or for Cause, any Stock Option held by such Participant, to extent it was then exercisable at the time of termination, or on such accelerated basis as the Plan Administrator may determine, may be exercised for a period of three months from the date of such Termination of Employment or until the expiration of the stated term of such Stock Option, whichever period is shorter; provided, however, that if the Participant dies within such three-month period, any unexercised Stock Option held by such Participant shall, notwithstanding the expiration of such three-month period, continue to be exercisable to the extent to which it was exercisable at the time of death until the expiration of the stated term of such Stock Option.

(j) *Extension of Termination Date* . An Award Agreement may also provide that if the exercise of any Stock Option following the termination of the Participant's Termination of Employment (other than upon the Participant's death) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Stock Option held by such Participant may be exercised, in lieu of the periods specified in Section 5(f) through 5(i), during the three (3) month period after the Participant's Termination of Employment in which the exercise of the Stock Option would not be in violation of such registration requirements or until the expiration of the stated term of such Stock Option, whichever period is shorter.

(k) *Change of Control Termination* . A Stock Option held by any Participant whose has not suffered a Termination of Employment prior to the effective time of a Change in Control may be subject to additional acceleration of vesting and exercisability upon or after such event as may be provided in the Award Agreement for such Stock Option or as may be provided in any other written agreement between the Company or any Subsidiary or Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

(l) *Cashing Out of Stock Option* . On receipt of written notice of exercise, the Plan Administrator may elect to cash out all or part of the portion of the shares of Common Stock for which a Stock Option is being exercised by paying the Participant an amount, in cash or Common Stock, equal to the excess of the Fair Market Value of the Common Stock over the Option Price times the number of shares of Common Stock for which the Option is being exercised on the effective date of such cash-out.

Section 6. Restricted Stock

(a) *Administration* . Shares of Restricted Stock may be awarded either alone or in addition to other Awards granted under the Plan. The Plan Administrator shall determine the Participants to whom and the time or times at which grants of Restricted Stock will be awarded, the number of shares to be awarded to any Participant, the conditions for vesting, the time or times within which such Awards may be subject to forfeiture and any other terms and conditions of the Awards, in addition to those contained in Section 6(c).

(b) *Awards and Certificates* . Shares of Restricted Stock shall be evidenced in such manner as the Plan Administrator may deem appropriate, including book-entry registration or issuance of one or more stock certificates. Any certificate issued in respect of shares of Restricted Stock shall be registered in

the name of such Participant and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award, substantially in the following form:

"The transferability of this certificate and the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of CROCS, INC. 2005 Equity Incentive Plan and an Award Agreement. Copies of such Plan and Agreement are on file at the offices of CROCS, INC."

The Plan Administrator may require that the certificates evidencing such shares be held in custody by the Company until the restrictions thereon shall have lapsed and that, as a condition of any Award of Restricted Stock, the Participant shall have delivered a stock power, endorsed in blank, relating to the Common Stock covered by such Award.

(c) *Terms and Conditions* . Shares of Restricted Stock shall be subject to the following terms and conditions:

(i) The Plan Administrator may, prior to or at the time of grant, designate an Award of Restricted Stock as a Qualified Performance-Based Award, in which event it shall condition the grant or vesting, as applicable, of such Restricted Stock upon the attainment of Performance Goals. If the Plan Administrator does not designate an Award of Restricted Stock as a Qualified Performance-Based Award, it may also condition the grant or vesting thereof upon the attainment of Performance Goals. Regardless of whether an Award of Restricted Stock is a Qualified Performance-Based Award, the Plan Administrator may also condition the grant or vesting thereof upon the continued service of the Participant. The conditions for grant or vesting and the other provisions of Restricted Stock Awards (including without limitation any applicable Performance Goals) need not be the same with respect to each recipient. The Plan Administrator may at any time, in its sole discretion, accelerate or waive, in whole or in part, any of the foregoing restrictions; provided, however, that in the case of Restricted Stock that is a Qualified Performance-Based Award, the applicable Performance Goals have been satisfied.

(ii) Subject to the provisions of the Plan and the Award Agreement referred to in Section 6(c)(vi), during the period, if any, set by the Plan Administrator, commencing with the date of such Award for which such Participant's continued service is required (the " *Restriction Period* "), and until the later of (A) the expiration of the Restriction Period and (B) the date the applicable Performance Goals (if any) are satisfied, the Participant shall not be permitted to sell, assign, transfer, pledge or otherwise encumber shares of Restricted Stock; provided that, to the extent permitted by applicable law, the foregoing shall not prevent a Participant from pledging Restricted Stock as security for a loan, the sole purpose of which is to provide funds to pay the Option Price for Stock Options.

(iii) Except as provided in this paragraph (iii) and Section 6(c)(i) and 7(c)(ii) and the Award Agreement, the Participant shall have, with respect to the shares of Restricted Stock, all of the rights of a shareholder of the Company holding the class or series of Common Stock that is the subject of the Restricted Stock, including, if applicable, the right to vote the shares and the right to receive any cash dividends. If so determined by the Plan Administrator in the applicable Award Agreement and subject to Section 15(h) of the Plan, (A) cash dividends on the class or series of Common Stock that is the subject of the Restricted Stock Award shall be automatically deferred and reinvested in additional Restricted Stock, held subject to the vesting of the underlying Restricted Stock, or held subject to meeting Performance Goals, and (B) dividends payable in Common Stock shall be paid in the form of Restricted Stock of the same class as the Common Stock with which such dividend was paid, held subject to the vesting of the underlying Restricted Stock, or held subject to meeting Performance Goals.

(iv) Except to the extent otherwise provided in the applicable Award Agreement or Section 6(c)(i), 7(c)(ii), 7(c)(v) or 11(a), upon a Participant's Termination of Employment for any reason during the Restriction Period or before the applicable Performance Goals are satisfied, all shares still subject to restriction shall be forfeited by the Participant; provided, however, that the Plan Administrator shall have the discretion to waive, in whole or in part, any or all remaining restrictions (other than, in the case of Restricted Stock with respect to which a Participant is a Covered Employee, satisfaction of the applicable Performance Goals unless the Participant's employment is terminated by reason of death or Disability by the Company without Cause) with respect to any or all of such Participant's shares of Restricted Stock.

(v) If and when any applicable Performance Goals are satisfied and the Restriction Period expires without a prior forfeiture of the Restricted Stock, unlegended certificates for such shares shall be delivered to the Participant upon surrender of the legended certificates.

(vi) Each Award shall be confirmed by, and be subject to, the terms of an Award Agreement.

Section 7. Performance Units

(a) *Administration* . Performance Units may be awarded either alone or in addition to other Awards granted under the Plan. The Plan Administrator shall determine the Participants to whom and the time or times at which Performance Units shall be awarded, the number of Performance Units to be awarded to any Participant), the duration of the Award Cycle and any other terms and conditions of the Award, in addition to those contained in Section 7(b).

(b) *Terms and Conditions* . Performance Units Awards shall be subject to the following terms and conditions:

(i) The Plan Administrator may, prior to or at the time of the grant, designate Performance Units as Qualified Performance-Based Awards, in which event it shall condition the settlement thereof upon the attainment of Performance Goals. If the Plan Administrator does not designate Performance Units as Qualified Performance-Based Awards, it may also condition the settlement thereof upon the attainment of Performance Goals. Regardless of whether Performance Units are Qualified Performance-Based Awards, the Plan Administrator may also condition the settlement thereof upon the continued service of the Participant. The provisions of such Awards (including without limitation any applicable Performance Goals) need not be the same with respect to each recipient. Subject to the provisions of the Plan and the Award Agreement referred to in Section 7(b)(iv), Performance Units may not be sold, assigned, transferred, pledged or otherwise encumbered during the Award Cycle. No more than 25,000 shares of Common Stock may be subject to Qualified Performance Based Awards granted to any Eligible Individual in any fiscal year of the Company.

(ii) Except to the extent otherwise provided in the applicable Award Agreement or Section 7(b)(ii) or Section 9(a), upon a Participant's Termination of Employment for any reason during the Award Cycle or before any applicable Performance Goals are satisfied, all rights to receive cash or stock in settlement of the Performance Units shall be forfeited by the Participant; provided, however, that the Plan Administrator shall have the discretion to waive, in whole or in part, any or all remaining payment limitations (other than, in the case of Performance Units that are Qualified Performance-Based Awards, satisfaction of the applicable Performance Goals unless the Participant's employment is terminated by reason of death or Disability by the Company without Cause) with respect to any or all of such Participant's Performance Units.

(iii) At the expiration of the Award Cycle, the Plan Administrator shall evaluate the Company's performance in light of any Performance Goals for such Award, and shall determine the number of Performance Units granted to the Participant which have been earned, and the Plan

Administrator shall then cause to be delivered (A) a number of shares of Common Stock equal to the number of Performance Units determined by the Plan Administrator to have been earned, or (B) cash equal to the Fair Market Value of such number of shares of Common Stock to the Participant, as the Plan Administrator shall elect.

(iv) Each Award shall be confirmed by, and be subject to, the terms of an Award Agreement.

Section 8. Other Stock-Based Awards

Other Awards of Common Stock and other Awards that are valued in whole or in part by reference to, or are otherwise based upon, Common Stock, including (without limitation) dividend equivalents and convertible debentures, may be granted either alone or in conjunction with other Awards granted under the Plan.

Section 9. Change in Control Provisions

(a) *Impact of Event* . Notwithstanding any other provision of the Plan to the contrary, unless otherwise provided by the Plan Administrator in any Award Agreement, in the event of a Change in Control:

(i) Any Stock Options outstanding as of the date of such Change in Control, and which are not then exercisable and vested, shall become fully exercisable and vested.

(ii) The restrictions applicable to any Restricted Stock shall lapse, and such Restricted Stock shall become free of all restrictions and become fully vested.

(iii) All Performance Awards shall be considered to be earned and payable in full, and any restriction shall lapse and such Performance Awards shall be settled in cash or Shares, as determined by the Plan Administrator, as promptly as is practicable.

(iv) All restrictions on other Awards shall lapse and such Awards shall become free of all restrictions and become fully vested.

(b) *Definition of Change in Control* . For purposes of the Plan, a " *Change in Control* " shall mean the happening of any of the following events:

(i) An acquisition by any individual, entity or "group" (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a " *Person* ") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 33 $^{1}/_{3}$ % or more of either (1) the then outstanding shares of common stock of the Company (the " *Outstanding Company Common Stock* ") or (2) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the " *Outstanding Company Voting Securities* "); excluding, however, the following: (1) any acquisition directly from the Company, other than an acquisition by virtue of the exercise of a conversion privilege unless the security being so converted was itself acquired directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any entity controlled by the Company, (4) any acquisition pursuant to a transaction which complies with clauses (1), (2) and (3) of subsection (iii) of this Section 9(b), or (5) any Change in Control triggered solely because the percentage of Outstanding Company Common Stock or Outstanding Company Voting Securities held by any Person (the " *Subject Person* ") exceeds the designated percentage threshold thereof as a result of a repurchase or other acquisition of securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of securities by the Company, and after such share acquisition, the Subject Person becomes the owner of any additional voting securities that, assuming the repurchase or other

acquisition had not occurred, increases the percentage of the then outstanding voting securities owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur; or

(ii) A change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (such Board shall be hereinafter referred to as the " *Incumbent Board* ") cease for any reason to constitute at least a majority of the Board; provided, however, for purposes of this Section 9(b)(ii), that any individual who becomes a member of the Board subsequent to the Effective Date, whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; but, provided, further, that any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board shall not be so considered as a member of the Incumbent Board; or

(iii) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (" *Corporate Transaction* "); excluding, however, such a Corporate Transaction pursuant to which (1) all or substantially all of the individuals and entities who are the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Corporate Transaction will beneficially own, directly or indirectly, more than 50% of, respectively, the outstanding shares of common stock, and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Corporate Transaction (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (2) no Person (other than the Company, any employee benefit plan (or related trust) of the Company or such corporation resulting from such Corporate Transaction) will beneficially own, directly or indirectly, $33\ ^{1}/_{3}\%$ or more of, respectively, the outstanding shares of common stock of the corporation resulting from such Corporate Transaction or the combined voting power of the outstanding voting securities of such corporation entitled to vote generally in the election of directors except to the extent that such ownership existed prior to the Corporate Transaction, and (3) individuals who were members of the Incumbent Board will constitute at least a majority of the members of the board of directors of the corporation resulting from such Corporate Transaction; or

(iv) The approval by the shareholders of the Company of a complete liquidation or dissolution of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur.

The term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

Notwithstanding the foregoing or any other provision of the Plan, the definition of Change in Control (or any analogous term) in an Award Agreement between the Company or any Subsidiary and the Participant shall supersede the foregoing definition with respect to Awards subject to such agreement (it being understood, however, that if no definition of Change in Control or any analogous term is set forth in such an Award Agreement, the foregoing definition shall apply).

Section 10. Forfeiture of Awards

Notwithstanding anything in the Plan to the contrary, the Plan Administrator shall have the authority under the Plan to provide in any Award Agreement that in the event of serious misconduct by a Participant (including, without limitation, any misconduct prejudicial to or in conflict with the Company or its Subsidiaries or Affiliates, or any Termination of Employment for Cause), or any activity of a Participant in competition with the business of the Company or any Subsidiary or Affiliate, any outstanding Award granted to such Participant shall be cancelled, in whole or in part, whether or not vested or deferred. The determination of whether a Participant has engaged in a serious breach of conduct or any activity in competition with the business of the Company or any Subsidiary or Affiliate shall be determined by the Plan Administrator in good faith and in its sole discretion.

Section 11. Term, Amendment and Termination

The Plan will terminate on the tenth anniversary of the Effective Date. Under the Plan, Awards outstanding as of such date shall not be affected or impaired by the termination of the Plan.

The Board may amend, alter, or discontinue the Plan, but no amendment, alteration or discontinuation shall be made which would impair the rights of a Participant under a Stock Option, Restricted Stock Award, Performance Unit Award or other Award theretofore granted without the Participant's or recipient's consent, except such an amendment made to comply with applicable law, stock exchange rules or accounting rules. In addition, no such amendment shall be made without the approval of the Company's shareholders to the extent such approval is required by applicable law or stock exchange rules.

The Plan Administrator may amend the terms of any Stock Option or other Award theretofore granted, prospectively or retroactively, but no such amendment shall cause a Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption or impair the rights of any holder without the holder's consent except such an amendment made to cause the Plan or Award to comply with applicable law, stock exchange rules or accounting rules.

Subject to the above provisions, the Board shall have authority to amend the Plan to take into account changes in law and tax and accounting rules as well as other developments, and to grant Awards which qualify for beneficial treatment under such rules without shareholder approval.

Section 12. Unfunded Status of Plan

It is presently intended that the Plan constitute an "unfunded" plan for incentive and deferred compensation. The Plan Administrator may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Common Stock or make payments; provided, however, that unless the Plan Administrator otherwise determines, the existence of such trusts or other arrangements is consistent with the "unfunded" status of the Plan.

Section 13. General Provisions

(a) *Availability of Shares* . During the terms of any Awards under the Plan, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Awards.

(b) *Securities Law Compliance* . The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Awards and to issue and sell shares of Common Stock upon exercise of the Awards; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Award or any Common Stock issued or issuable pursuant to any such Award. Notwithstanding any other provision of the Plan or agreements made pursuant thereto, the Company shall not be required

to issue or deliver any certificate or certificates for shares of Common Stock under the Plan prior to fulfillment of all of the following conditions:

(i) Listing or approval for listing upon notice of issuance, of such shares on NASDAQ, or such other securities exchange as may at the time be the principal market for the Common Stock;

(ii) Any registration or other qualification of such shares of the Company under any state or federal law or regulation, or the maintaining in effect of any such registration or other qualification which the Plan Administrator shall, in its absolute discretion upon the advice of counsel, deem necessary or advisable; and

(iii) Obtaining any other consent, approval, or permit from any state or federal governmental agency which the Plan Administrator shall, in its absolute discretion after receiving the advice of counsel, determine to be necessary or advisable.

(c) *Investment Assurances* . The Company may require a Participant, as a condition of acquiring Common Stock under any Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (1) the issuance of the shares of Common Stock upon the exercise or acquisition of Common Stock under the Award has been registered under a then currently effective registration statement under the Securities Act or (2) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(d) *Section 16 Compliance; Section 162(m) Administration* . The Plan is intended to comply in all respects with Rule 16b-3 or any successor provision, as in effect from time to time, and in all events the Plan shall be construed in accordance with the requirements of Rule 16b-3. If any Plan provision does not comply with Rule 16b-3 as hereafter amended or interpreted, the provision shall be deemed inoperative. The Board, in its absolute discretion, may bifurcate the Plan so as to restrict, limit or condition the use of any provision of the Plan with respect to persons who are officers or directors subject to Section 16 of the Exchange Act without so restricting, limiting or conditioning the Plan with respect to other Eligible Individuals. The Company intends that all Stock Options granted under the Plan to individuals who are or who the Plan Administrator believes will be Covered Employees will constitute "qualified performance-based compensation" within the meaning of Section 162(m) of the Code.

(e) *No Limit of Other Arrangements* . Nothing contained in the Plan shall prevent the Company or any Subsidiary or Affiliate from adopting other or additional compensation arrangements for its employees.

(f) *No Contract of Employment* . The Plan shall not constitute a contract of employment, and adoption of the Plan shall not confer upon any employee any right to continued employment, nor shall it interfere in any way with the right of the Company or any Subsidiary or Affiliate to terminate the employment of any employee at any time.

(g) *Tax Withholding* . No later than the date as of which an amount first becomes includible in the gross income of the Participant for federal income tax purposes with respect to any Award under the Plan, the Participant shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any federal, state, local or foreign taxes of any kind required by law to be withheld with respect to such amount. Unless otherwise determined by the Company, withholding obligations may be settled with Common Stock, including Common Stock that is part of the Award that gives rise to the withholding requirement; provided, that not more than the legally required minimum withholding may be settled with Common Stock. The obligations of the Company under the Plan shall be conditional on such payment or arrangements, and the Company and its Affiliates shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Participant. The Plan Administrator may establish such procedures as it deems appropriate, including making irrevocable elections, for the settlement of withholding obligations with Common Stock.

(h) *Dividends* . Reinvestment of dividends in additional Restricted Stock at the time of any dividend payment shall only be permissible if sufficient shares of Common Stock are available under Section 3 for such reinvestment (taking into account then outstanding Stock Options and other Awards).

(i) *Death Beneficiary* . The Plan Administrator shall establish such procedures as it deems appropriate for a Participant to designate a beneficiary to whom any amounts payable in the event of the Participant's death are to be paid or by whom any rights of the Participant, after the Participant's death, may be exercised.

(j) *Subsidiary Employees* . In the case of a grant of an Award to any employee of a Subsidiary of the Company, the Company may, if the Plan Administrator so directs, issue or transfer the shares of Common Stock, if any, covered by the Award to the Subsidiary, for such lawful consideration as the Plan Administrator may specify, upon the condition or understanding that the Subsidiary will transfer the shares of Common Stock to the employee in accordance with the terms of the Award specified by the Plan Administrator pursuant to the provisions of the Plan. All shares of Common Stock underlying Awards that are forfeited or canceled should revert to the Company.

(k) *Use of Proceeds From Stock* . Proceeds from the sale of Common Stock pursuant to Awards shall constitute general funds of the Company.

(l) *Governing Law* . The Plan and all Awards made and actions taken thereunder shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws.

(m) *Nontransferability* . Except as otherwise provided hereunder or by the Plan Administrator, Awards under the Plan are not transferable except by will or by laws of descent and distribution.

(n) *Application to Participants Outside of the United States* . In the event an Award is granted to Participant who is employed or providing services outside the United States and who is not compensated from a payroll maintained in the United States, the Plan Administrator may, in its sole discretion, modify the provisions of the Plan as they pertain to such individual to comply with applicable foreign law.

Section 14. Effective Date of Plan

The Plan shall be effective as of the date that it is approved by the shareholders of the Company (the " *Effective Date* ").

Exhibit 10.3

CROCS, INC.
NOTICE OF GRANT OF STOCK OPTION

Notice is hereby given of the following option grant (the "Option") to purchase shares of the Common Stock of CROCS, INC. (the "Company"):

Optionee: _____

Grant Date: _____

Vesting Commencement Date: _____

Exercise Price: $ _____per share
Number of Option Shares: $ _____shares of Common Stock
Expiration Date: _____

Type of Option: _____ Incentive Stock Option

_____ Non-Statutory Stock Option

Date Exercisable: Immediately Exercisable

Vesting Schedule: _____

For purposes of the Option, the term "Service" shall mean the provision of services to the Company (or any Subsidiary or Affiliate) by a person in the capacity of an employee, a non-employee member of the board of directors or a consultant or independent advisor, except to the extent otherwise specifically provided in the Option Agreement.

Optionee understands and agrees that the Option is granted subject to and in accordance with the terms of the 2005 Equity Incentive Plan (the "Plan"). Optionee further agrees to be bound by the terms of the Plan and the terms of the Option as set forth in the Stock Option Agreement attached hereto as *Exhibit A* (the "Option Agreement").

Optionee understands that any Option Shares purchased under the Option will be subject to the terms set forth in the Stock Purchase Agreement attached hereto as *Exhibit B* (the "Purchase Agreement"). Optionee hereby acknowledges receipt of a copy of the Plan in the form attached hereto as *Exhibit C* .

REPURCHASE RIGHTS **. OPTIONEE HEREBY AGREES THAT ALL OPTION SHARES ACQUIRED UPON THE EXERCISE OF THE OPTION SHALL BE SUBJECT TO CERTAIN REPURCHASE RIGHTS AND RIGHTS OF FIRST REFUSAL EXERCISABLE BY THE COMPANY AND ITS ASSIGNS. THE TERMS OF SUCH RIGHTS ARE SPECIFIED IN THE ATTACHED STOCK PURCHASE AGREEMENT.**

At Will Employment. Nothing in this Notice or in the attached Stock Option Agreement or Plan shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining Optionee) or of Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service at any time for any reason, with or without cause.

Definitions. All capitalized terms in this Notice shall have the meaning assigned to them in this Notice or in the attached Stock Option Agreement.

DATED: _____, 20 __

COMPANY:

CROCS, INC.

By: _____

Title: _____

OPTIONEE:

Signature: _____

Printed Name: _____

Address: _____

_____

***Attachments* :**

Exhibit A—Stock Option Agreement

Exhibit B—Stock Purchase Agreement

Exhibit C—2005 Equity Incentive Plan

EXHIBIT A
STOCK OPTION AGREEMENT
Filed as Exhibit 10.6

EXHIBIT B
STOCK PURCHASE AGREEMENT
Filed as Exhibit 10.5

EXHIBIT C
2005 EQUITY INCENTIVE PLAN
Filed as Exhibit 10.2

QuickLinks

CROCS, INC. NOTICE OF GRANT OF STOCK OPTION

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Exhibit 10.4

NON-EXEMPT EMPLOYEE
UNDER FAIR LABOR STANDARDS ACT

CROCS, INC.
NOTICE OF GRANT OF STOCK OPTION

Notice is hereby given of the following option grant (the "Option") to purchase shares of the Common Stock of CROCS, INC. (the "Company"):

Optionee:

Grant Date:

Vesting Commencement Date:

Exercise Price: $ _____per share
Number of Option Shares: $ _____shares of Common Stock
Expiration Date:

Type of Option: Incentive Stock Option

Non-Statutory Stock Option

Date Exercisable: The Option shall become exercisable for all the Option Shares upon the Optionee's completion of six (6) months of Service measured from the Grant Date.

Vesting Schedule:

For purposes of the Option, the term "Service" shall mean the provision of services to the Company (or any Subsidiary or Affiliate) by a person in the capacity of an employee, a non-employee member of the board of directors or a consultant or independent advisor, except to the extent otherwise specifically provided in the Option Agreement.

Optionee understands and agrees that the Option is granted subject to and in accordance with the terms of the 2005 Equity Incentive Plan (the "Plan"). Optionee further agrees to be bound by the terms of the Plan and the terms of the Option as set forth in the Stock Option Agreement attached hereto as *Exhibit A* (the "Option Agreement").

Optionee understands that any Option Shares purchased under the Option will be subject to the terms set forth in the Stock Purchase Agreement attached hereto as *Exhibit B* (the "Purchase Agreement"). Optionee hereby acknowledges receipt of a copy of the Plan in the form attached hereto as *Exhibit C* .

REPURCHASE RIGHTS **. OPTIONEE HEREBY AGREES THAT ALL OPTION SHARES ACQUIRED UPON THE EXERCISE OF THE OPTION SHALL BE SUBJECT TO CERTAIN REPURCHASE RIGHTS AND RIGHTS OF FIRST REFUSAL EXERCISABLE BY THE COMPANY AND ITS ASSIGNS. THE TERMS OF SUCH RIGHTS ARE SPECIFIED IN THE ATTACHED STOCK PURCHASE AGREEMENT.**

At Will Employment. Nothing in this Notice or in the attached Stock Option Agreement or Plan shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining Optionee) or of Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service at any time for any reason, with or without cause.

Definitions. All capitalized terms in this Notice shall have the meaning assigned to them in this Notice or in the attached Stock Option Agreement.

DATED: _____, 20 __

COMPANY:

CROCS, INC.

By: _____

Title: _____

OPTIONEE:

Signature: _____

Printed Name: _____

Address: _____

_____

Attachments **:**

Exhibit A—Stock Option Agreement

Exhibit B—Stock Purchase Agreement

Exhibit C—2005 Equity Incentive Plan

EXHIBIT A
STOCK OPTION AGREEMENT

Filed as Exhibit 10.6

EXHIBIT B
STOCK PURCHASE AGREEMENT
Filed as Exhibit 10.5

EXHIBIT C
2005 EQUITY INCENTIVE PLAN
Filed as Exhibit 10.2

QuickLinks

CROCS, INC. NOTICE OF GRANT OF STOCK OPTION

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.5

CROCS, INC.

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (the "Agreement") is made and entered into this day of , by and between CROCS, INC., a Colorado corporation (the "Company"), and ("Optionee").

RECITALS

A. The Board has adopted the 2005 Equity Incentive Plan (the "Plan") pursuant to which Optionee has been granted an option to acquire shares of Common Stock as specified in a Notice of Grant of Stock Option (the "Grant Notice").

B. Optionee desires to exercise his or her option to purchase some or all of the option shares (as specified in the Grant Notice).

C. Capitalized terms used but not otherwise defined in this Agreement have the respective meanings specified in the Plan and the Grant Notice.

ARTICLE I
EXERCISE OF OPTION

Section 1.1 *Exercise.* Optionee hereby purchases shares of Common Stock (the "Purchased Shares") pursuant to that certain option (the "Option") granted Optionee on , (the "Grant Date") to purchase up to shares of Common Stock (the "Option Shares") under the Plan at the exercise price of $ per share (the "Exercise Price").

Section 1.2 *Payment.* Concurrently with the delivery of this Agreement to the Company, Optionee shall pay the Exercise Price for the Purchased Shares in accordance with the provisions of the Stock Option Agreement attached as *Exhibit A* to the Grant Notice (the "Option Agreement") and shall deliver whatever additional documents may be required by the Option Agreement as a condition for exercise, together with a duly-executed blank Assignment Separate from Certificate (in the form attached hereto as *Exhibit I*) with respect to the Purchased Shares.

Section 1.3 *Stockholder Rights.* Until such time as the Company exercises the Repurchase Right or the First Refusal Right, Optionee (or any successor in interest) shall have all the rights of a stockholder (including voting, dividend and liquidation rights) with respect to the Purchased Shares, subject, however, to the transfer restrictions of Articles II and III.

ARTICLE II
SECURITIES LAW COMPLIANCE

Section 2.1 *Restricted Securities.* The Purchased Shares have not been registered under the 1933 Act and are being issued to Optionee in reliance upon the exemption from such registration provided by SEC Rule 701 for stock issuances under compensatory benefit plans such as the Plan. Optionee hereby confirms that Optionee has been informed that the Purchased Shares are restricted securities under the 1933 Act and may not be resold or transferred unless the Purchased Shares are first registered under the Federal securities laws or unless an exemption from such registration is available. Accordingly, Optionee hereby acknowledges that Optionee is acquiring the Purchased Shares for investment purposes only and not with a view to resale and is prepared to hold the Purchased Shares for an indefinite period and that Optionee is aware that SEC Rule 144 issued under the 1933 Act

which exempts certain resales of unrestricted securities is not presently available to exempt the resale of the Purchased Shares from the registration requirements of the 1933 Act.

Section 2.2 *Restrictions on Disposition of Purchased Shares.* Optionee shall make no disposition of the Purchased Shares (other than a Permitted Transfer) unless and until there is compliance with all of the following requirements:

(a) Optionee shall have provided the Company with a written summary of the terms and conditions of the proposed disposition.

(b) Optionee shall have complied with all requirements of this Agreement applicable to the disposition of the Purchased Shares.

(c) Optionee shall have provided the Company with written assurances, in form and substance satisfactory to the Company, that (a) the proposed disposition does not require registration of the Purchased Shares under the 1933 Act or (b) all appropriate action necessary for compliance with the registration requirements of the 1933 Act or any exemption from registration available under the 1933 Act (including Rule 144) has been taken.

The Company shall *not* be required (i) to transfer on its books any Purchased Shares which have been sold or transferred in violation of the provisions of this Agreement *or* (ii) to treat as the owner of the Purchased Shares, or otherwise to accord voting, dividend or liquidation rights to, any transferee to whom the Purchased Shares have been transferred in contravention of this Agreement.

For purposes of this Agreement "Permitted Transfer" shall mean (i) a gratuitous transfer of the Purchased Shares, provided and only if Optionee obtains the Company's prior written consent to such transfer, (ii) a transfer of title to the Purchased Shares effected pursuant to Optionee's will or the laws of inheritance following Optionee's death or (iii) a transfer to the Company in pledge as security for any purchase-money indebtedness incurred by Optionee in connection with the acquisition of the Purchased Shares.

Section 2.3 *Restrictive Legends.* The stock certificates for the Purchased Shares shall be endorsed with one or more of the following restrictive legends:

"The shares represented by this certificate have not been registered under the Securities Act of 1933. The shares may not be sold or offered for sale in the absence of (a) an effective registration statement for the shares under such Act, (b) a "no action" letter of the Securities and Exchange Commission with respect to such sale or offer or (c) satisfactory assurances to the Company that registration under such Act is not required with respect to such sale or offer."

"The shares represented by this certificate are subject to certain repurchase rights and rights of first refusal granted to the Company and accordingly may not be sold, assigned, transferred, encumbered, or in any manner disposed of except in conformity with the terms of a written agreement dated , 20 between the Company and the registered holder of the shares (or the predecessor in interest to the shares). A copy of such agreement is maintained at the Company's principal corporate offices."

ARTICLE III
TRANSFER RESTRICTIONS

Section 3.1 *Restriction on Transfer.* Except for any Permitted Transfer, Optionee shall not transfer, assign, encumber or otherwise dispose of any of the Purchased Shares which are subject to the Repurchase Right (as defined below). In addition, Purchased Shares which are released from the Repurchase Right shall not be transferred, assigned, encumbered or otherwise disposed of in

contravention of the First Refusal Right (as defined below) or the Market Stand-Off (as defined below).

Section 3.2 *Transferee Obligations.* Each person (other than the Company) to whom the Purchased Shares are transferred by means of a Permitted Transfer must, as a condition precedent to the validity of such transfer, acknowledge in writing to the Company that such person is bound by the provisions of this Agreement and that the transferred shares are subject to (i) the Repurchase Right, (ii) the First Refusal Right and (iii) the Market Stand-Off, to the same extent such shares would be so subject if retained by Optionee.

Section 3.3 *Market Stand-Off.*

(a) In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the 1933 Act, including the Company's initial public offering, Optionee and all subsequent holders of the Purchased Shares who derive their chain of ownership through a Permitted Transfer from Optionee (collectively, "Owner") shall not sell, make any short sale of, loan, hypothecate, pledge, grant any option for the purchase of, or otherwise dispose or transfer for value or otherwise agree to engage in any of the foregoing transactions with respect to, any Purchased Shares without the prior written consent of the Company or its underwriters. Such restriction (the "Market Stand-Off") shall be in effect for such period of time from and after the effective date of the final prospectus for the offering as may be requested by the Company or such underwriters. In no event, however, shall such period exceed one hundred eighty (180) days, and the Market Stand-Off shall in no event be applicable to any underwritten public offering effected more than two (2) years after the effective date of the Company's initial public offering.

(b) Owner shall be subject to the Market Stand-Off provided and only if the officers and directors of the Company are also subject to similar restrictions.

(c) Any new, substituted or additional securities which are by reason of any Recapitalization or Reorganization distributed with respect to the Purchased Shares shall be immediately subject to the Market Stand-Off, to the same extent the Purchased Shares are at such time covered by such provisions.

(d) In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Purchased Shares until the end of the applicable stand-off period.

ARTICLE IV
REPURCHASE RIGHT

Section 4.1 *Grant.* The Company is hereby granted the right (the "Repurchase Right"), exercisable at any time during the sixty (60)-day period following the date Optionee ceases for any reason to remain in Service or (if later) during the sixty (60)-day period following the execution date of this Agreement, to repurchase at the lower of (i) the per share Exercise Price or (ii) the Fair Market Value per share of Common Stock on the date of Optionee's cessation of Service (the amount determined pursuant to clause (i) or (ii), as applicable, being referred to herein as the "Repurchase Price") any or all of the Purchased Shares in which Optionee is not, at the time of his or her cessation of Service, vested in accordance with the vesting schedule specified in the Grant Notice (the "Vesting Schedule") applicable to those shares or the special vesting acceleration provisions of Section 4.6 of this Agreement (such shares to be hereinafter referred to as the "Unvested Shares").

Section 4.2 *Exercise of the Repurchase Right.* The Repurchase Right shall be exercisable by written notice delivered to each Owner of the Unvested Shares prior to the expiration of the sixty (60)-day exercise period. The notice shall indicate the number of Unvested Shares to be repurchased,

the Repurchase Price to be paid per share and the date on which the repurchase is to be effected, such date to be not more than thirty (30) days after the date of such notice. The certificates representing the Unvested Shares to be repurchased shall be delivered to the Company on the closing date specified for the repurchase. Concurrently with the receipt of such stock certificates, the Company shall pay to Owner, in cash or cash equivalents (including the cancellation of any purchase-money indebtedness), an amount equal to the Repurchase Price for the Unvested Shares which are to be repurchased from Owner.

Section 4.3 *Termination of the Repurchase Right.* The Repurchase Right shall terminate with respect to any Unvested Shares for which it is not timely exercised under Section 4.2. In addition, the Repurchase Right shall terminate and cease to be exercisable with respect to any and all Purchased Shares in which Optionee vests in accordance with the Vesting Schedule. All Purchased Shares as to which the Repurchase Right lapses shall, however, remain subject to (i) the First Refusal Right and (ii) the Market Stand-Off.

Section 4.4 *Aggregate Vesting Limitation.* If the Option is exercised in more than one increment so that Optionee is a party to one or more other Stock Purchase Agreements (the "Prior Purchase Agreements") which are executed prior to the date of this Agreement, then the total number of Purchased Shares as to which Optionee shall be deemed to have a fully-vested interest under this Agreement and all Prior Purchase Agreements shall not exceed in the aggregate the number of Purchased Shares in which Optionee would otherwise at the time be vested, in accordance with the Vesting Schedule, had all the Purchased Shares (including those acquired under the Prior Purchase Agreements) been acquired exclusively under this Agreement.

Section 4.5 *Recapitalization.* Any new, substituted or additional securities or other property (including cash paid other than as a regular cash dividend) which is by reason of any Recapitalization distributed with respect to the Purchased Shares shall be immediately subject to the Repurchase Right and any escrow requirements hereunder, but only to the extent the Purchased Shares are at the time covered by such right or escrow requirements. Appropriate adjustments to reflect such distribution shall be made to the number and/or class of Purchased Shares subject to this Agreement and to the Repurchase Price per share to be paid upon the exercise of the Repurchase Right in order to reflect the effect of any such Recapitalization upon the Company's capital structure; provided, however, that the aggregate Repurchase Price shall remain the same.

Section 4.6 *Change in Control.* The Repurchase Right shall automatically terminate in its entirety, and all the Purchased Shares shall vest in full, immediately prior to the consummation of any Change in Control.

ARTICLE V
RIGHT OF FIRST REFUSAL

Section 5.1 *Grant.* The Company is hereby granted the right of first refusal (the "First Refusal Right"), exercisable in connection with any proposed transfer of the Purchased Shares in which Optionee has vested in accordance with the provisions of Article IV. For purposes of this Article V the term "transfer" shall include any sale, assignment, pledge, encumbrance or other disposition of the Purchased Shares intended to be made by Owner, but shall not include any Permitted Transfer.

Section 5.2 *Notice of Intended Disposition.* In the event any Owner of Purchased Shares in which Optionee has vested desires to accept a bona fide third-party offer for the transfer of any or all of such shares (the Purchased Shares subject to such offer to be hereinafter referred to as the "Target Shares"), Owner shall promptly (i) deliver to the Company written notice (the "Disposition Notice") of the terms of the offer, including the purchase price and the identity of the third-party offeror, and

(ii) provide satisfactory proof that the disposition of the Target Shares to such third-party offeror would not be in contravention of the provisions set forth in Articles II and III.

Section 5.3 *Exercise of the First Refusal Right.* The Company shall, for a period of twenty-five (25) days following receipt of the Disposition Notice, have the right to repurchase any or all of the Target Shares subject to the Disposition Notice upon the same terms as those specified therein or upon such other terms (not materially different from those specified in the Disposition Notice) to which Owner consents. Such right shall be exercisable by delivery of written notice (the "Exercise Notice") to Owner prior to the expiration of the twenty-five (25)-day exercise period. If such right is exercised with respect to all the Target Shares, then the Company shall effect the repurchase of such shares, including payment of the purchase price, not more than five (5) business days after delivery of the Exercise Notice; and at such time the certificates representing the Target Shares shall be delivered to the Company.

Should the purchase price specified in the Disposition Notice be payable in property other than cash or evidences of indebtedness, the Company shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. If Owner and the Company cannot agree on such cash value within ten (10) days after the Company's receipt of the Disposition Notice, the valuation shall be made by an appraiser of recognized standing selected by Owner and the Company or, if they cannot agree on an appraiser within twenty (20) days after the Company's receipt of the Disposition Notice, each shall select an appraiser of recognized standing and the two (2) appraisers shall designate a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of such appraisal shall be shared equally by Owner and the Company. The closing shall then be held on the *later* of (i) the fifth (5th) business day following delivery of the Exercise Notice or (ii) the fifth (5th) business day after such valuation shall have been made.

Section 5.4 *Non-Exercise of the First Refusal Right.* In the event the Exercise Notice is not given to Owner prior to the expiration of the twenty-five (25)-day exercise period, Owner shall have a period of thirty (30) days thereafter in which to sell or otherwise dispose of the Target Shares to the third-party offeror identified in the Disposition Notice upon terms (including the purchase price) no more favorable to such third-party offeror than those specified in the Disposition Notice; provided, however, that any such sale or disposition must not be effected in contravention of the provisions of Articles II and III. The third-party offeror shall acquire the Target Shares subject to the First Refusal Right and the provisions and restrictions of Article II and Section 3.3, and any subsequent disposition of the acquired shares must be effected in compliance with the terms and conditions of such First Refusal Right and the provisions and restrictions of Article II and Section 3.3. In the event Owner does not effect such sale or disposition of the Target Shares within the specified thirty (30)-day period, the First Refusal Right shall continue to be applicable to any subsequent disposition of the Target Shares by Owner until such right lapses.

Section 5.5 *Partial Exercise of the First Refusal Right.* In the event the Company makes a timely exercise of the First Refusal Right with respect to a portion, but not all, of the Target Shares specified in the Disposition Notice, Owner shall have the option, exercisable by written notice to the Company delivered within five (5) business days after Owner's receipt of the Exercise Notice, to effect the sale of the Target Shares pursuant to either of the following alternatives:

(a) sale or other disposition of all the Target Shares to the third-party offeror identified in the Disposition Notice, but in full compliance with the requirements of Section 5.4, as if the Company did not exercise the First Refusal Right; or

(b) sale to the Company of the portion of the Target Shares which the Company has elected to purchase, such sale to be effected in substantial conformity with the provisions of Section 5.3. The First Refusal Right shall continue to be applicable to any subsequent disposition of the remaining Target Shares until such right lapses.

Owner's failure to deliver timely notification to the Company shall be deemed to be an election by Owner to sell the Target Shares pursuant to alternative (i) above.

Section 5.6 *Recapitalization/Reorganization.*

(a) Any new, substituted or additional securities or other property which is by reason of any Recapitalization distributed with respect to the Purchased Shares shall be immediately subject to the First Refusal Right, but only to the extent the Purchased Shares are at the time covered by such right.

(b) In the event of a Reorganization, the First Refusal Right shall remain in full force and effect and shall apply to the new capital stock or other property received in exchange for the Purchased Shares in consummation of the Reorganization, but only to the extent the Purchased Shares are at the time covered by such right.

Section 5.7 *Lapse.* The First Refusal Right shall lapse upon the *earliest* to occur of (i) the first date on which shares of the Common Stock are held of record by more than five hundred (500) persons, (ii) a determination made by the Board that a public market exists for the outstanding shares of Common Stock or (iii) a firm commitment underwritten public offering, pursuant to an effective registration statement under the 1933 Act, covering the offer and sale of the Common Stock in the aggregate amount of at least twenty million dollars ($20,000,000). However, the Market Stand-Off shall continue to remain in full force and effect following the lapse of the First Refusal Right.

ARTICLE VI
SPECIAL TAX ELECTION

The acquisition of the Purchased Shares may result in adverse tax consequences which may be avoided or mitigated by filing an election under Code Section 83(b). Such election must be filed within thirty (30) days after the date of this Agreement. A description of the tax consequences applicable to the acquisition of the Purchased Shares and the form for making the Code Section 83(b) election are set forth in *Exhibit II* . **OPTIONEE SHOULD CONSULT WITH HIS OR HER TAX ADVISOR TO DETERMINE THE TAX CONSEQUENCES OF ACQUIRING THE PURCHASED SHARES AND THE ADVANTAGES AND DISADVANTAGES OF FILING THE CODE SECTION 83(b) ELECTION. OPTIONEE ACKNOWLEDGES THAT IT IS OPTIONEE'S SOLE RESPONSIBILITY, AND NOT THE COMPANY'S, TO FILE A TIMELY ELECTION UNDER CODE SECTION 83(b), EVEN IF OPTIONEE REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON HIS OR HER BEHALF.**

ARTICLE VII
GENERAL PROVISIONS

Section 7.1 *Assignment.* The Company may assign the Repurchase Right and/or the First Refusal Right to any person or entity selected by the Board, including one or more stockholders of the Company.

Section 7.2 *At Will Employment.* Nothing in this Agreement or in the Plan shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining Optionee) or of Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service at any time for any reason, with or without cause.

Section 7.3 *Notices.* Any notice required to be given under this Agreement shall be in writing and shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, registered or

certified, postage prepaid and properly addressed to the party entitled to such notice at the address indicated below such party's signature line on this Agreement or at such other address as such party may designate by ten (10) days advance written notice under this paragraph to all other parties to this Agreement.

Section 7.4 *No Waiver.* The failure of the Company in any instance to exercise the Repurchase Right or the First Refusal Right shall not constitute a waiver of any other repurchase rights and/or rights of first refusal that may subsequently arise under the provisions of this Agreement or any other agreement between the Company and Optionee. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature.

Section 7.5 *Cancellation of Shares.* If the Company shall make available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Purchased Shares to be repurchased in accordance with the provisions of this Agreement, then from and after such time, the person from whom such shares are to be repurchased shall no longer have any rights as a holder of such shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such shares shall be deemed purchased in accordance with the applicable provisions hereof, and the Company shall be deemed the owner and holder of such shares, whether or not the certificates therefor have been delivered as required by this Agreement.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

Section 8.1 *Optionee Undertaking.* Optionee hereby agrees to take whatever additional action and execute whatever additional documents the Company may deem necessary or advisable in order to carry out or effect one or more of the obligations or restrictions imposed on either Optionee or the Purchased Shares pursuant to the provisions of this Agreement.

Section 8.2 *Agreement is Entire Contract.* This Agreement constitutes the entire contract between the parties hereto with regard to the subject matter hereof. This Agreement is made pursuant to the provisions of the Plan and shall in all respects be construed in conformity with the terms of the Plan.

Section 8.3 *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware without resort to that State's conflict-of-laws rules.

Section 8.4 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 8.5 *Successors and Assigns.* The provisions of this Agreement shall inure to the benefit of, and be binding upon, the Company and its successors and assigns and upon Optionee, Optionee's permitted assigns and the legal representatives, heirs and legatees of Optionee's estate, whether or not any such person shall have become a party to this Agreement and have agreed in writing to join herein and be bound by the terms hereof.

IN WITNESS WHEREOF , the parties have executed this Agreement on the day and year first indicated above.

COMPANY:

CROCS, INC.

By: _____

Title: _____

OPTIONEE:

Signature: _____

Printed Name: _____

Address: _____

_____

SPOUSAL ACKNOWLEDGMENT

The undersigned spouse of Optionee has read and hereby approves the foregoing Stock Purchase Agreement. In consideration of the Company's granting Optionee the right to acquire the Purchased Shares in accordance with the terms of such Agreement, the undersigned hereby agrees to be irrevocably bound by all the terms of such Agreement, including (without limitation) the right of the Company (or its assigns) to purchase any Purchased Shares in which Optionee is not vested at time of his or her cessation of Service.

OPTIONEE'S SPOUSE

Address:

EXHIBIT I

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED hereby sell(s), assign(s) and transfer(s) unto CROCS, INC. (the "Company"), ( ) shares of the Common Stock of the Company standing in his or her name on the books of the Company represented by Certificate No. herewith and do(es) hereby irrevocably constitute and appoint Attorney to transfer the said stock on the books of the Company with full power of substitution in the premises.

Dated:

Signature: _____

Instruction: Please do not fill in any blanks other than the signature line. Please sign exactly as you would like your name to appear on the issued stock certificate. The purpose of this assignment is to enable the Company to exercise the Repurchase Right without requiring additional signatures on the part of Optionee.

EXHIBIT II

FEDERAL INCOME TAX CONSEQUENCES AND SECTION 83(b) TAX ELECTION

I. ***Federal Income Tax Consequences and Section 83(b) Election For Exercise of Non-Statutory Option.*** If the Purchased Shares are acquired pursuant to the exercise of a Non-Statutory Option, as specified in the Grant Notice, then under Code Section 83, the excess of the Fair Market Value of the Purchased Shares on the date any forfeiture restrictions applicable to such shares lapse over the Exercise Price paid for those shares will be reportable as ordinary income on the lapse date. For this purpose, the term "forfeiture restrictions" includes the right of the Company to repurchase the Purchased Shares pursuant to the Repurchase Right. However, Optionee may elect under Code Section 83(b) to be taxed at the time the Purchased Shares are acquired, rather than when and as such Purchased Shares cease to be subject to such forfeiture restrictions. Such election must be filed with the Internal Revenue Service within thirty (30) days after the date of the Agreement. Even if the Fair Market Value of the Purchased Shares on the date of the Agreement equals the Exercise Price paid (and thus no tax is payable), the election must be made to avoid adverse tax consequences in the future. The form for making this election is attached as part of this exhibit **.** FAILURE TO MAKE THIS FILING WITHIN THE APPLICABLE THIRTY (30)-DAY PERIOD WILL RESULT IN THE RECOGNITION OF ORDINARY INCOME BY OPTIONEE AS THE FORFEITURE RESTRICTIONS LAPSE.

II. ***Federal Income Tax Consequences and Conditional Section 83(b) Election For Exercise of Incentive Option.*** If the Purchased Shares are acquired pursuant to the exercise of an Incentive Option, as specified in the Grant Notice, then the following tax principles shall be applicable to the Purchased Shares:

(i) For regular tax purposes, no taxable income will be recognized at the time the Option is exercised.

(ii) The excess of (a) the Fair Market Value of the Purchased Shares on the date the Option is exercised or (if later) on the date any forfeiture restrictions applicable to the Purchased Shares lapse over (b) the Exercise Price paid for the Purchased Shares will be includible in Optionee's taxable income for alternative minimum tax purposes.

(iii) If Optionee makes a disqualifying disposition of the Purchased Shares, then Optionee will recognize ordinary income in the year of such disposition equal in amount to the excess of (a) the Fair Market Value of the Purchased Shares on the date the Option is exercised or (if later) on the date any forfeiture restrictions applicable to the Purchased Shares lapse over (b) the Exercise Price paid for the Purchased Shares. Any additional gain recognized upon the disqualifying disposition will be either short-term or long-term capital gain depending upon the period for which the Purchased Shares are held prior to the disposition.

(iv) For purposes of the foregoing, the term "forfeiture restrictions" will include the right of the Company to repurchase the Purchased Shares pursuant to the Repurchase Right. The term "disqualifying disposition" means any sale or other disposition [1] of the Purchased Shares within two (2) years after the Grant Date or within one (1) year after the exercise date of the Option.

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(1) Generally, a disposition of shares purchased under an Incentive Option includes any transfer of legal title, including a transfer by sale, exchange or gift, but does not include a transfer to the Optionee's spouse, a transfer into joint ownership with right of survivorship if Optionee remains one of the joint owners, a pledge, a transfer by bequest or inheritance or certain tax-free exchanges permitted under the Code.

(v) In the absence of final Treasury Regulations relating to Incentive Options, it is not certain whether Optionee may, in connection with the exercise of the Option for any Purchased Shares at

the time subject to forfeiture restrictions, file a protective election under Code Section 83(b) which would limit Optionee's ordinary income upon a disqualifying disposition to the excess of the Fair Market Value of the Purchased Shares on the date the Option is exercised over the Exercise Price paid for the Purchased Shares. Accordingly, such election if properly filed will only be allowed to the extent the final Treasury Regulations permit such a protective election.

(iv) The Code Section 83(b) election will be effective in limiting the Optionee's alternative minimum taxable income to the excess of the Fair Market Value of the Purchased Shares at the time the Option is exercised over the Exercise Price paid for those shares.

Page 2 of the attached form for making the election should be filed with any election made in connection with the exercise of an Incentive Option.

SECTION 83(b) ELECTION

This statement is being made under Section 83(b) of the Internal Revenue Code, pursuant to Treas. Reg. Section 1.83-2.

(1) The taxpayer who performed the services is:

Name:
Address:
Taxpayer Ident. No.:

(2) The property with respect to which the election is being made is shares of the common stock of CROCS, INC.

(3) The property was issued on , 20 .

(4) The taxable year in which the election is being made is the calendar year .

(5) The property is subject to a repurchase right pursuant to which the issuer has the right to acquire the property at the *lower* of the purchase price paid per share or the fair market value per share, if for any reason taxpayer's service with the issuer terminates. The issuer's repurchase right will lapse in a series of annual and monthly installments over a four (4)-year period ending on , 20 .

(6) The fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse) is $ per share.

(7) The amount paid for such property is $ per share.

(8) A copy of this statement was furnished to CROCS, INC. for whom taxpayer rendered the services underlying the transfer of property.

(9) This statement is executed on , 20 .

Spouse (if any) Taxpayer

This election must be filed with the Internal Revenue Service Center with which taxpayer files his or her Federal income tax returns and must be made within thirty (30) days after the execution date of the Stock Purchase Agreement. This filing should be made by registered or certified mail, return receipt requested. Optionee must retain two (2) copies of the completed form for filing with his or her Federal and state tax returns for the current tax year and an additional copy for his or her records.

The property described in the above Section 83(b) election is comprised of shares of common stock acquired pursuant to the exercise of an incentive stock option under Section 422 of the Internal Revenue Code (the "Code"). Accordingly, it is the intent of the Taxpayer to utilize this election to achieve the following tax results:

1. One purpose of this election is to have the alternative minimum taxable income attributable to the purchased shares measured by the amount by which the fair market value of such shares at the time of their transfer to the Taxpayer exceeds the purchase price paid for the shares. In the absence of this election, such alternative minimum taxable income would be measured by the spread between the fair market value of the purchased shares and the purchase price which exists on the various lapse dates in effect for the forfeiture restrictions applicable to such shares.

2. Section 421(a)(1) of the Code expressly excludes from income any excess of the fair market value of the purchased shares over the amount paid for such shares. Accordingly, this election is also intended to be effective in the event there is a "disqualifying disposition" of the shares, within the meaning of Section 421(b) of the Code, which would otherwise render the provisions of Section 83(a) of the Code applicable at that time. Consequently, the Taxpayer hereby elects to have the amount of disqualifying disposition income measured by the excess of the fair market value of the purchased shares on the date of transfer to the Taxpayer over the amount paid for such shares. Since

Section 421(a) presently applies to the shares which are the subject of this Section 83(b) election, no taxable income is actually recognized for regular tax purposes at this time, and no income taxes are payable, by the Taxpayer as a result of this election. The foregoing election is to be effective to the full extent permitted under the Code.

THIS PAGE 2 IS TO BE ATTACHED TO ANY SECTION 83(b) ELECTION FILED IN CONNECTION WITH THE EXERCISE OF AN INCENTIVE STOCK OPTION UNDER THE FEDERAL TAX LAWS.

QuickLinks

CROCS, INC. STOCK PURCHASE AGREEMENT
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SECTION 83(b) ELECTION

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.6

CROCS, INC.

STOCK OPTION AGREEMENT

This Stock Option Agreement (the "Agreement") is attached as *Exhibit A* to a Notice of Grant of Stock Option (the "Grant Notice"), pursuant to which Optionee has been informed of the basic terms of the option evidenced thereby. Certain capitalized terms used but not otherwise defined herein have the respective meanings specified in the Grant Notice to which this Agreement relates.

RECITALS

A. The Board has adopted the Plan for the purpose of retaining the services of selected employees, non-employee members of the Board or the board of directors of any Subsidiary or Affiliate and consultants and other independent advisors in the service of the Company (or any Subsidiary or Affiliate).

B. Optionee is to render valuable services to the Company (or a Subsidiary or Affiliate), and this Agreement is executed pursuant to, and is intended to carry out the purposes of, the Plan in connection with the Company's grant of an option to Optionee.

C. Those capitalized terms used but not otherwise defined in this Agreement have the respective meanings specified in to the Plan.

NOW, THEREFORE, it is hereby agreed as follows:

1. *Grant of Option.* The Company hereby grants to Optionee, as of the Grant Date, an option to purchase up to the number of shares of Common Stock subject to the option (the "Option Shares") specified in the Grant Notice. The Option Shares shall be purchasable from time to time during the option term specified in Section 2 at the Exercise Price.

2. *Option Term.* This option shall expire at the close of business on the Expiration Date or on the date on which the option shall have been exercised in full in accordance with Section 9 hereof (the "Exercise Date"), unless sooner terminated in accordance with Section 5 or 6 hereof.

3. *Limited Transferability.*

(a) This option shall be neither transferable nor assignable by Optionee other than by will or the laws of inheritance following Optionee's death and may be exercised, during Optionee's lifetime, only by Optionee. However, Optionee may designate one or more persons as the beneficiary or beneficiaries of this option, and this option shall, in accordance with such designation, automatically be transferred to such beneficiary or beneficiaries upon the Optionee's death while holding this option. Such beneficiary or beneficiaries shall take the transferred option subject to all the terms and conditions of this Agreement, including (without limitation) the limited time period during which this option may, pursuant to Section 5, be exercised following Optionee's death.

(b) If this option is designated a Non-Statutory Option in the Grant Notice, then this option may be assigned in whole or in part during Optionee's lifetime to one or more members of Optionee's family or to a trust established for the exclusive benefit of one or more such family members or to Optionee's former spouse, to the extent such assignment is in connection with the Optionee's estate plan or pursuant to a domestic relations order. The assigned portion shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such assignment. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment.

4. *Dates of Exercise.* This option shall become exercisable for the Option Shares in one or more installments as specified in the Grant Notice. As the option becomes exercisable for such installments,

those installments shall accumulate, and the option shall remain exercisable for the accumulated installments until the Expiration Date or sooner termination of the option term under Section 5 or 6.

5. *Cessation of Service.* The option term specified in Section 2 shall terminate (and this option shall cease to be outstanding) prior to the Expiration Date should any of the following provisions become applicable:

(a) Should Optionee cease to remain in Service for any reason (other than death, Disability or Cause) while this option is outstanding, then Optionee (or any person or persons to whom this option is transferred pursuant to a permitted transfer under Section 3) shall have a period of three (3) months (commencing with the date of such cessation of Service) during which to exercise this option, but in no event shall this option be exercisable at any time after the Expiration Date.

(b) Should Optionee die while this option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the option is transferred pursuant to Optionee's will or the laws of inheritance following Optionee's death or to whom the option is transferred during Optionee's lifetime pursuant to a permitted transfer under Section 3 shall have the right to exercise this option. However, if Optionee dies while holding this option and if Optionee has an effective beneficiary designation in effect for this option at the time of his or her death, then the designated beneficiary or beneficiaries shall have the exclusive right to exercise this option following Optionee's death. Any such right to exercise this option shall lapse, and this option shall cease to be outstanding, upon the *earlier* of (i) the expiration of the twelve (12)-month period measured from the date of Optionee's death or (ii) the Expiration Date.

(c) Should Optionee cease Service by reason of Disability while this option is outstanding, then Optionee (or any person or persons to whom this option is transferred pursuant to a permitted transfer under Section 3) shall have a period of twelve (12) months (commencing with the date of such cessation of Service) during which to exercise this option. In no event shall this option be exercisable at any time after the Expiration Date.

Note: Exercise of this option on a date later than three (3) months following cessation of Service due to Disability will result in loss of favorable Incentive Option treatment, *unless* such Disability constitutes a total and permanent disability within the meaning of Section 22(e)(3) of the Internal Revenue Code. In the event that Incentive Option treatment is not available, this option will be taxed as a Non-Statutory Option upon exercise.

(d) During the limited period of post-Service exercisability, this option may not be exercised in the aggregate for more than the number of Option Shares in which Optionee is, at the time of Optionee's cessation of Service, vested pursuant to the Vesting Schedule specified in the Grant Notice or the special vesting acceleration provisions of Section 6. Upon the expiration of such limited exercise period or (if earlier) upon the Expiration Date, this option shall terminate and cease to be outstanding for any vested Option Shares for which the option has not been exercised. To the extent Optionee is not vested in one or more Option Shares at the time of Optionee's cessation of Service, this option shall immediately terminate and cease to be outstanding with respect to those shares.

(e) Should Optionee's Service be terminated for Cause or should Optionee otherwise engage in Cause while this option is outstanding, then this option shall terminate immediately and cease to remain outstanding.

6. *Accelerated Vesting.*

(a) In the event of any Change in Control, the Option Shares at the time subject to this option but not otherwise vested shall automatically vest in full so that this option shall, immediately prior to the effective date of the Change in Control, become exercisable for all of the

Option Shares as fully vested shares and may be exercised for any or all of those Option Shares as vested shares.

(b) This Agreement shall not in any way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

7. *Adjustment in Option Shares.* Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Exercise Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

8. *Stockholder Rights.* The holder of this option shall not have any stockholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Exercise Price and become the record holder of the purchased shares.

9. *Manner of Exercising Option.*

(a) In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Optionee (or any other person or persons exercising the option) must take the following actions:

(i) Execute and deliver to the Company a Purchase Agreement for the Option Shares for which the option is exercised.

(ii) Pay the aggregate Exercise Price for the purchased shares in one or more of the following forms:

(A) cash or check made payable to the Company; or

(B) a promissory note payable to the Company, but only to the extent authorized by the Plan Administrator in accordance with Section 14.

(iii) Should the Common Stock be registered under Section 12 of the 1934 Act at the time the option is exercised, then the Exercise Price may also be paid as follows:

(A) in shares of Common Stock held by Optionee (or any other person or persons exercising the option) for the requisite period necessary to avoid a charge to the Company's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date; or

(B) to the extent the option is exercised for vested Option Shares, through a special sale and remittance procedure pursuant to which Optionee (or any other person or persons exercising the option) shall concurrently provide irrevocable instructions (a) to a Company-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable income and employment taxes required to be withheld by the Company by reason of such exercise and (b) to the Company to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

Except to the extent the sale and remittance procedure is utilized in connection with the option exercise, payment of the Exercise Price must accompany the Purchase Agreement delivered to the Company in connection with the option exercise.

(iv) Furnish to the Company appropriate documentation that the person or persons exercising the option (if other than Optionee) have the right to exercise this option.

(v) Execute and deliver to the Company such written representations as may be requested by the Company in order for it to comply with the applicable requirements of applicable securities laws.

(vi) Make appropriate arrangements with the Company (or Subsidiary or Affiliate employing or retaining Optionee) for the satisfaction of all applicable income and employment tax withholding requirements applicable to the option exercise.

(b) As soon as practical after the Exercise Date, the Company shall issue to or on behalf of Optionee (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto.

(c) In no event may this option be exercised for any fractional shares.

10. ***REPURCHASE RIGHTS.*** ALL OPTION SHARES ACQUIRED UPON THE EXERCISE OF THIS OPTION SHALL BE SUBJECT TO CERTAIN RIGHTS OF THE COMPANY AND ITS ASSIGNS TO REPURCHASE THOSE SHARES IN ACCORDANCE WITH THE TERMS SPECIFIED IN THE PURCHASE AGREEMENT.

11. *Compliance with Laws and Regulations.*

(a) The exercise of this option and the issuance of the Option Shares upon such exercise shall be subject to compliance by the Company and Optionee with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange (or the Nasdaq National Market, if applicable) on which the Common Stock may be listed for trading at the time of such exercise and issuance.

(b) The inability of the Company to obtain approval from any regulatory body having authority deemed by the Company to be necessary to the lawful issuance and sale of any Common Stock pursuant to this option shall relieve the Company of any liability with respect to the non-issuance or sale of the Common Stock as to which such approval shall not have been obtained. The Company, however, shall use its best efforts to obtain all such approvals.

12. *Successors and Assigns.* Except to the extent otherwise provided in Sections 3 and 6, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Company and its successors and assigns and Optionee, Optionee's assigns and the legal representatives, heirs and legatees of Optionee's estate.

13. *Notices.* Any notice required to be given or delivered to the Company under the terms of this Agreement shall be in writing and addressed to the Company at its principal corporate offices. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line on the Grant Notice. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

14. *Financing.* To the extent permitted by applicable law, the Plan Administrator may, in its absolute discretion and without any obligation to do so, permit Optionee to pay the Exercise Price for the purchased Option Shares (to the extent such Exercise Price is in excess of the par value of those shares) by delivering a full-recourse promissory note bearing interest at a market rate and secured by those Option Shares. The payment schedule in effect for any such promissory note shall be established by the Plan Administrator in its sole discretion.

15. *Construction.* This Agreement and the option evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the terms of the Plan. All

decisions of the Plan Administrator with respect to any question or issue arising under the Plan or this Agreement shall be conclusive and binding on all persons having an interest in this option.

16. *Governing Law.* The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Delaware without resort to that State's conflict-of-laws rules.

17. *Stockholder Approval.* If the Option Shares covered by this Agreement exceed, as of the Grant Date, the number of shares of Common Stock which may be issued under the Plan as last approved by the stockholders, then this option shall be void with respect to such excess shares, unless stockholder approval of an amendment sufficiently increasing the number of shares of Common Stock issuable under the Plan is obtained in accordance with the provisions of the Plan.

18. *Additional Terms Applicable to an Incentive Option.* In the event this option is designated an Incentive Option in the Grant Notice, the following terms and conditions shall also apply to the grant:

(a) This option shall cease to qualify for favorable tax treatment as an Incentive Option if (and to the extent) this option is exercised for one or more Option Shares: (i) more than three (3) months after the date Optionee ceases to be an employee for any reason other than death or Disability or (ii) more than twelve (12) months after the date Optionee ceases to be an employee by reason of Disability.

(b) This option shall not become exercisable in the calendar year in which granted if (and to the extent) the aggregate Fair Market Value (determined at the Grant Date) of the Common Stock for which this option would otherwise first become exercisable in such calendar year would, when added to the aggregate value (determined as of the respective date or dates of grant) of the Common Stock and any other securities for which one or more other Incentive Options granted to Optionee prior to the Grant Date (whether under the Plan or any other option plan of the Company or any Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars ($100,000) in the aggregate. To the extent the exercisability of this option is deferred by reason of the foregoing limitation, the deferred portion shall become exercisable in the first calendar year or years thereafter in which the One Hundred Thousand Dollar ($100,000) limitation of this Section 18(b) would not be contravened, but such deferral shall in all events end immediately prior to the effective date of a Change in Control in which this option is not to be assumed or otherwise continued in effect, whereupon the option shall become immediately exercisable as a Non-Statutory Option for the deferred portion of the Option Shares.

(c) Should Optionee hold, in addition to this option, one or more other options to purchase Common Stock which become exercisable for the first time in the same calendar year as this option, then the foregoing limitations on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

QuickLinks

CROCS, INC. STOCK OPTION AGREEMENT

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Exhibit 10.7

Crocs, Inc.
Restricted Stock Award Grant Notice

Crocs, Inc. (the "Company") hereby acknowledges its obligation to award to Participant, on the dates set forth below, that number of shares of the Company's Common Stock set forth below ("Award") if Participant remains employed by the Company as of each such date. This Award is subject to all of the terms and conditions as set forth herein and in the Restricted Stock Award Agreement and all of the shares issued pursuant to this Award will be issued pursuant to the Company's 2005 Equity Incentive Plan (the "Plan"), all of which are attached hereto and incorporated herein in their entirety.

Participant:	_____
Date of Grant:	_____
Number of Shares Subject to Award:	_____
Consideration:	Participant's Services

Grant Schedule: _____. All shares that have not been issued shall be issued immediately upon any Termination of Employment (as defined in the Plan) by the Company other than for Cause (as defined in the Plan). In the event that the Participant suffers a Termination of Employment by reason of Death (as defined in the Plan), Disability (as defined in the Plan), Retirement (as defined in the Plan), voluntary termination by Employee, or is terminated by the Company for Cause, the Participant shall not be entitled to the issuance of any shares of Common Stock that have not been previously granted as of the date of such Termination of Employment.

Additional Terms/Acknowledgements: The undersigned Participant acknowledges receipt of, and understands and agrees to, this Restricted Stock Award Notice, the Restricted Stock Award Agreement and the Plan. Participant further acknowledges that as of the date hereof, this Restricted Stock Award Notice, the Restricted Stock Award Agreement and the Plan set forth the entire understanding between Participant and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) Awards previously granted and delivered to Participant under the Plan, and (ii) the following agreements only:

Other Agreements: _____

_____

PARTICIPANT ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS NO RIGHTS TO ACQUIRE COMMON STOCK OF THE COMPANY, AND THE COMPANY HAS NOT MADE ANY PROMISES TO ISSUE COMMON STOCK TO PARTICIPANT, EXCEPT AS SET FORTH IN THIS RESTRICTED STOCK AWARD NOTICE AND IN THE OTHER AGREEMENTS (IF ANY).

Crocs, Inc.	**Participant:**
By: _____	_____
Signature	Signature
Title: _____	Date: _____
Date _____	

Attachments: Restricted Stock Award Agreement and 2005 Equity Incentive Plan.

Attachment I

RESTRICTED STOCK AWARD AGREEMENT

Filed as Exhibit 10.8

Attachment II

CROCS, INC. 2005 EQUITY INCENTIVE PLAN

Filed as Exhibit 10.2

QuickLinks

Crocs, Inc. Restricted Stock Award Grant Notice

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Exhibit 10.8

CROCS, INC.

Restricted Stock Award Agreement

Pursuant to the Restricted Stock Award Grant Notice ("Grant Notice") to which this Restricted Stock Award Agreement is attached as *Attachment I* (this "Agreement;" and together with the Grant Notice, the "Award") and in consideration for services rendered or to be rendered to Crocs, Inc. (the "Company"), the Company acknowledges its understanding and agreement to issue to you, under its 2005 Equity Incentive Plan (the "Plan"), that number of shares of the Company's Common Stock specified in the Grant Notice in accordance with the Grant Schedule. Capitalized terms used but not defined terms in this Agreement shall have the meaning ascribed to them in the Plan.

The details of your Award are as follows:

1. Grants. Subject to the limitations contained herein, your right to receive future issuances of the Company's Common Stock will survive as provided in the Grant Notice, provided that all rights under the Award will cease upon your Termination of Employment.

2. Securities Law Compliance. You may not be issued any shares under your Award unless the shares are either (i) then registered under the Securities Act or (ii) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Your Award must also comply with other applicable laws and regulations governing the Award, and you will not receive such shares if the Company determines that such receipt would not be in material compliance with such laws and regulations.

3. Restrictions on Transfer.

(a) You agree that the Company (or a representative of the underwriters) may, in connection with the first underwritten registration of the offering of any securities of the Company under the Securities Act, require that you not sell, dispose of, transfer, pledge, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any shares of Common Stock or other securities of the Company held by you under the Award, for a period of time specified by the underwriter(s) (not to exceed one hundred eighty (180) days) following the effective date of the registration statement of the Company filed under the Securities Act (or such longer period, not to exceed eighteen (18) days after expiration of the one hundred eighty (180) day period, as the Company or the underwriters shall request in order to facilitate compliance with NASD Rule 2711).

(b) You agree to execute and deliver such other agreements as may be reasonably requested by the Company and/or the underwriter(s) that are consistent with the foregoing or that are necessary to give further effect thereto. In addition, if requested by the Company or the representative of underwriters of Common Stock of the Company, you shall provide, within ten (10) days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. The obligations described in this Section shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your Common Stock until the end of such lock-up period.

4. Changes In Capitalization. The number of shares of the Company's Common Stock that shall be issued pursuant to the Award shall be proportionately adjusted for any increase or decrease in the Company's Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Company's Common Stock, or any other increase or decrease in the number of issued shares of the Company's Common Stock effected without receipt or consideration by the

Company. Such adjustments shall be made by the Company's Board of Directors, whose determination in that respect shall be final, binding and conclusive.

5. Change in Control. The stock grants contemplated by the Award shall accelerate upon a Change of Control so that all stock that is to be issued pursuant to the Award shall, immediately prior to the effective date of the Change of Control, be issued to you. This Agreement shall not in any way affect the right of the Company to adjust, reclassify, reorganize or otherwise changes its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

6. Restrictive Legends. The shares issued under your Award shall be endorsed with the legends set forth below or legends substantially equivalent thereto, as determined by the Company it its sole discretion, together with any other legends that may be required by the Company or by state or federal securities laws:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS OF A RESTRICTED STOCK AWARD AGREEMENT, DATED AS OF , , BETWEEN THE COMPANY AND THE HOLDER OF THIS STOCK.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT AND SUCH LAWS.

THE HOLDER OF THIS STOCK MAY NOT SELL, TRANSFER OR DISPOSE OF THIS STOCK (EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED (THE "ACT")) WITHOUT FIRST DELIVERING TO THE COMPANY AN OPINION OF COUNSEL (REASONABLY ACCEPTABLE IN FORM AND SUBSTANCE TO THE COMPANY) THAT NEITHER REGISTRATION NOR QUALIFICATION UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS IS REQUIRED IN CONNECTION WITH SUCH TRANSFER.

7. Award not a Service Contract. Your Award is not an employment or service contract, and nothing in your Award shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or on the part of the Company or an Affiliate to continue your employment. In addition, nothing in your Award shall obligate the Company or an Affiliate, their respective shareholders, boards of directors, officers or employees to continue any relationship that you might have as a director or consultant for the Company or an Affiliate.

8. Not a Service Contract. Your Award is not an employment or service contract, and nothing in your Award shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or on the part of the Company or an Affiliate to continue your employment

9. Withholding Obligations.

(a) At the time your Award is made, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with your Award.

(b) Unless the tax withholding obligations of the Company and/or any Affiliate are satisfied, the Company shall have no obligation to issue a certificate for such shares or release such shares from any escrow provided for herein.

10. Rights as a Shareholder. Until the Common Stock underlying this Award has been issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the stock to be issued in Future Grants.

11. Limitation on Change in Control Payments. If (i) there is an acceleration of the stock grants contemplated by the Award (as provided in Section 5), (ii) such acceleration could be deemed a "payment" within the meaning of Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code"), and (iii) such payment together with any other payments which you have the right to receive from the Company or any corporation which is a member of an "affiliated group" (as defined in Section 1504(a) of the Code without regard to Section 1504(b) of the Code) of which the Company is a member would constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Code), then the number of shares subject to acceleration under Section 5 hereof will be reduced to the largest amount as will result in no portion of such payments being subject to the excise tax imposed by Section 4999 of the Code.

12. Notices. Any notices provided for in your Award or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

13. Miscellaneous.

(a) The rights and obligations of the Company under your Award shall be transferable to any one or more persons or entities, and all covenants and agreements hereunder shall inure to the benefit of, and be enforceable by the Company's successors and assigns. Your rights and obligations under your Award may only be assigned with the prior written consent of the Company.

(b) You agree upon request to execute any further documents or instruments necessary or desirable in the sole determination of the Company to carry out the purposes or intent of your Award.

(c) You acknowledge and agree that you have reviewed your Award in its entirety, have had an opportunity to obtain the advice of counsel prior to executing and accepting your Award and fully understand all provisions of your Award.

(d) The interpretation, performance and enforcement of this Award shall be governed by the laws of the State of Delaware without resort to that State's conflict-of-laws rules.

14. Governing Plan Document. Your Award is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your Award, and is further subject to all interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your Award and those of the Plan, the provisions of the Plan shall control.

QuickLinks

CROCS, INC. Restricted Stock Award Agreement

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Exhibit 10.9

CROCS, INC.

NONSTATUTORY STOCK OPTION AGREEMENT

This Non-Statutory Stock Option Agreement (this "Agreement") is made as of (the "Effective Date"), between Crocs, Inc. (the "Company"), and ("Optionee"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Section II(15) of this Agreement.

RECITALS

A. On the Effective Date, the Board of Directors of the Company (the "Board") granted Optionee an option to purchase shares of the Company's Common Stock conditioned upon the Optionee's provision of Services to the Company.

B. Optionee was notified of the option granted by the Board and the Company's internal records have reflected the option grant to Optionee.

C. The Company and Optionee did not enter into a written agreement evidencing the issuance of the option and are entering into this Agreement for the purpose of memorializing the understanding of the parties as of the Effective Date.

D. The Company and Optionee have agreed to the terms and conditions of, and desire to document the prior grant pursuant to, this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual agreements hereinafter contained, and for other good and valuable consideration, the parties agree as follows:

I. *STOCK OPTION GRANT*

1. *Grant of Option.* The Company hereby acknowledges and confirms that, as of the Effective Date, Optionee was granted an option (the "Option") to purchase the number of shares set forth below, at the exercise price per share set forth below (the "Exercise Price"), which exercise price was the fair market value of the Common Stock as of the Effective Date, and subject to the terms and conditions of this Agreement.

Date of Grant:	_____
Vesting Commencement Date:	_____
Exercise Price:	$ per share
Total Number of Shares Granted (the "Option Shares")	_____
Type of Option:	Nonstatutory Stock Option
Expiration Date:	_____

2. *Vesting Schedule.* This Option Shares were initially unvested and became or shall become vested and exercisable, in whole or in part, according to the following vesting schedule:

II. TERMS AND CONDITIONS OF OPTION

1. *Exercise of Option.*

(a) *Right to Exercise.* This Option shall be exercisable during its term in accordance with the Vesting Schedule set out in Section I and with the applicable provisions of this Agreement.

(b) *Conditions for Exercise; Rights as a Stockholder.* The Option may not be exercised for a fraction of a share of the Company's Common Stock. Until the shares underlying the Option are purchased by Optionee and issued by the Company (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Option Shares. Should any change be made to the Common Stock of the Company by reason of any stock split, stock dividend, recapitalization, combination of stock, exchange of stock or other change affecting the Company's Common Stock without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this Option, and (ii) the Exercise Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

(c) *Method of Exercise.* In order to exercise this Option with respect to all or any part of the Option Shares for which this Option is at the time exercisable, Optionee must take the following actions:

(i) Execute and deliver to the Company the exercise notice (the "Exercise Notice") attached hereto as **Exhibit A** .

(ii) Pay the aggregate Exercise Price for the purchased shares in one of the following forms: (A) by cash or check made payable to the Company, or (B) should the Common Stock be registered under Section 12 of the Securities Exchange Act of 1934 at the time the option is exercised, then the Exercise Price may also be paid through a special sale and remittance procedure pursuant to which Optionee (or any other person or persons exercising the option) concurrently provides irrevocable instructions (y) to a Company-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable income and employment taxes required to be withheld by the Company by reason of such exercise and (z) to the Company to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

(iii) Furnish to the Company appropriate documentation that the person or persons exercising the Option (if other than Optionee) have the right to exercise this Option.

(iv) If requested by the Company, execute and deliver to the Company the Investment Representation Statement attached hereto as **Exhibit B** .

(v) Make appropriate arrangements with the Company for the satisfaction of all applicable income and employment tax withholding requirements applicable to the exercise of the Option.

(d) *Certificates.* As soon as practical after the Company receives the Exercise Notice, the Company shall issue to or on behalf of Optionee (or any other person exercising this Option) a certificate for the requisite number of shares of Common Stock, with the appropriate legends affixed thereto.

(e) *Exercise as to Vested Shares.* The Option may be exercised as to vested Option Shares only.

2. *Cessation of Service.* The Option shall terminate (and cease to be outstanding) prior to the Expiration Date should any of the following provisions become applicable:

(a) Should Optionee cease to remain in Service for any reason (other than death, Disability or Misconduct) while this Option is outstanding, then Optionee (or any person or persons to whom this Option is transferred pursuant to a permitted transfer under Section II(3)) shall have a

period of three (3) months (commencing with the date of such cessation of Service) during which to exercise this Option, but in no event shall this Option be exercisable at any time after the Expiration Date.

(b) Should Optionee die while this Option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the Option is transferred pursuant to Optionee's will or the laws of inheritance following Optionee's death or to whom the Option is transferred during Optionee's lifetime pursuant to a permitted transfer under Section II(3) shall have the right to exercise this Option. However, if Optionee dies while holding this Option and if Optionee has an effective beneficiary designation in effect for this Option at the time of his or her death, then the designated beneficiary or beneficiaries shall have the exclusive right to exercise this Option following Optionee's death. Any such right to exercise this Option shall lapse, and this Option shall cease to be outstanding, upon the *earlier* of (i) the expiration of the twelve (12)-month period measured from the date of Optionee's death or (ii) the Expiration Date.

(c) Should Optionee cease Service by reason of Disability while this Option is outstanding, then Optionee (or any person or persons to whom this Option is transferred pursuant to a permitted transfer under Section II(3)) shall have a period of twelve (12) months (commencing with the date of such cessation of Service) during which to exercise this Option. In no event shall this Option be exercisable at any time after the Expiration Date.

(d) During the limited period of post-Service exercisability, this Option may not be exercised in the aggregate for more than the number of Option Shares in which Optionee is, at the time of Optionee's cessation of Service, vested pursuant to the Vesting Schedule or the special vesting acceleration provisions of Section II(4). Upon the expiration of such limited exercise period or (if earlier) upon the Expiration Date, this Option shall terminate and cease to be outstanding for any vested Option Shares for which the Option has not been exercised. To the extent Optionee is not vested in one or more Option Shares at the time of Optionee's cessation of Service, this Option shall immediately terminate and cease to be outstanding with respect to such Option Shares.

(e) Should Optionee's Service be terminated for Misconduct or should Optionee otherwise engage in Misconduct while this Option is outstanding, then this Option shall terminate immediately and cease to remain outstanding and Optionee shall have no right to exercise vested or unvested Option Shares.

3. *Limited Transferability of Options.* This Option shall neither be transferable nor assignable by Optionee other than by will or the laws of inheritance following Optionee's death and may be exercised, during Optionee's lifetime, only by Optionee. However, Optionee may designate one or more persons as the beneficiary or beneficiaries of this Option, and this Option shall, in accordance with such designation, automatically be transferred to such beneficiary or beneficiaries upon the Optionee's death while holding this Option. Such beneficiary or beneficiaries shall take the transferred Option subject to all the terms and conditions of this Agreement, including (without limitation) the limited time period during which this Option may, pursuant to Section II(2), be exercised following Optionee's death.

4. *Accelerated Vesting.*

(a) In the event of any Change in Control, the Option Shares at the time subject to this Option but not otherwise vested shall automatically vest in full so that this Option shall, immediately prior to the effective date of the Change in Control, become exercisable for all of the Option Shares as fully vested shares and may be exercised for any or all of those Option Shares as vested shares.

(b) This Agreement shall not in any way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

5. *Tax Obligations: Withholding Taxes.* The Optionee agrees to make appropriate arrangements with the Company for the satisfaction of all Federal, state, local and foreign income and employment tax withholding requirements applicable to the Option exercise. The Optionee acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver shares if such withholding amounts are not delivered at the time of exercise.

6. *Lock-Up Period.* The Optionee hereby agrees that the Optionee shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Common Stock (or other securities) of the Company (other than those included in or acquired after such registration) or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock (or other securities) of the Company held by the Optionee (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company not to exceed one hundred eighty (180) days following the effective date of any registration statement of the Company filed under the Securities Act (or such longer period, not to exceed eighteen (18) days after expiration of the one hundred eighty (180) day period, as the Company or the underwriters shall request in order to facilitate compliance with NASD Rule 2711).

The Optionee agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, the Optionee shall provide, within ten (10) days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. The obligations described in this Section shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of such lock-up period. The Optionee agrees that any transferee of the Option or shares acquired pursuant to the Option shall be bound by this Section.

8. *Restrictions on Exercise.* This Option may not be exercised if the issuance of shares upon exercise or the method of payment of consideration for such shares would constitute a violation of any Applicable Law. The inability of the Company to obtain approval from any regulatory body having authority deemed by the Company to be necessary to the lawful issuance and sale of any Common Stock pursuant to this Option shall relieve the Company of any liability with respect to the non-issuance or sale of the Common Stock as to which such approval has not been obtained. The Company, however, shall use its best efforts to obtain all such approvals.

9. *Term of Option.* If not earlier terminated pursuant to other provision of this Agreement, the Option will terminate on the Expiration Date and may not be exercised thereafter.

10. *At-Will Employment.* Nothing in this Agreement shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company or of Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service at any time for any reason, with or without cause.

11. *Successors and Assigns.* The provisions of this Agreement shall inure to the benefit of, and be binding upon, the Company and its successors and assigns and Optionee, Optionee's assigns and the legal representatives, heirs and legatees of Optionee's estate.

12. *Notices.* Any notice required to be given or delivered to the Company under the terms of this Agreement shall be in writing and addressed to the Company at its principal corporate offices. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line hereto. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

13. *Governing Law.* The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Colorado without resort to that State's conflict-of-laws rules.

14. *Definition of Change in Control.* For purposes of this Agreement, a "Change in Control" shall mean the happening of any of the following events:

(a) An acquisition by any individual, entity or "group" (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934) of 33 $^{1}/_{3}$% or more of either (1) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (2) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); excluding, however, the following: (1) any acquisition directly from the Company, other than an acquisition by virtue of the exercise of a conversion privilege unless the security being so converted was itself acquired directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any entity controlled by the Company, (4) any acquisition pursuant to a transaction which complies with clauses (1), (2) and (3) of subsection (iii) of this Section II (14), or (5) any Change in Control triggered solely because the percentage of Outstanding Company Common Stock or Outstanding Company Voting Securities held by any Person (the "Subject Person") exceeds the designated percentage threshold thereof as a result of a repurchase or other acquisition of securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of securities by the Company, and after such share acquisition, the Subject Person becomes the owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur; or

(b) A change in the composition of the Board such that the individuals who, as of the date of this Agreement, constitute the Board (such Board shall be hereinafter referred to as the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, for purposes of this Section II(14)(b) that any individual who becomes a member of the Board subsequent to the date of this Agreement, whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; but, provided, further, that any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board shall not be so considered as a member of the Incumbent Board; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company ("Corporate Transaction"); excluding, however, such a Corporate Transaction pursuant to which (1) all or substantially all of the individuals and entities who are the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Corporate Transaction will beneficially own, directly or indirectly, more than 50% of, respectively, the outstanding shares of common stock, and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Corporate Transaction (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (2) no Person (other than the Company, any employee benefit plan (or related trust) of the Company or such corporation resulting from such Corporate Transaction) will beneficially own, directly or indirectly, 33?% or more of, respectively, the outstanding shares of common stock of the corporation resulting from such Corporate Transaction or the combined voting power of the outstanding voting securities of such corporation entitled to vote generally in the election of directors except to the extent that such ownership existed prior to the Corporate Transaction, and (3) individuals who were members of the Incumbent Board will constitute at least a majority of the members of the board of directors of the corporation resulting from such Corporate Transaction; or

(d) The approval by the stockholders of the Company of a complete liquidation or dissolution of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur.

(e) The term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

15. *Additional Definitions.* Definitions for this Agreement are as follows:

(a) "Agreement" has the meaning set forth in the preface above.

(b) "Applicable Law" means the requirements relating the issuance and exercise of stock options under federal and state corporate laws, federal and state securities laws, the Internal Revenue Code of 1986, as amended, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any other country or jurisdiction where the Optionee resides at the time of exercise.

(c) "Common Stock" means the Company's Common Stock, $.001 par value, and in the case of an option granted prior to January 3, 2005, the Class B Membership Units of the Company's predecessor that have been converted into the Company's Common Stock.

(d) "Company" has the meaning set forth in the preface above.

(e) "Change of Control" has the meaning set forth in Section II(14) above.

(f) "Corporate Transaction" has the meaning set forth in Section II(14)(c) above.

(g) "Disability" shall mean that the Optionee has been unable to perform his or her Company duties as the result of his or her incapacity due to physical or mental illness, and such inability, at least twenty-six (26) weeks after its commencement, is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Optionee or the Optionee's legal representative (such agreements to acceptability not to be unreasonably withheld).

(h) "Employee" means an individual who is in the employ of the Company, subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

(i) "Exercise Notice" has the meaning set forth in Section II(1)(c)(i) above.

(j) "Exercise Price" has the meaning set forth in Section I(1) above.

(k) "Expiration Date" has the meaning set forth in Section I(1) above.

(l) "Incumbent Board" has the meaning set forth in Section II(14)(b) above.

(m) "Misconduct" shall mean (i) the commission of any act of fraud, embezzlement or dishonesty by Optionee, (ii) any unauthorized use or disclosure by Optionee of confidential information or trade secrets of the Company, (iii) conviction of the Optionee for committing a felony under federal law or the law of the state in which such action occurred, (iv) illegal drug use or alcohol abuse on Company premises or at a Company sponsored event, (v) intentional, material violation by the Optionee of any contract between the employee and the Company or of any statutory duty of the Optionee to the Company, or (vi) any other intentional misconduct by Optionee adversely affecting the business or affairs of the Company in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Company may consider as grounds for the dismissal or discharge of Optionee or any other individual in the Service of the Company.

(n) "Option" has the meaning set forth in Section I(1) above.

(o) "Optionee" has the meaning set forth in the preface above.

(p) "Option Shares" or means the Shares subject to the Option.

(q) "Outstanding Company Common Stock" has the meaning set forth in Section II(14)(a) above.

(r) "Outstanding Company Voting Securities" has the meaning set forth in Section II(14)(a) above.

(s) "Person" has the meaning set forth in Section II(14)(a) above.

(t) "Service" or "Services" means the Optionee's performance of services for the Company in the capacity of an Employee, a non-employee member of the Board of Directors or a consultant or independent advisor.

(u) "Subject Person" has the meaning set forth in Section II(14)(a) above.

(v) "Vesting Commencement Date" has the meaning set forth in Section I(1) above.

IN WITNESS WHEREOF , the parties have executed this Agreement this day of , 200 , to be effective as of the Effective Date.

OPTIONEE	CROCS, INC.
By:	By:
	Its:
Residence Address	

EXHIBIT A

NONSTATUTORY STOCK OPTION AGREEMENT

EXERCISE NOTICE

Crocs, Inc.
6273 Monarch Park Place
Niwot, Colorado 80503

Attention: Secretary

1. *Exercise of Option.* Effective as of today, , , the undersigned (the "Optionee") hereby elects to exercise the Optionee's option to purchase shares of the Common Stock (the "Shares") of Crocs, Inc. (the "Company") under and pursuant to the Nonstatutory Stock Option Agreement dated (the "Agreement").

2. *Delivery of Payment.* The Optionee herewith delivers to the Company the full purchase price of the Shares, as set forth in the Agreement, and any and all withholding taxes due in connection with the exercise of the Option (as defined in the Agreement).

3. *Representations of Optionee.* The Optionee acknowledges that the Optionee has received, read and understood the Agreement and agrees to abide by and be bound by its terms and conditions.

4. *Rights as Stockholder*. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to shares not yet exercised. The Shares shall be issued to the Optionee as soon as practicable after the Option is exercised in accordance with the Agreement.

5. *Tax Consultation.* The Optionee understands that the Optionee may suffer adverse tax consequences as a result of the Optionee's purchase or disposition of the Shares. The Optionee represents that the Optionee has consulted with any tax consultants the Optionee deems advisable in connection with the purchase or disposition of the Shares and that the Optionee is not relying on the Company for any tax advice.

6. *Restrictive Legends and Stop-Transfer Orders.*

(a) *Legends.* The Optionee understands and agrees that the Company shall cause the legends set forth below or legends substantially equivalent thereto, to be placed upon any certificate(s) evidencing ownership of the Shares together with any other legends that may be required by the Company or by state or federal securities laws:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR, IN THE OPINION OF COMPANY COUNSEL SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS IN COMPLIANCE THEREWITH.

(b) *Stop-Transfer Notices.* The Optionee agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) *Refusal to Transfer*. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Exercise Notice or (ii) to treat as owner of such Shares or to accord the right to vote or

pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

7. *Successors and Assigns.* The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this Exercise Notice shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon the Optionee and his or her heirs, executors, administrators, successors and assigns.

8. *Governing Law; Severability.* This Exercise Notice is governed by and construed in accordance with the laws of the State of Colorado without resort to that State's conflict-of-laws rules.

9. *Entire Agreement.* The Agreement is incorporated herein by reference. This Exercise Notice, the Agreement and the Investment Representation Statement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and the Optionee.

Submitted by:

OPTIONEE

Signature

Print Name

Address:

Accepted by:

CROCS, INC.

By

Title

Date Received

EXHIBIT B

INVESTMENT REPRESENTATION STATEMENT

OPTIONEE:

COMPANY: **CROCS, INC.**

SECURITIES: COMMON STOCK

AMOUNT:

DATE:

In connection with the purchase of the above-listed Securities, the undersigned Optionee represents to the Company the following:

(a) The Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. The Optionee is acquiring these Securities for investment for the Optionee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the " **Securities Act** ").

(b) The Optionee acknowledges and understands that the Securities constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Optionee's investment intent as expressed herein. In this connection, the Optionee understands that, in the view of the Securities and Exchange Commission, the statutory basis for such exemption may be unavailable if the Optionee's representation was predicated solely upon a present intention to hold these Securities for the minimum capital gains period specified under tax statutes, for a deferred sale, for or until an increase or decrease in the market price of the Securities, or for a period of one year or any other fixed period in the future. The Optionee further understands that the Securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. The Optionee further acknowledges and understands that the Company is under no obligation to register the Securities. The Optionee understands that the certificate evidencing the Securities will be imprinted with any legend required under applicable state securities laws.

(c) The Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to the Optionee, the exercise will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter (or such longer period as any market stand-off agreement may require) the Securities exempt under Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including: (1) the resale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934); and, in the case of an affiliate, (2) the availability of certain public information about the Company, (3) the amount of Securities being sold during any three month period not exceeding the limitations specified in Rule 144(e), and (4) the timely filing of a Form 144, if applicable.

In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the Securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires the resale to occur not less than one year after the later of the date the Securities were sold by the Company or the date the Securities were sold by an affiliate of the Company, within the meaning of Rule 144; and, in the case of acquisition of the Securities by an affiliate, or by a

non-affiliate who subsequently holds the Securities less than two years, the satisfaction of the conditions set forth in sections (1), (2), (3) and (4) of the paragraph immediately above.

(d) The Optionee further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk. The Optionee understands that no assurances can be given that any such other registration exemption will be available in such event.

Signature of Optionee:

_____

Date: _____ , _____

QuickLinks

CROCS, INC. NONSTATUTORY STOCK OPTION AGREEMENT
EXHIBIT A NONSTATUTORY STOCK OPTION AGREEMENT EXERCISE NOTICE
EXHIBIT B INVESTMENT REPRESENTATION STATEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.10

COMMERCIAL LEASE

THIS LEASE is entered into this date by and between DiiG, LLP, a Colorado limited liability company ("Lessor") and WESTERN BRANDS, LLC, a Colorado limited liability company ("Lessee").

In consideration of the covenants, leases and stipulations herein contained on the part of the Lessee to be paid, kept and faithfully performed, the Lessor does hereby lease, demise and let unto the said Lessee, and Lessee does hereby hire and take from Lessor the entire premise including the building containing 12,000 rentable square feet located at and commonly known as 6273 Monarch Park Place, Niwot, Colorado, 80503, including all parking associated with the building.

In consideration of the leasing of said premises and of the mutual leases herein contained, each party hereto does hereby expressly covenant and agree to and with the other, as follows:

Section 1. Acceptance of Lease. The Lessee accepts said letting and agrees to pay to the order of the Lessor the rentals stated below for the full term of this lease, in advance, at the times and in the manner aforesaid.

Section 2. Term. This lease shall commence January 1, 2005, and continue for a period of three (3) years, ending at 5:00 P.M., December 31, 2007.

Section 3. Option to Renew. Lessee shall have the option to renew this lease for one additional three (3) year term, if, at the time of renewal, Lessee is not then in default, as follows:

A. The options may be exercised by written notice to Lessor given not less than one hundred twenty (120) days prior to the last day of the term of this Lease for the first option, and not less than one hundred twenty (120) days prior to the last day of the first option term for the second option.

B. The terms and conditions of the lease for the renewal term shall be identical with the original term except for the basic rent. The basic rent for each renewal term shall be the then market rate for the premises, provided however, that the basic rent shall not increase by less than five percent (5%) over the prior year's basic rent. During each renewal term, the basic rent shall increase at the rate of five percent (5%) per annum. During the renewal terms, Lessor shall be entitled to retain all rents received by Lessee from sublease, assignment and licensing of the subject real property.

Section 4. Basic Rent.

A. Lessee shall pay to Lessor for each full calendar month during the lease term, basic rent in the sum of nine thousand five hundred dollars ($9,500.00) per month. The basic rent shall be payable in advance upon the 1st day of each calendar month through and including December 1, 2007. The first month's basic rent shall be paid on the commencement date of this lease. If rent is not paid within five (5) days of its due date, Lessee shall pay an additional late fee of five percent (5%) of the monthly rental amount. Any amounts, whether basic rent or additional rent which are not paid within ten (10) days after written notice to Lessee, shall bear interest at the rate of twelve percent (12%) per annum.

Section 5. Additional Rent .

A. The Lessee shall pay Lessor additional annual rent equal to the cost of all operating expenses for the building and premises multiplied by one hundred percent (100%). Operating expenses shall include, but not be limited to: (i) taxes, assessments and governmental taxes, whether federal, state, county or municipal, which are levied on or charged against the premises and any other taxes and assessments attributable to the premises and its operation excluding, however, federal and state income taxes; (ii) all insurance premiums paid by the Lessor attributable to the premises, for insurance customarily carried by owners of buildings of the same size and age as the demised premises; (iii) all expenses incurred in connection with the maintenance, operation, and repair of the building, except as set forth in Section 9 B hereinafter, associated equipment,

parking areas, and landscaped areas;

(iv) building and cleaning supplies and materials; (v) the cost of all charges for cleaning, maintenance and service contracts, trash collection, snow removal, and other services with independent contractors; (vi) the reasonable amortization of any capital improvements which are made or installed by Lessor after the commencement of this lease for the purpose of saving labor or otherwise reducing applicable operating expenses using generally accepted accounting practices consistently applied; and (vii) all other costs and expenses reasonably necessary in the operation and maintenance of a first class building (any management fees shall not exceed five percent (5%) of the net income). Such additional rent shall be paid at monthly intervals in advance upon receipt of statements of estimated charges from Lessor. At the end of each calendar year, or, at Lessor's option, at any other more frequent interval, Lessor shall provide a detailed accounting of the total operating expenses for the Building, Lessee's share of such amount, and Lessee's payments toward such amount during the year or interval. During the thirty (30) day period following such accounting, Lessor shall pay any excess to the Lessee if payments exceed expenses, and the Lessee shall pay additional rent to Lessor if expenses exceed payments. If Lessee does not agree with the accounting provided by Lessor, Lessee shall have the right to examine the books and records of Lessor related to the premises for purposes of auditing the operating expenses, provided, however that such audit shall be at Lessee's sole cost and expense unless the audit reveals a discrepancy of more than five percent (5%) in Lessor's favor, in which case the cost and expense of the audit shall be reimbursed to Lessee by Lessor.

B. Operating expenses shall not include the cost of any work or service performed specially by the Lessor for the Lessee at the cost of such Lessee.

C. During the term of this lease, Lessee may, within Lessor's consent, which consent shall not be unreasonably withheld, contract with third parties to perform all or part of the services described in Section 5 A above.

Section 6. Adjustment of Basic Rent .

The amount of basic monthly rent shall be adjusted for the succeeding twelve months on each anniversary date of this lease as follows: January 1, 2006—nine thousand seven hundred fifty dollars ($9750.00); January 1, 2007—ten thousand dollars ($10,000).

Section 7. Right to Contest Taxes. Lessor, at Lessor's discretion, may protest the amount of any assessment of real property taxes. If Lessor obtains a reduction in assessment and/or real property taxes and after deducting reasonable expenses involved in the contesting of said taxes, Lessor shall credit to Lessee any net reduction in real estate taxes affected for a year for which Lessee has previously paid said taxes. If, in Lessor's discretion, Lessor refuses to contest the amount of any assessment and/or real property taxes, then Lessee shall have the right to contest any such assessment and/or real property taxes. If Lessee elects to contest such assessment and/or real property taxes, Lessee shall diligently conduct such proceedings on behalf of Lessor or other entity entitled to initiate such proceedings or other actions. Lessor shall cooperate with Lessee in any such contest and shall execute and deliver any documents reasonably required to be executed by Lessor as owner of the demised premises in connection with such contest. If the proceedings or other actions instituted by Lessee result in the reduction in the amount of assessment and/or tax, Lessee shall first be reimbursed from the amount of rebate or reduction, if any, of taxes previously paid for Lessee's expenses in undertaking and prosecuting the proceeding or other action, and then Lessee shall be reimbursed the balance of any rebate. Lessee shall also be entitled to a credit for of any net reduction in real estate taxes affected for future years by reason of the payment of any increase in real property taxes as set forth in this lease.

Section 8. Use of Premises .

A. The Lessee shall use said demised premises during the term of this lease for general office purposes and warehousing, provided that said use complies with all applicable laws, ordinances and

regulations, and for no other purpose whatsoever without Lessor's written consent, which shall not be unreasonably withheld.

B. The Lessee will not make any unlawful, improper or offensive use of said premises; will not suffer any waste thereof; will not permit any objectionable noise or odor to escape or to be emitted from said premises or do anything or permit anything to be done upon or about said premises in any way tending to create a nuisance; will not sell or permit to be sold any spirituous, vinous or malt liquors on said premises, excepting such as Lessee may be licensed by law to sell and as may be herein expressly permitted; nor will it sell or permit to be sold any controlled substance on or about said premises.

C. The Lessee will not allow the leased premises at any time to fall into such a state of repair or disorder as to increase the fire hazard thereon; shall not permanently install any power machinery on said premises except under the supervision and with the written consent of the Lessor; shall not store gasoline or other highly combustible materials on said premises at any time; will not use said premises in such a way or for such a purpose that the fire insurance rate on the building in which said premises are located is thereby increased or that would prevent the Lessor from taking advantage of any rulings of any agency of the state in which said leased premises are situated or its successors, which would allow the Lessor to obtain reduced premium rates for long term fire insurance policies.

D. Lessee accepts the premises in a where is, as is condition, and Lessor has no obligation to improve, repair, restore, or alter the premises. Lessee acknowledges that neither the Lessor or any agent of Lessor has made any representation or warranty, except as otherwise expressly provided in this lease, with respect to the premises, including, without limitation, any representation or warranty with respect to the suitability or fitness of the premises or any portion for the conduct of Lessee's business, or compliance of the premises with the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 - 12213, as amended from time to time (the ADA). Notwithstanding the above, Landlord warrants that the HVAC, electrical and mechanical systems are in good condition and repair as of September 1, 2004. Lessee shall comply in all material respects, at Lessee's own expense, with all laws and regulations of any municipal, county, state, federal or other public authority respecting the use of said leased premises. Nothing herein shall require Lessee to make structural repairs or alterations to comply with such laws and regulations unless Lessee has, by its manner of use of the demised premises or method of operation therein, violated any such laws or regulations with respect thereto, or caused the premises to be in non-compliance. Lessee may, after securing Lessor to Lessor's reasonable satisfaction against all damages, interest, penalties and expenses, including, but not limited to, reasonable attorney's fees, by cash deposit or by surety bond in an amount and in a company satisfactory to Lessor, contest and appeal any such laws or regulations provided same is done with all reasonable promptness and provided such appeal shall not subject Lessor to prosecution for a criminal offense or cause the demised premises or any part thereof to be condemned or vacated.

Section 9. Repairs and Improvements .

A. The Lessor shall not be required to make any repairs, alterations, additions or improvements to or upon said premises during the term of this lease, except only those hereinafter specifically provided for; the Lessee hereby agrees to maintain and keep said leased premises including all interior and exterior doors, heating, ventilating and cooling systems, interior wiring, plumbing fixtures and interior drain pipes in good order and repair during the entire term of this lease at Lessee's own cost and expense, and to replace all glass which may be broken or damaged during the term hereof in the windows and doors of said premises with glass of as good or better quality as that now in use; Lessee further agrees that Lessee will make no alterations, additions or improvements to or upon said premises without the written consent of the Lessor first being obtained.

B. The Lessor agrees to maintain in good order and repair during the term of this lease the exterior walls, roof, gutters, downspouts and foundations of the building on the demised premises and

the sidewalks thereabouts. Lessor will maintain and keep any wiring, plumbing and drain pipes outside the building, but on the demised premises, in good repair during the term of this lease, except as such repairs are caused by the negligent acts or willful wrong doing of Lessee or agents, employees, or licensees of Lessee. It is understood and agreed that the Lessor reserves and at any and all times shall have the right to alter, repair or improve the building, or to add thereto and for that purpose at any time may erect scaffolding and all other necessary structures about and upon the demised premises and Lessor and Lessor's representatives, contractors and workmen for that purpose may enter in or about the said demised premises with such materials as Lessor may deem necessary therefor, and Lessee waives any claim to damages, including loss of business resulting therefrom, provided, however, that Lessor shall use its best efforts not to interfere with the conduct and operation of Lessee's business at the demised premises.

Section 10. Lessor's Right of Entry. It shall be lawful for the Lessor, its agents and representatives, at any reasonable time, with twenty-four (24) hours notice, except for an emergency in which case no not ice shall be required, to enter into or upon said demised premises for the purpose of examining into the condition thereof, or any other lawful purpose.

Section 11. Utilities. Lessee shall contract for and obtain, in its name, all utility services required on the premises, including gas, electricity, telephone, water and sewer services, and Lessee shall pay all charges for those services as they become due. If Lessee fails to pay the charges, Lessor may elect to pay them and the charges will then be added to the rental installment next due. Lessee shall be liable for any injury or damages to the equipment or service lines of the utility suppliers that are located on the premises, resulting from the negligent acts or willful wrongdoing of Lessee, or the agents, employees or licensees of Lessee.

Section 12. Right of Assignment. The Lessee will not assign, transfer, pledge, hypothecate, surrender or dispose of this lease, or any interest herein, sublet, or permit any other person or persons whomsoever to occupy the demised premises without the written consent of the Lessor being first obtained in writing, which consent shall not be unreasonably withheld; this lease is personal to said Lessee; Lessee's interests, in whole or in part, cannot be sold, assigned, transferred, seized or taken by operation at law, or under or by virtue of any execution or legal process, attachment or proceedings instituted against the Lessee, or under or by virtue of any bankruptcy or insolvency proceedings had in regard to the Lessee, or in any other manner, except as above mentioned. Notwithstanding the foregoing, however, Lessee may assign this lease without Lessor's prior written consent to any corporation, which is directly or indirectly controlled by or under common control with Lessee.

Section 13. Liens. The Lessee will not permit any lien of any kind, type or description to be placed or imposed upon the building in which said leased premises are situated, or any part thereof, or the real estate on which it stands, and shall discharge same within thirty (30) days after filing thereof by payment thereof or filing a bond required by law.

Section 14. Ice, Snow, Debris. At all times Lessee shall keep the sidewalks in front of the demised premises free and clear of rubbish, debris and obstruction; and if the Lessee occupies the entire building, and Lessee will not permit rubbish, debris, ice or snow to accumulate on the roof of said building so as to stop up or obstruct gutters or downspouts or cause damage to said roof, and will save harmless and protect the Lessor against any injury whether to Lessor or to Lessor's property or to any other person or property caused by its failure in that regard.

Section 15. Advertising Signs. The Lessee will not use the outside walls of said premises, or allow signs or devices of any kind to be attached thereto or suspended therefrom, for advertising or displaying the name or business of the Lessee or for any purpose whatsoever, other than in compliance with applicable laws, regulations or ordinances.

Section 16. Liability Insurance. The Lessee further agrees at all times during the term hereof, at Lessee's own expense, to maintain and keep in effect, liability insurance policies in form and with an insurer reasonably satisfactory to the Lessor, insuring both the Lessor and the Lessee against all liability for damages to person or property in or about said leased premises; the amount of said liability insurance shall not be less than two million dollars ($2,000,000.00) for injury to one person, three million dollars ($3,000,000.00) for injuries arising out of any one accident and not less than one million dollars ($1,000,000.00) for property damage, and to furnish and deliver to the Lessor certificates of said insurance. Lessee agrees to and shall indemnify and hold Lessor harmless against any and all claims and demands arising from the negligence of the Lessee, its officers, agents, invitees and/or employees, as well as those arising from Lessee's failure to comply with any covenant of this lease on Lessee's part to be performed, and shall at Lessee's own expense defend the Lessor against any and all suits or actions arising out of such negligence, actual or alleged, and all appeals therefrom and shall satisfy and discharge any judgment which may be awarded against Lessor in any such suit or action. Notwithstanding the foregoing, Lessee may secure the insurance coverages required by this Section 16 under a blanket form of policy or policies

Section 17. Fixtures. All partitions, plumbing, electrical wiring, additions to or improvements upon said leased premises, whether installed by the Lessor or Lessee, shall be and become a part of the building as soon as installed and the property of the Lessor unless Lessor notifies Lessee, within sixty (60) days of the termination of this lease or any extension, to remove the same, in which case Lessee shall restore the premises to the condition existing prior to installation and repair any damage due to such removal. Notwithstanding the foregoing, at the time of any request for approval of Lessee installed improvements, Lessee may also request that Lessor make a determination at that time as to whether or not such improvements may remain at the termination of the lease. Lessee shall not be required to remove any improvements, which, at the time of Lessor approval, Lessor had approved their remaining upon termination of the lease. Lessor's approval shall not be unreasonably withheld, and Lessor's determination as to allowing improvements to remain shall be reasonable, provided however, that the parties acknowledge that Lessor may refuse any improvements, or require removal of any improvements which detract from the operation of the premises as a multi-tenant facility. Nothing in this section shall be construed to give Lessor title to or to prevent Lessee's removal of business or trade fixtures, machinery and equipment, moveable office furniture and equipment, but upon removal of any such items from the premises, Lessee shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises due to such removal.

Section 18. Casualty & Fire Damage; Duty to Repair .

A. In the event of the total destruction of the building (defined as destruction of ninety percent (90%) or more of the building) in which said leased premises are located by fire or other casualty, either party hereto may terminate this lease as of the date of said fire or casualty.

In the event of partial damage to the building, the Lessor shall have the option to terminate the lease or to repair the building. If notice to repair is not given to Lessee within twenty (20) days of the damage, Lessor conclusively shall be deemed to have elected not to repair. In the event Lessor elects or is deemed not to repair said building, then and in that event this lease shall terminate with the date of said damage. If Lessor elects to repair as aforesaid, then the Lessor shall repair said building with all convenient speed and shall have the right to take possession of and occupy, to the exclusion of the Lessee, all or any part of said building in order to make the necessary repairs, and the Lessee hereby agrees to vacate upon request, all or any part of said building which the Lessor may require for the purpose of making necessary repairs. For the period of time between the day of such damage and until such repairs have been substantially completed there shall be such an abatement of rent as the nature of the injury or damage and its interference with the occupancy of said leased premises by said Lessee shall warrant; however, if the premises be but slightly injured and the damage so occasioned shall not

cause any material interference with the occupation of the premises by said Lessee, then there shall be no abatement of rent and the Lessor shall repair said damage with all convenient speed.

B. In the event Lessor elects to repair under Section 18 A above, and such casualty and repairs have caused the Lessee to have vacated the premises for more than one hundred twenty (120) days, or if Lessor is not able to determine, such determination to be made in good faith, that Lessee will be in occupancy on or within one hundred twenty (120) days of such casualty, then, Lessee, at Lessee's option, may elect to terminate this lease.

Section 19. Waiver of Subrogation Rights. Neither the Lessor nor the Lessee shall be liable to the other for loss arising out of damage to or destruction of the leased premises, or the building or improvement of which the leased premises are a part or with which they are connected, or the contents of any thereof, when such loss is caused by any of the perils which are or could be included within or insured against by a standard form of fire insurance with extended coverage. All such claims for any and all loss, however caused, hereby are waived. Such absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Lessor or Lessee or by any of their respective agents, servants or employees. It is the intention and lease of the Lessor and the Lessee that the rentals reserved by this lease have been fixed in contemplation that each party shall fully provide its own insurance protection at its own expense, and that each party shall look to its respective insurance carriers for reimbursement of any such loss, and further, that the insurance carriers involved shall not be entitled to subrogation under any circumstances against any party to this lease. Neither the Lessor nor the Lessee shall have any interest or claim in the other's insurance policy or policies, or the proceeds thereof, unless specifically covered therein as a joint assured. Both parties shall give notice to their respective insurance carriers of this provision.

Section 20. Eminent Domain. In case of the condemnation or appropriation of all or any substantial part of the said demised premises by any public or private corporation under the laws of eminent domain, this lease may be terminated at the option of either party hereto on thirty (30) days' written notice to the other and in that case the Lessee shall not be liable for any rent after the date of Lessee's removal from the premises. Notwithstanding the above, Lessee may make its own claim against the condemning authority based on the Lessee's leasehold interest in the premises.

Section 21. Signage. During the period of one hundred twenty (120) days prior to the date above fixed for the termination of this lease, the Lessor herein may post on said premises or in the windows thereof signs of moderate size notifying the public that the premises are "for sale" or "for lease."

Section 22. Premises on Termination. At the expiration of said term or upon any sooner termination thereof, the Lessee will quit and deliver up said leased premises and all future erections or additions to or upon the same, broom-clean, to the Lessor or those having Lessor's estate in the premises, peaceably, quietly, and in as good order and condition, reasonable use and wear thereof, damage by fire, unavoidable casualty and the elements alone excepted, as the same are now in or hereafter may be put in by the Lessor.

Section 23. Environmental Matters .

A. *Environmental Warranties.* Notwithstanding any other provision of this lease, Lessee's use of the subject real property is expressly subject to the condition precedent that Lessee comply with the warranties, representations and covenants set forth in this section. Lessee warrants, represents and covenants as follows:

(1) Lessee shall conduct no activity or allow to be conducted any activity or use of the property which would result in the presence of any "Hazardous Materials" or any "Hazardous Materials Contamination" on the property;

(a) "Hazardous Materials" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), as amended from time to time, and regulations promulgated thereunder; (c) radon and material quantities of petroleum products; (d) any substance the presence of which on the property is regulated by any federal, state or local law relating to the protection of the environment or public health; and (e) any other substance which by law requires special handling in its collection, storage, treatment or disposal.

(b) "Hazardous Materials Contamination" means the contamination occurring after the date hereof of the improvements, facilities, soil, ground water, surface water, air or other elements on or under the property by Hazardous Materials, or the contamination occurring after the date hereof of the buildings, facilities, soil, ground water, surface water, air or other elements on or under any other property as a result of Hazardous Materials emanating from the property.

(2) Lessee will obtain all necessary federal, state and local environmental permits necessary for its business and use of the property;

(3) Lessee will at all times be in compliance, in all material respects, with the terms and conditions of its environmental permits;

(4) Lessee will be in compliance, in all material respects, with all applicable federal, state and local environmental statutory and regulatory requirements, other than those contained in its permits;

(5) There are no pending environmental civil, criminal or administrative proceedings against Lessee, which will affect the leased premises;

(6) Lessee knows of no threatened civil, criminal or administrative proceedings against it relating to environmental matters, which will affect the leased premises;

(7) Lessee knows of no fact or circumstances that may give rise to any future civil, criminal or administrative proceedings against it relating to environmental matters, which will affect the leased premises.

B. *Indemnification* .

(1) Lessee agrees to indemnify, defend, reimburse and hold harmless the following persons from and against any and all "Environmental Damages" arising from activities of Lessee or its employees, agents, or invitees which (a) result in the presence of "Hazardous Materials" upon, about or beneath the premises or migrating to or from the premises, or (b) result in the violation of any "Environmental Requirements" pertaining to the premises and the activities thereon:

(a) Lessor;

(b) any other person who acquires a portion of the premises in any manner, including but not limited to through purchase, at a foreclosure sale or otherwise through the exercise of the rights and remedies of Lessor under this Lease; and

(c) the directors, officers, shareholders, employees, partners, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees, heirs, devisees, successors, assigns and invitees of such persons.

(2) "Environmental Damages" means all claims, judgments, injuries, actual damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of

investigation and defense of any claim, and of any settlement of judgment subject to the provisions of Section 24 (5) below, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including, without limitation, reasonable attorneys' fees and disbursements and consultants' fees, but excluding consequential damages, any of which are incurred at any time as a result of the existence of "Hazardous Material" upon, about, beneath the premises or migrating or threatening to migrate to or from the premises or the existence of a violation of "Environmental Requirements" pertaining to the premises.

(3) "Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorization, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities, of the United States, states and political subdivisions thereof, and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment.

(4) This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by the indemnified parties), and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against such indemnified persons. Lessor, at its sole expense, may employ additional counsel of its choice to associate with counsel representing Lessee.

(5) If Lessee or any indemnified party shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of "Environmental Requirements," or liability of Lessee for "Environmental Damages" in connection with the premises or past or present activities of any person thereon, or that any representation set forth in this Section 23 is not or is no longer accurate, then such party shall deliver to the other party, within ten (10) days of the receipt of such notice, or communication or correcting information by Lessee, a written description of such information or condition, together with copies of any documents evidencing same. Any indemnified party shall cooperate with Lessee and Lessee shall not be required to indemnify any indemnified party for any settlement entered into without the prior consent of the Lessee, which consent may not be unreasonably withheld.

(6) Lessor shall have the right in its sole and absolute discretion, but not the duty, to enter and conduct an inspection of the premises at any reasonable time, with reasonable notice, to determine whether Lessee is complying with the terms of this Lease, with respect to "Environmental Requirements" and the existence of "Environmental Damages." Lessee hereby grants to Lessor the right to enter the premises and to perform such tests on the premises as are reasonably necessary in the opinion of Lessor to conduct such reviews and investigations. Lessor shall use its best efforts to minimize interference with the business of Lessee but Lessor shall not be liable for any interference caused thereby.

(7) Should Lessee fail to perform or observe any of its obligations or leases pertaining to "Hazardous Materials" or "Environmental Requirements," then Lessor shall have the right, but not the duty, without limitation upon any of the rights of Lessor pursuant to this lease, to enter the premises personally or through its agents, consultants or contractors and perform the same. Lessee agrees to indemnify Lessor for the costs thereof and liabilities therefrom as set forth in Section B above.

Section 24. Survival. Lessor and Lessee agree that the provisions of Section 23 of this lease shall survive the termination and/or expiration of this lease.

Section 25. Quiet Enjoyment. Lessor warrants and represents that Lessor is the owner of the leased premises, has full authority and right to lease the premises and enter into this lease. Lessor will

defend Lessee's right to quiet enjoyment of the leased premises from the claims of all persons during the lease term.

Section 26. Good Faith. The parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this lease. All promises and covenants are mutual and dependent.

Section 27. Attachment, Bankrupt, Default.

A. The Lessor or those having Lessor's estate in the premises, may terminate this lease and, lawfully, at Lessor's or their option immediately or at any time thereafter, without demand or notice, may enter into and upon said demised premises and every part thereof and repossess the same as of Lessor's former estate, and expel said Lessee and those claiming by, through and under Lessee and remove Lessee's effects at Lessee's expense, forcibly if necessary and store the same, all without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be used for arrears of rent or preceding breach of covenant if (i) the Lessee shall be in arrears in the payment of said rent for a period of ten (10) days after notice of arrearage is given to Lessee; (ii) the Lessee shall fail or neglect to do, keep, perform or observe any of the covenants and leases contained herein on Lessee's part to be done, kept, performed and observed and such default shall continue for ten (10) days or more after written notice of such failure or neglect shall be given to Lessee, or if such failure cannot be cured within such ten (10) day period, if, within such 10 day period, Lessee has not commenced and is not diligently pursuing such cure; (iii) the Lessee shall be declared bankrupt or insolvent according to law; (iv) any assignment of Lessee's property shall be made for the benefit of creditors; or (v) on the expiration of this lease Lessee fails to surrender possession of said leased premises.

B. Neither the termination of this lease by forfeiture nor the taking or recovery of possession of the premises shall deprive Lessor of any other action, right or remedy against Lessee for possession, rent or damages, nor shall any omission by Lessor to enforce any forfeiture, right or remedy to which Lessor may be entitled be deemed a waiver by Lessor of the right to enforce the performance of all terms and conditions of this lease by Lessee.

C. In the event of any re-entry by Lessor, Lessor may lease or relet the premises in whole or in part to any tenant or tenants who may be satisfactory to Lessor, for any duration, and for the best rent, terms and conditions as Lessor may reasonably obtain. Lessor shall apply the rent received from any new tenant first to the cost of retaking and reletting the premises, including remodeling required to obtain any new tenant, and then to any arrears of rent and future rent payable under this lease and any other damages to which Lessor may be entitled hereunder.

D. Any property which Lessee leaves on the premises after abandonment or expiration of the lease, or for more than thirty (30) days after any termination of the lease by Lessor, shall be deemed to have been abandoned, and Lessor may remove and sell said property at public or private sale as Lessor sees fit, without being liable for any prosecution therefor or for damages by reason thereof, and the net proceeds of said sale shall be applied toward the expenses of Lessor and rent as aforesaid, and the balance of such amounts, if any, shall be held for and paid to the Lessee.

Section 28. Holding Over. In the event the Lessee for any reason shall hold over after the expiration of this lease, such holding over shall not be deemed to operate as a renewal or extension of this lease, but shall only create a tenancy from month to month at a basic rental rate equal to one hundred fifty percent (150%) of the prior rent, which may be terminated at will at any time by the Lessor.

Section 29. Default by Lessor. If at any time during the term Lessor shall fail to: (i) perform any of its obligations under this lease, (ii) make any payments required of it pursuant to this lease, or

(iii) make any mortgage, ground rent or other required payments on the land, building or premises, then in any of such events, Lessee may:

A. If any such failure shall continue for a period of ten (10) consecutive business days after Lessee gives written notice thereof to Lessor, perform such obligations and/or make such payments and deduct the cost thereof from the rent; and

B. If any such failure shall cause disruption in Lessee's normal business operations being conducted on the premises for a period of ten (10) consecutive business days after Lessee gives written notice thereof to Lessor, abate the rent for the period of such disruption; and

C. If any such failure prohibits Lessee from conducting its normal business operations on the premises for a period of thirty (30) consecutive days after Lessee gives written notice thereof to Lessor, terminate this lease; and

D. Exercise any and all other rights and remedies available to Lessee at law or in equity.

Section 30. Waiver. Any waiver by the Lessor of any breach of any covenant herein contained to be kept and performed by the Lessee shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the Lessor from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

Section 31. Notices. Notice under this lease shall be in writing and shall be effective when actually delivered. If mailed, notice shall be deemed effective 48 hours after mailing as registered or certified mail, postage prepaid, directed to the other party at the address set forth below or such other address as the party may indicate by written notice to the other:

Lessor:	6955 Cordwood Ct Boulder, CO 80301
Lessee:	6273 Monarch Park Place Niwot, CO 80503

Section 32. Governing Law. This lease shall be governed by and construed in accordance with the laws of the State of Colorado.

Section 33. Attorney Fees. In the event of an arbitration, suit or action is brought by any party under this lease to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorneys fees to be fixed by the arbitrator, trial court, and/or appellate court.

Section 34. Titles and Captions. All article, section and paragraph titles or captions contained in this lease are for convenience only and shall not be deemed part of the context nor affect the interpretation of this lease.

Section 35. Lease Binding. This lease shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Section 36. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this lease.

Section 37. Savings Clause. If any provision of this lease, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 38. Waiver of Trial by Jury. It is mutually agreed by and between Lessor and Lessee that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Lessor and Lessee and Lessee's use of or occupancy of said premises.

IN WITNESS WHEREOF, the parties hereto have executed this lease as of this 26th day of December, 2004.

LESSOR:

DiiG, LLP

By: /s/ CARL J. VERTUCA, JR.

Carl R. Vertuca, Jr., Partner

LESSEE:

WESTERN BRANDS, LLC

By: /s/ RONALD SNYDER

Ronald Snyder, Manager/President

QuickLinks

Exhibit 10.10

COMMERCIAL LEASE

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.11

SUBLEASE

by and between

Flextronics USA, Inc.
a Delaware corporation

("Sublessor")

and

Crocs, Inc.
a Colorado corporation

("Sublessee")

for improved real property at

6268 Monarch Park Place
Niwot, Colorado

SUBLEASE

THIS SUBLEASE is made and entered into as of the 19th day of May, 2005, by and between Flextronics USA, Inc., a Delaware corporation ("Sublessor") and Crocs, Inc., a Colorado corporation ("Sublessee").

WITNESSETH:

In consideration of the rents reserved and the covenants and conditions set forth herein, Sublessor and Sublessee agree as follows:

A. FUNDAMENTAL SUBLEASE TERMS.

i. ***Parties*** **.**

Sublessor: Flextronics USA, Inc.
Sublessee: Crocs, Inc.

ii. ***Sublease Premises*** **(Section 1).**

The building comprising approximately 37,250 rentable square feet of space, located at 6268 Monarch Park Place, Niwot, Colorado.

iii. ***Term*** **(Section 3).**

Commencement Date: June 1, 2005
Termination Date: March 31, 2007
Extension Terms: None.

iv. ***Base Rent*** **(Section 6).**

Months	Monthly Rent per Sq.Ft.	Annualized Base Rent
1 - 12	$ 13,037.50	$ 156,450.00
13 - 22	$ 13,447.25	$ 161,367.00

v. ***Addresses***

Sublessor:

Flextronics International USA, Inc.
2090 Fortune Drive
San Jose, California 95131
Attn: Mr. Michael Carney

With a copy to:

Robins, Kaplan, Miller & Ciresi L.L.P.
800 Boylston Street
25th Floor
Boston, MA 02199-7610
Attn: Mark S. LaConte, Esq.

Sublessee:

Crocs, Inc.
6273 Monarch Park Place
Niwot, Colorado 80503
Attn: President
Attn: General Counsel

1. THE SUBLEASE PREMISES.

Subject to the terms and conditions of this Sublease, Sublessor leases to Sublessee and Sublessee rents from Sublessor the building located at 6268 Monarch Park Place, Niwot, Colorado (the "Building") consisting of approximately 37,250 square feet of rentable space (the "Sublease Premises"), together with the non-exclusive right to use the common areas and facilities appurtenant thereto. The Building is located within the Real Property (as hereinafter defined).

2. MASTER LEASE.

Reference is made to that certain Lease dated as of January 17, 1997 (the "Building Lease"), by and between 1227 Spruce Street Company, LLP (the "Master Lessor"), as lessor, and DTM Products, Inc. (predecessor to Sublessor), as lessee, with respect to the real property upon which the Building is located (the "Real Property").

Except for payment of Base Rent and as otherwise provided herein, Sublessee shall be responsible for and shall perform all obligations of Sublessor under the Building Lease which relate to the Sublease Premises, the Building and/or the Real Property. This Sublease is a sublease under the Building Lease and is subject and subordinate to the terms and conditions of the Building Lease. Neither Sublessee nor its agents, contractors or invitees shall cause or suffer any act or omission which would result in a default under the Building Lease. Notwithstanding anything to the contrary herein contained, this Sublease shall terminate upon the expiration or earlier termination of the Building Lease.

Sublessee shall pay any documented administrative fees charged by the Master Lessor in connection with this Sublease or any other document executed in connection herewith.

3. SUBLEASE TERM.

The term of this Sublease (the "Sublease Term") shall commence on June 1, 2005 (the "Commencement Date") and shall expire on March 31, 2007, unless sooner terminated or extended as provided herein.

Notwithstanding the foregoing, upon the execution hereof Sublessee shall have the right to access the Sublease Premises solely for the purpose of preparing the Premises for Sublessee's business operations and storage of Sublessee's inventory, provided that Sublessee shall not occupy the Sublease Premises until the Commencement Date.

4. USE OF PREMISES.

Sublessee shall use the Sublease Premises solely for the uses set forth in the Building Lease. Sublessor shall be allowed to store certain personal property and equipment in the Sublease Premises if Sublessor shall not be completely moved out of the Sublease Premises by the Commencement Date, provided that Sublessee shall be allowed a pro rata rent credit (based on square footage used) for any space that is so used by Sublessor. Sublessee shall have the right to use the warehouse storage racks currently located within the Sublease Premises.

5. DELIVERY OF THE SUBLEASE PREMISES; SUBLESSEE'S WORK.

A. ***Condition of Sublease Premises*** **.**

(1) On the Commencement Date, Sublessor shall deliver possession of the Sublease Premises to Sublessee in an "AS IS" and with all faults condition, except that the Sublease Premises shall be broom clean.

(2) BY EXECUTION OF THIS SUBLEASE, SUBLESSEE ACKNOWLEDGES AND AGREES THAT IT HAS INSPECTED OR BEEN AFFORDED THE OPPORTUNITY TO INSPECT THE SUBLEASE PREMISES AND SHALL ACCEPT THE SUBLEASE PREMISES ON THE COMMENCEMENT DATE IN ITS THEN "AS IS" AND "WHERE IS" CONDITION. SUBLESSEE ACKNOWLEDGES AND AGREES THAT NEITHER SUBLESSOR NOR ITS AGENTS OR EMPLOYEES HAS MADE ANY EXPRESS WARRANTY OR REPRESENTATION REGARDING THE CONDITION OF THE SUBLEASE PREMISES, THE QUALITY OF MATERIAL OR WORKMANSHIP OF THE SUBLEASE PREMISES, LATENT OR PATENT, OR THE FITNESS OF THE SUBLEASE PREMISES FOR ANY PARTICULAR USE OR PURPOSE AND THAT NO SUCH WARRANTY OR REPRESENTATION SHALL BE IMPLIED BY LAW, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY SUBLESSEE.

(3) SUBLESSOR MAKES NO REPRESENTATIONS WITH RESPECT TO THE NECESSITY (OR LACK OF NECESSITY) FOR OR AVAILABILITY OF ANY PERMITS, LICENSES, OR OTHER GOVERNMENTAL AUTHORIZATIONS IN ORDER TO MODIFY, ALTER OR CHANGE THE SUBLEASE PREMISES OR TO OPERATE THE SUBLEASE PREMISES FOR THE USES INTENDED BY SUBLESSEE, IT BEING AGREED THAT, ALL SUCH RISKS ARE TO BE BORNE BY SUBLESSEE.

B. ***Sublessee's Work .***

Sublessee shall be responsible, at its sole cost, to obtain, perform and pay for all work necessary or desirable to repair and alter and otherwise make fit the Sublease Premises for its intended use (collectively, "Sublessee's Work"), provided, however, that (i) all plans and specifications for Sublessee's Work shall first be approved by Sublessor and Master Lessor; and (ii) upon the termination and/or expiration of this Sublease, Sublessee shall, at its own expense, restore the Sublease Premises to the condition that it was in on the Commencement Date and remove all signage erected by or for the benefit of Sublessee.

(2) Sublessee agrees that, within thirty (30) days after notice thereof, it shall remove and discharge, at its expense, any charge, lien, security interest or encumbrance upon the Sublease Premises, the Building, or the Real Property, which arises out of the construction, repair or rebuilding of the Sublease Premises or by reason of labor or materials furnished or claimed to have been furnished to Sublessee, its subtenants or licensees, or for the Sublease Premises.

(3) In performing any work on, to or for the Sublease Premises, Sublessee shall: (i) perform all aspects of such work in an expeditious manner and in a good and workmanlike condition in accordance with applicable law and the approved plans and specifications therefor; and (ii) at its cost, obtain all permits and approvals necessary to commence and complete such work and to comply with applicable law and any provisions of the Building Lease relating thereto.

6. RENT.

Commencing on the Commencement Date, Sublessee hereby covenants and agrees to pay Sublessor as Base Rent for the Sublease Premises the amounts set forth in Section A.iv. of the Fundamental Sublease Terms hereof.

All other sums payable hereunder shall be deemed additional rent (collectively, the "Additional Rent"). From and after the Commencement Date, Sublessee shall pay to Sublessor all Additional Rent.

Base Rent and Additional Rent shall be payable in advance and without demand on the first (1st) day of each and every calendar month during the entire Sublease Term. Base Rent and Additional Rent shall be prorated for any partial month at the beginning or end of the Sublease Term. Sublessee shall pay rent to Sublessor at the address provided for Sublessor in Section A.v. of the Fundamental Sublease Terms hereof, unless otherwise designated by Sublessor.

No payment by Sublessee or receipt by Sublessor of a lesser amount than the Base Rent or Additional Rent shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Sublessor shall accept such check or payment without prejudice to Sublessor's right to recover the balance of such Base Rent and Additional Rent or pursue any other remedy provided in this Sublease.

7. INCORPORATION OF BUILDING LEASE.

To the extent applicable to the Sublease Premises and subject to the provisions hereof, the terms and provisions of the Building Lease are hereby incorporated into this Sublease, and this Sublease shall be deemed to contain all of such terms and provisions *mutatis mutandis* (the necessary changes being made to reflect that "Landlord" is the Sublessor, "Tenant" is the Sublessee, "Leased Premises" or "Premises" are the Sublease Premises, and the "Lease Term" is the Sublease Term); provided, however, that the following provisions of the Building Lease shall not apply hereto: Article I; Article II; clauses (a), (d) and (e) of Article III; Article IV; Article V to the extent Taxes due or payable are attributable to any period other than the term of this Sublease; Article IX; Article X; Article XVII; and all Addendums to the Building Lease.

To the extent incorporated into this Sublease, Sublessee shall perform the obligations of the Sublessor as tenant under the Building Lease, with respect to the Sublease Premises, Building and the Real Property. Notwithstanding any other provision of this Sublease, Sublessor, as sublandlord under this Sublease, shall have the benefit of all rights, remedies and limitations of liability enjoyed by Master Lessor, as the landlord under the Building Lease, but (i) Sublessor shall have no obligations under this Sublease to perform the covenants or obligations of Master Lessor, as landlord under the Building Lease, including without limitation any obligation to maintain and/or repair the Sublease Premises, Building, or Real Property, to construct improvements, or to provide services or maintain insurance, and Sublessee agrees that it shall seek such performance and obtain such services solely from Master Lessor; (ii) Sublessor shall not be bound by any representations or warranties of Master Lessor under the Building Lease; (iii) in any instance where the consent of Master Lessor is required under the terms of the Building Lease, the consent of Sublessor and Master Lessor shall be required; and (iv) Sublessor shall not be liable to Sublessee for any failure or delay in Master Lessor's performance of its obligations, as landlord under the Building Lease. Upon request of Sublessee, Sublessor shall, at Sublessee's expense, use reasonable efforts to cause Master Lessor to perform its obligations under the Building Lease.

Notwithstanding any contrary provision of this Sublease, (i) in any instances where Master Lessor, as landlord under the Building Lease, has a certain period of time in which to notify Sublessor, as tenant under the Lease, whether Master Lessor will or will not take some action, Sublessor, as landlord under this Sublease, shall have an additional two business day period after receiving such notice in which to notify Sublessee, (ii) in any instance where Sublessor, as tenant under the Building Lease, has a certain period of time in which to notify Master Lessor, as landlord under the Building Lease, whether Sublessor will or will not take some action, Sublessee, as tenant under this Sublease, must notify Sublessor, as landlord under this Sublease, at least two business days before the end of such period, but in no event shall Sublessee have a period of less than five business days in which so to notify Sublessor unless the period under the Building Lease is five business days or less, in which case the period under this Sublease shall be one day less than the period provided to Sublessor under the

Building Lease, but not less than two (2) business days, (iii) in any instance where a specific grace period is granted to Sublessor, as tenant under the Lease, before Sublessor is considered in default under the Building Lease, Sublessee, as tenant under this Sublease, shall be deemed to have a grace period which is two business days less than Sublessor before Sublessee is considered in default under this Sublease, but in no event shall any grace period be reduced to less than five business days unless the period under the Building Lease is five business days or less, in which case the period under this Sublease shall be one day less than the period provided to Sublessor under the Building Lease but not less than two (2) business days, and (iv) in the event of any inconsistency between the terms of the Building Lease, as incorporated herein by reference, and the express terms of this Sublease, the express terms of this Sublease shall prevail.

In no event shall Sublessee be liable to Sublessor or Master Lessor for any obligation, covenant or breach thereof of the Tenant under the Building Lease if such obligation, covenant or breach thereof is primarily related to, or set forth in one of the excluded provisions listed in this Section 7 of the Sublease, except as may be herein provided.

8. UTILITIES.

Sublessee shall pay before delinquency all charges for water, gas, heat, electricity, power, telephone services, and all other services of utilities used in, upon, or about the Sublease Premises or the Real Property by Sublessee or any of its subtenants, licensees, or concessionaires during the Sublease Term. If any utility is not separately metered, Sublessee agrees to reimburse Sublessor for the cost of said service on a pro-rata basis. Sublessor shall not be liable in damages or otherwise if the furnishings by any supplier of any utility service or other service to the Sublease Premises shall be interrupted or impaired by fire, accident, riot, strike, act of God, the making of necessary repairs or improvements or by any causes beyond Sublessor's control, should it become necessary or desirable because of recommendations or directives of public authorities to reduce its energy consumption in accordance with reasonable, uniform and non-discriminatory standards established by Sublessor.

9. PAYMENTS TO MASTER LESSOR AND OTHER PARTIES.

Sublessor and Sublessee acknowledge and agree that Sublessor is making payments under the Building Lease to Master Lessor and other parties with respect to real estate taxes, municipal assessments, operating expenses, repair and maintenance costs, insurance premiums, and other costs and charges with respect to the Building and/or the Real Property (collectively, the "Building Lease Payments"). Sublessee shall be responsible for the payment of all of the Building Lease Payments, excluding Base Rent under the Building Lease, and shall make such payments either to Sublessor or directly to Master Lessor or other third parties, as may be directed by Sublessor from time to time. Sublessee shall have the sole responsibility for all standard maintenance, repairs and replacements, at its sole cost and expense, as set forth in Article VIII of the Building Lease, except that (i) Sublessee shall have no responsibility for replacement of the structural elements of the Building, the roof membrane, the foundation, the exterior walls, the bearing walls, or the subflooring; (ii) in the event of any other replacement having a cost which, under generally accepted accounting principles, must be capitalized and not expensed, Sublessee shall be responsible for paying only its pro-rata share of such cost, based upon the useful life of the applicable item and the remaining term of this Sublease; and (iii) Sublessor shall engage third party contractors to inspect and maintain the roof and HVAC systems on a regular, periodic basis, and Sublessee shall reimburse Sublessor for such costs within thirty days of request by Sublessor for such reimbursement.

10. INSURANCE.

Sublessee shall maintain (i) insurance of such types, in such policies, with such endorsements and coverages, and in such amounts as are set forth in Article VI of the Building Lease and (ii) such

additional insurance as may be required by Sublessor, in Sublessor's reasonable discretion. All insurance policies (except those relating to Sublessor's personal property) shall name as additional insureds and loss payees Sublessor and the parties required to be so named in Article VI of the Building Lease. Such insurance shall contain a provision that Sublessor, although named as an additional insured, shall nonetheless be entitled to recovery under said policy for any loss occasioned to it, its servants, agents, and employees by reason of the negligence of Sublessee or Sublessee's agents, servants, or employees. Such insurance shall also contain an endorsement that such policies may not be modified or canceled without 30 days prior written notice to all named insureds. Sublessee shall promptly pay all insurance premiums and shall provide Sublessor with policies or certificates evidencing such insurance prior to entering the Sublease Premises.

11. NOTICES.

Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and given by mailing such notice or consent by registered or certified mail, return receipt requested, addressed to the other party as indicated in Section A(v) of the Fundamental Sublease Terms hereof, or at such other address as may be specified from time to time in writing by either party. Any notice or consent given hereunder by either party shall be deemed effective when mailed as aforesaid, but the time period in which to respond to any notice or consent shall commence to run on the date on which such notice or consent is actually received by the addressee. Refusal to accept delivery shall be deemed receipt thereof.

12. HAZARDOUS SUBSTANCES.

A. Sublessee, its agents, employees, or contractors shall not (i) cause or permit any Hazardous Materials (hereinafter defined) to be brought upon, stored, used or disposed on, in or about the Real Property in violation of applicable law, or (ii) permit the release, discharge, spill or emission of any substance considered to be a Hazardous Material from or into the Real Property in violation of applicable law.

B. Any Hazardous Materials permitted by Sublessor, all containers therefor, and all materials that have been contaminated by Hazardous Materials shall be used, kept, stored and disposed of by Sublessee in a manner that shall in all respects comply with all applicable federal, state and local laws, ordinances, regulations and standards.

C. Sublessee hereby agrees that it is and shall be fully responsible for all costs, expenses, damages or liabilities (including, but not limited to those incurred by Sublessor and/or its mortgagee) which may occur from the use, storage disposal, release, spill, discharge or emissions of Hazardous Materials by Sublessee. Sublessee shall defend, indemnify and hold harmless Sublessor, Master Lessor, their mortgagees and agents from and against any claims, demands, administrative orders, judicial orders, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, reasonable attorney and consultant fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of Sublessee's failure to comply with any provision of this Section. The provisions of this Section shall be in addition to any other obligations and liabilities Sublessee may have to Sublessor at law or in equity and shall survive the transactions contemplated herein or any termination of this Sublease.

D. As used in this Sublease, the term "Hazardous Materials" shall include, without limitation:

(1) Those substances included within the definitions of "hazardous substances", "hazardous materials," toxic substances," or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 *et seq* .) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), and the Hazardous Materials Transportation Act, and in the regulations promulgated pursuant to said laws, all as amended;

(2) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (of any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(3) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 *et seq* . (33 U.S.C. §1321) or listed pursuant to Section of the Clean Water Act (33 U.S.C. §1317); (E) flammable explosives; or (F) radioactive materials;

(4) Those substances regulated pursuant to applicable federal, state or local law; and in the regulations promulgated pursuant to said laws, all as amended; and

(5) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

13. BROKERAGE.

Sublessor and Sublessee each represents and warrants to the other that there is no obligation to pay any brokerage fee, commission, finder's fee or other similar charge in connection with this Sublease, other than a brokerage fee to Commercial Property Services (the "Brokers"), and that neither has directly or indirectly communicated with any real estate agent or broker in connection with the Sublease Premises, other than the Brokers. Each party covenants that it will defend, indemnify and hold harmless the other party from and against any loss or liability by reason of brokerage or similar services alleged to have been rendered to, at the instance of, or agreed upon by said indemnifying party, other than the Brokers. Sublessor shall pay the brokerage fees of the Brokers pursuant to a separate written instrument.

14. PARKING.

Sublessee and Sublessee's designees shall have the right to use the parking spaces currently located on the Real Property. Sublessee shall have the right to use signage currently or formerly used by Sublessor, provided that all such use shall be in compliance with applicable laws and the Building Lease.

15. CONDITION PRECEDENT.

This Sublease, and the rights and obligations of Sublessor and Sublessee under this Sublease, are subject to the condition that Master Lessor consent to this Sublease, and this Sublease shall be effective only upon the receipt by Sublessor of such consent.

16. SECURITY DEPOSIT .

Sublessee has deposited with Sublessor the sum of **$** 13,447.25 as security for the faithful performance and observance by Sublessee of the terms, provisions and conditions of this Sublease. It is agreed that in the event Sublessee defaults in respect of any of the terms, provisions and conditions of this Sublease, including, but not limited to, the payment of Base Rent or Additional Rent, Sublessor may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent or any other sum as to which Sublessor may expend or be required to expend by reason of Sublessee's default in respect of any of the terms, covenants and conditions of this Sublease, including but not limited to, any damages or deficiency in the re-letting of the Premises, whether such damages or deficiency occurred before or after summary proceedings or other re-entry by Sublessor. If Sublessor applies any part of said deposit to cure any default of Sublessee, Sublessee shall upon demand deposit with Sublessor the amount so applied so that Sublessor shall have the full deposit on hand at all times during the Sublease Term.

In the event that Sublessee shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Sublease, the security shall be returned to Sublessee without interest after the date fixed as the end of the Term of this Sublease and after delivery of the entire possession of the Sublease Premises to Sublessor. In the event of a sale or lease of the Building and/or Real Property, Sublessor shall transfer the security to the vendee or lessee and Sublessor shall thereupon be released by Sublessee from all liability for the return of such security, and Sublessee agrees to look solely to the new Sublessor for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Sublessor. Sublessee further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Sublessor nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

17. INDEMNIFICATION.

Sublessee shall save Sublessor harmless from, and indemnify Sublessor against, any and all injury, loss or damage, or claims for injury, loss or damage, including reasonable legal fees and expenses, of whatever nature, caused by or resulting from any breach of a covenant of this Sublease by Sublessee, any act, omission or negligence of Sublessee or any subtenant, invitee or concessionaire of Sublessee or any employee or agent of Sublessee, or any event occurring within or about the Sublease Premises.

Sublessor shall save Sublessee harmless from, and indemnify Sublessee against, any and all injury, loss or damage, or claims for injury, loss or damage, including reasonable legal fees and expenses, of whatever nature, caused by or resulting from any breach of a covenant of this Sublease by Sublessor, any obligations or liabilities of Sublessor under the Building Lease not assumed by Sublessee under this Sublease, or any obligations or liabilities (including tax liabilities) attributable to periods prior to the term of this Sublease.

18. ENTIRE AGREEMENT.

This instrument shall merge all undertakings between the parties hereto with respect to the Sublease Premises and upon execution by both parties shall constitute the entire sublease agreement, unless thereafter modified by both parties in writing.

19. HEADINGS.

The headings of the Sections of this Sublease are for convenience of reference only and do not form a part hereof, and they shall not be interpreted or construed to modify, limit, or amplify the intent of such Sections.

20. PARTIES IN INTEREST.

Subject to the provisions of this Sublease relating to assignment, subleasing and other transfers or the parties' interests, this Sublease shall inure to the benefit of and be binding upon the successors in interest and assigns of the parties hereto.

21. COUNTERPARTS.

This Sublease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

22. NUMBER AND GENDER.

Words in the singular, plural, masculine, feminine and neuter as used herein shall have the meanings and be construed as required by the context in which they are used herein.

23. GOVERNING LAW.

This Sublease shall be construed under and governed by the laws of the state in which the Sublease Premises are located.

24. LIMITATION OF LIABILITY.

In the event that Sublessor shall have any liability to Sublessee relating to the Sublease Premises, the Building, the Real Property, or this Sublease, including without limitation on account of any breach by Sublessor of its obligations hereunder, Sublessee shall have recourse only to the interest of Sublessor in the Building and Real Property, and not to any other assets of Sublessor.

25. WAIVER OF SUBROGATION.

Anything in this Sublease to the contrary notwithstanding, Sublessor and Sublessee hereby waive and release each other of and from any and all right of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Sublease Premises or personal property within the Sublease Premises, by reason of fire or the elements, regardless of cause or origin, including negligence of Sublessor or Sublessee and their agents, officers and employees; provided, however, that the foregoing waiver and release shall be effective only to the extent that any of the foregoing are covered by insurance. Sublessor and Sublessee agree immediately to give their respective insurance companies which have issued policies of insurance covering all risk of direct physical loss, written notice of the terms of the mutual waivers contained in this Section, and shall require such insurance companies to waive any rights of subrogation.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF , the parties hereto have executed this Sublease as of the date first above written.

SUBLESSOR:

FLEXTRONICS USA, INC.

By: /s/ MIKE CARNEY

Name: Mike Carney
Title: General Manager

SUBLESSEE:

CROCS, INC.

By: /s/ RONALD SNYDER

Name: Ronald Snyder
Title: President and Chief Executive Officer

QuickLinks

Exhibit 10.11

SUBLEASE
SUBLEASE
WITNESSETH

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.14

CONFIDENTIAL

STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (" **Agreement** ") is made as of June 29, 2004, by 4246519 Canada, Inc. (" **Western** "), Finproject Group S.p.A., an Italian company incorporated in Italy, 3107019 Canada, Inc., a Canadian corporation, John Massotta, an individual resident in the United States, and Daniel J. Hunter, an individual resident in the United States (collectively "Sellers").

RECITALS

Sellers desire to sell, and Western desires to purchase, all of the issued and outstanding shares of all classes of the capital stock of Finproject N.A., Inc. a Canadian corporation (the " **Company** "), for the consideration and on the terms set forth in this Agreement.

AGREEMENT

The parties, intending to be legally bound, agree as follows:

1. DEFINITIONS.

For purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1:

1.1. **"Acquired Companies"** shall mean the Company and its Subsidiaries, collectively.

1.2. **"Ancillary Agreements"** shall mean the Supply Agreement and the Employment Agreements.

1.3. **"Balance Sheet"** shall have the meaning set forth in Section 3.4.

1.4. **"Closing"** shall have the meaning set forth in Section 2.6.

1.5. **"Closing Date"** shall mean the date and time as of which the Closing actually takes place.

1.6. **"Contemplated Transactions"** shall mean all of the transactions contemplated by this Agreement and the Ancillary Agreements.

1.7. **"Contract"** shall mean any agreement, contract, obligation, promise, or undertaking (whether written or oral and whether express or implied) that is legally binding (a) under which any Acquired Company has or may acquire any rights, (b) under which any Acquired Company has or may become subject to any obligation or liability, or (c) by which any Acquired Company or any of the assets owned or used by it is or may become bound.

1.8. **"Disclosure Letter"** shall mean the disclosure letter delivered by Sellers to Western concurrently with the execution and delivery of this Agreement.

1.9. **"Employment Agreements"** shall have the meaning set forth in Section 2.7.

1.10. **"Encumbrance"** shall mean any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, hypothec, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

1.11. **"Facilities"** shall mean any real property, leaseholds, or other interests currently or formerly owned or operated by any Acquired Company and any buildings, plants, structures, or equipment

(including motor vehicles, tank cars, and rolling stock) currently or formerly owned or operated by any Acquired Company.

1.12. **"GAAP"** shall mean generally accepted Canadian accounting principles, applied on a basis consistent with the basis on which the Balance Sheet and the other financial statements referred to in Section 3.4 were prepared.

1.13. **"Governmental Authorization"** shall mean any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.

1.14. **"Holdback"** shall have the meaning set forth in Section 2.4(c).

1.15. **"Intellectual Property Assets"** shall have the meaning set forth in Section 3.21.

1.16. **"Interim Balance Sheet"** shall have the meaning set forth in Section 3.4.

1.17. **"Knowledge"** as used herein, an individual will be deemed to have "Knowledge" of a particular fact or other matter if such individual is actually aware of such fact or other matter; or a prudent individual could be expected to discover or otherwise become aware of such fact or other matter. A Person (other than an individual) will be deemed to have "Knowledge" of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, partner, executor, or trustee of such Person (or in any similar capacity) has, or at any time had, Knowledge of such fact or other matter.

1.18. **"Net Profit"** shall mean the operating profits calculated in accordance with GAAP and using the same methodology as used in previous balance sheets of Seller less interest for the period defined.

1.19. **"Non-Resident Sellers"** shall mean Finproject Group SPA, Daniel J. Hunter and John Massotta.

1.20. **"Order"** shall mean any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other governmental body or by any arbitrator.

1.21. **"Person"** shall mean any individual, corporation, partnership, limited liability company or other entity or governmental body.

1.22. **"Shares"** shall mean the issued and outstanding shares of all classes of the capital stock of the Company as set forth in Part 3.3 of the Disclosure Letter.

1.23. **"Subsidiary(ies)"** shall mean with respect to any entity means a corporation or other business entity in which such entity owns, directly or indirectly, at least a fifty percent (50%) voting equity interest or that is otherwise, directly or indirectly, controlled by such entity.

1.24. **"Tax"** shall mean any tax (including any income tax, capital gains tax, value-added tax, sales tax, or property tax), levy, assessment, tariff, duty (including any customs duty), deficiency, or other fee, and any related charge or amount (including any fine, penalty, interest, or addition to tax), imposed, assessed, or collected by or under the authority of any governmental body or payable pursuant to any tax-sharing agreement or any other Contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee.

1.25. **"Withholding Tax Escrow Agreement"** shall mean the escrow agreement executed by the Non-Resident Sellers, Western and the Company on the Closing.

2. SALE AND TRANSFER OF SHARES; CLOSING.

2.1. **Shares.** Subject to the terms and conditions of this Agreement, at the Closing, Sellers will sell and transfer all of the Class A, Class B and Class C shares to Western, and Western will purchase the said Class A, Class B and Class C shares from Sellers.

2.2. **Purchase Price.** The purchase price (the " **Purchase Price** ") for the Shares will be

(a). Six Million Five Hundred Thousand Canadian Dollars ($6,500,000 to be paid in accordance with Section 2.4 below.

(b) An amount equal to the Company's Net Profit (excluding Western business) between January 1, 2004 and June 30, 2004, provided however, in no case will this amount exceed Two Hundred Thousand Canadian Dollars ($200,000). The June 30 balance sheet will determine said amount and will be delivered to Seller by July 30, 2004.

2.3. **Non-Resident Sellers.** The Non-Resident Sellers acknowledge that an amount set out opposite each such Seller's name under the heading "Withholding Amount" in Section 2.4 below (hereinafter referred to as the " **Withholding Amount** ") will be withheld by the Purchaser from such Non-Resident Sellers' entitlements to the Purchase Price and dealt with in accordance with the Withholding Tax Escrow Agreement.

2.4. **Payment of Purchase Price.**

(a). The $6,500,000 Canadian portion of the Purchase Price payable at Closing shall be paid and satisfied by Purchaser as follows:

Seller	Proportion of Purchase Price	Purchase Price	Payment at Closing	Withholding Amount
Finproject Group S.p.A.	66.76%	$ 4,339,400	$ 2,733,822	$ 1,654,980.40
3107019	30.55%	$ 1,985,750	$ 1,985,750	$ 0.00
Daniel J. Hunter	1.345%	$ 87,425	$ 65,568.75	$ 22,528.75
John Massotta	1.345%	$ 87,425	$ 65,568.75	$ 22,528.75
TOTAL	100%	$ 6,500,000	$ 4,850,709.50	$ 1,700,037.90

* All Amounts in Canadian Dollars

(b). Western will retain the amount due under Section 2.2(b) for a period of 2 years from Closing as security against any breaches of this Agreement, including but not limited to the Representations and Warranties of Sellers stated in Section 3 below (the " **Holdback** "). The Holdback shall be released to Sellers in proportion of ownership on the two-year anniversary of the execution of this Agreement (the " **Release Date** "), subject to any deductions in accordance with Section 8 below. The Holdback shall not in any way affect the transfer of ownership of the Shares to Western at the Closing.

2.5. **Class D Shares.** As to the 300,000 Class D shares of the capital stock of the Company held by Finproject Group S.p.A., Western undertakes to take all corporate action required in order to ensure that the Company will proceed with the repurchase of all such 300,000 Class D shares within 6 months following the Closing, by monthly installment of $50,000 Canadian plus interest, according to the letter dated January 4, 2004; the first monthly installment being payable on July 5, 2004.

2.6. **Closing.** The purchase and sale (the " **Closing** ") provided for in this Agreement will take place at the offices of Seller's counsel on June 29, 2004 or at such other time and place as the parties may agree. Subject to the provisions of Section 9, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this

Section 2.6 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

2.7. **Closing Obligations.** At, the Closing:

(a). Sellers will deliver to Western:

(i). certificates representing the Shares, duly endorsed (or accompanied by duly executed stock powers), for transfer to Western;

(ii). employment agreements executed by Andrew Reddyhoff and Marie Claude DeBilly (collectively, " **Employment Agreements** ");

(iii). A supply agreement with Finproject S.p.A. executed by Seller (the " **Supply Agreement** "); and

(iv). Written resignation of designated Directors and Officers of the; and

(b). At the Closing, Western will deliver to Sellers:

(i). $6,700,000 Canadian Dollars less any monies withheld in accordance with Section 2.3 and 2.4(b) of this Agreement, distributed to Sellers in accordance with their instructions;

(ii). the Employment Agreements, executed by Western;

(iii). the Supply Agreement.

2.8 **Tax Clearance Certificates/Escrow.** On the Closing Date, Non-Resident Seller's have not delivered the appropriate Clearance Certificate under the income tax laws in Canada and Quebec. The Non-Resident Sellers agree that the Purchaser shall place the appropriate portion of the Purchase Price in an escrow account to be held until the Certificates are received and all related obligations are met in accordance with the Withholding Tax Escrow Agreement.

3. REPRESENTATIONS AND WARRANTIES OF SELLERS.

Sellers represent and warrant to Western as follows:

3.1. **Organization and Good Standing.**

(a). Part 3.1 of the Disclosure Letter contains a complete and accurate list for each Acquired Company of its name, its jurisdiction of incorporation, other jurisdictions in which it is authorized to do business, and its capitalization (including the identity of each stockholder and the number of shares held by each). Each Acquired Company is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under its respective Contracts. Each Acquired Company is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

(b). Sellers have delivered to Western copies of the articles of incorporation and the bylaws of each Acquired Company, as currently in effect.

3.2. **Authority; No Conflict.**

(a). This Agreement constitutes the legal, valid, and binding obligation of Sellers, enforceable against Sellers in accordance with its terms. Upon the execution and delivery by Sellers of this Agreement and the Ancillary Agreements to which the Sellers are a party, such Ancillary

Agreements will constitute legal, valid, and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms. Sellers have the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and the Ancillary Agreements to which Sellers are a party and to perform their obligations under this Agreement and such Ancillary Agreements.

(b). Neither the execution and delivery of this Agreement or the Ancillary Agreements by Seller or the Acquired Companies, nor the consummation of the Contemplated Transactions will (i) conflict with, or (with or without notice or lapse of time, or both) result in a termination, breach, impairment or violation of, or constitute a default under any provision of the articles of incorporation or by-laws of any Acquired Company, in each case as currently in effect, (ii) conflict with, violate, constitute a default under, result in a termination, acceleration or breach of, provide any party with any right of termination or acceleration or any other material rights or remedies under (in each case with or without notice or lapse of time, or both), or require the consent of any party under any Contract and will not have any material adverse effect upon any such Contract pursuant to the terms of those Contracts, or (c) conflict with, violate or breach any Order.

(c). Except as set forth in Part 3.2 of the Disclosure Letter, and for non-material equipment, office furniture, and vehicle leases, no Seller or Acquired Company is or will be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

3.3. **Capitalization.** The authorized equity securities of the Company are as set forth in Part 3.3 of the Disclosure Letter and all such securities are issued and outstanding and constitute the Shares. Sellers are and will be on the Closing Date the record and beneficial owners and holders of the Shares, free and clear of all Encumbrances. The number of issued and outstanding shares of Company Common Stock held by each Seller is set forth in Part 3.3 of the Disclosure Letter, and no other Shares, or other equity securities are issued or outstanding or will be issued or outstanding immediately prior to the Closing. With the exception of the Shares (which are owned by Sellers), all of the outstanding equity securities and other securities of each Acquired Company are owned of record and beneficially by one or more of the Acquired Companies, free and clear of all Encumbrances. Except as disclosed in Part 3.3 of the Disclosure Letter, no legend or other reference to any purported Encumbrance appears upon any certificate representing equity securities of any Acquired Company. All of the outstanding equity securities of each Acquired Company have been duly authorized and validly issued and are fully paid and nonassessable. There are no Contracts relating to the issuance, sale, or transfer of any equity securities or other securities of any Acquired Company. None of the outstanding equity securities or other securities of any Acquired Company was issued in violation of any legal requirement. No Acquired Company owns, or has any Contract to acquire, any equity securities or other securities of any Person (other than Acquired Companies) or any direct or indirect equity or ownership interest in any other business.

3.4. **Financial Statements.** Sellers have delivered to Western: (a) the audited balance sheets of the Acquired Companies for each of the years 2000 through 2003, and the related audited statements of income, changes in stockholders' equity, and cash flow for each of the fiscal years then ended, together with the report thereon of Deloitte and Touche, independent certified public accountants, (b) a balance sheet for the Acquired Companies as at December 31, 2003 (including the notes thereto, the " **Balance Sheet(s)** "), and the related statements of income, changes in stockholders' equity, and cash flow for the fiscal year then ended, together with the report thereon of Deloitte and Touche, independent certified public accountants, and (c) unaudited balance sheets of the Acquired Companies as at March 31, 2004 (the " **Interim Balance Sheet** ") and the related unaudited statements of income, changes in stockholders' equity, and cash flow for the 3 months then ended, including in each case the notes thereto. Such financial statements and notes fairly present the financial condition and the results of operations, changes in stockholders' equity, and cash flow of the Acquired Companies as at the

respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP, subject, in the case of interim financial statements, to normal recurring year-end adjustments (the effect of which will not, individually or in the aggregate, be materially adverse) and the absence of notes (that, if presented, would not differ materially from those included in the Balance Sheets); the financial statements referred to in this Section 3.4 reflect the consistent application of such accounting principles throughout the periods. No financial statements of any Person other than the Acquired Companies are required by GAAP to be included in the financial statements of the Company.

3.5. **Books and Records.** The books, records and accounts of the Acquired Companies, all of which have been made available to Western, (a) are complete and correct, (b) have been maintained in accordance with sound business practices, (c) are stated in reasonable detail and accurately and fairly reflect the transactions and dispositions of the assets of the Acquired Companies and (d) accurately and fairly reflect the basis for the Financial Statements described in Section 3.4. Except as provided in Part 3.5 of the Disclosure Letter, each of the Acquired Companies has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that (x) transactions are executed in accordance with management's general or specific authorization; (y) transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with GAAP and (2) to maintain accountability for assets; and (z) the amount recorded for assets on the books and records of each of the Acquired Companies is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The minute books of the Acquired Companies contain accurate and complete records of all meetings held of, and corporate action taken by, the stockholders, the Boards of Directors, and committees of the Boards of Directors of the Acquired Companies in all material respects, and no meeting of any such stockholders, Board of Directors, or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Acquired Companies.

3.6. **Title to Properties; Encumbrances.** The Acquired Companies have good and marketable title to all of their assets (other than leased properties) owned or used in their businesses or as shown in the Balance Sheet and the Interim Balance Sheet, free and clear of all Encumbrances, except as disclosed in Part 3.6 of the Disclosure Letter, and are not, in the case of real property, subject to any rights of way, building use restrictions, exceptions, variances, reservations, or limitations of any nature except, with respect to all such properties and assets, (a) mortgages or security interests shown on the Balance Sheet or the Interim Balance Sheet as securing specified liabilities or obligations, with respect to which no default (or event that, with notice or lapse of time or both, would constitute a default) exists, (b) mortgages or security interests incurred in connection with the purchase of property or assets after the date of the Interim Balance Sheet (such mortgages and security interests being limited to the property or assets so acquired), with respect to which no default (or event that, with notice or lapse of time or both, would constitute a default) exists, (c) liens for current Taxes not yet due, and (d) with respect to real property, (i) minor imperfections of title, if any, none of which is substantial in amount, materially detracts from the value or impairs the use of the property subject thereto, or impairs the operations of any Acquired Company, and (ii) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto.

3.7. **Condition and Sufficiency of Assets.** The Acquired Companies' assets are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such assets are in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The machinery and equipment owned or leased by Company are in all material respects: (a) in good operating condition and repair, ordinary wear and tear excepted, (b) maintained in accordance with manufacturer's recommendations and sound engineering practices, (c) not obsolete or in need of renewal or replacement, except for renewal or replacement in the ordinary course of business, consistent with past practice, and (d) to the knowledge of the Company and the Sellers, free from any material defects. The assets of the Acquired Companies are sufficient for the continued conduct of the Acquired Companies' businesses after the Closing in substantially the same manner as conducted prior to the Closing.

3.8. **Accounts Receivable.** All accounts receivable of the Acquired Companies that are reflected on the Balance Sheet or the Interim Balance Sheet or on the accounting records of the Acquired Companies as of the Closing Date (collectively, the " **Accounts Receivable** ") represent or will represent valid obligations arising from sales actually made or services actually performed in the ordinary course of business, consistent with past practices. Unless paid prior to the Closing Date, the Accounts Receivable are or will be as of the Closing Date current and collectible net of the respective reserves shown on the Balance Sheet or the Interim Balance Sheet or on the accounting records of the Acquired Companies as of the Closing Date (which reserves are adequate and calculated consistent with past practice and, in the case of the reserve as of the Closing Date, will not represent a greater percentage of the Accounts Receivable as of the Closing Date than the reserve reflected in the Interim Balance Sheet represented of the Accounts Receivable reflected therein and will not represent a material adverse change in the composition of such Accounts Receivable in terms of aging). Subject to such reserves, each of the Accounts Receivable either has been or will be collected in full, without any set-off, within 120 days after the day on which it first becomes due and payable, excluding any Accounts Receivable attributable to Western. Western will give notice to Sellers regarding any uncollected Accounts Receivable following the 120-day period. Sellers shall have an additional 30 days after such notice to collect such Accounts Receivable before becoming liable to Western. There is no contest, claim, or right of set-off, other than returns in the ordinary course of business, consistent with past practices, under any Contract with any obligor of an Accounts Receivable relating to the amount or validity of such Accounts Receivable. Part 3.8 of the Disclosure Letter contains a complete and accurate list of all Accounts Receivable as of the date of the Interim Balance Sheet, which list sets forth the aging of such Accounts Receivable.

3.9. **Inventory.** All inventory of the Acquired Companies, whether or not reflected in the Balance Sheet or the Interim Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business, consistent with past practices, except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Balance Sheet or the Interim Balance Sheet or on the accounting records of the Acquired Companies as of the Closing Date, as the case may be. All inventories not written off have been priced at the lower of cost or market on a first in, first out basis. The quantities of each item of inventory (whether raw materials, work-in-process, or finished goods) are not excessive, but are reasonable in the ordinary course of business of the Acquired Companies.

3.10. **No Undisclosed Liabilities.** Except as set forth in the Disclosure Letter, the Acquired Companies have no liabilities or obligations of any nature (whether known or unknown and whether absolute, accrued, contingent, or otherwise) except for liabilities or obligations reflected or reserved against in the Balance Sheet or the Interim Balance Sheet and current liabilities incurred in the ordinary course of business, consistent with past practices since the respective dates thereof.

3.11. **Taxes.**

(a). The Acquired Companies have filed or caused to be filed all Tax Returns (defined below) that are or were required to be filed by or with respect to any of them, either separately or as a member of a group of corporations, pursuant to applicable legal requirements. Sellers have delivered to Western copies of, and Part 3.11 of the Disclosure Letter contains a complete and accurate list of, all such Tax Returns filed since 1997. The Acquired Companies have paid, or made provision for the payment of, all Taxes that have or may have become due pursuant to those Tax Returns or otherwise, or pursuant to any assessment received by Sellers or any Acquired Company, except such Taxes, if any, as are listed in Part 3.11 of the Disclosure Letter and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Balance Sheet and the Interim Balance Sheet. As used herein, **"Tax Return"** shall mean any return (including any information return), report, statement, schedule, notice, form, or other document or information filed with or submitted to, or required to be filed with or submitted to, any governmental body in connection with the determination, assessment, collection, or payment of any Tax or in connection with the administration, implementation, or enforcement of or compliance with any legal requirement relating to any Tax.

(b). The income Tax Returns of each Acquired Company subject to such Taxes have been audited by the relevant tax authorities or are closed by the applicable statute of limitations for all taxable years through 2003. Part 3.11 of the Disclosure Letter contains a complete and accurate list of all audits of all such Tax Returns, including a reasonably detailed description of the nature and outcome of each audit. All deficiencies proposed as a result of such audits have been paid, reserved against, settled, or, as described in Part 3.11 of the Disclosure Letter, are being contested in good faith by appropriate proceedings. Part 3.11 of the Disclosure Letter describes all adjustments to the income Tax Returns filed by any Acquired Company or any group of corporations including any Acquired Company for all taxable years since 1997. Except as described in Part 3.11 of the Disclosure Letter, no Seller or Acquired Company has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of any Acquired Company or for which any Acquired Company may be liable.

(c). The charges, accruals, and reserves with respect to Taxes on the respective books of each Acquired Company are adequate (determined in accordance with GAAP) and are at least equal to that Acquired Company's liability for Taxes. There exists no proposed Tax assessment against any Acquired Company except as disclosed in the Balance Sheet or in Part 3.11 of the Disclosure Letter. All Taxes that any Acquired Company is or was required by legal requirements to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper governmental body or other Person.

(d). All Tax Returns filed by (or that include on a consolidated basis) any Acquired Company are true, correct, and complete. There is no Tax sharing agreement that will require any payment by any Acquired Company after the date of this Agreement.

3.12. **No Material Adverse Change.** Since the date of the Balance Sheet, there has not been any material adverse change in the business, operations, properties, prospects, assets, or condition of any Acquired Company, and no event has occurred or circumstance exists that may result in such a material adverse change.

3.13. **Employees; Employee Benefits.**

(a). Part 3.13 of the Disclosure Letter contains a complete and accurate list of the following information for each employee or director of the Acquired Companies, including each employee on leave of absence or layoff status: employer; name; job title; current compensation paid or

payable and any change in compensation since April 30, 2003; vacation accrued; and service credited for purposes of vesting and eligibility to participate under any Acquired Company's Company Benefit Arrangements (defined below) or Company Pension Plan (defined below).

(b). No employee or director of any Acquired Company is a party to, or is otherwise bound by, any agreement or arrangement, including any confidentiality, noncompetition, or proprietary rights agreement, between such employee or director and any other Person (" **Proprietary Rights Agreement** ") that in any way adversely affects or will affect (i) the performance of his duties as an employee or director of the Acquired Companies, or (ii) the ability of any Acquired Company to conduct its business, including any Proprietary Rights Agreement with Sellers or the Acquired Companies by any such employee or director. To the Acquired Companies' and the Sellers' Knowledge, no director, officer, or other key employee of any Acquired Company intends to terminate his employment with such Acquired Company.

(c). Part 3.13 of the Disclosure Letter also contains a complete and accurate list of the following information for each retired employee or director of the Acquired Companies, or their dependents, receiving benefits or scheduled to receive benefits in the future: name, pension benefit, pension option election, retiree medical insurance coverage, retiree life insurance coverage, and other benefits.

(d). Except as set forth in Part 3.13 to the Disclosure Letter, the Acquired Companies do not have any employment contracts or consulting agreements currently in effect that are not terminable at will (other than agreements with the sole purpose of providing for the confidentiality of proprietary information or assignment of inventions).

(e). Except as disclosed in Part 3.13 of the Disclosure Letter, neither of the Acquired Companies (i) has ever been and is not now subject to a union organizing effort, (ii) is subject to any collective bargaining agreement with respect to any of its employees, (iii) is subject to any other contract, written or oral, with any trade or labor union, employees' association or similar organization, or (iv) has any current labor disputes. Each of the Acquired Companies has good employee relations, and has no Knowledge of any facts indicating that the consummation of the transactions contemplated hereby will have a material adverse effect on such employee relations, and has no Knowledge that any of its key employees intends to leave its employ. All of the employees of the Acquired Companies are legally permitted to be employed by the Acquired Companies, respectively, in their current job capacities.

(f). Part 3.13 to the Disclosure Letter identifies (i) each "employee benefit plan," and (ii) all other written or formal plans or agreements (other than statutory programs in the province of Quebec or Canada) involving direct or indirect compensation or benefits in the aggregate amount including each employment, severance or other similar contract, arrangement or policy and each plan or arrangement (written or oral) providing for amounts of insurance coverage in excess of $100,000 (including any self-insured arrangements), workers' benefits, vacation benefits, severance benefits, disability benefits, death benefits, hospitalization benefits, retirement benefits, deferred compensation, profit-sharing, bonuses, stock options, stock purchase, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement insurance, compensation or benefits for employees, consultants or directors which (A) is entered into, currently or is previously maintained or contributed to, as the case may be, by the Acquired Companies and (B) covers any employee or former employee of the Acquired Companies (excluding workers' compensation, unemployment and other government mandated plans). Such contracts, plans and arrangements as are described in this Section 3.13 are herein referred to collectively as the " **Company Benefit Arrangements** ."

(g). Copies of all Company Benefit Arrangements (and, if applicable, related trust agreements) and all amendments thereto and written interpretations thereof (including summary

plan descriptions and any summary of any material modification) have been delivered to Western, together with the three most recent annual reports prepared in connection with any such Company Benefit Arrangements. All Company Benefit Arrangements that individually or collectively would constitute an "employee pension benefit plan," (collectively, the " **Company Pension Plans** "), are identified as such in Part 3.13 of the Disclosure Letter. All contributions due from either Acquired Company in an aggregate amount in excess of $25,000 with respect to any of the Company Benefit Arrangements have been made or have been accrued on the Acquired Companies' financial statements as of April 30, 2004. Each Company Benefit Arrangement has been maintained substantially in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations. No Company Pension Plan constitutes a "multiemployer" plan.

(h). No Company Benefit Arrangement will be subject to any surrender fees or service fees upon termination other than the normal and reasonable administrative fees associated with the termination of benefit plans. To the extent permitted by applicable law, Western has been given direct access to the claims experience of any Company health plan to enable it to ascertain whether any persons covered by that plan have incurred claims in excess of $100,000 in the preceding 12 months. Company has taken such actions as may be necessary to authorize Western to obtain such information. However, Company does not represent that such information may be provided to Western under applicable law. Western shall take such actions as are appropriate under the circumstances to preserve the confidentiality of that data so as to comply with applicable law.

(i). There has been no amendment to, written interpretation or announcement (whether or not written) by the Acquired Companies relating to, or change in employee participation or coverage under, any Company Benefit Arrangement that would increase materially the expense of maintaining such Company Benefit Arrangement above the level of the expense incurred in respect thereof for the fiscal year ended 2003, except for any changes required by applicable law.

(j). The group health plans that benefit employees of the Acquired Companies are in compliance, in all material respects, with the continuation coverage requirements applicable to the Company and the regulations thereunder, as such requirements affect the Acquired Companies and their employees.

(k). The Acquired Companies are in compliance in all material respects with all legal requirements, agreements and Contracts relating to employment, employment practices, immigration, wages, hours, and terms and conditions of employment, including, but not limited to, employee compensation matters, and has made commercially reasonable efforts to correctly classify employees in accordance with any applicable laws, regulations or statutes.

(l). A true and complete list of all employees, officers and consultants of the Acquired Companies, their current compensation, their department and their title is set forth on Part 3.13 to the Disclosure Letter. The Acquired Companies will have no liability to any employee or to any organization or any other entity as a result of the termination of any employee leasing arrangement.

(m). Except as disclosed in Part 3.13 to the Disclosure Letter, neither of the Acquired Companies is a party to any: (i) agreement with any executive officer or other key employee thereof (x) the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction involving such company in the nature of any of the Contemplated Transactions, (y) providing any term of employment or compensation guarantee, or (z) providing severance benefits or other benefits after the termination of employment of such employee regardless of the reason for such termination of employment; or (ii) agreement or plan, including, without limitation, any stock option plan, stock appreciation rights plan or stock purchase plan, any

of the benefits of which will be materially increased, or the vesting of benefits of which will be materially accelerated, by the occurrence of any of the Contemplated Transactions or the value of any of the benefits of which will be calculated on the basis of any of the Contemplated Transactions.

3.14. **Compliance With Legal Requirements; Governmental Authorizations.**

(a). Each Acquired Company has complied with and will be, as of the Closing Date, in compliance with each law, ordinance, regulation and rule, and Order that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets. No event has occurred or circumstance exists that (with or without notice or lapse of time) may constitute or result in a violation by any Acquired Company of, or a failure on the part of any Acquired Company to comply with, any such applicable law, ordinance, regulation and rule, and Order. Except as set forth in Part 3.14 of the Disclosure Letter, there is no Order to which any of the Acquired Companies, or any of the assets owned or used by any Acquired Company, is subject. Each Acquired Company has filed all applicable government reports required by law. All reports filed by each Acquired Company are true, correct and complete.

(b). Each of the Acquired Companies has received all Governmental Authorizations that are necessary and/or legally required for the Acquired Companies to conduct its respective business as currently conducted without any violation of applicable law. All such Governmental Authorizations are in full force and effect and are listed in Part 3.14 to the Disclosure Letter and to the Knowledge of the Acquired Companies there exists no current default under or violation of any such permit or approval. Neither of the Acquired Companies has received any notice or other communication from any governmental authority regarding (i) any actual or possible violation of law or any Governmental Authorization or any failure to comply with any term or requirement of any Governmental Authorization, or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization.

3.15. **Legal Proceedings.** Except as set forth in Part 3.15 of the Disclosure Letter, there is no pending action, mediation, arbitration, audit, hearing, investigation, litigation, suit or other proceeding pending or to the Acquired Companies' and the Sellers' knowledge, threatened against the Acquired Companies (or against any officer, director, employee or agent of the Acquired Companies) or that otherwise relates to or may affect the business of, or any of the assets owned or used by, any Acquired Company; that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions. To the Knowledge of Sellers and the Acquired Companies, (1) no such action, arbitration, audit, hearing, investigation, litigation, suit or other proceeding has been threatened, and (2) no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such action, mediation, arbitration, audit, hearing, investigation, litigation, suit or other proceeding. Sellers have delivered to Western copies of all pleadings, correspondence, and other documents relating to each action, mediation, arbitration, audit, hearing, investigation, litigation, suit or other proceeding listed in Part 3.15 of the Disclosure Letter. To the Knowledge of Sellers and the Acquired Companies, the matters listed in Part 3.15 of the Disclosure Letter will not have a material adverse effect on the business, operations, assets, condition, or prospects of any Acquired Company.

3.16. **Absence Of Certain Changes And Events.** Except as set forth in Part 3.16 of the Disclosure Letter, since the date of the Balance Sheet, the Acquired Companies have conducted their businesses only in the ordinary course of business, consistent with past practices and there has not been any:

(a). change in any Acquired Company's authorized or issued capital stock; grant of any stock option or right to purchase shares of capital stock of any Acquired Company; issuance of any security convertible into such capital stock; grant of any registration rights; purchase, redemption,

retirement, or other acquisition by any Acquired Company of any shares of any such capital stock; declaration or payment of any dividend or other distribution or payment in respect of shares of capital stock;

(b). any acceleration or release of any vesting condition to the right to exercise any option, warrant or other right to purchase or otherwise acquire any shares of Company's capital stock, or any acceleration or release of any right to repurchase shares of Company's capital stock upon the shareholder's termination of employment or services with Company or pursuant to any right of first refusal;

(c). amendment to the articles or certificate of incorporation or the bylaws of any Acquired Company;

(d). payment or increase by any Acquired Company of any bonuses, salaries, or other compensation to any stockholder, director, officer, or (except in the ordinary course of business, consistent with past practices) employee or entry into any employment, severance, or similar Contract with any director, officer, or employee;

(e). adoption of, or increase in the payments to or benefits under, any Company Benefit Arrangement;

(f). any labor dispute or claim of unfair labor practices;

(g). any change with respect to the officers or management or key employees of Company;

(h). damage to or destruction or loss of any asset or property of any Acquired Company, whether or not covered by insurance, materially and adversely affecting the properties, assets, business, financial condition, or prospects of the Acquired Companies, taken as a whole;

(i). entry into, termination of, or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit, or similar agreement, or (ii) any Contract or transaction involving a total remaining commitment by or to any Acquired Company of at least $50,000 Canadian Dollars;

(j). sale (other than sales of inventory in the ordinary course of business, consistent with past practices), lease, or other disposition of any asset or property of any Acquired Company or mortgage, pledge, or imposition of any Encumbrance on any material asset or property of any Acquired Company, including any license, transfer or grant of a right under any Intellectual Property Assets of the Acquired Companies;

(k). any entry into, amendment of, relinquishment, termination or nonrenewal by Company of any contract, lease transaction, commitment or other right or obligation other than in the ordinary course of business, consistent with past practice, but in no event involving obligations (contingent or otherwise) of, or payments to, Company in excess of $25,000 Canadian Dollars individually or $50,000 Canadian Dollars in the aggregate;

(l). any material obligation or liability incurred other than in the ordinary course of business consistent with past practice, or any borrowing of moneys (other than the incurrence of trade accounts payable in the ordinary course of business consistent with past practice) in excess of $25,000 Canadian Dollars in the aggregate;

(m). any making of any loan, advance or capital contribution to, or investment in, any person other than travel loans or advances made in the ordinary course of business consistent with past practices;

(n). any agreement entered into by either of the Acquired Companies for the deferral by such company of the payment of any accounts payable outside the ordinary course of business or in an

amount which is material or any discount, accommodation or other concession made outside the ordinary course of business in order to accelerate or induce the collection of any receivable;

(o). any material change in the manner in which either of the Acquired Companies extends discounts, credits or warranties to customers or otherwise does business with its customers;

(p). material change in the accounting methods used by any Acquired Company; or

(q). any agreement or arrangement made by the Acquired Companies to do any of the foregoing or to take any action which, if taken prior to the date of this Agreement, would have made any representation or warranty of Company set forth in Section 3 of this Agreement untrue or incorrect as of the date when made.

3.17. **Contracts; No Defaults.**

(a). Part 3.17(a) of the Disclosure Letter contains a complete and accurate list, and Sellers have delivered to Western true and complete copies, of:

(i). any Contract, commitment, agreement, or purchase order providing for payments by or to the Acquired Companies in an aggregate amount of (i) $50,000 Canadian Dollars or more in the ordinary course of business, consistent with past practice, or (ii) $25,000 Canadian Dollars or more outside the ordinary course of business, consistent with past practice;

(ii). any Contract under which any Acquired Company is licensor of Intellectual Property Assets, or under which any Acquired Company is licensee of any intellectual property of any other Person (except for standard "shrink wrap" licenses for off-the-shelf software products);

(iii). any Contract by any Acquired Company to encumber, transfer or sell rights in or with respect to any Intellectual Property Assets;

(iv). any Contract for the sale or lease of real or personal property involving more than $25,000 per year other than sales of inventory or equipment in the ordinary course of business consistent with past practice;

(v). any dealer, distributor, sales representative, original equipment manufacturer, value added remarketer, volume purchase Contract or other Contract for the distribution or sale of the Acquired Companies' products (other than individual purchase orders in the ordinary course of business consistent with past practice);

(vi). any joint venture Contract or any other Contract that involves a sharing of profits with other persons or the payment of royalties to any other person;

(vii). any instrument evidencing indebtedness for borrowed money or guarantees thereof;

(viii). any Contract containing covenants purporting to limit the Acquired Companies' freedom to compete in any line of business in any geographic area or that restricts the Acquired Company from soliciting potential employees, consultants, contractors, suppliers or customers or that would restrict Western from carrying on the business of the Acquired Companies after the Closing;

(ix). any Contract of indemnification or warranty, other than standard warranties in connection with the sale of products and/or services in the ordinary course of business, consistent with past practice;

(x). any Contract granting most favored nation pricing and/or terms to any customer, licensee, purchaser, reseller, promoter or remarketer of any products or services.

(xi). any Contract with any employee

(xii). any Contract for consulting or similar services with a term of more than sixty (60) days and which is not terminable without penalty with notice of sixty (60) days or less;

(xiii). any Contract with or commitment to any labor union; or

(xiv). any other oral or written agreement, obligation or commitment that is material to Company, its financial condition, business or prospects.

A true and complete copy (or if not in writing, a description) of all Contracts and all amendments and schedules thereto has been delivered to Western. All Contracts are valid and in full force and effect. Neither of the Acquired Companies, nor, to the knowledge of the Sellers, any other party is in breach of or default under any material term of any Contract, nor will either of the Acquired Companies nor, to the Company's or Sellers' knowledge, any other party be in breach of or default under any such term after giving effect to the Contemplated Transactions. To the knowledge of Company and the Sellers, no party to any such Contract intends to cancel, withdraw, modify or amend such Contract. Neither of the Acquired Companies is a party to any Contract with any customer, supplier, landlord or labor union or association that (i) contains any provision that is or could reasonably be expected to become materially burdensome to such Acquired Company, other than provisions that are in the ordinary course of such Acquired Company's business and are consistent with industry practice; (ii) provides for the reduction of prices charged by such Acquired Company to any significant customer for its products or services other than price reductions that are proportionate to reductions in the related costs (including, without limitation, any "most favored customer" provisions); (iii) provides for any increases in the prices to be paid by such Acquired Company to any significant supplier for any products or services; or (iv) provides for any warranty or similar obligations with respect to products or services other than an obligation to repair or replace products in the event of defective workmanship or materials provided by such Acquired Company.

3.18. **Insurance.** The Acquired Companies maintain policies of insurance of the type and in amounts customarily carried by persons conducting businesses or owning assets similar in type and size to those of the Acquired Companies, including without limitation all legally required insurance and errors and omissions, casualty, fire and general liability insurance as listed in Part 3.18 of the Disclosure Letter. There is no claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the issuers or underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been timely paid and the Acquired Companies are otherwise in compliance with the terms of such policies and bonds and all such policies are in full force and effect. The Acquired Companies have no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies. All policies of insurance now held by Company are set forth in Part 3.18 to the Disclosure Letter together with the name of the insurer under each policy, the type of policy, the policy coverage amount and any applicable deductible, and the applicable provisions, as of the date of the Agreement.

3.19. **Environmental Matters.**

(a). As used herein, the following terms shall have the following meanings:

(i). **"Environmental, Health, and Safety Liabilities"** shall mean any cost, damages, expense, liability, obligation, or other responsibility arising from or under Environmental Law and consisting of or relating to: any environmental, health, or safety matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products); fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial, or inspection costs and expenses arising under Environmental Law; financial responsibility under Environmental Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment, or other remediation or response actions

(" **Cleanup** ") required by applicable Environmental Law (whether or not such Cleanup has been required or requested by any governmental body or any other Person) and for any natural resource damages; or any other compliance, corrective, investigative, or remedial measures required under Environmental Law.

(ii). **"Environment"** shall mean the soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

(iii). **"Environmental Law"** shall mean any legal requirement that requires or relates to: advising appropriate authorities, employees, and the public of intended or actual Releases of Hazardous Materials, violations of discharge limits, or other prohibitions and of the commencements of activities, such as resource extraction or construction, that could have significant impact on the Environment; preventing or reducing to acceptable levels the release of pollutants or hazardous substances or materials into the Environment; reducing the quantities, preventing the release, or minimizing the hazardous characteristics of wastes that are generated; assuring that products are designed, formulated, packaged, and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of; protecting resources, species, or ecological amenities; reducing to acceptable levels the risks inherent in the transportation of Hazardous Materials, oil, or other potentially harmful substances; cleaning up Hazardous Materials that have been Released, preventing the threat of Release, or paying the costs of such clean up or prevention; or making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment, or permitting self-appointed representatives of the public interest to recover for injuries done to public assets; or a legal requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

(iv). **"Hazardous Activity"** shall mean the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment, or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about, or from the Facilities or any part thereof into the Environment, and any other act, business, operation, or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm to persons or property on or off the Facilities, or that may affect the value of the Facilities or the Acquired Companies.

(v). **"Hazardous Materials"** shall mean any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefore and asbestos or asbestos-containing materials.

(vi). **"Release"** shall mean any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping, or other releasing into the Environment, whether intentional or unintentional.

(b). Except as set forth in part 3.19 of the disclosure letter:

(i). Each Acquired Company is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Law. No Seller or Acquired Company has any basis to expect, nor has any of them or any other Person for

whose conduct they are or may be held to be responsible received, any actual or threatened order, notice, or other communication of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities

(c). There has been no Release or, to the Knowledge of Sellers and the Acquired Companies, threat of Release, of any Hazardous Materials at or from the Facilities or at any other locations where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by the Facilities, or from or by any other properties and assets (whether real, personal, or mixed) in which Sellers or any Acquired Company has or had an interest, or any geologically or hydrologically adjoining property, whether by Sellers, any Acquired Company, or any other Person.

3.20. **Labor Relations.** Except as disclosed in Part 3.20 of the Disclosure Letter, there are no activities or proceedings of any labor union to organize any employees of the Acquired Companies and there are no strikes, material slowdowns, work stoppages or lockouts, or threats thereof by or with respect to any employees of the Acquired Companies.

3.21. **Intellectual Property.**

(a). The term " **Intellectual Property Assets** " includes:

(i). all fictional business names, trading names, registered and unregistered trademarks, service marks, and applications (collectively, "Marks");

(ii). all patents, patent applications, and inventions and discoveries that may be patentable (collectively, "Patents");

(iii). all copyrights in both published works and unpublished works (collectively, "Copyrights");

(iv). all rights in mask works (collectively, "Rights in Mask Works"); and

(v). all know-how, trade secrets, confidential information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints (collectively, "Trade Secrets"); owned, used, or licensed by any Acquired Company as licensee or licensor.

(b). Part 3.21(b) of the Disclosure Letter contains a complete and accurate list and summary description, including any royalties paid or received by the Acquired Companies, of all Contracts relating to the Intellectual Property Assets to which any Acquired Company is a party or by which any Acquired Company is bound, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available software programs with a value of less than $1000 Canadian Dollars under which an Acquired Company is the licensee. There are no outstanding and, to Sellers' Knowledge, no threatened disputes or disagreements with respect to any such agreement.

(c). Know-How Necessary for the Business **.**

(i). The Intellectual Property Assets are all those necessary for the operation of the Acquired Companies' businesses. One or more of the Acquired Companies is the owner of all right, title, and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, equities, and other adverse claims, and has the right to use without payment to a third party all of the Intellectual Property Assets or the Acquired Companies.

(ii). Except as set forth in Part 3.21(c) of the Disclosure Letter, all former and current employees of each Acquired Company have executed written Contracts with one or more of the Acquired Companies that assign to one or more of the Acquired Companies all rights to any inventions, improvements, discoveries, or information relating to the business of any Acquired Company. No employee of any Acquired Company has entered into any Contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his work to anyone other than one or more of the Acquired Companies.

(d). Patents.

(i). Part 3.21(d) of the Disclosure Letter contains a complete and accurate list and summary description of all Patents. One or more of the Acquired Companies is the owner of all right, title, and interest in and to each of the Patents, free and clear of all Encumbrances and other adverse claims, except as set forth in Part 3.6 of the Disclosure Letter.

(ii). All of the issued Patents are currently in compliance with formal legal requirements (including payment of filing, examination, and maintenance fees and proofs of working or use), are valid and enforceable, and are not subject to any maintenance fees or Taxes or actions falling due within ninety days after the Closing Date.

(iii). To Seller and Acquired Company's Knowledge, no Patent has been or is now involved in any interference, reissue, reexamination, or opposition proceeding. To Sellers' Knowledge, there is no potentially interfering patent or patent application of any third party.

(iv). To Seller and Acquired Company's Knowledge, no Patent is infringed or, to Sellers' Knowledge, has been challenged or threatened in any way. None of the products manufactured and sold, nor any process or know-how used, by any Acquired Company infringes or is alleged to infringe any patent or other proprietary right of any other Person.

(v). All products made, used, or sold under the Patents have been marked with the proper patent notice.

(e). Trademarks .

(i). Part 3.21(e) of Disclosure Letter contains a complete and accurate list and summary description of all Marks. One or more of the Acquired Companies is the owner of all right, title, and interest in and to each of the Marks, free and clear of Encumbrances and other adverse claims, except as disclosed in Part 3.6 of the Disclosure Letter.

(ii). All Marks that have been registered are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable, and are not subject to any maintenance fees or Taxes or actions falling due within ninety days after the Closing Date.

(iii). No Mark has been or is now involved in any opposition, invalidation, or cancellation and, to Sellers' Knowledge, no such action is threatened with the respect to any of the Marks.

(iv). To Sellers' Knowledge, there is no potentially interfering trademark or trademark application of any third party.

(v). No Mark is infringed or, to Sellers' Knowledge, has been challenged or threatened in any way. None of the Marks used by any Acquired Company infringes or is alleged to infringe any trade name, trademark, or service mark of any third party.

(vi). All products and materials containing a Mark bear the proper registration notice where permitted by law.

(f). Copyrights.

(i). Part 3.21(f) of the Disclosure Letter contains a complete and accurate list and summary description of all registered Copyrights. One or more of the Acquired Companies is the owner of all right, title, and interest in and to each of the Copyrights, free and clear of all Encumbrances and other adverse claims.

(g). Trade Secrets.

(i). With respect to each Trade Secret, the documentation relating to such Trade Secret is current, accurate, and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual.

(ii). Sellers and the Acquired Companies have taken all reasonable precautions to protect the secrecy, confidentiality, and value of their Trade Secrets.

(iii). One or more of the Acquired Companies has good title and an absolute (but not necessarily exclusive) right to use the Trade Secrets. The Trade Secrets are not part of the public knowledge or literature, and, to Sellers' Knowledge, have not been used, divulged, or appropriated either for the benefit of any Person (other than one or more of the Acquired Companies) or to the detriment of the Acquired Companies. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way.

3.22. **Certain Payments.** No Acquired Company or director, officer, agent, or employee of any Acquired Company, or any other Person associated with or acting for or on behalf of any Acquired Company, has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, (iii) to obtain special concessions or for special concessions already obtained, for or in respect of any Acquired Company or any Affiliate of an Acquired Company, or (iv) in violation of any legal requirement, (b) established or maintained any fund or asset that has not been recorded in the books and records of the Acquired Companies.

3.23. **Disclosure.**

(a). No representation or warranty of Sellers in this Agreement and no statement in the Disclosure Letter omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading.

(b). No notice given pursuant to Section 5.5 will contain any untrue statement or omit to state a material fact necessary to make the statements therein or in this Agreement, in light of the circumstances in which they were made, not misleading.

(c). To the Knowledge of the Sellers or the Acquired Companies, there is no fact known to either Seller that has specific application to either Seller or any Acquired Company (other than general economic or industry conditions) and that materially adversely affects or materially threatens, the assets, business, prospects, financial condition, or results of operations of the Acquired Companies (on a consolidated basis) that has not been set forth in this Agreement or the Disclosure Letter.

3.24. **Relationships With Related Persons.** No Seller or any Related Person of Sellers or of any Acquired Company has any interest in any property (whether real, personal, or mixed and whether tangible or intangible), used in or pertaining to the Acquired Companies' businesses except as stated in Part 3.24 of the Disclosure Letter. No Seller or any Related Person of Sellers or of any Acquired Company is, or since the first day of the next to last completed fiscal year of the Acquired Companies has (of record or as a beneficial owner) an equity interest or any other financial or profit interest in, a

Person that has (i) business dealings or a material financial interest in any transaction with any Acquired Company, or (ii) engages in competition with any Acquired Company with respect to any line of the products or services of such Acquired Company (a " **Competing Business** ") in any market presently served by such Acquired Company. Except as set forth in Part 3.24 of the Disclosure Letter, no Seller or any Related Person of Sellers or of any Acquired Company is a party to any Contract with, or has any claim or right against any Acquired Company.

3.25. **Brokers or Finders.** Sellers and their agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

4. **Representations And Warranties Of Western.**

Western represents and warrants to Sellers as follows:

4.1. **Organization and Good Standing.** Western is a Limited Liability Company duly organized, validly existing, and in good standing under the laws of the State of Colorado, USA.

4.2. **Authority; No Conflict.**

(a). This Agreement constitutes the legal, valid, and binding obligation of Western, enforceable against Western in accordance with its terms. Upon the execution and delivery by Western of the Ancillary Agreements, the Ancillary Agreements will constitute legal, valid, and binding obligations of Western, enforceable against Western in accordance with their respective terms. Western has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Ancillary Agreements and to perform its obligations under this Agreement and the Ancillary Agreements.

(b). Neither the execution and delivery of this Agreement by Western nor the consummation or performance of any of the Contemplated Transactions by Western will give any Person the right to prevent, delay, or otherwise interfere with any of the Contemplated Transactions pursuant to any provision of Western's articles or certificate of incorporation or bylaws; any resolution adopted by the board of directors or the stockholders of Western; any legal requirement or Order to which Western may be subject; or any Contract to which Western is a party or by which Western may be bound.

Western is not and will not be required to obtain any consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

4.3. **Certain Proceedings.** There is no pending action, arbitration, audit, hearing, investigation, litigation, suit or other proceeding that has been commenced against Western and that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions. To Western's Knowledge, no such proceeding has been threatened.

4.5 **Name Change.** Western agrees to file an official name change for the Company and cease using the name "Finproject" as well as any related Marks or logos within 30 days after Closing.

5. **Conditions Precedent To Western's Obligation To Close.**

Western's obligation to purchase the Shares and to take the other actions required to be taken by Western at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Western, in whole or in part):

5.1. **Sellers' Performance.**

(a). All of the covenants and obligations that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of

these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

(b). Each document required to be delivered pursuant to Section 2.7 must have been delivered, and each of the other covenants and obligations in Section 5 must have been performed and complied with in all respects.

5.2. **Consents.** Each of the consents identified in Part 3.2 of the Disclosure Letter must be in full force and effect.

5.3. **Additional Documents.** Each of the following documents must have been delivered to Western:

(a). an opinion of Seller's counsel, dated the Closing Date, in a form acceptable to Western;

(b). such other documents as Western may reasonably request for the purpose of (i) evidencing the accuracy of any of Sellers' representations and warranties, (ii) evidencing the performance by either Seller of, or the compliance by either Seller with, any covenant or obligation required to be performed or complied with by such Seller, (iii) evidencing the satisfaction of any condition referred to in this Section 7, or (iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions.

5.4. **No Claim Regarding Stock Ownership or Sale Proceeds.** There must not have been made or threatened by any Person any claim asserting that such Person (a) is the holder or the beneficial owner of, or has the right to acquire or to obtain beneficial ownership of, any stock of, or any other voting, equity, or ownership interest in, any of the Acquired Companies, or (b) is entitled to all or any portion of the Purchase Price payable for the Shares.

5.5. **No Prohibition.** Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, or cause Western or any Person affiliated with Western to suffer any material adverse consequence under, (a) any applicable legal requirement or Order, or (b) any legal requirement or Order that has been published, introduced, or otherwise proposed by or before any governmental body.

6. **Conditions Precedent To Sellers' Obligation To Close.** Sellers' obligation to sell the Shares and to take the other actions required to be taken by Sellers at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Sellers, in whole or in part):

6.1. **Accuracy of Representations.** All of Western's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

6.2. **Western's Performance.**

(a). All of the covenants and obligations that Western is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

(b). Western must have delivered each of the documents required to be delivered by Western pursuant to Section 2.7 and must have made the cash payments required to be made by Western pursuant to Sections 2.7(b)(i) and 2.7(b)(ii).

6.3. **Consents.** Each of the consents identified in Part 3.2 of the Disclosure Letter must have been obtained and must be in full force and effect.

6.4. **Additional Documents.** Western must have caused the following documents to be delivered to Sellers: such documents as Sellers may reasonably request for the purpose of (i) evidencing the accuracy of any representation or warranty of Western, (ii) evidencing the performance by Western of, or the compliance by Western with, any covenant or obligation required to be performed or complied with by Western, (iii) evidencing the satisfaction of any condition referred to in this Section 8, or (iv) otherwise facilitating the consummation of any of the Contemplated Transactions.

6.5. **No Injunction.** There must not be in effect any legal requirement or any injunction or other Order that (a) prohibits the sale of the Shares by Sellers to Western, and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

7. **Termination.**

7.1. **Termination Events.** This Agreement may, by notice given prior to or at the Closing, be terminated:

(a). by either Western or Sellers if a material breach of any provision of this Agreement has been committed by the other party and such breach has not been waived;

(b). by Western if any of the conditions in Section 7 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Western to comply with its obligations under this Agreement) and Western has not waived such condition on or before the Closing Date; or

(c). by Sellers, if any of the conditions in Section 8 has not been satisfied of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Sellers to comply with their obligations under this Agreement) and Sellers have not waived such condition on or before the Closing Date;

(d). by mutual consent of Western and Sellers; or

(e). by either Western or Sellers if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before July 15, 2004 or such later date as the parties may agree upon.

7.2. **Effect of Termination.** Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 11.1 and 11.3 will survive; provided, however, that if this Agreement is terminated by a party because of the breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

8. **Indemnification; Remedies.**

8.1. **Survival; Right to Indemnification Not Affected By Knowledge.** All representations and warranties of the Acquired Companies and/or the Sellers contained in this Agreement will remain operative and in full force and effect for a period of 2 years following the closing, with the exception of the representations and warranties contained in Sections 3.11 (Taxes) and 3.19 (Environmental), which shall remain in full force and effect for 7 years with respect to Environmental and for the applicable statute of limitations with respect to Taxes. The rights contained herein shall remain in full force and effect regardless of any investigation or disclosure made by or on behalf of the parties to this

Agreement. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, payment of Damages, or other remedy based on such representations, warranties, covenants, and obligations. Western' representations and warranties set forth in this Agreement shall terminate as of the earlier of (a) the termination of this Agreement or (b) 2 years from the Closing (without prejudice to any rights the Sellers may have for any violations of applicable law). All covenants of the parties shall survive according to their respective terms.

8.2. **Indemnification and Payment of Damages.** Sellers, jointly and severally, will indemnify and hold harmless Western, the Acquired Companies, and their respective directors, officers, employees, agents, or other representatives, stockholders and affiliates (collectively, the " **Indemnified Persons** ") for, and will pay to the Indemnified Persons the amount of, any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs of investigation and defense and reasonable attorneys' fees) or diminution of value, whether or not involving a third-party claim (collectively, " **Damages** "), arising, directly or indirectly, from or in connection with:

(a). any breach of any representation or warranty made by Sellers in this Agreement (without giving effect to any supplement to the Disclosure Letter), the Disclosure Letter, or any other certificate or document delivered by Sellers pursuant to this Agreement;

(b). any breach by any Seller of any covenant or obligation of such Seller in this Agreement; or

(c). any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by any such Person with any Seller or any Acquired Company (or any Person acting on their behalf) in connection with any of the Contemplated Transactions.

For the purpose of this Agreement, John Massotta and Daniel J. Hunter shall be excluded from joint and several liability. The remedies provided in this Section 8.2 will not be exclusive of or limit any other remedies that may be available to Western or the other Indemnified Persons.

8.3. **Indemnification and Payment of Damages—Environmental Matters.** In addition to the provisions of Section 10.2, Sellers, jointly and severally, will indemnify and hold harmless Western, the Acquired Companies, and the other Indemnified Persons for, and will pay to Western, the Acquired Companies, and the other Indemnified Persons the amount of, any Damages (including costs of cleanup, containment, or other remediation) arising, directly or indirectly, from or in connection with:

(a). any Environmental, Health, and Safety Liabilities arising out of or relating to: (i) (A) the ownership, operation, or condition at any time on or prior to the Closing Date of the Facilities or any other properties and assets (whether real, personal, or mixed and whether tangible or intangible) in which Sellers or any Acquired Company has or had an interest, or (B) any Hazardous Materials or other contaminants that were present on the Facilities or such other properties and assets at any time on or prior to the Closing Date; or (ii) (A) any Hazardous Materials or other contaminants, wherever located, that were, or were allegedly, generated, transported, stored, treated, Released, or otherwise handled by Sellers or any Acquired Company or by any other Person for whose conduct they are or may be held responsible at any time on or prior to the Closing Date, or (B) any Hazardous Activities that were, or were allegedly, conducted by Sellers or any Acquired Company or by any other Person for whose conduct they are or may be held responsible; or

(b). any bodily injury (including illness, disability, and death, and regardless of when any such bodily injury occurred, was incurred, or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction, and deprivation of the use of real property), or other damage of or to any Person, including any employee or former employee of Sellers or any

Acquired Company or any other Person for whose conduct they are or may be held responsible, in any way arising from or allegedly arising from any Hazardous Activity conducted or allegedly conducted with respect to the Facilities or the operation of the Acquired Companies prior to the Closing Date, or from Hazardous Material that was (i) present or suspected to be present on or before the Closing Date on or at the Facilities (or present or suspected to be present on any other property, if such Hazardous Material emanated or allegedly emanated from any of the Facilities and was present or suspected to be present on any of the Facilities on or prior to the Closing Date) or (ii) Released or allegedly Released by Sellers or any Acquired Company or any other Person for whose conduct they are or may be held responsible, at any time on or prior to the Closing Date.

Sellers will be entitled to control any Cleanup, any related action, arbitration, audit, hearing, investigation, litigation, or suit or other proceeding, and, except as provided in the following sentence, any other action, arbitration, audit, hearing, investigation, litigation, suit or other proceeding with respect to which indemnity may be sought under this Section 8.3. The procedure described in Section 8.7 will apply to any claim solely for monetary damages relating to a matter covered by this Section 8.3.

8.4. **Time Limitations.** Sellers will have no liability (for indemnification or otherwise) with respect to any representation or warranty, or covenant or obligation to be performed and complied with prior to the Closing Date, other than those in Sections 3.3 (Capitalization), 3.11 (Taxes), and 3.19 (Environmental), unless on or before the second anniversary of the Closing, Western notifies Sellers of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by Western; a claim with respect to Section 3.3 (Capitalization),and 3.19 (Environmental), or a claim for indemnification based upon any covenant or obligation to be performed and complied with prior to the Closing Date, may be made within 7 years of the Closing. A claim with respect to Section 3.11 Taxes may be brought within the timeframe of the applicable statue of limitations.

8.5. **Limitations on Amount.** Sellers will have no liability (for indemnification or otherwise) with respect to the matters described in clause (a), clause (b) or, to the extent relating to any failure to perform or comply prior to the Closing Date, clause (c) of Section 8.2 for individual claims exceeding $5000 Canadian Dollars and until the total of all Damages with respect to such matters exceeds $50,000 Canadian Dollars, and then for the amount of all Damages. Seller's total liablility for such matters shall not exceed fifty percent (50%) of the Purchase Price, provided however, that Seller's liabilities related to Environmental shall not exceed one hundred percent (100%) of the Purchase Price. In addition, this Section 8.5 will not apply to any breach of any of Sellers' representations and warranties of which either Seller had Knowledge at any time prior to the date on which such representation and warranty is made or any intentional breach by either Seller of any covenant or obligation, and Sellers will be jointly and severally liable for all Damages with respect to such breaches.

8.6. **Holdback; Right of Set-Off.**

(a). Any Damages for which an Indemnified Person shall be entitled to indemnification pursuant to this Section 10 will be immediately payable to such Indemnified Person by the reduction of the Holdback amount by an amount equal to the amount of such Damages. Such reduction shall be effected by (i) first, reducing the Holdback amount by an amount equal to the amount of such Damages, and (ii) second, to the extent that the amount of such Damages exceeds the available Holdback or if the Holdback has already been paid to the Sellers, by notifying Sellers of an indemnification claim pursuant to Section 8.2 and 8.3. The parties acknowledge and agree that in the event of a dispute (as defined in Section 11.5) between the parties which relates, directly or indirectly, to a claim by an Indemnified Person under this Section 8, a portion or all of the Holdback that may otherwise be payable to the Sellers, up to an amount equal to the Estimated Claim Amount may be withheld by Western pending resolution of such dispute in

accordance with Section 9.5, and, if such dispute is resolved in the Sellers' favor, Western shall not be liable for any damages to any of the Sellers resulting from or arising in connection with the payment of the Holdback being so withheld pending resolution of such dispute. The term " **Estimated Claim Amount** " means Western' good faith estimate of the Damages for which it may be entitled to indemnification hereunder in relation to any claim (which amount, in the case of a Third Party Claim, may include the entire amount of Damages claimed by a third party plaintiff against the Indemnified Person(s)).

(b). An Indemnified Person may apply claims for indemnification against the Holdback in whole or partial satisfaction thereof and may recover the Holdback amount to the extent of such claims, in accordance with the terms of this Agreement, without first making any other claims directly against the Sellers or Company, without rescinding or attempting to rescind any transaction consummated by this Agreement and without first exhausting any other remedies that may be available to it with respect to the subject matter of any claim, and such Indemnified Person will proceed directly in accordance with the provisions of this Agreement.

(c). Western will pay the Escrow Amount (reduced as provided in Section 10.6(a) above, if applicable) to the Sellers as stated in Section 2.4(c) of this Agreement, or such later date as all outstanding claims as of the Closing Date for which an Indemnified Person may be entitled to indemnification under this Section 10 have been resolved.

8.7. **Procedure for Indemnification—Third Party Claims.**

(a). The law firm of McCarthy Tetrault, LLP (Quebec City Office) shall act as representative (the " **Representative** ") of all Sellers for purposes of the indemnification provisions of this Section 8 (except as set forth in Section 8.7(d) below) until such time as he may be replaced in accordance with Section 8.7(e) below, and is duly authorized to be such Representative and may bind the Sellers. Promptly after the receipt of notice of, or discovery of, any demand or other basis for any claim by an Indemnified Person, the Indemnified Person will give the Representative a Notice of Claim (as defined in and in accordance with Section 8.8) provided, however, that any omission or delay in so notifying the Sellers shall not relieve the Sellers from any liability which the Sellers may have to any Indemnified Person unless and to the extent only that the Sellers do not otherwise learn of such demand and such omission or delay results in the forfeiture by the Sellers of material rights and defenses. An Indemnified Person may assert a claim at any time prior to the applicable Release Date. Within ten (10) calendar days of delivery of a Notice of Claim, the Representative may, at the expense of the Sellers, elect to contest such claim and in such event, the contest of such claim will be conducted in accordance with Section 9.5.

(b). In the event that the claim involves a demand, suit, action, arbitration, investigation, inquiry or proceeding brought by a third party against such Indemnified Person(s) (a " **Third Party Claim** "), the Representative may elect to defend such Third Party Claim (acting in accordance with this Section 8) to conclusion or settlement satisfactory to the Indemnified Person (and if the Indemnified Person is Western) subject to using counsel reasonably acceptable to the Indemnified Person and the payment of all Damages as they are incurred, including fees and expenses in connection with the investigation and settlement of such Third Party Claim, as such Damages are incurred; provided, that the Representative may not elect to defend or settle any such Third Party Claim if such Third Party Claim includes a request for equitable relief against the Indemnified Person(s).

(c). If the Representative makes the foregoing election with respect to the defense of any Third Party Claim, the Indemnified Person will have the right to participate at its own expense in all proceedings with respect to such Third Party Claim. If the Representative does not make an election to defend such Third Party Claim, the Indemnified Person shall be free to handle the defense of any such Third Party Claim, will take all necessary steps to defend such Third Party

Claim to conclusion or settlement satisfactory to the Indemnified Person, will notify the Representative of the progress of any such Third Party Claim, will permit the Representative at the sole cost of the Representative to participate in such defense and, except in the case of an actual or potential conflict of interest between the Indemnified Person(s) and the Sellers, will provide the Representative with reasonable access to all relevant information and documentation relating to the Third Party Claim and the Indemnified Person's defense thereof. In any case, the party not in control of the Third Party Claim will cooperate with the other party in the conduct of the defense of such Third Party Claim. The Representative will not compromise or settle any such Third Party Claim without the written consent of the Indemnified Person, which consent shall not be unreasonably withheld or delayed provided, that any Indemnified Person shall not be required to obtain the consent of the Sellers to compromise or settle in good faith any Third Party Claim in the following circumstances: (A) the Indemnified Person releases the Sellers from any liability to indemnify the Indemnified Persons hereunder from any such Third Party Claim; or (B) the part of the Third Party Claim that is settled relates only to equitable relief, or (C) the Majority Sellers fail to agree on the appointment of a Representative pursuant to Section 8.7(e) or on the conduct of the defense or settlement of such Third Party Claim. In the event that a Third Party Claim is settled by an Indemnified Person with the written consent of the Representative or in the circumstances described in the preceding sentence, the Sellers agree to indemnify and hold harmless the Indemnified Person for the entire amount of such settlement, all other Damages incurred prior to the date of such settlement and Damages incurred in relation to the settlement, including fees and expenses, as such Damages are incurred. Any settlement (by the Indemnified Person, if the Indemnified Person controls the defense of such Third Party Claim) or by the Representative, if the Representative controls the defense of the Claim on behalf of Sellers) of any pending or threatened Third Party Claim in respect of which any Indemnified Person or the Sellers, as the case may be, is or could have been a party shall include an unconditional release of such Indemnified Person(s) or the Sellers, as the case may be, (whether or not such Indemnified Person(s) or Sellers, as the case may be, are party(ies) to the proceedings for such Third Party Claim) from all liability with respect to all Claims asserted and filed by such third party against such Indemnified Person or the Sellers, as the case may be, and any unasserted Claims relating to, or arising out of, the same alleged facts, events or circumstances that underlie the Third Party Claim and such settlement shall not include an admission of fault, culpability or a failure to act, by or on behalf of such Indemnified Person(s) or the Sellers as the case may be.

(d). The Representative shall have the power to act for the Sellers with respect to all transactions contemplated by this Agreement, and in connection with any dispute, litigation or arbitration involving this Agreement, and to do or refrain from doing all such further acts and things, and execute all such documents as the Representative shall deem necessary or appropriate in connection with transactions contemplated by this Agreement, including without limitation, the power (i) to act for the Sellers with regard to matters pertaining to the indemnification referred to in this Agreement, including the power to compromise any claim on behalf of the Sellers and to transact matters of litigation; (ii) to do or refrain from doing any further act or deed on behalf of the Sellers which the Representative deems necessary or appropriate in his sole discretion relating to the subject matter of this Agreement, as fully and completely as each Seller could do if personally present; (iii) to receive all notices and service of process on behalf of the Sellers in connection with any claims or matters under this Agreement.

(e). The Sellers holding a majority of the voting power of the shares of the Company Capital Stock at the date of this Agreement (the " **Majority Sellers** ") shall have the power to substitute any other Seller (with such Seller's consent) as a successor Representative hereunder. In the event that the Representative is unable to perform his duties hereunder and unable to substitute a successor Representative by reason of the death or incapacity of the Representative and no substitute

Representative has previously been appointed, a substitute Representative shall be appointed by the Majority Sellers.

(f). The Representative shall act for the Sellers on all matters set forth in this Agreement in a manner the Representative believes to be in the best interests of the Sellers and consistent with his obligations under this Agreement, but the Representative shall not be responsible to the Sellers for any loss or damages the Sellers may suffer by reason of the performance by the Representative of his duties under the Agreement, other than loss or damage arising from willful violation of the law or gross negligence in the performance of his duties under this Agreement. The Sellers agree, jointly and severally, to indemnify and hold harmless the Representative for any loss or damage arising from the performance of his duties as Representative hereunder, including, without limitation, the cost of any accounting firm or legal counsel retained by the Representative on behalf of the Sellers, but excluding any loss or damage arising from willful violation of the law or gross negligence in the performance of his duties under this Agreement.

(g). All actions, decisions and instructions of the Representative taken, made or given pursuant to the authority granted to the Representative hereunder shall be conclusive and binding upon all of the Sellers and no Seller shall have the right to object, dissent, protest or otherwise contest the same. Western hereby acknowledges that the Representative may with respect to any particular action, decision or instruction, solicit the consent of the Sellers before acting.

(h). With regard to any obligation by the Sellers in this Section 8 to pay any fees, costs, or other Damages as they are incurred, the Sellers shall pay such fees, costs or other Damages, without setoff or counterclaim, within thirty days of being receiving an invoice for such Damages by the Indemnified Person(s).

(i). The provisions of this Section 8 are independent and severable, shall constitute an irrevocable power of attorney coupled with an interest and shall be binding upon the executors, heirs, legal representatives, successors and assigns of each Seller.

(j). Sellers hereby consent to the non-exclusive jurisdiction of any court in which any action, arbitration, audit, hearing, investigation, litigation, suit or other proceeding is brought against any Indemnified Person for purposes of any claim that an Indemnified Person may have under this Agreement with respect to such proceeding or the matters alleged therein, and agree that process may be served on Sellers with respect to such a claim anywhere in the world.

8.8. **Notice of Claim.** Each notice of a claim by an Indemnified Person pursuant to this Section 8 (the " **Notice of Claim** ") will be in writing and will contain the following information:

(i) The Estimated Claim Amount (as defined in Section 8.6(a)); and

(ii) A brief description, in reasonable detail (to the extent reasonably available to the Indemnified Person), of the facts, circumstances or events giving rise to the alleged claim and/or Damages based on the Indemnified Person's (or if the Indemnified Person is Company, Western') good faith belief thereof, including, without limitation, the identity and address of any third party claimant (to the extent reasonably available to the Indemnified Person), and copies of any formal demand or complaint.

9. **General Provisions.**

9.1. **Expenses.** Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel, and accountants. In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a breach of this Agreement by another party.

9.2. **Public Announcements.** Any public announcement or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as the parties determine. Unless consented to by Western in advance or required by legal requirements, prior to the Closing Sellers shall, and shall cause the Acquired Companies to, keep this Agreement strictly confidential and may not make any disclosure of this Agreement to any Person. Sellers and Western will consult with each other concerning the means by which the Acquired Companies' employees, customers, and suppliers and others having dealings with the Acquired Companies will be informed of the Contemplated Transactions, and Western will have the right to be present for any such communication.

9.3. **Confidentiality** . Between the date of this Agreement and the Closing Date, Western and Sellers will maintain in confidence, and will cause the directors, officers, employees, agents, and advisors of Western and the Acquired Companies to maintain in confidence, and not use to the detriment of another party or an Acquired Company any written, oral, or other information obtained in confidence from written information stamped "confidential" when originally furnished by another party or an Acquired Company in connection with this Agreement or the Contemplated Transactions, unless (a) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party, (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the Contemplated Transactions, or (c) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings.

If the Contemplated Transactions are not consummated, each party will return or destroy as much of such written information as the other party may reasonably request.

9.4. **Notices** . All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Sellers:

Finproject S.p.A.
62010 Morrovalle (MC)
C.DA Campomaggio, Italy
Attention: Carlo Sironi
Facsimile No.: 0039-0733 564489

with a copy to:

McCarthy Tetrault, LLP
1150, rue de Claire-Fontaine, 7e etage
Quebec, Canada G1R 5G4
Attention: Francois Amyot
Facsimile No.: (418) 521-3098

Western:

Western Brands, LLC
6273 Monarch Park Place,
Niwot, CO, 80503
Attention: Ron Snyder and George Boedecker
Facsimile No.: (303) 468-4266

with a copy to:

Ogilvy Renault
500 Grande Allee Est, Bureau 520
Quebec, Canada G1R 2J7
Attention: Bernard Choquette
Facsimile No.: (418) 640-1500

9.5. **Dispute Resolution; Governing Law** . [NOTE: New language to be added calling for acceptable arbitration in Canada- Must consult with local attorneys]

(a). The internal laws of the province of Quebec and Canada (irrespective of its choice of law principles) will govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties hereto. Any dispute between the parties hereunder shall be settled by arbitration in Quebec City, Canada and, except as herein specifically stated, in accordance with the commercial arbitration rules of the Canadian Center for International Arbitration (" **CCIA Rules** ") then in effect. However, in all events, these arbitration provisions shall govern over any conflicting rules, which may now or hereafter be contained in the CCIA Rules. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the subject matter thereof.

(b). Any such arbitration will be conducted before a single arbitrator who will be compensated for his or her services at a rate to be determined by the parties or by the Canadian Center for International Arbitration, but based upon reasonable hourly or daily consulting rates for the arbitrator in the event the parties are not able to agree upon his or her rate of compensation. The arbitration will be conducted in English and interpreted in Italian.

(c). The Canadian Center for International Arbitration will have the authority to select an arbitrator from a list of arbitrators who are lawyers familiar with Canadian contract law; provided, however, that such lawyers cannot work for a firm then performing services for either party, that each party will have the opportunity to make such reasonable objection to any of the arbitrators listed as such party may wish and that the Canadian Center for International Arbitration will select the arbitrator from the list of arbitrators as to whom neither party makes any such objection. In the event that the foregoing procedure is not followed, each party will choose one person from the list of arbitrators provided by the Canadian Center for International Arbitration (provided that such person does not have a conflict of interest), and the two persons so selected will select from the list provided by the Canadian Center for International Arbitration the person who will act as the arbitrator.

(d). Western and the Sellers will bear the expense of deposits and advances required by the arbitrator in equal proportions, but either party may advance such amounts, subject to recovery as an addition or offset to any award. The arbitrator will award to the prevailing party, as determined by the arbitrator, all costs, fees and expenses related to the arbitration, including reasonable fees and expenses of attorneys, accountants and other professionals incurred by the prevailing party.

(e). For any dispute submitted to arbitration, the burden of proof will be as it would be if the claim were litigated in a judicial proceeding.

(f). Upon the conclusion of any arbitration proceedings hereunder, the arbitrator will render findings of fact and conclusions of law and a written opinion setting forth the basis and reasons for any decision reached and will deliver such documents to each party to this Agreement along with a signed copy of the award. The arbitrator may not award punitive damages.

(g). The arbitrator chosen in accordance with these provisions will not have the power to alter, amend or otherwise affect the terms of these arbitration provisions or the provisions of this Agreement.

(h). Except as specifically otherwise provided in this Agreement, arbitration will be the sole and exclusive remedy of the parties for any dispute arising out of this Agreement. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the federal or state courts located in the province of Quebec in the judicial district of Quebec, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

9.6. **Further Assurances** . The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

9.7. **Waiver** . The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

9.8. **Entire Agreement and Modification** . This Agreement supersedes all prior agreements between the parties with respect to its subject matter (including the Letter of Intent between Western and Sellers dated April 9, 2004) and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

9.9. **Disclosure Letter** .

In the event of any inconsistency between the statements in the body of this Agreement and those in the Disclosure Letter (other than an exception expressly set forth as such in the Disclosure Letter with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

9.10. **Assignments, Successors, and No Third-Party Rights** . Neither party may assign any of its rights under this Agreement without the prior consent of the other parties[, which will not be unreasonably withheld,] except that Western may assign any of its rights under this Agreement to any Subsidiary of Western. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this

Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and assigns.

9.11. **Severability** . If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.12. **Section Headings, Construction** . The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

9.13. **Time of Essence** . With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

9.14. **Counterparts** . This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF , the parties have executed and delivered this Agreement as of the date first written above.

WESTERN:

4246519 Canada, Inc.

By: /s/ RONALD SNYDER

SELLERS:

Finproject Group S.p.A

By: /s/ CARLOS SIRONI

3107019 Canada, Inc.

/s/ ANDREW REDDYHOFF

Daniel J. Hunter

/s/ DANIEL J. HUNTER

John Massotta

/s/ JOHN J. MASOTTA

STOCK PURCHASE AGREEMENT

between

Finproject Group, S.p.A., 3107019 Canada, Inc., Daniel J. Hunter and John Massotta

and

4246519 Canada, Inc.

Dated June 29, 2004

QuickLinks

Exhibit 10.14

STOCK PURCHASE AGREEMENT
RECITALS
AGREEMENT
STOCK PURCHASE AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.15

ASSET PURCHASE AND PROPERTY TRANSFER AGREEMENT

This **ASSET PURCHASE AND PROPERTY TRANSFER AGREEMENT** (this " **Agreement** "), dated as of April 23, 2005 (the " **Agreement Date** "), is entered into by and between Hana Phylon Tech S.A. de C.V., a Mexican company (" **Seller** " or " **Hana** "), and Crocs Mexico, SRL de C.V. a Mexican company (" **Buyer** " or " **Crocs** ").

WHEREAS, ; Hana owns and operates a business unit in Purisima del Rincon, Guanajuato, Mexico known as Hana Phylon Tech, which engages in the business of injection molding shoes and shoe parts (the " **Business** "); and

WHEREAS, Crocs desires to purchase, and Hana desires to sell, substantially all of the assets of the of the Business (the " **Purchased Assets** "), for the Purchase Price (as defined in Section 4.1 below), subject to the terms and conditions of this Agreement; and

WHEREAS , in connection with the execution of this Agreement desires to accept the assignment of the lease for the property where the Business is currently located (the " **Lease Agreement** "); and

NOW, THEREFORE, the parties hereto agree as follows:

1. **Purchase and Sale of Purchased Assets.** Subject to the terms and conditions of this Agreement, at the Closing, Hana agrees to sell, assign, transfer and convey to Crocs, and Crocs agrees to purchase and acquire from Hana, all of Hana's right, title and interest in and to all of the Purchased Assets, free and clear of any mortgage, pledge, lien, or other encumbrance. For the purposes of this Agreement, " **Purchased Assets** " shall mean the following:

(i) all machinery, equipment, furniture, leasehold improvements and other fixed assets owned or used by Hana in connection with the Business; and;

(ii) all prepaid expenses and off-book assets relating to the Business, including all phone and facsimile numbers

(iii) all of Seller's rights under license agreements, utility agreements, leases and other contracts related to the Business to which it is a party;

(iv) all computers, software, office equipment and know-how, related to the Business

(v) all other assets of the business not listed above except: all accounts receivable, inventories, molds, compound, trademarks and trade names (the "Excluded Assets").

Notwithstanding the description contained in this Section 1, a list of the Purchased Assets prepared by Hana is attached hereto as Exhibit 1.

2. **Asset Transfer; Passage of Title; Delivery** .

2.1. ***Title Passage*** . At the Closing, title to all of the Purchased Assets shall pass to Crocs, and Hana shall deliver to Crocs possession all of the Purchased Assets and a bill of sale in the form attached hereto as *Exhibit 2.1* .

2.2. ***Delivery of Purchased Assets*** . The Purchased Assets shall be delivered on the Closing Date. All risk of loss and damage to the Purchased Assets shall be borne by Crocs on and as of the Closing Date.

3. **Retention of Liabilities.** Hana shall retain all of the liabilities of Hana other than the Assumed Liabilities (defined below). For the purposes of this Agreement **Retained Liabilities** shall mean the following:

(i) all accounts payable;

(ii) all obligations of Hana related to any supply agreements, customer agreements, license agreements, consulting agreements, leases or other contracts related to the Business, other than those listed as Assumed Liabilites;

(iii) all accrued employee compensation, expenses liabilities on the balance sheet as of Closing;

(iv) all liabilities of Hana for any sales, use, value-added or stamp taxes and all other like transfer taxes imposed in connection with the consummation of the transactions contemplated by this Agreement (collectively, the " **Transfer Taxes** ") other than taxes specifically imposed on Hana under State or Federal law;

(v) all other liabilities of Hana related to the Business other than the following **Assumed Liabilities** :

(a) At Purchaser's option, any contracts or agreements with third parties that are necessary to run the Business (ex: utilities); and

4. **Consideration for Purchased Assets** .

4.1. ***Purchase Price .***

a. ***Cash Consideration*** . The cash consideration to be paid by Crocs for the Purchased Assets shall be One Million Three Hundred Thousand United States Dollars ($1,300,000) (the " **Cash Consideration** "). Crocs shall pay the Cash Consideration at the Closing by check or other delivery of immediately available funds.

b. ***Assumption of Liabilities*** . Crocs shall assume and accept assignment of the Assumed Liabilities at Closing as outlined in Section 3 above.

5. **Closing** .

The consummation of the purchase and sale of the Purchased Assets contemplated hereby (the " **Closing** ") will take place on April 25, 2004 (the " **Closing Date** ").

6. **Employees** .

Hana will terminate all of its employees on the Closing Date. Crocs agrees to immediately offer employment to the current employees of the Business at the same rate of pay, with the same or similar benefits and under the same or similar terms as they received as employees of Hana.

7. **Representations and Warranties of Seller** .

7.1 ***Seller Authorization*** . The Seller has all requisite power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by the Seller and constitutes the valid and binding obligations of the Seller enforceable in accordance with its terms. The execution, delivery and performance by the Seller of this Agreement and any Instrument of Conveyance or other agreement, document or instrument executed by the Seller in connection with the consummation of the transactions contemplated hereby has been duly authorized by all necessary corporate and third party action.

7.2 ***Ownership*** . The Seller has good and marketable title to all of the Purchased Assets and Inventory, free and clear of all liens, encumbrances, security interests, restrictions or charges of any kind. Seller has not imposed any security interest upon any of the Purchased Assets or Inventory.

7.3 ***Condition of Assets*** . The Purchased Assets are, in the aggregate, free from defects, have been maintained in accordance with normal industry practice, are in good operating condition and repair (subject to normal wear and tear) and are suitable for the purposes for which they presently are used.

7.4 ***Complete Equipment List*** . Seller represents that it has supplied Buyer with a complete list of the Equipment (including applicable software and software licenses) that Seller deems necessary to support Seller's business.

7.5 ***Disclosure*** . No representation or warranty by the Seller contained in this Agreement, and no statement contained in the Exhibits or any other document, certificate or other instrument delivered or to be delivered by or on behalf of the Seller pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading.

8. **Representations and Warranties of Buyer** .

8.1 ***Buyer Authorization*** . The Buyer has all requisite power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by the Buyer and constitutes the valid and binding obligations of the Buyer enforceable in accordance with its terms. The execution, delivery and performance by the Buyer of this Agreement and any Instrument of Conveyance or other agreement, document or instrument executed by the Buyer in connection with the consummation of the transactions contemplated hereby has been duly authorized by all necessary corporate and third party action.

8.2 ***Disclosure*** . No representation or warranty by the Buyer contained in this Agreement or any other document, certificate or other instrument delivered or to be delivered by or on behalf of the Buyer pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading.

9. **Assignment of Lease** .

On the Closing Date Seller agrees to assign, and Buyer agrees to accept assignment, of the Lease Agreement. Buyer shall be responsible for all future payments due under the Lease Agreement following the Closing.

10. **Non-Competition Agreement** .

In connection with the sale of the Purchased Assets, Mr. John Seo, primary shareholder of Hana, agrees to enter into the Non-Competition Agreement attached hereto as Exhibit 9 to this Agreement (the "NCA"). The NCA is considered a bargained for agreement in connection with the sale of a business and is a material element of this Agreement.

11. **Indemnification** .

The Seller shall indemnify the Buyer (including but not limited to Buyer's officers and board members) in respect of, and hold the Buyer harmless against, any and all debts, obligations and other liabilities (whether absolute, accrued, contingent, fixed or otherwise, or whether known or unknown, or due or to become due or otherwise), monetary damages, fines, fees, penalties, interest obligations, deficiencies, diminutions in value of assets, losses and expenses (including without limitation amounts paid in settlement, court costs, costs of investigators, fees and expenses of attorneys, accountants,

financial advisors and other experts, and other expenses of litigation) (" **Damages** ") incurred or suffered by the Buyer resulting from, relating to, constituting or arising out of:

a. any misrepresentation or breach of warranty by the Seller contained in this Agreement, it's Exhibits, or in any certificate, document or instrument furnished by the Seller pursuant to this Agreement or in connection with the transactions contemplated hereby;

b. any failure to perform any covenant or agreement of the Seller contained herein;

c. any liabilities arising out of, or relating to Seller's business and its operations; or

d. any liabilities related to any environmental condition that exists or existed prior on or prior to the Closing Date.

12. **Miscellaneous** .

12.1. ***Further Assurances*** . Each party shall execute and deliver all such documents and take all such other actions as the other party may reasonably request in order to fully effectuate and reflect the transactions contemplated hereby.

12.2. ***No Assignment*** . This Agreement may not be assigned by a party hereto without the prior written consent of the other party.

12.3. ***Amendment*** . No amendment or waiver hereunder shall be of any effect unless in writing and signed by both parties hereto.

12.4. ***Governing Law*** . This Agreement shall be governed by the laws of the State of Colorado (excluding the choice of law rules thereof).

12.5. ***Entire Agreement*** . This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties relating thereto.

12.6. ***Counterparts*** . This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

HANA PHYLON TECH S.A. DE C.V.

By: /s/ CHONG H. SEO

Name: Chong Seo
Title: Representative

CHONG SEO

By: /s/ CHONG H. SEO

Chong Seo

CROCS MEXICO SRL DE C.V.

By: /s/ ERIK REBICH

Name: Erik Rebich
Title: General Counsel

QuickLinks

Exhibit 10.15

ASSET PURCHASE AND PROPERTY TRANSFER AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.16

ASSET PURCHASE AND PROPERTY TRANSFER AGREEMENT

This **ASSET PURCHASE AND PROPERTY TRANSFER AGREEMENT** (this " **Agreement** "), dated effective as of May 19, 2005 (the " **Agreement Date** "), is entered into by and between St. Vrain Trading, LLC, d/b/a Crocs Hawaii, LLC, a Colorado Limited Liability Company (" **Seller** "), and Crocs, Inc. a Colorado company (" **Buyer** " or " **Crocs** ").

WHEREAS, Buyer manufactures and sells Crocs brand products; and

WHEREAS, Seller owns and operates a business unit in Honolulu, Hawaii which markets and distributes Crocs brand products to local retailers (the " **Business** "); and

WHEREAS, Crocs desires to purchase, and Seller desires to sell, certain assets of the of the Business for the Purchase Price (as defined in Section 4.1 below), subject to the terms and conditions of this Agreement; and

WHEREAS, in connection with the execution of this Agreement desires to accept the assignment of the lease for the property where the Business is currently located (the " **Lease Agreement** "):

NOW, THEREFORE, the parties hereto agree as follows:

1. **Purchase and Sale of Purchased Assets.** Subject to the terms and conditions of this Agreement, at the Closing, Seller agrees to sell, assign, transfer and convey to Crocs, and Crocs agrees to purchase and acquire from Seller, all of Seller's right, title and interest in and to all of the assets owned by the business other than the Excluded Assets (as defined below) as listed on the adjusted balance sheet dated May 19, 2005 (the " **Closing Date Balance Sheet** "). A true and correct copy of the Closing Date Balance sheet is attached hereto as *Exhibit 3* to this Agreement. The Purchased Assets shall be delivered to Crocs free and clear of any mortgage, pledge, lien, or other encumbrance. For the purposes of this Agreement, " **Purchased Assets** " shall mean the following:

(i) all machinery, equipment, furniture, leasehold improvements and other fixed assets owned or used by Seller in connection with the Business;

(ii) all prepaid expenses and off-book assets relating to the Business, including all phone and facsimile numbers;

(iii) all of Seller's rights under license agreements, utility agreements, leases and other contracts related to the Business to which it is a party;

(iv) all right title and interest in the name Crocs Hawaii, which will be assigned to Buyer within 30 business days of the Closing (as defined below);

(v) all computers, software, office equipment and know-how, related to the Business;

(vi) all cash and cash accounts of the Business; and

(vii) all other assets of the Business not listed above which are reflected on the Closing Date Balance Sheet except the following excluded assets (the " **Excluded Assets** "):

a) The Accounts Receivable listed on the Closing Date Balance Sheet;

b) The van used by the Business; and

c) All other assets of Seller net used in the Business.

Notwithstanding the description contained in this Section 1, a list of the Purchased Assets prepared by Seller is attached hereto as *Exhibit 1*.

2. **Asset Transfer; Passage of Title; Delivery.**

2.1. ***Title Passage.*** At the Closing, title to all of the Purchased Assets shall pass to Crocs, and Seller shall transfer to Crocs possession all of the Purchased Assets and deliver to Crocs a bill of sale in the form attached hereto as *Exhibit 2.1*.

2.2. ***Delivery of Purchased Assets.*** The Purchased Assets shall be transferred on the Closing Date. All risk of loss and damage to the Purchased Assets shall be borne by Crocs on and as of the Closing Date.

3. **Retention of Liabilities.** Seller shall retain all of the liabilities of Seller other than the Assumed Liabilities (defined in Section 3 (ii) below). For the purposes of this Agreement " **Retained Liabilities** " shall mean the following:

(i) all accrued employee compensation, expenses and liabilities as of Closing Date;

(ii) all other liabilities of Seller related to the Business other than the following " **Assumed Liabilities** ":

(a) All contracts or agreements with third parties are listed on *Exhibit 3-1;*

(b) The Lease Agreement; and

(c) All liabilities reflected on the Closing Date Balance Sheet.

4. **Consideration for Purchased Assets.**

4.1. ***Purchase Price.***

a. ***Cash Consideration.*** The cash consideration to be paid by Crocs for the Purchased Assets shall be the Net Equity of the Business (as evidenced on the Closing Date Balance Sheet), less the Accounts Receivable on the Closing Date Balance Sheet, plus Fifty Thousand United States Dollars ($50.000.00), adjusted in the manner set forth on the Settlement Statement is attached hereto as *Exhibit 4* (the " **Cash Consideration** "), The Cash Consideration shall be paid on the Closing Date by check or other delivery of immediately available funds.

b. ***Assumption of Liabilities.*** Crocs shall assume and accept assignment of the Assumed Liabilities at Closing as outlined in Section 3 above. Crocs agrees to perform all of the Assumed Liabilities that arise on and after the Closing Date as and when due and in accordance with their terms.

c. ***Taxes.*** All transfer taxes arising as a result of this transaction shall be payable by Buyer.

5. **Closing.**

The consummation of the purchase and sale of the Purchased Assets contemplated hereby (the " **Closing** ") will take place, but effective as of the Agreement Date (the " **Closing Date** ").

6. **Employees.**

Seller will terminate all of its employees on the Closing Date. Crocs agrees to offer employment to the employees of the Business that Crocs desires to retain.

7. **Representations and Warranties of Seller.**

7.1. ***Seller Authorization.*** The Seller has all requisite power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by the Seller and constitutes the valid and binding obligations of

the Seller enforceable in accordance with its terms. The execution, delivery and performance by the Seller of this Agreement and any other agreement, document or instrument executed by the Seller in connection with the consummation of the transactions contemplated hereby has been duly authorized by all necessary corporate and third party action.

7.2 ***Ownership.*** The Seller has good and marketable title to all of the Purchased Assets and Inventory, free and clear of all liens, encumbrances, security interests, restrictions or charges of any kind. Seller has not imposed any security interest upon any of the Purchased Assets or Inventory.

7.3 ***Condition of Assets.*** The Purchased Assets are, in the aggregate, free from defects, have been maintained in accordance with normal industry practice, are in good operating condition and repair (subject to normal wear and tear) and are suitable for the purposes for which they presently are used.

7.4 ***Complete Equipment List.*** Seller represents that it has supplied Buyer with a complete list of the Equipment (including applicable software and software licenses) that Seller deems necessary to support Seller's business.

7.5 ***Accuracy of Information.*** Seller represents and warrants that the documents it has provided to Buyer in connection with this Agreement, including but not limited to the Closing Date Balance Sheet, are true, correct and an accurate representation of the Business as of the Closing and do not contain any inaccuracies or misstatements of any kind.

7.6 ***Disclosure.*** No representation or warranty by the Seller contained in this Agreement, and no statement contained in the Exhibits or any other document, certificate or other instrument delivered or to be delivered by or on behalf of the Seller pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading.

8. **Representations and Warranties of Buyer.**

8.1 ***Buyer Authorization.*** The Buyer has all requisite power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by the Buyer and constitutes the valid and binding obligations of the Buyer enforceable in accordance with its terms. The execution, delivery and performance by the Buyer of this Agreement and any other agreement, document or instrument executed by the Buyer in connection with the consummation of the transactions contemplated hereby has been duly authorized by all necessary corporate and third party action.

8.2 ***Disclosure.*** No representation or warranty by the Buyer contained in this Agreement or any other document, certificate or other instrument delivered or to be delivered by or on behalf of the Buyer pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading.

9. **Assignment of Lease.**

On the Closing Date Seller agrees to assign, and Buyer agrees to accept assignment, of the Lease Agreement. Buyer shall be responsible for and shall perform all future payments and obligations due under the Lease Agreement following the Closing as and when due in accordance with the terms of the Lease Agreement. Seller shall be responsible for obtaining the consent of the Landlord to the assignment of the Lease Agreement to Buyer and for any claims, liabilities or damages resulting from Landlord withholding such consent. After Closing, Buyer shall use commercially reasonable efforts to obtain the release of the personal guaranties of Mark Retzloff and Theresa Retzloff of the Lease Agreement.

10. **Seller's Indemnification.**

The Seller shall indemnify the Buyer (including but not limited to Buyer's officers and board members) in respect of, and hold the Buyer harmless against, any and all debts, obligations and other liabilities (whether absolute, accrued, contingent, fixed or otherwise, or whether known or unknown, or due or to become due or otherwise), monetary damages, fines, fees, penalties, interest obligations, deficiencies, diminutions in value of assets, losses and expenses (including without limitation amounts paid in settlement, court costs, costs of investigators, fees and expenses of attorneys, accountants, financial advisors and other experts, and other expenses of litigation) (" **Damages** ") incurred or suffered by the Buyer resulting from, relating to, constituting or arising out of:

a. any misrepresentation or breach of warranty by the Seller contained in this Agreement, it's Exhibits, or in any certificate, document or instrument furnished by the Seller pursuant to this Agreement or in connection with the transactions contemplated hereby;

b. any failure to perform any covenant or agreement of the Seller contained herein;

c. Any third-party claim relating to the Business or the Purchased Assets that arose or accrued prior to the Agreement Date; or

d. any environmental condition that exists or existed prior on or prior to the Closing Date.

Notwithstanding anything in this Section 10 to the contrary, Seller's liability under this Agreement shall not exceed the Cash Consideration.

11. **Buyer's Indemnification.**

Crocs shall indemnify, defend and hold harmless Seller, and Seller's managers, members and employees, from any Damages they incur or suffer resulting from, relating to, constituting or arising out of:

a. any misrepresentation or breach of warranty by the Buyer contained in this Agreement, it's Exhibits, or in any certificate, document or instrument furnished by the Buyer pursuant to this Agreement or in connection with the transactions contemplated hereby;

b. any failure to perform any covenant or agreement of the Buyer contained herein; or

c. Any third-party claim relating to the Business, the Purchased Assets or the Assumed Liabilities that arises or accrues on or after the Closing Date.

12. **Miscellaneous.**

12.1. ***Further Assurances.*** Each party shall execute and deliver all such documents and take all such other actions as the other party may reasonably request in order to fully effectuate and reflect the transactions contemplated hereby.

12.2. ***No Assignment.*** This Agreement may not be assigned by a party hereto without the prior written consent of the other party.

12.3. ***Amendment.*** No amendment or waiver hereunder shall be of any effect unless in writing and signed by both parties hereto.

12.4. ***Governing Law.*** This Agreement shall be governed by the laws of the State of Colorado (excluding the choice of law rules thereof).

12.5. ***Entire Agreement.*** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties relating thereto.

12.6. ***Counterparts.*** This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Agreement Date.

Crocs Hawaii, LLC

By: /s/ MARK RETZLOFF

Name: Mark Retzloff
Title: Managing Partner

Crocs, Inc.

By: /s/ CARYN ELLISON

Name: Caryn Ellison
Title: CFO

EXHIBIT 1
Purchased Assets

Computer/Printer

- Software
- Router

Warehouse Racks

Ladder

Ventilation Fan

32 Gridwall Kits

Office Machines

- Answering Machine
- Phone
- Pencil Sharpener
- Adding Machine
- Scale

Tables

Organizers

Chairs

Office Supplies

- Boxes
- Bags
- Toner
- Tape Gun
- Desktop Items

EXHIBIT 2.1

Bill of Sale

GENERAL ASSIGNMENT AND BILL OF SALE

THIS ASSIGNMENT AND BILL OF SALE is entered into effective the 3rd day of May, 2005 by and between Crocs, Inc. a Colorado company (" **Crocs** "), and Crocs Hawaii, LLC, a Hawaii limited liability company (" **Seller** ").

WHEREAS, Seller and Crocs have entered into that certain Asset Purchase and Property Transfer Agreement, dated effective as of May 3, 2005 (the " **Agreement** "), pursuant to which Seller has agreed to sell, transfer, convey, assign and deliver to Crocs and Crocs has agreed to purchase from Seller all of the Purchased Assets (as defined in the Agreement).

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller hereby irrevocably sells, transfers, conveys, assigns and delivers to Crocs free and clear of all liens and encumbrances, all of Seller's right, title and Interest in, to and under the Purchased Assets, TO HAVE AND TO HOLD the same unto Crocs, its successors and assigns, forever, and Crocs hereby accepts the sale, transfer, conveyance, assignment and delivery of same.

This General Assignment and Bill of Sale may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

This General Assignment and Bill of Sale shall be governed by and construed in accordance with the laws of the State of Colorado applicable to a contract executed and performed in such State without giving effect to the conflicts of laws principles thereof, except that if it is necessary in any other jurisdiction to have the law of such other jurisdiction govern this General Assignment and Bill of Sale in order for this General Assignment and Bill of Sale to be effective in any respect, then the laws of such other jurisdiction shall govern this General Assignment and Bill of Sale to such extent.

IN WITNESS WHEREOF, the parties hereto have each caused this General Assignment and Bill of Sale to be signed and delivered by its duly authorized officer, all as of the date first set forth above.

Crocs Hawaii, LLC

By: /s/ MARK RETZLOFF

Name: Mark Retzloff
Title: Managing Partner

Crocs, Inc.

By: /s/ CARYN ELLISON

Name: Caryn Ellison
Title: CFO

EXHIBIT 3

Closing Date Balance Sheet Dated May 19, 2005

Crocs Hawaii
Balance Sheet
As of May 19, 2005

	May 19, 05
ASSETS	
Current Assets	
Checking/Savings	
BOH Checking	70,225.68
Total Checking/Savings	70,225.68
Accounts Receivable	
Accounts Receivable	11,481.19
Total Accounts Receivable	11,481.19
Other Current Assets	
Rent Deposit	1,750.00
Inventory Asset	33,972.93
Total Other Current Assets	35,722.93
Total Current Assets	117,429.80
TOTAL ASSETS	**117,429.80**
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	92,219.96
Total Accounts Payable	92,219.96
Credit Cards	
Advanta	3,981.90
Total Credit Cards	3,981.90
Other Current Liabilities	
Payroll Liabilities	
Fed W/H Payable	427.00
HI State W/H Payable	642.26
Social Security W/H Payable	376.16
Medicare W/H Payable	87.96
Corp SS Payable	376.16
Corp Medicare Payable	87.96
Federal Unemployment Payable	43.29
HI State Unemployment Payable	333.55
HI ETF Payable	1.39
Payroll Liabilities—Other	13.93
Total Payroll Liabilities	2,389.66
Sales Tax Payable	967.29
Total Other Current Liabilities	3,356.95
Total Current Liabilities	99,558.81
Total Liabilities	99,558.81
Equity	
Equity—Mark Retzloff	58,850.00
Retained Earnings	(5,987.90)

Net Income	(34,991.11)
Total Equity	17,870.99
TOTAL LIABILITIES & EQUITY	**117,429.80**

EXHIBIT 3-1

Assumed Liabilities

1. Lease Agreement

2.

3.

EXHIBIT 4

Settlement Statement

HAWAII CLOSING

	5/19/05 B/S	Adj	Total
Assets			
Cash	70,226		70,226
A/R	11,481		11,481
Inventory	33,973	5,937	39,910
Other	1,750		1,750
Total Assets	117,430	5,937	123,367
Liabilities			
A/P	92,220	6,764	98,984
Credit Cards	3,982		3,982
Other Current Liabilities	3,357		3,357
Total Liabilities	99,559	6,764	106,323
Equity	17,871	0	17,871
Total Liabilities and Equity	117,430	6,764	124,194
Net Equity	17,871	0	17,044
Less: A/R	11,481	0	11,481
Payment	50,000		50,000
Total Cash Consideration	56,390		55,563

IN WITNESS WHEREOF , the undersigned have executed this Settlement Statement effective as of May 19, 2005.

Crocs Hawaii, LLC

By: /s/ MARK RETZLOFF

Name: Mark Retzloff
Title: Managing Partner

Crocs, Inc.

By: /s/ CARYN ELLISON

Name: Caryn Ellison
Title: CFO

QuickLinks

Exhibit 10.16

ASSET PURCHASE AND PROPERTY TRANSFER AGREEMENT
EXHIBIT 1 Purchased Assets
EXHIBIT 2.1 Bill of Sale
GENERAL ASSIGNMENT AND BILL OF SALE
EXHIBIT 3 Closing Date Balance Sheet Dated May 19, 2005
EXHIBIT 3-1 Assumed Liabilities
EXHIBIT 4 Settlement Statement

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.17

CREDIT AGREEMENT

Dated as of April 8, 2005

between

CROCS, INC.

and

BANK OF AMERICA, N.A.

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C	Compliance Certificate
D	Borrowing Base Certificate
E	Opinion Matters

CREDIT AGREEMENT

This CREDIT AGREEMENT (" *Agreement* ") is entered into as of April 8, 2005 by and between **CROCS, INC.** , a Colorado corporation (the " *Borrower* ") and **BANK OF AMERICA, N.A.** (the " *Lender* ").

The Borrower has requested that the Lender provide a revolving credit facility with a letter of credit sublimit, and the Lender is willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

" *Account Debtor* " means any Person obligated on any Account of the Borrower.

" *Accounts* " means and includes all of the Borrower's now owned or hereafter acquired or arising accounts, as defined in the UCC, including any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance.

" *Advance Limit* " means, as of any date of determination thereof, the *lesser* of (a) the aggregate amount of the Commitments in effect on such date, and (b) the Borrowing Base set forth on the Borrowing Base Certificate most recently delivered (as adjusted by the Lender in accordance with the terms of this Agreement).

" *Affiliate* " means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

" *Agreement* " means this Credit Agreement.

" *Applicable Rate* " means (a) with respect to Base Rate Loans, 1.00%, (b) with respect to Eurodollar Rate Loans, 4.00%, and (c) with respect to Letter of Credit Fees, 4.00%.

" *Approved Fund* " means any Fund that is administered or managed by (a) the Lender, (b) an Affiliate of the Lender or (c) an entity or an Affiliate of an entity that administers or manages the Lender.

" *Attributable Indebtedness* " means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

" *Audited Financial Statements* " means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2004, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

" *Availability Period* " means the period from and including the Closing Date to the earlier of (a) the Maturity Date and (b) the date of termination of the Commitment.

" *Bank of America* " means Bank of America, N.A. or any successor thereof.

" *Base Rate* " means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus $^{1}/_{2}$ of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate." The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

" *Base Rate Loan* " means a Loan that bears interest based on the Base Rate.

" *Borrower* " has the meaning specified in the introductory paragraph hereto.

" *Borrowing Base* " means, at any time, an amount equal to (a) the *sum* of (i) eighty-five percent (85%) of the Net Amount of Eligible Accounts *plus* (ii) the lesser of sixty percent (60%) of the value of Eligible Inventory and $2,500,000 *plus* (iii) forty percent (40%) of the Net Book Value of Eligible Equipment *plus* (iv) the amount of the Collateral Shortfall Adjustment in effect on such date; *minus* (b) Reserves from time to time established by the Lender in its reasonable credit judgment.

" *Borrowing Base Certificate* " means a certificate by a Responsible Officer of the Borrower, substantially in the form of *Exhibit D* (or another form acceptable to the Lender) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof, all in such detail as shall be reasonably satisfactory to the Lender. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate shall originally be made by the Borrower and certified to the Lender; *provided* , that the Lender shall have the right to review and adjust, in the exercise of its reasonable credit judgment, any such calculation (a) to reflect its reasonable estimate of declines in value of any of the Collateral described therein and of any applicable Reserves, and (b) to the extent that such calculation is not in accordance with this the Agreement.

" *Business Day* " means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Lending Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

" *Cash Collateralize* " has the meaning specified in *Section 2.03(f)* .

" *Change in Law* " means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

" *Change of Control* " means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an " *option right* "), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 25% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the

Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

(c) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower, or control over the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such Person or group has the right to acquire pursuant to any option right) representing 25% or more of the combined voting power of such securities.

" *Closing Date* " means the first date all the conditions precedent in *Section 4.01* are satisfied or waived by the Lender in accordance with *Section 9.01* .

" *Code* " means the Internal Revenue Code of 1986.

" *Collateral* " means all of the Borrower's personal property and all other assets of any Person from time to time subject to Liens in favor of the Lender securing payment or performance of the Obligations.

" *Collateral Shortfall Adjustment* " means, during each period set forth below, an amount set forth opposite such period:

Period	Collateral Shortfall Adjustment
Closing Date through March 30, 2005	$ 1,000,000
March 31, 2005 through April 29, 2005	$ 750,000
April 30, 2005 through May 30, 2005	$ 500,000
May 31, 2005 through June 29, 2005	$ 250,000
June 30, 2005 and thereafter	$ 0

" *Commitment* " means the obligation of the Lender to make Loans and L/C Credit Extensions hereunder in an aggregate principal amount at any one time not to exceed $5,000,000, as such amount may be adjusted from time to time in accordance with this Agreement.

" *Compliance Certificate* " means a certificate substantially in the form of *Exhibit C* .

" *Consolidated EBITDA* " means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period *plus* (a) the following

to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges for such period, (ii) the provision for Federal, state, local and foreign income taxes payable by the Borrower and its Subsidiaries for such period, (iii) depreciation and amortization expense and (iv) other non-recurring expenses of the Borrower and its Subsidiaries reducing such Consolidated Net Income which do not represent a cash item in such period or any future period and *minus* (b) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits of the Borrower and its Subsidiaries for such period and (ii) all non-cash items increasing Consolidated Net Income for such period.

" *Consolidated Fixed Charge Coverage Ratio* " means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the period of the four prior fiscal quarters ending on such date less cash taxes *minus* all capital expenditures made in cash by the Borrower and its Subsidiaries during such period *to* (b) Consolidated Fixed Charges for such period.

" *Consolidated Fixed Charges* " means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (a) Consolidated Interest Charges, (b) Restricted Payments (other than the Permitted Tax Distribution) made in cash by the Borrower or any of its Subsidiaries, and (d) payments of principal on Indebtedness of the Borrower and its Subsidiaries scheduled to be made during the next ensuing period of four fiscal quarters of the Borrower beginning on the day after the date of measurement thereof.

" *Consolidated Funded Indebtedness* " means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) Attributable Indebtedness in respect of capital leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Borrower or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary.

" *Consolidated Interest Charges* " means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Borrower and its Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Borrower and its Subsidiaries with respect to such period under capital leases that is treated as interest in accordance with GAAP.

" *Consolidated Leverage Ratio* " means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date *to* (b) Consolidated EBITDA for the period of the four fiscal quarters most recently ended.

" *Consolidated Net Income* " means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the net income of the Borrower and its Subsidiaries (excluding extraordinary gains but including extraordinary losses) for that period.

" *Contractual Obligation* " means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

" *Control* " means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

" *Credit Extension* " means each of the following: (a) a borrowing of a Loan and (b) an L/C Credit Extension.

" *Debtor Relief Laws* " means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

" *Default* " means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

" *Default Rate* " means (a) when used with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, provided that if the Eurodollar Rate is illegal or unavailable, the Default Rate shall be an interest rate equal the Base Rate plus 4% per annum, (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum, in all cases to the fullest extent permitted by applicable Laws, and (c) when used with respect to any Obligations not covered in (a) or (b) above, the Default Rate shall be equal to the Base Rate plus 4% per annum.

" *Direct Foreign Subsidiary* " means Subsidiary other than a Domestic Subsidiary a majority of whose Voting Securities, or a majority of whose Equity Interests, are owned by the Borrower or a Domestic Subsidiary.

" *Disposition* " or " *Dispose* " means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

" *Dollar* " and " *$* " mean lawful money of the United States.

" *Domestic Subsidiary* " means any Subsidiary that is organized under the laws of any political subdivision of the United States.

" *Eligible Account* " means the Accounts of the Borrower arising from the sale of goods or rendition of services in the ordinary course of business of the Borrower which the Lender, in the exercise of its reasonable commercial discretion, determines to be Eligible Accounts. Without limiting the discretion of the Lender to establish other criteria of ineligibility, Eligible Accounts shall not include any Account:

(a) with respect to which more than 90 days have elapsed since the date of the original invoice therefor;

(b) with respect to which any of the representations, warranties, covenants, and agreements contained in the Loan Documents are incorrect or have been breached;

(c) with respect to which Account (or any other Account due from such Account Debtor), in whole or in part, a check, promissory note, draft, trade acceptance or other instrument for the payment of money has been received, presented for payment and returned uncollected for any reason;

(d) which represents a progress billing (as hereinafter defined) or as to which the Borrower has extended the time for payment without the consent of the Lender; for the purposes hereof, "progress billing" means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor's obligation to pay such invoice is conditioned upon the Borrower's completion of any further performance under the contract or agreement;

(e) with respect to which any one or more of the following events has occurred to the Account Debtor on such Account: death or judicial declaration of incompetency of an Account Debtor who is an individual; the filing by or against the Account Debtor of a request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, winding-up, or other relief under the bankruptcy, insolvency, or similar laws of the United States, any state or territory thereof, or any foreign jurisdiction, now or hereafter in effect; the making of any general assignment by the Account Debtor for the benefit of creditors; the appointment of a receiver or trustee for the Account Debtor or for any of the assets of the Account Debtor, including, without limitation, the appointment of or taking possession by a "custodian," as defined in the U.S. Federal Bankruptcy Code; the institution by or against the Account Debtor of any other type of insolvency proceeding (under the bankruptcy laws of the United States or otherwise) or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding up of affairs of, the Account Debtor; the sale, assignment, or transfer of all or any material part of the assets of the Account Debtor; the nonpayment generally by the Account Debtor of its debts as they become due; or the cessation of the business of the Account Debtor as a going concern;

(f) if twenty-five percent (25%) or more of the aggregate Dollar amount of outstanding Accounts owed at such time by the Account Debtor thereon is classified as ineligible under *clause (a)* above;

(g) owed by an Account Debtor which: (1) does not maintain its chief executive office in the United States; (2) is not organized under the laws of the United States or any state thereof; (3) is not, if a natural person, a citizen of the United States residing therein; or (4) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof; except to the extent that such Account is secured or payable by a letter of credit satisfactory to the Lender in its discretion;

(h) owed by an Account Debtor which is an Affiliate, officer or employee of the Borrower;

(i) except as provided in clause (k) below, with respect to which either the perfection, enforceability, or validity of the Lender's Liens in such Account, or the Lender's right or ability to obtain direct payment to the Lender of the proceeds of such Account, is governed by any federal, state, or local statutory requirements other than those of the UCC;

(j) owed by an Account Debtor to which the Borrower or any of its Subsidiaries is indebted in any way, or which is subject to any right of setoff or recoupment by the Account Debtor, unless the Account Debtor has entered into an agreement acceptable to the Lender to waive setoff rights; or if the Account Debtor thereon has disputed liability or made any claim with respect to any other Account due from such Account Debtor, but in each such case only to the extent of such indebtedness, setoff, recoupment, dispute, or claim;

(k) owed by the government of the United States, or any department, agency, public corporation, or other instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq.), and any other steps necessary to perfect the Lender's Liens therein, have been complied with to the Lender's satisfaction with respect to such Account;

(l) owed by any state, municipality, or other political subdivision of the United States, or any department, agency, public corporation, or other instrumentality thereof and as to which the Lender determines that its Lien therein is not or cannot be perfected;

(m) which represents a sale on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis;

(n) which is evidenced by a promissory note or other instrument or by chattel paper;

(o) if the Lender believes, in the exercise of its reasonable judgment, that the prospect of collection of such Account is reasonably likely to be impaired or that the Account could reasonably be expected not to be paid by reason of the Account Debtor's financial inability to pay;

(p) with respect to which the Account Debtor is located in any state requiring the filing of a Notice of Business Activities Report or similar report in order to permit the Borrower to seek judicial enforcement in such state of payment of such Account, unless such Borrower has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year;

(q) which arises out of a sale not made in the ordinary course of the Borrower's business or out of finance or similar charges;

(r) with respect to which the goods giving rise to such Account have not been shipped and delivered to and accepted by the Account Debtor or the services giving rise to such Account have not been performed by the Borrower and, if applicable, accepted by the Account Debtor, or the Account Debtor revokes its acceptance of such goods or services;

(s) owed by an Account Debtor which is obligated to the Borrower respecting Accounts the aggregate unpaid balance of which exceeds twenty-five percent (25%) of the aggregate unpaid balance of all Accounts owed to the Borrower at such time by all of the Borrower's Account Debtors, but only to the extent of such excess;

(t) which is not subject to the Lender's Liens, which are perfected as to such Accounts, or which are subject to any other Lien whatsoever (other than the Liens described in *Section 7.01(c)* and *(d)* so long as any such Lien (i) is junior in priority to the Lender's Liens or subject to Reserves and (ii) do not impair the ability of the Lender to realize on or obtain the full benefit of the Collateral).

The Borrower, by including an Account in any computation of the Borrowing Base, shall be deemed to represent and warrant to the Lender that such Account is not of the type described in any of (a) through (t) above, and if any Account at any time ceases to be an Eligible Account, then such Account shall promptly be excluded from the calculation of Eligible Accounts.

" *Eligible Assignee* " means (a) an Affiliate of the Lender; (b) an Approved Fund; and (c) any other Person (other than a natural person) approved by the Borrower (such approval not to be unreasonably withheld or delayed) and the Lender; *provided* that no such approval shall be required if an Event of Default has occurred and is continuing.

" *Eligible Equipment* " means Equipment of the Borrower which the Lender, in the exercise of its reasonable commercial discretion, determines to be Eligible Equipment. Without limiting the discretion of the Lender to establish other criteria of ineligibility, Eligible Equipment shall not include any Equipment:

(a) that is not legally owned by the Borrower;

(b) that is not subject to the Lender's Liens, which are perfected as to such Inventory, or that are subject to any other Lien whatsoever (other than the Liens described in *Section 7.01(c)* and *(d)*

so long as any such Lien (i) is junior in priority to the Lender's Liens or subject to Reserves and (ii) do not impair the ability of the Lender to realize on or obtain the full benefit of the Collateral);

(c) that is not in good working condition for its intended use or for sale;

(d) (other than with respect to injection molds) that is located outside the United States or at a location other than a place of business of the Borrower; or

(e) that is located in a facility leased by the Borrower, if the lessor has not delivered to the Lender, if requested by the Lender, a subordination agreement in form and substance satisfactory to the Lender or if a Reserve for rents has not been established for Equipment at that location.

The Borrower, by including Equipment in any computation of the Borrowing Base, shall be deemed to represent and warrant to the Lender that such Equipment is not of the type described in any of (a) through (e) above, and if any Equipment at any time ceases to be Eligible Equipment, then such Equipment shall promptly be excluded from the calculation of Eligible Equipment.

" *Eligible Inventory* " means Inventory, valued at the lower of cost (on a first-in, first-out basis) or market, which the Lender, in its reasonable discretion, determines to be Eligible Inventory. Without limiting the discretion of the Lender to establish other criteria of ineligibility, Eligible Inventory shall not include any Inventory:

(a) that is not owned by the Borrower;

(b) for which, if such Inventory is being purchased from FCI, satisfactory evidence of payment by the Borrower has not been delivered to the Lender;

(c) that is not subject to the Lender's Liens, which are perfected as to such Inventory, or that are subject to any other Lien whatsoever (other than the Liens described in *Section 7.01(c)* and *(d)* so long as any such Lien (i) is junior in priority to the Lender's Liens or subject to Reserves and (ii) do not impair the ability of the Lender to realize on or obtain the full benefit of the Collateral);

(d) that does not consist of finished goods or raw materials;

(e) that consists of work-in-process, chemicals, samples, prototypes, supplies, or packing and shipping materials;

(f) that is not in good condition, is unmerchantable, or does not meet all standards imposed by any Governmental Authority, having regulatory authority over such goods, their use or sale;

(g) that is not currently either usable or salable, at prices approximating at least cost, in the normal course of the Borrower's business, or that is slow moving or stale;

(h) that is obsolete or returned or repossessed or used goods taken in trade;

(i) that is located outside the United States of America (or that is in-transit from vendors or suppliers (unless insured against risk of loss and Bank of America is named as loss payee));

(j) that is located in a public warehouse or in possession of a bailee or in a facility leased by the Borrower, if the warehouseman, or the bailee, or the lessor has not delivered to the Lender, if requested by the Lender, a subordination agreement in form and substance satisfactory to the Lender or if a Reserve for rents or storage charges has not been established for Inventory at that location;

(k) that contains or bears any IP Rights licensed to a Borrower by any Person, if the Lender is not satisfied that it may sell or otherwise dispose of such Inventory in accordance with the terms of the Security Agreement and Section 9.2 without infringing the rights of the licensor of such IP

Rights or violating any contract with such licensor (and without payment of any royalties other than any royalties due with respect to the sale or disposition of such Inventory pursuant to the existing license agreement), and, as to which the Borrower has not delivered to the Lender a consent or sublicense agreement from such licensor in form and substance acceptable to the Lender if requested; or

(l) that is Inventory placed on consignment.

The Borrower, by including Inventory in any computation of the Borrowing Base, shall be deemed to represent and warrant to the Lender that such Inventory is not of the type described in any of (a) through (k) above, and if any Inventory at any time ceases to be Eligible Inventory, such Inventory shall promptly be excluded from the calculation of Eligible Inventory.

" *Environmental Laws* " means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

" *Environmental Liability* " means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

" *Equipment* " means all of the Borrower's now owned and hereafter acquired machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property (except Inventory), including embedded software, motor vehicles with respect to which a certificate of title has been issued, aircraft, dies, tools, jigs, molds and office equipment, as well as all of such types of property leased by the Borrower and all of the Borrower's rights and interests with respect thereto under such leases (including, without limitation, options to purchase); together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto; wherever any of the foregoing is located.

" *Equity Interests* " means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

" *ERISA* " means the Employee Retirement Income Security Act of 1974.

" *ERISA Affiliate* " means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

" *ERISA Event* " means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

" *Eurodollar Rate Loan* " means a Loan that bears interest at a rate based on the LIBOR Daily Floating Rate.

" *Eurodollar Reserve Percentage* " means, for any day, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to the Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System of the United States for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as " *Eurocurrency liabilities* "). The Eurodollar Rate for each outstanding Eurodollar Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

" *Event of Default* " has the meaning specified in *Section 8.01* .

" *Excluded Taxes* " means, with respect to the Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located.

" *Federal Funds Rate* " means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Lender on such day on such transactions as determined by the Lender.

" *FRB* " means the Board of Governors of the Federal Reserve System of the United States.

" *Fund* " means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

" *GAAP* " means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting

Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

" *Governmental Authority* " means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

" *Guarantee* " means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

" *Hazardous Materials* " means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

" *Honor Date* " has the meaning specified in *Section 2.03(c)(i)* .

" *Indebtedness* " means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 60 days after the date on which such trade account payable was created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other

title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) capital leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

" *Indemnified Taxes* " means Taxes other than Excluded Taxes.

" *Indemnitees* " has the meaning specified in *Section 9.04(b)* .

" *Interest Payment Date* " means the last Business Day of each March, June, September and December and the Maturity Date.

" *Inventory* " has the meaning given such term in Section 9-102 of the UCC.

" *Investment* " means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

" *IP Rights* " has the meaning specified in *Section 5.17* .

" *IRS* " means the United States Internal Revenue Service.

" *ISP* " means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

" *Issuer Documents* " means with respect to any Letter of Credit Application, the Letter of Credit Application and any other document, agreement and instrument entered into by the Lender and the Borrower or in favor of the Lender and relating to any such Letter of Credit.

" *Laws* " means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

" *L/C Credit Extension* " means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

" *L/C Obligations* " means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit *plus* the aggregate of all Unreimbursed Amounts. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with *Section 1.06* . For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

" *Lending Office* " means the office or offices of the Lender described as such on *Schedule 9.02* , or such other office or offices as the Lender may from time to time notify the Borrower.

" *Letter of Credit* " means any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

" *Letter of Credit Application* " means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Lender.

" *Letter of Credit Expiration Date* " means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

" *Letter of Credit Fee* " has the meaning specified in *Section 2.03(h)* .

" *Letter of Credit Sublimit* " means an amount equal to $50,000. The Letter of Credit Sublimit is part of, and not in addition to, the Commitment.

LIBOR Daily Floating Rate " means a rate per annum determined by the Lender pursuant to the following formula:

$$\text{LIBOR Daily Floating Rate} = \frac{\text{LIBOR Daily Floating Base Rate}}{\text{1.00 - Eurodollar Reserve Percentage}}$$

Where,

" *LIBOR Daily Floating Base Rate* " means, for all Loans, on each day any such Loan is outstanding, the fluctuating rate of interest (rounded upwards, as necessary, to the nearest 1/100 of 1%) equal to the BBA LIBOR, as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated the Lender from time to time) at approximately 11:00 a.m., London time, on each day any such Loan is outstanding, for Dollar deposits with a term equivalent to one month. If such rate is not available at such time for any reason, then the "LIBOR Daily Floating Base Rate" shall be the rate per annum determined by the Lender to be the rate at which deposits in Dollars for delivery in same day funds in the approximate amount of the LIBOR Floating Rate Loan being made, continued or converted by Bank of America and with a term equivalent to one month would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time), on each day any such Loan is outstanding.

" *Lien* " means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

" *Loan* " has the meaning specified in *Section 2.01* .

" *Loan Documents* " means this Agreement, the Note, each Issuer Document, each Security Instrument and all other instruments and documents heretofore or hereafter executed and delivered to or in favor of the Lender in connection with the Loans made, Letters of Credit issued and other transactions between one or more of the Loan Parties and the Lender contemplated under this Agreement.

" *Loan Notice* " means a notice of a borrowing of a Loan pursuant to *Section 2.02(a)* , which, if in writing, shall be substantially in the form of *Exhibit A* .

" *Loan Parties* " means, collectively, the Borrower and each other Person providing Collateral pursuant to any Security Instrument.

" *Material Adverse Effect* " means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower or the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

" *Maturity Date* " means the earlier of (i) April 6, 2006 or (ii) the date of any of closing of any initial public offering.

" *Mexican Acquisition* " means the potential acquisition by the Borrower of certain assets located in San Francisco del Rincon, Mexico for a purchase price of not more than $1,400,000.

" *Multiemployer Plan* " means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

" *Net Amount of Eligible Accounts* " means, at any time, the gross amount of Eligible Accounts less sales, excise or similar taxes, and less returns, discounts, claims, credits, allowances, accrued rebates, offsets, deductions, counterclaims, disputes and other defenses of any nature at any time issued, owing, granted, outstanding, available or claimed.

" *Net Book Value of Eligible Equipment* " means, at any time, the then-current book value of all Eligible Equipment (giving effect to any adjustments to such book value on or prior to the date of measurement thereof) *less* all accumulated depreciation and amortization of such Equipment through the date of measurement.

" *Net Proceeds* " means, with respect to the sale of any Equity Interests of the Borrower or any Subsidiary, an amount equal to (i) the sum of the cash and cash equivalents received in connection with such sale (before payment of the amounts set forth in the following part (ii)), *minus* (ii) the underwriting discounts and commissions, and other out-of-pocket expenses, incurred in connection with such sale.

" *Note* " means a promissory note made by the Borrower in favor of the Lender evidencing Loans made by the Lender, substantially in the form of *Exhibit B* .

" *Obligations* " means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

" *Organization Documents* " means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

" *Other Taxes* " means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

" *Outstanding Amount* " means (i) with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date; and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

" *Participant* " has the meaning specified in *Section 9.06(c)* .

" *PBGC* " means the Pension Benefit Guaranty Corporation.

" *Pension Plan* " means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

" *Permitted Tax Distribution* " means a single distribution by the Borrower to those Persons that held Equity Interests in the Borrower prior to its conversion to a "C" corporation, which such distribution shall not exceed $4,000,000.

" *Person* " means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

" *Plan* " means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

" *Pledge Agreement* " means that certain Securities Pledge Agreement dated as of the Closing Date among the Lender and the Borrower, as amended or supplemented from time to time.

" *Pledged Interests* " means the Equity Interests in any Person pledged or required to be pledged as Collateral pursuant to the terms of this Agreement, the Pledge Agreement or the Subsidiaries Pledge Agreements.

" *Related Parties* " means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

" *Reportable Event* " means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

" *Request for Credit Extension* " means (a) with respect to a borrowing and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

" *Reserves* " means reserves that limit the availability of credit hereunder, consisting of reserves against Availability, Eligible Accounts, Eligible Inventory or equipment, established by the Lender from time to time in the Lender's reasonable credit judgment. Without limiting the generality of the foregoing, the following reserves shall be deemed to be a reasonable exercise of the Lender's credit judgment: (a) reserves for rent at leased locations subject to landlord Liens, except to the extent the Lender has received landlord subordination agreements acceptable to the Lender, (b) Inventory shrinkage, (c) customs charges, (d) dilution, and (e) warehousemen's or bailees' charges.

" *Responsible Officer* " means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of the Borrower. Any document delivered hereunder that is signed by a Responsible Officer of the Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Borrower.

" *Restricted Payment* " means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Borrower's stockholders, partners or members (or the equivalent Person thereof).

" *SEC* " means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

" *Security Agreement* " means that certain Security Agreement dated as of the Closing Date among the Borrower and the Lender, as amended or supplemented from time to time.

" *Security Instruments* " means, collectively, the Pledge Agreement, the Subsidiary Pledge Agreements, the Security Agreement and all other agreements (including control agreements), instruments and other documents, whether now existing or hereafter in effect, pursuant to which the Borrower or any other Person shall grant or convey to the Lender a Lien in, or any other Person shall acknowledge any such Lien in, property as security for all or any portion of the Obligations or any other obligation under any Loan Document, as any of them may be amended, modified or supplemented from time to time.

" *Subsidiary* " of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

" *Subsidiary Pledge Agreements* " means that certain Securities Pledge Agreements dated as of the Closing Date among 4646519 Canada, Inc. and the Lender, as amended or supplemented from time to time, and that certain Securities Pledge Agreements dated as of the Closing Date among Western Brands Holding, Inc. and the Lender, as amended or supplemented from time to time.

" *Swap Contract* " means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a " *Master Agreement* "), including any such obligations or liabilities under any Master Agreement.

" *Swap Termination Value* " means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

" *Synthetic Lease Obligation* " means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

" *Taxes* " means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

" *Threshold Amount* " means $250,000.

" *Total Outstandings* " means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

" *UCC* " means the Uniform Commercial Code then in effect in the state of North Carolina or, if the context shall so indicate, another applicable jurisdiction.

" *Unaudited Financial Statements* " has the meaning specified in *Section 5.05(b)* .

" *Unfunded Pension Liability* " means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

" *United States* " and " *U.S.* " mean the United States of America.

" *Unreimbursed Amount* " has the meaning specified in *Section 2.03(c)(i)* .

" *Voting Securities* " means Equity Interests, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right to vote has been suspended by the happening of such contingency.

1.02 Other Interpretive Provisions . With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word " *from* " means " *from and including* ;" the words " *to* " and " *until* " each mean " *to but excluding* ;" and the word " *through* " means " *to and including* ."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms . (a) *Generally* . All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, *except* as otherwise specifically prescribed herein.

(b) *Changes in GAAP* . If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Lender shall so request, the Lender and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Lender), provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation

between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 Rounding . Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day . Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 Letter of Credit Amounts . Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Issuer Documents related thereto, whether or not such maximum face amount is in effect at such time.

ARTICLE II.
THE COMMITMENT AND CREDIT EXTENSIONS

2.01 Loans . Subject to the terms and conditions set forth herein, the Lender agrees to make loans (each such loan, a " *Loan* ") to the Borrower from time to time, on any Business Day during the Availability Period; *provided* , *however* , that after giving effect to any borrowing, the Total Outstandings shall not exceed the Advance Limit. Within the limits of the Advance Limit, and subject to the other terms and conditions hereof, the Borrower may borrow under this *Section 2.01* , prepay under *Section 2.04* , and reborrow under this *Section 2.01* . A Loan may be a Base Rate Loan or a Eurodollar Rate Loan, as further provided herein.

2.02 Borrowings .

(a) Each borrowing shall be made upon the Borrower's irrevocable notice to the Lender, which may be given by telephone. Each such notice must be received by the Lender not later than 1:00 p.m. one Business Day prior to the requested date of any borrowing of a Eurodollar Rate Loan. Notwithstanding anything to the contrary contained herein, but subject to the provisions of *Section 9.02(d)* , any such telephonic notice may be given by an individual who has been authorized in writing to do so by a Responsible Officer of the Borrower. Each such telephonic notice must be confirmed promptly by delivery to the Lender of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each borrowing (a "Eurodollar Rate Loan") shall be in a principal amount of $250,000 or a whole multiple of $50,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) the requested date of the borrowing (which shall be a Business Day) and (ii) the principal amount of the Loan to be borrowed.

(b) Upon satisfaction of the applicable conditions set forth in *Section 4.02* (and, if a borrowing is the initial Credit Extension, *Section 4.01*), the Lender shall make the proceeds of each Loan available to the Borrower either by (i) crediting the account of the Borrower on the books of the Lender with the amount of such proceeds or (ii) wire transfer of such proceeds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Lender by the Borrower; *provided* , *however* , that if on the date the Loan Notice with respect to such borrowing is given, there are drawings under Letters of Credit that have not been reimbursed by the Borrower, then the proceeds of such borrowing shall be applied, *first* , to the payment in full of any such unreimbursed drawings, and *second* , to the Borrower as provided above.

(c) Notwithstanding any other provision herein, all Loans hereunder shall be Eurodollar Rate Loans unless the conditions set forth in *Section 3.02* or *3.03* exist.

(d) The determination of the Eurodollar Rate by the Lender shall be conclusive in the absence of manifest error. At any time that a Base Rate Loan is outstanding, the Lender shall notify the Borrower of any change in the Lender's prime rate used in determining the Base Rate promptly following the public announcement of such change.

2.03 Letters of Credit .

(a) *The Letter of Credit Commitment* .

(i) Subject to the terms and conditions set forth herein, the Lender agrees (A) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower, and to amend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (B) to honor drawings under the Letters of Credit; *provided* that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (y) the Total Outstandings shall not exceed the Advance Limit and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The Lender shall not issue any Letter of Credit, if:

(A) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date.

(iii) The Lender shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Lender from issuing such Letter of Credit, or any Law applicable to the Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Lender shall prohibit, or request that the Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Lender in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the Lender;

(C) except as otherwise agreed by the Lender, such Letter of Credit is in an initial stated amount less than $10,000, in the case of a commercial Letter of Credit, or $25,000, in the case of a standby Letter of Credit;

(D) such Letter of Credit is to be denominated in a currency other than Dollars; or

(E) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iv) The Lender shall be under no obligation to amend any Letter of Credit if (A) the Lender would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) *Procedures for Issuance and Amendment of Letters of Credit* .

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the Lender in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such L/C Application must be received by the Lender not later than 1:00 p.m., at least two Business Days (or such later date and time as the Lender may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Lender: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Lender may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Lender (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the Lender may require. Additionally, the Borrower shall furnish to the Lender such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the Lender may require.

(ii) Upon the Lender's determination that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, the Lender shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the Lender's usual and customary business practices.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Lender will also deliver to the Borrower a true and complete copy of such Letter of Credit or amendment.

(c) *Drawings and Reimbursements* .

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the Lender shall notify the Borrower thereof. Not later than 1:00 p.m. on the date of any payment by the Lender under a Letter of Credit (each such date, an " *Honor Date* "), the Borrower shall reimburse the Lender in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the Lender, the Borrower shall be deemed to have requested a borrowing of a Base Rate Loan to be disbursed on the Honor Date in an amount equal to the amount of such unreimbursed drawing (the " *Unreimbursed Amount* "), without regard to the minimum and multiples specified in *Section 2.02* for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Advance Limit and the conditions set forth in *Section 4.02* (other than the delivery of a Loan Notice).

(ii) If the Borrower fails to reimburse the Lender for any drawing under any Letter of Credit (whether by means of a borrowing or otherwise), such Unreimbursed Amount shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate.

(d) *Obligations Absolute* . The obligation of the Borrower to reimburse the Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the Lender. The Borrower shall be conclusively deemed to have waived any such claim against the Lender and its correspondents unless such notice is given as aforesaid.

(e) *Role of Lender* . The Borrower agrees that, in paying any drawing under a Letter of Credit, the Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided* , *however* , that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Lender, any of its Affiliates, any of the respective officers, directors, employees, agents or attorneys-in-fact of the Lender and its Affiliates, nor any of the respective correspondents, participants or assignees of the Lender shall be liable or responsible for any of the matters described in clauses (i) through (v) of *Section 2.03(d)* ; *provided* , *however* , that anything in

such clauses to the contrary notwithstanding, the Borrower may have a claim against the Lender, and the Lender may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the Lender's willful misconduct or gross negligence or the Lender's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(f) *Cash Collateral* . Upon the request of the Lender, (i) if the Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has not been reimbursed on the applicable Honor Date, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. *Sections 2.04* and *8.02(c)* set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this *Section 2.03* , *Section 2.04* and *Section 8.02(c)* , " *Cash Collateralize* " means to pledge and deposit with or deliver to the Lender, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Lender. Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Lender a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at the Lender.

(g) *Applicability of ISP and UCP* . Unless otherwise expressly agreed by the Lender and the Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(h) *Letter of Credit Fees* . The Borrower shall pay to the Lender a Letter of Credit fee (the " *Letter of Credit Fee* ") for each Letter of Credit equal to the Applicable Rate times the daily maximum amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with *Section 1.06* . Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) *Documentary and Processing Charges Payable to Lender* . The Borrower shall pay to the Lender the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Lender relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) *Conflict with Issuer Documents* . In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

2.04 Prepayments .

(a) The Borrower may, upon notice to the Lender, at any time or from time to time voluntarily prepay any Loan in whole or in part without premium or penalty; *provided* that (i) such notice must be received by the Lender not later than 1:00 p.m. (A) three Business Days prior to any date of prepayment of a Eurodollar Rate Loan, and (B) on the date of prepayment of a Base Rate Loan; any prepayment of a Loan shall be in a principal amount of $1,000 or a whole multiple thereof; or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to *Section 3.05* .

(b) If for any reason the Total Outstandings at any time exceed the Advance Limit then in effect, the Borrower shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided , however* , that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this *Section 2.04(b)* unless after the prepayment in full of the Loans the Total Outstandings exceed the Advance Limit then in effect.

2.05 Termination or Reduction of Commitment.

(a) *Optional Reductions* . The Borrower may, upon notice to the Lender, terminate the Commitment, or from time to time permanently reduce the Commitment; provided that (i) any such notice shall be received by the Lender not later than 1:00 p.m., five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $1,000 or any whole multiple thereof, (iii) the Borrower shall not terminate or reduce the Commitment if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Advance Limit, and (iv) if, after giving effect to any reduction of the Commitment, the Letter of Credit Sublimit exceeds the amount of the Commitment, such Sublimit shall be automatically reduced by the amount of such excess. All fees accrued until the effective date of any termination of the Commitment shall be paid on the effective date of such termination.

(b) *Mandatory Reductions* .

(i) In addition to any required and optional reduction of the Commitment, payments of principal amount of Loans and imposition of Cash Collateral requirements in respect of Letters of Credit otherwise set forth herein, there shall occur a permanent reduction of the Commitment in an amount equal to one-hundred percent (100%) of the Net Proceeds of each private or public offering of Equity Interests of or by the Borrower or any Subsidiary (including in each case, without limitation, any security not constituting Indebtedness exchangeable, exercisable or convertible for or into equity securities); *provided ; however* , that in the case of a private offering of Equity Interests, to the extent that the aggregate Net Proceeds of all such offerings do not exceed $3,000,000, no prepayment will be required.

(ii) Simultaneously with the reduction of the Commitment by an amount equal to the Net Proceeds from each event described in *Section 2.05(b)(i)* , the Borrower shall repay outstanding Loans in an amount necessary to reduce the aggregate Outstanding Amount below the Advance Limit in effect after giving effect to such reduction of the Commitment. If, after repayment of all Loans, the Outstanding Amount exceeds the Commitment then in effect, the Borrower will also Cash Collateralize the Outstanding Amount of Letters of Credit

in an amount necessary to reduce the aggregate Outstanding Amount below the Advance Limit in effect after giving effect to such reduction of the Commitment.

(iii) Each reduction of the Commitment, and accompanying prepayment or other application of funds, required by this *Section 2.05(b)* will be made within ten (10) Business Days of the issuance of any such Equity Interests, without regard to any contingencies, earnouts or future payments, and in each case upon not less than two (2) Business Days' irrevocable written notice to the Lender, and shall include a certificate of a Responsible Officer of the Borrower setting forth in reasonable detail the calculations utilized in computing the amount of such reduction of the Commitment and accompanying prepayment or Cash Collateralization.

2.06 Repayment of Loans . The Borrower shall repay to the Lender on the Maturity Date the aggregate principal amount of Loans outstanding on such date.

2.07 Interest .

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Eurodollar Rate *plus* the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate *plus* the Applicable Rate.

(b) (i) If any amount payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) While any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.08 Fees . In addition to certain fees described in subsections (h) and (i) of *Section 2.03* :

(a) *Unused Fee* . The Borrower shall pay to the Lender a fee equal to 0.35% per annum *times* the actual daily amount by which the Commitment exceeds the Total Outstandings. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in *Article IV* is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Maturity Date. The commitment fee shall be calculated quarterly in arrears.

(b) *Collateral Shortfall Adjustment Fee* . The Borrower shall pay to the Lender a fee (the " *Collateral Shortfall Adjustment Fee* ") equal to 2.00% per annum *times* the amount of the Collateral Shortfall Adjustment in effect on the last Business Day of the preceding month. The Collateral Shortfall Adjustment Fee shall accrue at all times during which the Collateral Shortfall Adjustment is greater than $0, including at any time during which one or more of the conditions in *Article IV* is not met, and shall be due and payable monthly in arrears on the last Business Day of March,

April, May and June, commencing with the first such date to occur after the Closing Date, and on the Maturity Date (and, if applicable, thereafter on demand). The Collateral Shortfall Adjustment Fee shall be calculated monthly in arrears and shall be pro-rated for the month ending March 31, 2005.

2.09 Computation of Interest and Fees . All computations of interest for Base Rate Loans when the Base Rate is determined by the Lender's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, subject to *Section 2.11(a)* , bear interest for one day.

2.10 Evidence of Debt . The Credit Extensions made by the Lender shall be evidenced by one or more accounts or records maintained by the Lender in the ordinary course of business. The accounts or records maintained by the Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lender to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. The Note shall evidence the Lender's Loans in addition to such accounts or records. The Lender may attach schedules to the Note and endorse thereon the date, amount and maturity of each Loan and payments with respect thereto. Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Payments Generally .

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Lender at the applicable Lending Office in Dollars and in immediately available funds not later than 3:00 p.m. on the date specified herein. All payments received by the Lender after 3:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) Nothing herein shall be deemed to obligate the Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by the Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

ARTICLE III.
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes .

(a) *Payments Free of Taxes* . Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, *provided* that if the Borrower shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no

such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) *Payment of Other Taxes by the Borrower* . Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) *Indemnification by the Borrower* . The Borrower shall indemnify the Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Lender with respect to this Agreement and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(d) *Evidence of Payments* . As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(e) *Treatment of Certain Refunds* . If the Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Lender, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower, upon the request of the Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender in the event the Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.02 Illegality . If the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its Lending Office to make, maintain or fund Eurodollar Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of the Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by the Lender to the Borrower, any obligation of the Lender to make Eurodollar Rate Loans shall be suspended until the Lender notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon the giving of such notice, all Eurodollar Rate Loans shall be automatically converted to Base Rate Loans.

3.03 Inability to Determine Eurodollar Rate . If the Lender determines that for any reason in connection with any request for a Eurodollar Rate Loan that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Base Rate with respect to a proposed Eurodollar Rate Loan, or (c) the Eurodollar Base Rate with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to the Lender of funding such Loan, the Lender will promptly so notify the Borrower. Thereafter, the obligation of the Lender to make or maintain Eurodollar Rate Loans shall be suspended until the Lender revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs .

(a) *Increased Costs Generally* . If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Lender (except any reserve requirement reflected in the Eurodollar Rate);

(ii) subject the Lender to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit or any Eurodollar Loan, or change the basis of taxation of payments to the Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by *Section 3.01* and the imposition of, or any change in the rate of, any Excluded Tax payable by the Lender); or

(iii) impose on the Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans or any Letter of Credit;

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to the Lender of issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount) then, upon request of the Lender, the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) *Capital Requirements* . If the Lender determines that any Change in Law affecting the Lender or its Lending Office or the Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement, the Commitment of the Lender or the Loans made by, or the Letters of Credit issued by the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement* . A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) *Delay in Requests* . Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate the Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 [Reserved] .

3.06 Mitigation Obligations . If the Lender requests compensation under *Section 3.04* , or the Borrower is required to pay any additional amount to the Lender or any Governmental Authority for the account of the Lender pursuant to *Section 3.01* , or if the Lender gives a notice pursuant to *Section 3.02* , then the Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to *Section 3.01* or *3.04* , as the case may be, in the future, or eliminate the need for the notice pursuant to *Section 3.02* , as applicable, and (ii) in each case, would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

3.07 Survival . All of the Borrower's obligations under this *Article III* shall survive termination of the Commitment and repayment of all other Obligations hereunder.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension . The obligation of the Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Lender's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Lender:

(i) executed counterparts of this Agreement and each other Loan Document, sufficient in number for distribution to the Lender and the Borrower;

(ii) the Note executed by the Borrower;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Lender may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Lender may reasonably require to evidence that each Loan Party is duly organized or formed, and that the Borrower is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Eric Revege, Esq., counsel to the Loan Parties, addressed to the Lender, in form and substance reasonably satisfactory to the Lender;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in *Sections 4.02(a)* and *(b)* have been satisfied, and (B) that there has been no event or circumstance since the date of the Unaudited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(viii) a duly completed Compliance Certificate as of the last day of the fiscal quarter of the Borrower most recently ended prior to the Closing Date, pro forma for the transactions in this Agreement, signed by a Responsible Officer of the Borrower;

(ix) a duly completed Borrowing Base Certificate as of the last day of the calendar month most recently ended prior to the Closing Date, with such adjustments as are reasonably requested by the Lender to bring such Borrowing Base Certificate current to the Closing Date, along with such agings, reports and similar information relating to the Collateral as may be reasonably requested by the Lender;

(x) Uniform Commercial Code search results showing only those Liens that are (A) terminated on or will be terminated before the Closing Date (provided that satisfactory evidence of such termination or of satisfactory arrangements for such termination is delivered to the Lender prior to the Closing Date is delivered on or before the Closing Date), (B) described on *Schedule 7.01* , or (C) otherwise acceptable to the Lender;

(xi) Uniform Commercial Code financing statements suitable in form and substance for filing in all places required by applicable law to perfect the Liens of the Lender under the Security Instruments as a first priority Lien as to items of Collateral in which a security interest may be perfected by the filing of financing statements, and such other documents and/or evidence of other actions as may be necessary under applicable law to perfect the Liens of the Lender under the Security Instruments as a first priority Lien in and to such other Collateral as the Lender may require, including without limitation the delivery of any issued and outstanding certificates evidencing Pledged Interests, accompanied in each case by duly executed stock powers (or other appropriate transfer documents) in blank affixed thereto;

(xii) an initial Request for Credit Extension, if any;

(xiii) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(xiv) such other assurances, certificates, documents, consents or opinions as the Lender reasonably may require.

(b) Any fees required to be paid on or before the Closing Date, including, but not limited to, a commitment fee of 0.50% of the Commitment payable to the Lender, shall have been paid.

(c) The Borrower shall have paid all fees, charges and disbursements of counsel to the Lender to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Lender).

4.02 Conditions to all Credit Extensions . The obligation of the Lender to make any Credit Extension is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in *Article V* or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the

date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this *Section 4.02* , the representations and warranties contained in subsections (a) and (b) of *Section 5.05* shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of *Section 6.01* .

(b) No Default shall exist, or would result from such proposed Credit Extension.

(c) The Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) If requested by the Lender, the Lender shall have received an updated Borrowing Base Certificate as of the date of such Credit Extension (or a recent date prior thereto, but after the date of the most recently delivered Borrowing Base Certificate, reasonably requested by the Lender).

Each Request for Credit Extension submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in *Sections 4.02(a)* and *(b)* have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lender that:

5.01 Existence, Qualification and Power; Compliance with Laws . Each Loan Party (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, and (d) is in compliance with all Laws; except in each case referred to in clause (b)(i), (c) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention . The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law. Each Loan Party and each Subsidiary thereof is in compliance with all Contractual Obligations referred to in clause (b)(i), except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents . No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document.

5.04 Binding Effect . This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This

Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

5.05 Financial Statements; No Material Adverse Effect .

(a) The Audited Financial Statements (i) will be prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) will fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) will show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated and consolidating balance sheet of the Borrower and its Subsidiaries dated September 30, 2004 (the "Unaudited Financial Statements"), and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the three fiscal quarter period ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. *Schedule 5.05* sets forth all material indebtedness and other liabilities, direct or contingent, of the Borrower and its consolidated Subsidiaries as of the date of such financial statements, including liabilities for taxes, material commitments and Indebtedness.

(c) Since the date of the Unaudited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The consolidated and consolidating pro forma balance sheet of the Borrower and its Subsidiaries as at February 28, 2005, and the related consolidated and consolidating pro forma statements of income and cash flows of the Borrower and its Subsidiaries for the two-month period then ended, certified by the chief financial officer of the Borrower, copies of which have been furnished to the Lender, fairly present the consolidated and consolidating pro forma financial condition of the Borrower and its Subsidiaries as at such date and the consolidated and consolidating pro forma results of operations of the Borrower and its Subsidiaries for the period ended on such date, all in accordance with GAAP.

(e) The consolidated and consolidating forecasted balance sheet and statements of income and cash flows of the Borrower and its Subsidiaries delivered to the Lender prior to the Closing Date were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Borrower's best estimate of its future financial performance.

5.06 Litigation . There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default . Neither the Borrower nor any Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens . Each of the Borrower and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Borrower and its Subsidiaries is subject to no Liens, other than Liens permitted by *Section 7.01* .

5.09 Environmental Compliance . The Borrower and its Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance . The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

5.11 Taxes . The Borrower and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Borrower or any Subsidiary that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement.

5.12 ERISA Compliance .

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Borrower and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA);

(iv) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

5.13 Subsidiaries; Equity Interests . The Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of *Schedule 5.13* , and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by a Loan Party in the amounts specified on Part (a) of *Schedule 5.13* free and clear of all Liens. The Borrower has no equity investments in any other corporation or entity other than those specifically disclosed in Part(b) of *Schedule 5.13* . All of the outstanding Equity Interests in the Borrower have been validly issued and are fully paid and nonassessable.

5.14 Margin Regulations; Investment Company Act; Public Utility Holding Company Act .

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary (i) is a "holding company," or a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, or (ii) is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure . The Borrower has disclosed to the Lender all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws . Each of the Borrower and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. The Borrower and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, " *IP Rights* ") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrower or any Subsidiary infringes upon any rights held by any other Person. No claim or litigation

regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as the Commitment shall be in effect, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrower shall, and shall (except in the case of the covenants set forth in *Sections 6.01* , *6.02* and *6.03*) cause each Subsidiary to:

6.01 Financial Statements . Deliver to the Lender, in form and detail satisfactory to the Lender:

(a) as soon as available, but in any event within 180 days after the end of each fiscal year of the Borrower (commencing with the fiscal year ended December 31, 2004), a consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Lender, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit and such consolidating statements to be certified by a Responsible Officer of the Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Borrower and its Subsidiaries; and

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ending March 31, 2005), a consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating statements to be certified by a Responsible Officer of the Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Borrower and its Subsidiaries.

As to any information contained in materials furnished pursuant to *Section 6.02(f)* , the Borrower shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

6.02 Certificates; Other Information . Deliver to the Lender, in form and detail satisfactory to the Lender:

(a) concurrently with the delivery of the financial statements referred to in *Section 6.01(a)* , a certificate of its independent certified public accountants certifying such financial statements and

stating that in making the examination necessary therefor no knowledge was obtained of any Default or, if any such Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the financial statements referred to in *Sections 6.01(a)* and *(b)* (commencing with the delivery of the financial statements for the fiscal quarter ended March 31, 2005), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(c) promptly after any request by the Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent accountants in connection with the accounts or books of the Borrower or any Subsidiary, or any audit of any of them;

(d) no later than fifteen (15) days after the end of each calendar month, or more frequently if requested by the Lender (including, upon request of the Lender, concurrently with any Request for Credit Extension), a Borrowing Base Certificate as of the end of such calendar month;

(e) The Borrower shall deliver the following agings, reports and other information to the Lender as of the times set forth below:

(i) on a monthly basis, by the fifteenth (15 th) day of the following month, or more frequently if requested by the Lender, an aging of the Borrower's Accounts, together with a reconciliation to the corresponding Borrowing Base and to the Borrower's general ledger;

(ii) on a monthly basis, by the fifteenth (15 th) day of the following month, or more frequently if requested by the Lender, an aging of the Borrower's accounts payable;

(iii) on a monthly basis, by the fifteenth (15 th) day of the following month, or more frequently if requested by the Lender, a detailed calculation of Eligible Accounts, Eligible Inventory and Eligible Equipment;

(iv) on a monthly basis, by the fifteenth (15 th) day of the following month, or more frequently if requested by the Lender, Inventory reports by category and location, together with a reconciliation to the corresponding Borrowing Base and to the Borrower's general ledger;

(v) upon request, copies of invoices in connection with the Borrower's Accounts, customer statements, credit memos, remittance advices and reports, deposit slips, shipping and delivery documents in connection with the Borrower's Accounts and for Inventory and Equipment acquired by the Borrower, purchase orders and invoices;

(vi) upon request, a statement of the balance of all assets and liabilities, however arising, which are due to the Borrower from, or which are due from the Borrower to, or which otherwise arise from any transaction by the Borrower with, any Affiliate of the Borrower;

(vii) upon request, such other reports as to the Collateral of the Borrower as the Lender shall reasonably request from time to time; and

(viii) with the delivery of each of the foregoing, a certificate of the Borrower executed by a Responsible Officer certifying as to the accuracy and completeness of the foregoing.

(f) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Lender pursuant hereto;

(g) promptly, such additional information regarding the business, financial or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Lender may from time to time reasonably request.

Documents required to be delivered pursuant to *Section 6.01(a)* or *(b)* or *Section 6.02(f)* (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on *Schedule 9.02* ; *provided* that: (i) if the Lender so requests, the Borrower shall deliver paper copies of such documents to the Lender until a written request to cease delivering paper copies is given by the Lender and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Lender of the posting of any such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by *Section 6.02(b)* to the Lender. If any of the Borrower's records or reports of the Collateral are prepared by an accounting service or other agent, the Borrower hereby authorizes such service or agent to deliver such records, reports, and related documents to the Lender.

6.03 Notices . Promptly notify the Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by the Borrower or any Subsidiary; and

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to *Section 6.03(a)* shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations . Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.05 Preservation of Existence, Etc . (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a

transaction permitted by *Section 7.04* or *7.05* ; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties . (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.07 Maintenance of Insurance . Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons that are similarly sized and geographically situated and that are engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons (including business interruption, property and medical malpractice and other professional liability insurance), and any other insurance required by any of the Security Instruments, and in each case providing for not less than 30 days' prior notice to the Lender of termination, lapse or cancellation of such insurance.

6.08 Compliance with Laws . Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records . Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights; Field Audit . Permit representatives and independent contractors of the Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, to perform a field audit of the Borrower's accounts receivable, inventory and equipment, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* , that any field audit shall be performed at the Borrower's expense no more frequently than annually; *provided* , *further* , *however* , that when an Event of Default exists the Lender (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11 Use of Proceeds . Use the proceeds of the Credit Extensions for working capital, capital expenditures, Restricted Payments and general corporate purposes, in each case in compliance with the terms of this Agreement and not in contravention of any Law or of any Loan Document.

6.12 Deposit Accounts. Maintain its primary commercial banking relationship for all traditional commercial banking products, including all of its business, cash management, operating and administrative deposit accounts, with Bank of America, N.A.

ARTICLE VII.
NEGATIVE COVENANTS

So long as the Commitment shall be in effect, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens . Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on *Schedule 7.01* and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by *Section 7.03(b)* ;

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) Liens securing Indebtedness permitted under *Section 7.03(e)* ; *provided* that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person; and

(i) Liens securing judgments for the payment of money not constituting an Event of Default under *Section 8.01(h)* or securing appeal or other surety bonds related to such judgments.

7.02 Investments . Make any Investments, except:

(a) Investments set forth on *Schedule 5.13* ;

(b) Investments held by the Borrower or such Subsidiary in the form of cash equivalents (including short-term debt securities issued or fully guaranteed or insured by the United States federal government or any agency thereof);

(c) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed $15,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(d) Investments of (i) the Borrower in any Guarantor, (ii) any Guarantor in the Borrower or in another Guarantor, (iii) any Subsidiary of the Borrower that is not a Guarantor in another Subsidiary of the Borrower;

(e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(f) the Mexican Acquisition; and

(g) Guarantees permitted by *Section 7.03* .

7.03 Indebtedness . Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on *Schedule 7.03* and any refinancings, refundings, renewals or extensions thereof; *provided* that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(c) Guarantees of (i) the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Guarantor, and (ii) any Subsidiary of the Borrower that is not a Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any of its Subsidiaries;

(d) obligations (contingent or otherwise) of the Borrower or any Subsidiary existing or arising under any Swap Contract, *provided* that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) Indebtedness in respect of capital leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in *Section 7.01(g)* ; *provided* , *however* , that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed $1,250,000; and

(f) unsecured Indebtedness in an aggregate principal amount not to exceed $250,000 at any time outstanding.

7.04 Fundamental Changes . Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) the Borrower, *provided* that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, *provided* that when any

Guarantor is merging with another Subsidiary, the Guarantor shall be the continuing or surviving Person;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then the transferee must either be the Borrower or a Guarantor; and

(c) the Borrower may reincorporate under the laws of the State of Delaware, upon giving not less than thirty (30) days' prior notice to the Lender.

7.05 Dispositions . Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by any Subsidiary to the Borrower or to a wholly-owned Subsidiary; *provided* that if the transferor of such property is a Guarantor, the transferee thereof must either be the Borrower or a Guarantor; and

(e) Dispositions permitted by *Section 7.04* ;

provided , *however* , that any Disposition pursuant to clauses (a) through (e) shall be for fair market value.

7.06 Restricted Payments . Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests, except that, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) each Subsidiary may make Restricted Payments to the Borrower, the Guarantors and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) each Subsidiary of the Borrower may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests;

(d) the Borrower may issue and sell shares of its common stock, so long as the Net Proceeds thereof (in excess, in the aggregate, of $3,000,000 with respect to any private offering) are required to be applied to the prepayment of the Loans pursuant to *Section 2.05(b)* and are so applied; and

(e) the Borrower may make the Permitted Tax Distribution, so long as after giving effect thereto the Borrower, and the Borrower and its Subsidiaries on a consolidated basis, would be solvent.

7.07 Change in Nature of Business . Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

7.08 Transactions with Affiliates . Enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate.

7.09 Burdensome Agreements . Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.10 Use of Proceeds . Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Financial Covenants .

(a) *Consolidated Fixed Charge Coverage Ratio* . Permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter of the Borrower to be less than 1.50 to 1.00.

(b) *Consolidated Leverage Ratio* . Permit the Consolidated Leverage Ratio at any time to be greater than 1.75 to 1.00.

(c) *Consolidated EBITDA* . Permit Consolidated EBITDA at any time during the periods set forth below to be less than that set forth opposite each such period:

Period		Consolidated EBITDA
Four the fiscal quarters ending March 31, 2005	$	5,250,000
As of June 30, 2005	$	7,750,000
As of September 30, 2005 and all times thereafter	$	11,250,000

7.12 Capital Expenditures. Make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations), except for capital expenditures in the ordinary course of business not exceeding, in the aggregate for the Borrower and it Subsidiaries, $5,000,000 during any fiscal year of the Borrower.

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default . Any of the following shall constitute an Event of Default:

(a) *Non-Payment* . The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) *Specific Covenants* . The Borrower fails to perform or observe any term, covenant or agreement contained in any of *Section 6.01* , *6.02* , *6.03* , *6.05* , *6.10* , *6.11* , *6.12* , *6.13* or *Article VII* ; or

(c) *Other Defaults* . Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) *Representations and Warranties* . Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading (in any material way, with respect to any such document other than a Loan Document) when made or deemed made; or

(e) *Cross-Default* . (i) The Borrower or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts; Attachment* . (i) The Borrower or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) *Judgments* . There is entered against the Borrower or any Subsidiary (i) a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to

the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) *ERISA* . (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) *Invalidity of Loan Documents* . Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Lien granted thereunder at any time after its creation and perfection and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect or have the priority required hereby or thereby; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document or the validity, perfection or priority of any Lien granted thereunder; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) *Change of Control* . There occurs any Change of Control.

(l) *Material Adverse Effect* . There occurs any event or circumstance that has a Material Adverse Effect.

8.02 Remedies Upon Event of Default . If any Event of Default occurs and is continuing, the Lender may take any or all of the following actions:

(a) declare the Commitment to be terminated, whereupon the Commitment shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise all rights and remedies available to it under the Loan Documents or applicable law;

provided , however , that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the Commitment shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Lender.

8.03 Application of Funds . After the exercise of remedies provided for in *Section 8.02* (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to *Section 8.02*), any amounts received on account of the Obligations shall be applied by the Lender in such order as it elects in its sole discretion.

ARTICLE IX.
MISCELLANEOUS

9.01 Amendments; Etc . No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Lender and the Borrower or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

9.02 Notices, Effectiveness; Electronic Communication .

(a) *Notices Generally* .

(i) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the address, facsimile number, electronic mail address or telephone number specified for such Person on *Schedule 9.02* .

(ii) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) *Electronic Communications* .

(i) Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Lender. The Lender or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the Lender otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (A) of notification that such notice or communication is available and identifying the website address therefor.

(c) *Change of Address, Etc* . Each of the Borrower and the Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto.

(d) *Reliance by Lender* . The Lender shall be entitled to rely and act upon any notices (including telephonic Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Lender and the Related Parties of the Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Lender may be recorded by the Lender, and the Borrower hereby consents to such recording.

9.03 No Waiver; Cumulative Remedies . No failure by the Lender to exercise, and no delay by the Lender in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.04 Expenses; Indemnity; Damage Waiver .

(a) *Costs and Expenses* . The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Lender and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Lender), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by the Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Lender (including the fees, charges and disbursements of any counsel for the Lender), and shall pay all fees and time charges for attorneys who may be employees of the Lender, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) *Indemnification by the Borrower* . The Borrower shall indemnify the Lender and each Related Party of the Lender (each such Person being called an " *Indemnitee* ") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether

brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) *Waiver of Consequential Damages, Etc* . To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(d) *Payments* . All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(e) *Survival* . The agreements in this Section shall survive the termination of the Commitment and the repayment, satisfaction or discharge of all the other Obligations.

9.05 Payments Set Aside . To the extent that any payment by or on behalf of the Borrower is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred.

9.06 Successors and Assigns .

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender and the Lender may not assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (c) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (c) of this Section and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Commitment, the

Loans and L/C Obligations at the time owing to it) pursuant to documentation acceptable to the Lender and the assignee, it being understood and agreed that with respect to any Letters of Credit outstanding at the time of any such assignment, the Lender may sell to the assignee a ratable participation in such Letters of Credit. From and after the effective date specified in such documentation, such Eligible Assignee shall be a party to this Agreement and, to the extent of the interest assigned by the Lender, have the rights and obligations of the Lender under this Agreement, and the Lender shall, to the extent of the interest so assigned, be released from its obligations under this Agreement (and, in the case of an assignment of all of the Lender's rights and obligations under this Agreement, shall cease to be a party hereto but shall continue to be entitled to the benefits of *Sections 3.01* , *3.04* , *3.05* and *9.04* with respect to facts and circumstances occurring prior to the effective date of such assignment, and shall continue to have all of the rights provided hereunder to the Lender in its capacity as issuer of any Letters of Credit outstanding at the time of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver new or replacement Notes to the Lender and the assignee, and shall execute and deliver any other documents reasonably necessary or appropriate to give effect to such assignment and to provide for the administration of this Agreement after giving effect thereto.

(c) The Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a " *Participant* ") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the outstanding Letters of Credit and/or the Loans and/or the reimbursement obligations in respect of Letters of Credit); *provided* that (i) the Lender's obligations under this Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the Borrower for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which the Lender sells such a participation shall provide that the Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that the Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification that would (i) postpone any date upon which any payment of money (other than a mandatory prepayment) is scheduled to be made to such Participant, (ii) reduce the principal, interest, fees or other amounts payable to such Participant (*provided* , *however* , that the Lender may, without the consent of the Participant, waive the right to be paid interest at the Default Rate), (iii) release all or substantially all of the Guarantors from the Guaranty or (iv) release all or substantially all of the Collateral. Subject to subsection (d) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of *Sections 3.01* , *3.04* and *3.05* to the same extent as if it were the Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of *Section 9.08* as though it were the Lender.

(d) A Participant shall not be entitled to receive any greater payment under *Section 3.01* or *3.04* than the Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that is not a "United States person" within the meaning of Section 7701 (a)(30) of the Code shall not be entitled to the benefits of *Section 3.01* unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to provide to the Lender such tax forms prescribed by the IRS as are necessary or desirable to establish an exemption from, or reduction of, U.S. withholding tax.

(e) The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under the Note, if any) to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

9.07 Confidentiality . The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates and to its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, " *Information* " means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, *provided* that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, the Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or any other Loan Party now or hereafter existing under this Agreement or any other Loan Document to the Lender, irrespective of whether or not the Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or any other Loan Party may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of the Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Lender or its Affiliates may have. The Lender agrees to notify the Borrower promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

9.09 Interest Rate Limitation . Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the " *Maximum Rate* "). If the Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be

applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Lender exceeds the Maximum Rate, the Lender may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

9.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in *Section 4.01* , this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

9.11 Survival of Representations and Warranties . All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

9.12 Severability . If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.13 Governing Law; Jurisdiction; Etc.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NORTH CAROLINA APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE; PROVIDED THAT THE LENDER SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) THIS *SECTION 9.13* CONCERNS THE RESOLUTION OF ANY CONTROVERSIES OR CLAIMS BETWEEN THE BORROWER AND THE LENDER, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE, INCLUDING BUT NOT LIMITED TO CONTROVERSIES OR CLAIMS THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS (COLLECTIVELY, A " *CLAIM* "). FOR PURPOSES OF THIS *SECTION 9.13* ONLY, THE TERM "LENDER" SHALL INCLUDE ANY PARENT CORPORATION, SUBSIDIARY OR AFFILIATE OF THE LENDER INVOLVED IN THE SERVICING, MANAGEMENT OR ADMINISTRATION OF ANY OBLIGATION DESCRIBED OR EVIDENCED BY THIS AGREEMENT.

(c) AT THE REQUEST OF THE BORROWER OR THE LENDER, ANY CLAIM SHALL BE RESOLVED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (TITLE 9, U.S. CODE) (THE " *ACT* "). THE ACT WILL APPLY EVEN THOUGH THIS AGREEMENT PROVIDES THAT IT IS GOVERNED BY THE LAW OF THE STATE OF NORTH CAROLINA.

(d) ARBITRATION PROCEEDINGS WILL BE DETERMINED IN ACCORDANCE WITH THE ACT, THE APPLICABLE RULES AND PROCEDURES FOR THE ARBITRATION OF DISPUTES OF JAMS OR ANY SUCCESSOR THEREOF (" *JAMS* ") AND THE TERMS OF THIS *SECTION 9.13* . IN THE EVENT OF ANY INCONSISTENCY, THE TERMS OF THIS *SECTION 9.13* SHALL CONTROL.

(e) THE ARBITRATION SHALL BE ADMINISTERED BY JAMS AND CONDUCTED, UNLESS OTHERWISE REQUIRED BY LAW, IN ANY U.S. STATE WHERE REAL OR TANGIBLE PERSONAL PROPERTY COLLATERAL FOR THIS CREDIT IS LOCATED OR IF THERE IS NO SUCH COLLATERAL, IN THE STATE OF NORTH CAROLINA. ALL CLAIMS SHALL BE DETERMINED BY ONE ARBITRATOR; *HOWEVER* , IF CLAIMS EXCEED $5,000,000, UPON THE REQUEST OF ANY PARTY, THE CLAIMS SHALL BE DECIDED BY THREE ARBITRATORS. ALL ARBITRATION HEARINGS SHALL COMMENCE WITHIN 90 DAYS OF THE DEMAND FOR ARBITRATION AND CLOSE WITHIN 90 DAYS OF COMMENCEMENT AND THE AWARD OF THE ARBITRATOR(S) SHALL BE ISSUED WITHIN 30 DAYS OF THE CLOSE OF THE HEARING. HOWEVER, THE ARBITRATOR(S), UPON A SHOWING OF GOOD CAUSE, MAY EXTEND THE COMMENCEMENT OF THE HEARING FOR UP TO AN ADDITIONAL 60 DAYS. THE ARBITRATOR(S) SHALL PROVIDE A CONCISE WRITTEN STATEMENT OF REASONS FOR THE AWARD. THE ARBITRATION AWARD MAY BE SUBMITTED TO ANY COURT HAVING JURISDICTION TO BE CONFIRMED AND ENFORCED.

(f) THE ARBITRATOR(S) WILL HAVE THE AUTHORITY TO DECIDE WHETHER ANY CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS AND, IF SO, TO DISMISS THE ARBITRATION ON THAT BASIS. FOR PURPOSES OF THE APPLICATION OF THE STATUTE OF LIMITATIONS, THE SERVICE ON JAMS UNDER APPLICABLE JAMS RULES OF A NOTICE OF CLAIM IS THE EQUIVALENT OF THE FILING OF A LAWSUIT. ANY DISPUTE CONCERNING THIS ARBITRATION PROVISION OR WHETHER A CLAIM IS ARBITRABLE SHALL BE DETERMINED BY THE ARBITRATOR (S). THE ARBITRATOR(S) SHALL HAVE THE POWER TO AWARD LEGAL FEES PURSUANT TO THE TERMS OF THIS AGREEMENT.

(g) THIS *SECTION 9.13* DOES NOT LIMIT THE RIGHT OF ANY PARTY TO: (i) EXERCISE SELF-HELP REMEDIES, SUCH AS BUT NOT LIMITED TO, SETOFF; (ii) INITIATE JUDICIAL OR NONJUDICIAL FORECLOSURE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL; (iii) EXERCISE ANY JUDICIAL OR POWER OF SALE RIGHTS, OR (iv) ACT IN A COURT OF LAW TO OBTAIN AN INTERIM REMEDY, SUCH AS BUT NOT LIMITED TO, INJUNCTIVE RELIEF, WRIT OF POSSESSION OR APPOINTMENT OF A RECEIVER, OR ADDITIONAL OR SUPPLEMENTARY REMEDIES.

(h) BY AGREEING TO BINDING ARBITRATION, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM. FURTHERMORE, WITHOUT INTENDING IN ANY WAY TO LIMIT THIS AGREEMENT TO ARBITRATE, TO THE EXTENT ANY CLAIM IS NOT ARBITRATED, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF SUCH CLAIM. THIS

PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

9.14 USA PATRIOT Act Notice . The Lender that is subject to the Act (as hereinafter defined) and hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the " *Act* "), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act.

9.15 Time of the Essence . Time is of the essence of the Loan Documents.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

CROCS, INC.

By: /s/ RONALD SNYDER

Name: Ronald Snyder
Title: Chief Executive Officer and President

BANK OF AMERICA, N.A.

By: /s/ CHARLES R. DICKERSON

Name: Charles R. Dickerson
Title: Senior Vice President

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Exhibit 10.17

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Exhibit 10.18

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this " *Security Agreement* ") is made and entered into as of April 8, 2005, by **CROCS, INC.** , a Colorado corporation (the " *Borrower* " and the " *Grantor* ") and **BANK OF AMERICA, N.A.** , a national banking association, as Lender (the " *Lender* "). All capitalized terms used but not otherwise defined herein or pursuant to *Section 1* hereof shall have the respective meanings assigned thereto in the Credit Agreement (as defined below).

W I T N E S S E T H **:**

WHEREAS , the Lender has agreed to provide to the Borrower a revolving credit facility pursuant to the Credit Agreement dated as of April 8, 2005, by and among the Borrower and the Lender (as from time to time amended, revised, modified, supplemented or amended and restated, the " *Credit Agreement* "); and

WHEREAS , as collateral security for payment and performance of its Obligations, the Borrower is willing to grant to the Lender a security interest in certain of its personal property and assets pursuant to the terms of this Security Agreement; and

WHEREAS , the Lender is unwilling to enter into the Loan Documents unless the Borrower enters into this Security Agreement;

NOW, THEREFORE , in order to induce the Lender to enter into the Loan Documents and to make Loan, and in further consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

1. ***Certain Definitions .*** Terms used in this Security Agreement, not otherwise expressly defined herein or in the Credit Agreement, and for which meanings are provided in the Uniform Commercial Code of the State of North Carolina (the " *UCC* "), shall have such meanings.

2. ***Grant of Security Interest .*** The Borrower hereby grants as collateral security for the payment, performance and satisfaction of all of the Borrower's Obligations, and the prompt payment and performance when due of its obligations and liabilities hereunder and under all other Loan Documents to which it is a party (collectively, the " *Secured Obligations* "), to the Lender a continuing first priority security interest in and to, and collaterally assigns to the Lender all of the following property of the Grantor or in which the Grantor has or may have or acquire an interest or the power to transfer rights therein, whether now owned or existing or hereafter created, acquired or arising and wheresoever located:

(a) All accounts, and including accounts receivable, contracts, bills, acceptances, choses in action, and other forms of monetary obligations at any time owing to the Grantor arising out of property sold, leased, licensed, assigned or otherwise disposed of or for services rendered or to be rendered by the Grantor, and all of the Grantor's rights with respect to any property represented thereby, whether or not delivered, property returned by customers and all rights as an unpaid vendor or lienor, including rights of stoppage in transit and of recovering possession by proceedings including replevin and reclamation (collectively referred to hereinafter as " *Accounts* ");

(b) All inventory, including all goods manufactured or acquired for sale or lease, and any piece goods, raw materials, work in process and finished merchandise, component materials, and all supplies, goods, incidentals, office supplies, packaging materials and any and all items used or consumed in the operation of the business of the Grantor or which may contribute to the finished product or to the sale, promotion and shipment thereof, in which the Grantor now or at any time hereafter may have an interest, whether or not the same is in transit or in the constructive, actual or exclusive occupancy or possession of the Grantor or is held by the Grantor or by others for the Grantor's account (collectively referred to hereinafter as " *Inventory* ");

(c) All goods, including all machinery, equipment, motor vehicles, parts, supplies, apparatus, appliances, tools, patterns, molds, dies, blueprints, fittings, furniture, furnishings, fixtures and articles of tangible personal property of every description, and all computer programs embedded in any of the foregoing and all supporting information relating to such computer programs, but excluding motor vehicles subject to any certificate of title law (collectively referred to hereinafter as " *Equipment* ");

(d) All general intangibles, including all rights now or hereafter accruing to the Grantor under contracts, leases, agreements or other instruments, including all contracts or contract rights to perform or receive services, to purchase or sell goods, or to hold or use land or facilities, and to enforce all rights thereunder, all causes of action, corporate or business records, inventions, patents and patent rights, rights in mask works, designs, trade names and trademarks and all goodwill associated therewith, trade secrets, trade processes, copyrights, licenses, permits, franchises, customer lists, computer programs and software, all internet domain names and registration rights thereto, all internet websites and the content thereof, all payment intangibles, all claims under guaranties, tax refund claims, all rights and claims against carriers and shippers, leases, all claims under insurance policies, all interests in general and limited partnerships and limited liability companies, and other Persons not constituting Investment Property (as defined below), all rights to indemnification and all other intangible personal property and intellectual property of every kind and nature, including but not limited to those patents, trademarks and copyrights listed on *Schedule 2(d)* attached hereto (collectively referred to hereinafter as " *General Intangibles* ");

(e) All chattel paper, including tangible chattel paper, electronic chattel paper, or any hybrid thereof (collectively referred to hereinafter as " *Chattel Paper* ");

(f) All investment property, including all securities, security entitlements, securities accounts, commodity contracts and commodity accounts of or maintained for the benefit of the Grantor (collectively referred to hereinafter as " *Investment Property* ");

(g) All instruments, including all promissory notes (collectively referred to hereinafter as " *Instruments* ");

(h) All documents, including warehouse receipts, bills of lading and other documents of title (collectively referred to hereinafter as " *Documents* ");

(i) All rights to payment or performance under letters of credit including rights to proceeds of letters of credit (" *Letter-of-Credit Rights* "), and all Guarantees, endorsements, Liens, supporting obligations and other obligations of any Person securing or supporting the payment, performance, value or liquidation of any of the foregoing (collectively, with Letter-of-Credit Rights, referred to hereinafter as " *Supporting Obligations* ");

(j) All books and records relating to any of the forgoing (including customer data, credit files, ledgers, computer programs, printouts, and other computer materials and records (and all media on which such data, files, programs, materials and records are or may be stored)); and

(k) All proceeds, products and replacements of, accessions to, and substitutions for, any of the foregoing, including without limitation proceeds of insurance policies insuring any of the foregoing.

All of the property and interests in property described in subsections (a) through (k) are herein collectively referred to as the " *Collateral* ."

3. ***Perfection .***

At the time of execution of this Security Agreement, the Grantor shall have:

(a) furnished the Lender with financing statements in form, number and substance suitable for filing, sufficient under applicable law, and satisfactory in order that upon the filing of the same the Lender shall have a duly perfected security interest in all Collateral in which a security interest can be perfected by the filing of financing statements;

(b) delivered to the Lender possession of all Collateral with respect to which either a security interest can be perfected only by possession or a security interest perfected by possession shall have priority as against Persons not having possession, so that the Lender shall have a security interest in all such Collateral perfected by possession; subject in each case only to Liens allowed to exist and have priority under *Section 7.01* of the Credit Agreement (" *Permitted Liens* "); and

(c) delivered to the Lender notice of any patents, trademarks or copyrights registered with the Parent and Trademark Office, the Copyright Office or any similar office or agency, whether in the United States or any other country, and, upon the request of the Lender, delivered such perfection documents or filing statements as are required to perfect an interest in such intellectual property; *provided* , *however* , that the Lender shall have no obligation to file such perfection documents and/or filing statements and shall incur no liability with respect to such perfection documents and/or filing statements.

All financing statements (including all amendments thereto and continuations thereof), control agreements, certificates, acknowledgments, stock powers and other documents, electronic identification, restrictive legends, and instruments furnished in connection with the creation, enforcement, protection, perfection or priority of the Lender's security interest in Collateral, including such items as are described above in this *Section 3* , are sometimes referred to herein as " *Perfection Documents* ." The delivery of possession of items of or evidencing Collateral, causing other Persons to execute and deliver Perfection Documents as appropriate, the filing or recordation of Perfection Documents, the establishment of control over items of Collateral, and the taking of such other actions as may be necessary or advisable in the determination of the Lender to create, enforce, protect, perfect, or establish or maintain the priority of, the security interest of the Lender in the Collateral is sometimes referred to herein as " *Perfection Action* ."

4. ***Maintenance of Security Interest; Further Assurances .***

(a) The Grantor will from time to time at its own expense, deliver specific assignments of Collateral or such other Perfection Documents, and take such other or additional Perfection Action, as may be required by the terms of the Loan Documents or as the Lender may reasonably request in connection with the administration or enforcement of this Security Agreement or related to the Collateral or any part thereof in order to carry out the terms of this Security Agreement, to perfect, protect, maintain the priority of or enforce the Lender's security interest in the Collateral, subject only to Permitted Liens, or otherwise to better assure and confirm unto the Lender its rights, powers and remedies for the benefit of the Lender hereunder. Without limiting the foregoing, the Grantor hereby irrevocably authorizes the Lender to file (with, or to the extent permitted by applicable law, without the signature of the Grantor appearing thereon) financing statements (including amendments thereto and initial financing statements in lieu of continuation statements) or other Perfection Documents (including copies thereof) showing the Grantor as "debtor" at such time or times and in all filing offices as the Lender may from time to time determine to be necessary or advisable to perfect or protect the rights of the Lender hereunder, or otherwise to give effect to the transactions herein contemplated. The Grantor hereby irrevocably ratifies and acknowledges the Lender's authority to have effected filings of Perfection Documents made by the Lender prior to the date hereof.

(b) With respect to any and all Collateral, the Grantor agrees to do and cause to be done all things necessary to perfect, maintain the priority of and keep in full force the security interest granted in favor of the Lender, including, but not limited to, the prompt payment upon demand therefor by the Lender of all fees and expenses (including documentary stamp, excise or intangibles taxes) incurred in connection with the preparation, delivery, or filing of any Perfection Document or the taking of any Perfection Action to perfect, protect or enforce a security interest in Collateral in favor of the Lender, subject only to Permitted Liens. All amounts not so paid when due shall constitute additional Secured Obligations and (in addition to other rights and remedies resulting from such nonpayment) shall bear interest from the date of demand until paid in full at the Default Rate.

(c) The Grantor agrees to maintain among its books and records appropriate notations or evidence of, and to make or cause to be made appropriate disclosure upon its financial statements of, the security interest granted hereunder to the Lender.

(d) The Grantor agrees that, in the event any proceeds (other than goods) of Collateral shall be or become commingled with other property not constituting Collateral, then such proceeds may, to the extent permitted by law, be identified by application of the lowest intermediate balance rule to such commingled property.

5. ***Receipt of Payment .*** In the event an Event of Default shall occur and be continuing and the Grantor (or any of its affiliates, stockholders, directors, officers, employees or agents) shall receive any proceeds of Collateral, including without limitation monies, checks, notes, drafts or any other items of payment, the Grantor shall hold all such items of payment in trust for the Lender, and as the property of the Lender, separate from the funds and other property of the Grantor, and no later than the first Business Day following the receipt thereof, at the election of the Lender, the Grantor shall cause such Collateral to be forwarded to the Lender for its custody, possession and disposition in accordance with the terms hereof and of the other Loan Documents.

6. ***Preservation and Protection of Collateral .***

(a) The Lender shall be under no duty or liability with respect to the collection, protection or preservation of the Collateral, or otherwise, except to the extent expressly contemplated under *Section 25* . The Grantor shall be responsible for the safekeeping of its Collateral, and in no event shall the Lender have any responsibility for (i) any loss or damage thereto or destruction thereof occurring or arising in any manner or fashion from any cause, (ii) any diminution in the value thereof, or (iii) any act or default of any carrier, warehouseman, bailee or forwarding agency thereof or other Person in any way dealing with or handling such Collateral.

(b) The Grantor shall keep and maintain its tangible personal property Collateral in good operating condition and repair, ordinary wear and tear excepted. The Grantor shall not permit any such items to become a fixture to real property (unless the Grantor has granted the Lender a Lien on such real property having a priority acceptable to the Lender) or accessions to other personal property.

(c) The Grantor agrees (i) to pay when due all taxes, charges and assessments against the Collateral in which it has any interest, unless being contested in good faith by appropriate proceedings diligently conducted and against which adequate reserves have been established in accordance with GAAP applied on a Consistent Basis and evidenced to the satisfaction of the Lender and provided that all enforcement proceedings in the nature of levy or foreclosure are effectively stayed, and (ii) to cause to be terminated and released all Liens (other than Permitted Liens) on the Collateral. Upon the failure of the Grantor to so pay or contest such taxes, charges, or assessments, or cause such Liens to be terminated, the Lender at its option may pay or contest any of them or amounts relating thereto (the Lender having the sole right to determine the legality

or validity and the amount necessary to discharge such taxes, charges, Liens or assessments) but shall not have any obligation to make any such payment or contest. All sums so disbursed by the Lender, including reasonable attorneys' fees, court costs, expenses and other charges related thereto, shall be payable on demand by the Grantor to the Lender and shall be additional Secured Obligations secured by the Collateral, and any amounts not so paid on demand (in addition to other rights and remedies resulting from such nonpayment) shall bear interest from the date of demand until paid in full at the Default Rate.

7. ***Status of Grantors and Collateral Generally.*** The Grantor represents and warrants to, and covenants with, the Lender, with respect to itself and the Collateral as to which it has or acquires any interest, that:

(a) It is (or as to Collateral acquired after the date hereof will be upon the acquisition of the same) and, except as permitted by the Credit Agreement and subsection (b) of this *Section 7* , will continue to be, the owner of the Collateral, free and clear of all Liens, other than the security interest hereunder in favor of the Lender and Permitted Liens, and that it will at its own cost and expense defend such Collateral and any products and proceeds thereof against all claims and demands of all Persons (other than holders of Permitted Liens) at any time claiming the same or any interest therein adverse to the Lender. Upon the failure of the Grantor to so defend, the Lender may do so at its option but shall not have any obligation to do so. All sums so disbursed by the Lender, including reasonable attorneys' fees, court costs, expenses and other charges related thereto, shall be payable on demand by the Grantor to the Lender and shall be additional Secured Obligations secured by the Collateral, and any amounts not so paid on demand (in addition to other rights and remedies resulting from such nonpayment) shall bear interest from the date of demand until paid in full at the Default Rate.

(b) It shall not (i) sell, assign, transfer, lease, license or otherwise dispose of any of, or grant any option with respect to, the Collateral, except for dispositions permitted under the Credit Agreement, (ii) create or suffer to exist any Lien upon or with respect to any of the Collateral except for the security interests created by this Security Agreement and Permitted Liens, or (iii) take any other action in connection with any of the Collateral that would materially impair the value of the interest or rights of the Grantor in the Collateral taken as a whole or that would materially impair the interest or rights of the Lender.

(c) It has full power, legal right and lawful authority to enter into this Security Agreement and to perform its terms, including the grant of the security interests in the Collateral herein provided for.

(d) No authorization, consent, approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required either (i) for the grant by the Grantor of the security interests granted hereby or for the execution, delivery or performance of this Security Agreement by the Grantor, or (ii) for the perfection of or the exercise by the Lender of its rights and remedies hereunder, except for action required or by the Uniform Commercial Code to perfect the security interest conferred hereunder.

(e) No effective financing statement or other Perfection Document similar in effect, nor any other Perfection Action, covering all or any part of the Collateral purported to be granted or taken by or on behalf of the Grantor (or by or on behalf of any other Person and which remains effective as against all or any part of the Collateral) has been filed in any recording office, delivered to another Person for filing (whether upon the occurrence of a contingency or otherwise), or otherwise taken, as the case may be, except such as pertain to Permitted Liens and such as may have been filed for the benefit of, delivered to, or taken in favor of, the Lender in connection with the security interests conferred hereunder.

(f) *Schedule 7(f)* attached hereto contains true and complete information as to each of the following: (i) the exact legal name of the Grantor as it appears in its Organizational Documents as of the date hereof and at any time during the five (5) year period ending as of the date hereof (the " *Covered Period* "), (ii) the jurisdiction of formation and form of organization of the Grantor, and the identification number (if any) of the Grantor in its jurisdiction of formation, (iii) the address of the chief executive office of the Grantor as of the date hereof and at any time during the Covered Period, (iv) all trade names or trade styles used by the Grantor as of the date hereof and at any time during the Covered Period, (v) the address of each location of the Grantor at which any tangible personal property Collateral (including Account Records (as defined below) and Account Documents (as defined below)) is located at the date hereof or has been located at any time during the Covered Period, (vi) with respect to each location described in clause (v) that is not owned beneficially and of record by the Grantor, the name and address of the owner thereof; and (vii) the name of each Person other than the Grantor and the address of such Person at which any tangible personal property Collateral of the Grantor is held under any warehouse, consignment, bailment or other arrangement as of the date hereof. The Grantor shall not change its name, change its jurisdiction of formation (whether by reincorporation, merger or otherwise), change the location of its chief executive office, utilize any additional location where tangible personal property Collateral (including Account Records and Account Documents) may be located or garaged, or change or use any additional or different trade name or style, except in each case upon giving not less than fifteen (15) days' prior written notice to the Lender and taking or causing to be taken at the Grantor's expense all such Perfection Action, including the delivery of such Perfection Documents, as may be reasonably requested by the Lender to perfect or protect, or maintain the perfection and priority of, the Lien of the Lender in Collateral contemplated hereunder.

(g) The Grantor shall not engage in any consignment transaction in respect of any of the Collateral, whether as consignee or consignor.

(h) The Grantor shall not cause, suffer or permit any of the tangible personal property Collateral (i) to be evidenced by any document of title (except for shipping documents as necessary or customary to effect the delivery of inventory to customers in the ordinary course of business) or (ii) to be in the possession, custody or control of any warehouseman or other bailee unless such location and Person are set forth on *Schedule 7(f)* or the Lender shall have received not less than 30 days' prior written notice of each such transaction, and the Grantor shall have caused at its expense to be prepared and executed such additional Perfection Documents and to be taken such other Perfection Action as the Lender may deem necessary or advisable to carry out the transactions contemplated by this Security Agreement.

(i) No tangible personal property Collateral is or shall be located at any location that is leased by the Grantor from any other Person, unless (x) such location and lessor is set forth on *Schedule 7(f)* attached hereto or the Grantor provides not less than thirty (30) days' prior written notice thereof to the Lender, (y) such lessor acknowledges the Lien in favor of the Lender conferred hereunder and waives its statutory and consensual liens and rights with respect to such Collateral in form and substance acceptable to the Lender and delivered in writing to the Lender prior to any Collateral being located at any such location, and (z) the Grantor shall have caused at its expense to be prepared and executed such additional Perfection Documents and to be taken such other Perfection Action as the Lender may deem necessary or advisable to carry out the transactions contemplated by this Security Agreement.

8. ***Inspection.*** The Lender (by any of its officers, employees and agents) shall have the right upon prior notice to an executive officer of the Grantor, and at any reasonable times during the Grantor's usual business hours, to inspect the Collateral, all records related thereto (and to make extracts or copies from such records), and the premises upon which any of the Collateral is located, to

discuss the Grantor's affairs and finances with any Person (other than Persons obligated on any Accounts (" *Account Debtors* ") except as expressly otherwise permitted in the Loan Documents) and to verify with any Person other than (except as expressly otherwise permitted in the Loan Documents) Account Debtors the amount, quality, quantity, value and condition of, or any other matter relating to, the Collateral and, if an Event of Default has occurred and is continuing, to discuss the Grantor's affairs and finances with the Grantor's Account Debtors and to verify the amount, quality, value and condition of, or any other matter relating to, the Collateral with such Account Debtors. Upon or after the occurrence and during the continuation of an Event of Default, the Lender may at any time and from time to time employ and maintain on the Grantor's premises a custodian selected by the Lender who shall have full authority to do all acts necessary to protect the Lender's interest. All expenses incurred by the Lender by reason of the employment of such custodian shall be paid by the Grantor on demand from time to time and shall be added to the Secured Obligations secured by the Collateral, and any amounts not so paid on demand (in addition to other rights and remedies resulting from such nonpayment) shall bear interest from the date of demand until paid in full at the Default Rate.

9. ***Specific Collateral .***

(a) ***Accounts.*** With respect to its Accounts whether now existing or hereafter created or acquired and wheresoever located, the Grantor represents, warrants and covenants to the Lender that:

(i) The Grantor shall keep accurate and complete records of its Accounts (" *Account Records* ") and from time to time at intervals designated by the Lender the Grantor shall provide the Lender with a schedule of Accounts in form and substance acceptable to the Lender describing all Accounts created or acquired by the Grantor (" *Schedule of Accounts* "); *provided , however* , that the Grantor's failure to execute and deliver any such Schedule of Accounts shall not affect or limit the Lender's security interest or other rights in and to any Accounts. If requested by the Lender, the Grantor shall furnish the Lender with copies of proof of delivery and other documents relating to the Accounts so scheduled, including without limitation repayment histories and present status reports (collectively, " *Account Documents* ") and such other matter and information relating to the status of then existing Accounts as the Lender shall request.

(ii) All Account Records and Account Documents are and shall at all times be located only at the Grantor's current chief executive office as set forth on *Schedule 7(f)* attached hereto, such other locations as are specifically identified on *Schedule 7(f)* attached hereto as an "Account Documents location," or as to which the Grantor has complied with *Section 7(f)* hereof.

(iii) The Accounts, to the best of the Borrower's knowledge, are genuine, are in all respects what they purport to be and are not evidenced by an instrument or document or, if evidenced by an instrument or document, are only evidenced by one original instrument or document.

(iv) The Accounts cover bona fide sales and deliveries of Inventory usually dealt in by the Grantor, or the rendition by the Grantor of services, to an Account Debtor in the ordinary course of business.

(v) The amounts of the face value of any Account shown or reflected on any Schedule of Accounts, invoice statement, or certificate delivered to the Lender, are actually owing to the Grantor and are not contingent for any reason; and there are no setoffs, discounts, allowances, claims, counterclaims or disputes of any kind or description in an amount greater than $100,000 in the aggregate, or greater than $50,000 individually, existing or asserted with respect thereto and the Grantor has not made any agreement with any Account Debtor

thereunder for any deduction therefrom, except as may be stated in the Schedule of Accounts and reflected in the calculation of the face value of each respective invoice related thereto.

(vi) Except for conditions generally applicable to the Grantor's industry and markets, there are no facts, events, or occurrences known to the Grantor pertaining particularly to any Accounts which are reasonably expected to materially impair in any way the validity, collectibility or enforcement of Accounts that would reasonably be likely, in the aggregate, to be of material economic value, or in the aggregate materially reduce the amount payable thereunder from the amount of the invoice face value shown on any Schedule of Accounts, or on any certificate, contract, invoice or statement delivered to the Lender with respect thereto.

(vii) The goods or services giving rise thereto are not, and were not at the time of the sale or performance thereof, subject to any Lien, claim, encumbrance or security interest, except those of the Lender and Permitted Liens.

(viii) In the event any amounts due and owing in excess of $10,000 individually, or $50,000 in the aggregate amount, are in dispute between any Account Debtor and the Grantor (which shall include without limitation any dispute in which an offset claim or counterclaim may result), the Grantor shall provide the Lender with written notice thereof as soon as practicable, explaining in detail the reason for the dispute, all claims related thereto and the amount in controversy.

(b) ***Inventory.*** With respect to its Inventory whether now existing or hereafter created or acquired and wheresoever located, the Grantor represents, warrants and covenants to the Lender that:

(i) The Grantor shall keep accurate and complete records itemizing and describing the kind, type, location and quantity of Inventory, its cost therefor and the selling price of Inventory held for sale, and the daily withdrawals therefrom and additions thereto, and shall furnish to the Lender from time to time at reasonable intervals designated by the Lender, a current schedule of Inventory (" *Schedule of Inventory* ") based upon its most recent physical inventory and its daily inventory records. The Grantor shall conduct a physical inventory no less frequently than annually, and shall furnish to the Lender such other documents and reports thereof as the Lender shall reasonably request with respect to the Inventory.

(ii) All Inventory, other than Inventory having a value of less than $10,000 in the aggregate for all locations, is and shall at all times be located only at the Grantor's locations as set forth on *Schedule 7(f)* attached hereto or at such other locations as to which the Grantor has complied with *Section 7(f)* hereof. The Grantor shall not, other than in the ordinary course of business in connection with its sale, lease, license or other permitted disposition, remove any Inventory having an aggregate value in excess of that stated in the preceding sentence from such locations.

(iii) If any Account Debtor returns any Inventory to the Grantor after shipment thereof, and such return generates a credit in excess of $10,000 on any individual Account or $50,000 in the aggregate on any Accounts of such Account Debtor, the Grantor shall notify the Lender in writing of the same as soon as practicable.

(c) ***Equipment.*** With respect to its Equipment whether now existing or hereafter created or acquired and wheresoever located, the Grantor represents, warrants and covenants to the Lender that:

(i) The Grantors, as soon as practicable following a request therefor by the Lender, shall deliver to the Lender any and all evidence of ownership of any of the Equipment (including without limitation certificates of title and applications for title).

(ii) The Grantors shall maintain accurate, itemized records describing the kind, type, quality, quantity and value of its Equipment and shall furnish the Lender upon request with a current schedule containing the foregoing information, but, other than during the continuance of an Event of Default, not more often than once per fiscal quarter.

(iii) All Equipment, other than Equipment having a value of less than $50,000 in the aggregate for all locations, is and shall at all times be located only at the Grantor's locations as set forth on *Schedule 7(f)* attached hereto or at such other locations as to which the Grantor has complied with *Section 7(f)* hereof. The Grantor shall not, other than as expressly permitted hereunder or under the Credit Agreement, sell, lease, transfer, dispose of or remove any Equipment from such locations, having an aggregate value in excess of that stated in the preceding sentence from such locations.

10. ***Casualty and Liability Insurance Required.***

(a) The Grantor will keep the Collateral continuously insured against such risks as are customarily insured against by businesses of like size and type engaged in the same or similar operations including:

(i) casualty insurance on the Inventory and the Equipment in an amount not less than the full insurable value thereof, against loss or damage by theft, fire, lightning and other hazards ordinarily included under uniform broad form standard extended coverage policies, limited only as may be provided in the standard broad form of extended coverage endorsement at the time in use in the states in which the Collateral is located;

(ii) comprehensive general liability insurance against claims for bodily injury, death or property damage occurring with or about such Collateral (all such coverage to include provisions waiving subrogation against the Lender), with the Lender as additional insured thereunder, in amounts as shall be reasonably satisfactory to Lender;

(iii) liability insurance with respect to the operation of its facilities under the workers' compensation laws of the states in which such Collateral is located, in amounts as shall be reasonably satisfactory to Lender; and

(iv) business interruption insurance in amounts as shall be reasonably satisfactory to Lender.

(b) Each insurance policy obtained in satisfaction of the requirements of *Section 10(a)* :

(i) may be provided by blanket policies now or hereafter maintained by the Grantor;

(ii) shall be issued by such insurer (or insurers) as shall be financially responsible, of recognized standing and reasonably acceptable to the Lender;

(iii) shall be in such form and have such provisions (including without limitation the loss payable clause, the waiver of subrogation clause, the deductible amount, if any, and the standard mortgagee endorsement clause) as are generally considered standard provisions for the type of insurance involved and are reasonably acceptable in all respects to the Lender;

(iv) shall prohibit cancellation or substantial modification, termination or lapse in coverage by the insurer without at least 30 days' prior written notice to the Lender, except for non-payment of premium, as to which such policies shall provide for at least ten (10) days' prior written notice to the Lender;

(v) without limiting the generality of the foregoing, all insurance policies where applicable under *Section 10(a)(i)* carried on the Collateral shall name the Lender as loss payee and the Lender as a party insured thereunder in respect of any claim for payment.

(c) Prior to expiration of any such policy, the Grantor shall furnish the Lender with evidence satisfactory to the Lender that the policy or certificate has been renewed or replaced or is no longer required by this Security Agreement.

(d) The Grantor hereby makes, constitutes and appoints the Lender (and all officers, employees or agents designated by the Lender) as the Grantor's true and lawful attorney (and agent-in-fact) for the purpose of making, settling and adjusting claims under such policies of insurance, endorsing the name of the Grantor on any check, draft, instrument or other item or payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect to such policies of insurance, which appointment is coupled with an interest and is irrevocable; provided, however, that the powers pursuant to such appointment shall be exercisable only upon the occurrence and during the continuation of an Event of Default.

(e) In the event the Grantor shall fail to maintain, or fail to cause to be maintained, the full insurance coverage required hereunder or shall fail to keep any of its Collateral in good repair and good operating condition, the Lender may (but shall be under no obligation to), without waiving or releasing any Secured Obligation or Default or Event of Default by the Grantor hereunder, contract for the required policies of insurance and pay the premiums on the same or make any required repairs, renewals and replacements; and all sums so disbursed by Lender, including reasonable attorneys' fees, court costs, expenses and other charges related thereto, shall be payable on demand by the Grantor to the Lender, shall be additional Secured Obligations secured by the Collateral, and (in addition to other rights and remedies resulting from such nonpayment) shall bear interest from the date of demand until paid in full at the Default Rate.

(f) The Grantor agrees that to the extent that it shall fail to maintain, or fail to cause to be maintained, the full insurance coverage required by *Section 10(a)* , it shall in the event of any loss or casualty pay promptly to the Lender to be held in a separate account for application in accordance with the provisions of *Sections 10(h)* , such amount as would have been received as Net Proceeds (as hereinafter defined) by the Lender under the provisions of *Section 10(h)* had such insurance been carried to the extent required.

(g) The Net Proceeds of the insurance carried pursuant to the provisions of *Sections 10(a)(ii)* and *10(a)(iii)* shall be applied by the Grantor toward satisfaction of the claim or liability with respect to which such insurance proceeds may be paid.

(h) The Net Proceeds of the insurance carried with respect to the Collateral pursuant to the provisions of *Section 10(a)(i)* hereof shall be paid to the Grantor and held by the Grantor in a separate account and applied, as follows: after any loss under any such insurance and payment of the proceeds of such insurance, the Grantor shall have a period of 30 days after payment of the insurance proceeds with respect to such loss to elect to either (x) repair or replace the Collateral so damaged, (y) deliver such Net Proceeds to the Lender as additional Collateral or (z) apply such Net Proceeds to the acquisition of tangible assets constituting Collateral used or useful in the conduct of the business of the Grantor, subject to the provisions of this Security Agreement. If the Grantor elects to repair or replace the Collateral so damaged, the Grantor agrees the Collateral shall be repaired to a condition substantially similar to or of better quality or higher value than its condition prior to damage or replaced with Collateral in a condition substantially similar to or of better quality or higher value than the condition of the Collateral so replaced prior to damage. At all times during which an Event of Default shall have occurred and be continuing, the Lender shall be entitled to receive direct and immediate payment of the proceeds of such insurance and the Grantor shall take all action as the Lender may reasonably request to accomplish such payment. Notwithstanding the foregoing, in the event the Grantor shall receive any such proceeds, the Grantor shall immediately deliver such proceeds to the Lender as additional Collateral, and

pending such delivery shall hold such proceeds in trust for the Lender and keep the same segregated from its other funds.

(i) "Net Proceeds" when used with respect to any insurance proceeds shall mean the gross proceeds from such proceeds, award or other amount, less all taxes, fees and expenses (including attorneys' fees) incurred in the realization thereof.

(j) In case of any material damage to, destruction or loss of, or claim or proceeding against, all or any material part of the Collateral pledged hereunder by the Grantor, the Grantor shall give prompt notice thereof to the Lender. Each such notice shall describe generally the nature and extent of such damage, destruction, loss, claim or proceeding. Subject to *Section 10(d)* , the Grantor is hereby authorized and empowered to adjust or compromise any loss under any such insurance other than losses relating to claims made directly against the Lender as to which the insurance described in *Section 10(a)(ii) or (iii)* is applicable.

(k) The provisions contained in this Security Agreement pertaining to insurance shall be cumulative with any additional provisions imposing additional insurance requirements with respect to the Collateral or any other property on which a Lien is conferred under any Security Instrument.

11. ***Rights and Remedies Upon Event of Default.*** Upon and after an Event of Default, the Lender shall have the following rights and remedies in addition to any rights and remedies set forth elsewhere in this Security Agreement or the other Loan Documents, all of which may be exercised with or, if allowed by law, without notice to the Grantor:

(a) All of the rights and remedies of a secured party under the UCC or under other applicable law, all of which rights and remedies shall be cumulative, and none of which shall be exclusive, to the extent permitted by law, in addition to any other rights and remedies contained in this Security Agreement or any other Loan Document;

(b) The right to foreclose the Liens and security interests created under this Security Agreement by any available judicial procedure or without judicial process;

(c) The right to (i) enter upon the premises of the Grantor through self-help and without judicial process, without first obtaining a final judgment or giving the Grantor notice or opportunity for a hearing on the validity of the Lender's claim and without any obligation to pay rent to the Grantor, or any other place or places where any Collateral is located and kept, and remove the Collateral therefrom to the premises of the Lender or any agent of the Lender, for such time as the Lender may desire, in order effectively to collect or liquidate the Collateral, (ii) require the Grantor or any bailee or other agent of the Grantor to assemble the Collateral and make it available to the Lender at a place to be designated by the Lender that is reasonably convenient to both parties, and (iii) notify any or all Persons who have possession of or control over any Collateral of the occurrence of an Event of Default and other appropriate circumstances, and exercise control over and take possession or custody of any or all Collateral in the possession, custody or control of such other Persons;

(d) The right to (i) exercise all of the Grantor's rights and remedies with respect to the collection of Accounts and General Intangibles (collectively, " *Payment Collateral* "), including the right to demand payment thereof and enforce payment, by legal proceedings or otherwise; (ii) settle, adjust, compromise, extend or renew all or any Payment Collateral or any legal proceedings pertaining thereto; (iii) discharge and release all or any Payment Collateral; (iv) take control, in any manner, of any item of payment or proceeds referred to in *Section 5* above; (v) prepare, file and sign the Grantor's name on any Proof of Claim in bankruptcy, notice of Lien, assignment or satisfaction of Lien or similar document in any action or proceeding adverse to any obligor under any Payment Collateral or otherwise in connection with any Payment Collateral;

(vi) endorse the name of the Grantor upon any chattel paper, document, instrument, invoice, freight bill, bill of lading or similar document or agreement relating to any Collateral; (vii) use the information recorded on or contained on the Grantor's internet website or otherwise in any data processing equipment and computer hardware and software relating to any Collateral to which the Grantor has access; (viii) open the Grantor's mail and collect any and all amounts due to the Grantor from any Account Debtors or other obligor in respect of Payment Collateral; (ix) take over the Grantor's post office boxes or make other arrangements as the Lender deems necessary to receive the Grantor's mail, including notifying the post office authorities to change the address for delivery of the Grantor's mail to such address as the Lender may designate; (x) notify any or all Account Debtors or other obligor on any Payment Collateral that such Payment Collateral has been assigned to the Lender and that Lender has a security interest therein (provided that the Lender may at any time give such notice to an Account Debtor that is a department, agency or authority of the United States government); the Grantor hereby agrees that any such notice, in the Lender's sole discretion, may (but need not) be sent on the Grantor's stationery, in which event the Grantor shall co-sign such notice with the Lender; and (xi) do all acts and things and execute all documents necessary, in Lender's sole discretion, to collect the Payment Collateral; and

(e) The right to sell all or any Collateral in its then existing condition, or after any further manufacturing or processing thereof, at such time or times, at public or private sale or sales, with such notice as may be required by law, in lots or in bulk, for cash or on credit, with or without representations and warranties, all as the Lender, in its sole discretion, may deem advisable. The Lender shall have the right to conduct such sales on the Grantor's premises or elsewhere and shall have the right to use the Grantor's premises without charge for such sales for such time or times as the Lender may see fit. The Lender may, if it deems it reasonable, postpone or adjourn any sale of the Collateral from time to time by an announcement at the time and place of such postponed or adjourned sale, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Grantor agrees that the Lender has no obligation to preserve rights to the Collateral against prior parties or to marshal any Collateral for the benefit of any Person. The Lender is hereby granted a license or other right to use, without charge, the Grantor's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale and selling any Collateral. If any of the Collateral shall require repairs, maintenance, preparation or the like, or is in process or other unfinished state, the Lender shall have the right, but shall not be obligated, to perform such repairs, maintenance, preparation, processing or completion of manufacturing for the purpose of putting the same in such saleable form as the Lender shall deem appropriate, but the Lender shall have the right to sell or dispose of the Collateral without such processing and the Grantor shall not have any claim against the Lender for the value that may have been added to such Collateral with such processing. In addition, the Grantor agrees that in the event notice is necessary under applicable law, written notice mailed to the Grantor in the manner specified herein seven (7) days prior to the date of public sale of any of the Collateral or prior to the date after which any private sale or other disposition of the Collateral will be made shall constitute commercially reasonable notice to the Grantor. All notice is hereby waived with respect to any of the Collateral which threatens to decline speedily in value or is of a type customarily sold on a recognized market. The Lender may purchase all or any part of the Collateral at public or, if permitted by law, private sale, free from any right of redemption which is hereby expressly waived by the Grantor and, in lieu of actual payment of such purchase price, may set off the amount of such price against the Secured Obligations. The Grantor recognizes that the Lender may be unable to effect a public sale of certain of the Collateral by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the " *Securities Act* "), and applicable state law, and may be otherwise delayed or adversely affected in effecting any sale by reason of present or future restrictions thereon imposed

by governmental authorities (" *Affected Collateral* "), and that as a consequence of such prohibitions and restrictions the Lender may be compelled (i) to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire Affected Collateral, or (ii) to seek regulatory approval of any proposed sale or sales, or (iii) to limit the amount of Affected Collateral sold to any Person or group. The Grantor agrees and acknowledges that private sales so made may be at prices and upon terms less favorable to the Grantor than if such Affected Collateral was sold either at public sales or at private sales not subject to other regulatory restrictions, and that the Lender has no obligation to delay the sale of any Affected Collateral for the period of time necessary to permit the Grantor or any other Person to register or otherwise qualify them under or exempt them from any applicable restriction, even if the Grantor or other Person would agree to register or otherwise qualify or exempt such Affected Collateral so as to permit a public sale under the Securities Act or applicable state law. The Grantor further agrees, to the extent permitted by applicable law, that the use of private sales made under the foregoing circumstances to dispose of Affected Collateral shall be deemed to be dispositions in a commercially reasonable manner. The Grantor hereby acknowledges that a ready market may not exist for Affected Collateral that is not traded on a national securities exchange or quoted on an automated quotation system.

The net cash proceeds resulting from the collection, liquidation, sale, or other disposition of the Collateral shall be applied first to the expenses (including all attorneys' fees) of retaking, holding, storing, processing and preparing for sale, selling, collecting, liquidating and the like, and then to the satisfaction of all Secured Obligations in accordance with the terms of *Section 8.03* of the Credit Agreement. The Grantor shall be liable to the Lender and shall pay to the Lender on demand any deficiency which may remain after such sale, disposition, collection or liquidation of the Collateral.

12. ***Attorney-in-Fact.*** The Grantor hereby appoints the Lender as the Grantor's attorney-in-fact for the purposes of carrying out the provisions of this Security Agreement and taking any action and executing any instrument which the Lender may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest; *provided* , that the Lender shall have and may exercise rights under this power of attorney only upon the occurrence and during the continuance of an Event of Default. Without limiting the generality of the foregoing, upon the occurrence and during the continuance of an Event of Default, the Lender shall have the right and power

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(b) to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (a) above;

(c) to endorse the Grantor's name on any checks, notes, drafts or any other payment relating to or constituting proceeds of the Collateral which comes into the Lender's possession or the Lender's control, and deposit the same to the account of the Lender on account and for payment of the Secured Obligations.

(d) to file any claims or take any action or institute any proceedings that the Lender may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Lender with respect to any of the Collateral; and

(e) to execute, in connection with any sale or other disposition of Collateral provided for herein, any endorsement, assignments, or other instruments of conveyance or transfer with respect thereto.

13. ***Reinstatement.*** The granting of a security interest in the Collateral and the other provisions hereof shall continue to be effective or be reinstated, as the case may be, if at any time any payment of

any of the Secured Obligations is rescinded or must otherwise be returned by the Lender or is repaid by the Lender in whole or in part in good faith settlement of a pending or threatened avoidance claim, whether upon the insolvency, bankruptcy or reorganization of the Grantor or otherwise, all as though such payment had not been made. The provisions of this *Section 13* shall survive repayment of all of the Secured Obligations and the termination or expiration of this Security Agreement in any manner, including but not limited to termination upon occurrence of the Maturity Date.

14. ***Certain Waivers by the Grantors.*** The Grantor waives to the extent permitted by applicable law (a) any right to require the Lender or any other obligee of the Secured Obligations to (x) proceed against any Person or entity, (y) proceed against or exhaust any Collateral or other collateral for the Secured Obligations, or (z) pursue any other remedy in its power; (b) any defense arising by reason of any disability or other defense of any other Person, or by reason of the cessation from any cause whatsoever of the liability of any other Person or entity, (c) any right of subrogation, (d) any right to enforce any remedy which the Lender or any other obligee of the Secured Obligations now has or may hereafter have against any other Person and any benefit of and any right to participate in any collateral or security whatsoever now or hereafter held by the Lender. The Grantor authorizes the Lender without notice (except notice required by applicable law) or demand and without affecting its liability hereunder or under the Loan Documents from time to time to: (i) take and hold security, other than the Collateral herein described, for the payment of such Secured Obligations or any part thereof, and exchange, enforce, waive and release the Collateral herein described or any part thereof or any such other security; and (ii) apply such Collateral or other security and direct the order or manner of sale thereof as the Lender or such obligee in its discretion may determine.

The Lender may at any time deliver (without representation, recourse or warranty) the Collateral or any part thereof to the Grantor and the receipt thereof by the Grantor shall be a complete and full acquittance for the Collateral so delivered, and the Lender shall thereafter be discharged from any liability or responsibility therefor.

15. ***Continued Powers.*** Until the Maturity Date shall have occurred, the power of sale and other rights, powers and remedies granted to the Lender hereunder shall continue to exist and may be exercised by the Lender at any time and from time to time irrespective of the fact that any of the Secured Obligations or any part thereof may have become barred by any statute of limitations or that any part of the liability of the Grantor may have ceased.

16. ***Other Rights.*** The rights, powers and remedies given to the Lender by this Security Agreement shall be in addition to all rights, powers and remedies given to the Lender under any other Loan Document or by virtue of any statute or rule of law. Any forbearance or failure or delay by the Lender in exercising any right, power or remedy hereunder shall not be deemed to be a waiver of such right, power or remedy, and any single or partial exercise of any right, power or remedy hereunder shall not preclude the further exercise thereof; and every right, power and remedy of the Lender shall continue in full force and effect until such right, power or remedy is specifically waived in accordance with the terms of the Credit Agreement.

17. ***Anti-Marshaling Provisions.*** The right is hereby given by the Grantor to the Lender to make releases (whether in whole or in part) of all or any part of the Collateral agreeable to the Lender without notice to, or the consent, approval or agreement of other parties and interests, including junior lienors, which releases shall not impair in any manner the validity of or priority of the Liens and security interests in the remaining Collateral conferred hereunder, nor release the Grantor from personal liability for the Secured Obligations. Notwithstanding the existence of any other security interest in the Collateral held by the Lender, the Lender shall have the right to determine the order in which any or all of the Collateral shall be subjected to the remedies provided in this Security Agreement. The Grantor hereby waives any and all right to require the marshaling of assets in

connection with the exercise of any of the remedies permitted by applicable law or provided herein or in any other Loan Document.

18. ***Entire Agreement.*** This Security Agreement, together with the Credit Agreement and other Loan Documents, constitutes and expresses the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, agreements and understandings, inducements, commitments or conditions, express or implied, oral or written, except as contained in the Loan Documents. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. Neither this Security Agreement nor any portion or provision hereof may be changed, altered, modified, supplemented, discharged, canceled, terminated, or amended orally or in any manner other than as provided in the Credit Agreement.

19. ***Third Party Reliance.*** The Grantor hereby consents and agrees that all issuers of or obligors in respect of any Collateral, and all securities intermediaries, warehousemen, bailees, public officials and other Persons having any interest in, possession of, control over or right, privilege, duty or discretion in respect of, any Collateral shall be entitled to accept the provisions hereof as conclusive evidence of the right of the Lender to exercise its rights hereunder or thereunder with respect to the Collateral, notwithstanding any other notice or direction to the contrary heretofore or hereafter given by the Grantor or any other Person to any of such Persons.

20. ***Binding Agreement; Assignment.*** This Security Agreement and the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto, and to their respective successors and assigns, except that the Grantor shall not be permitted to assign this Security Agreement, or any interest herein, except as expressly permitted herein or in the Credit Agreement, in the Collateral or any part thereof, or otherwise, except as expressly permitted herein or in the Credit agreement, pledge, encumber or grant any option with respect to the Collateral or any part thereof. Without limiting the generality of the foregoing sentence of this *Section 20* , any Lender may assign to one or more Persons, or grant to one or more Persons participations in or to, all or any part of its rights and obligations under the Credit Agreement (to the extent permitted by the Credit Agreement); and to the extent of any such assignment or participation such other Person shall, to the fullest extent permitted by law, thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise, subject however, to the provisions of the Credit Agreement, including *Section 9.06* thereof (concerning participations). All references herein to the Lender and shall include any successor thereof or permitted assignee, and any other obligees from time to time of the Secured Obligations.

21. ***Swap Contracts.*** All obligations of the Grantor under or in respect of Swap Contracts (which are not prohibited under the terms of the credit Agreement) to which the Lender or any affiliate of the Lender is a party, shall be deemed to be Secured Obligations secured hereby, and the Lender or affiliate of the Lender party to such Swap Contract shall be deemed to be a Lender hereunder with respect to such Secured Obligations; *provided* , *however* , that such obligations shall case to be Secured Obligations at such time as such Person (or affiliate of such Person) shall cease to be a "Lender" under the Credit Agreement.

22. ***Severability.*** The provisions of this Security Agreement are independent of and separable from each other. If any provision hereof shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof, but this Security Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

23. ***Counterparts.*** This Security Agreement may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in

making proof of this Security Agreement to produce or account for more than one such counterpart executed by the Grantor against whom enforcement is sought.

24. ***Termination.*** Subject to the provisions of *Section 13* , this Security Agreement and all obligations of the Grantor hereunder (excluding those obligations and liabilities that expressly survive such termination) shall terminate without delivery of any instrument or performance of any act by any party on the Maturity Date. Upon such termination of this Security Agreement, the Lender shall, at the request and sole expense of the Grantors, promptly deliver to the Grantors such termination statements and take such further actions as the Grantors may reasonably request to terminate of record, or otherwise to give appropriate notice of the termination of, any Lien conferred hereunder.

25. ***Indemnification.*** Without limitation of *Section 9.04* of the Credit Agreement or any other indemnification provision in any Loan Document, the Grantor agrees to indemnify and hold harmless the Lender and each of its affiliates, and their respective officers, directors, employees, agents, and advisors (each, an "Indemnified Party"), from and against any and all claims, damages, losses, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of defense in connection therewith) the Loan Documents, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loan under the Loan Documents except to the extent such claim, damage, loss, liability, cost, or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this *Section 25* applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Grantor, any of their respective directors, shareholders or creditors, or an Indemnified Party or any other Person, or any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Grantor agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to it, any of its subsidiaries or affiliates, or any security holders or creditors thereof arising out of, related to or in connection with the transactions contemplated herein or in the other Loan Documents, except to the extent that such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have directly resulted from such Indemnified Party's gross negligence or willful misconduct. The Grantor agrees not to assert any claim against the Lender, any of its affiliates, or any of their respective directors, officers, employees, attorneys, agents, or advisers, on any theory of liability, for special, indirect, consequential, or punitive damages arising out of or otherwise relating to the Loan Documents, any of the transactions contemplated therein or the actual or proposed use of the proceeds of the Loan under the Loan Documents. The agreements in this *Section 25* shall survive repayment of all of the Secured Obligations and the termination or expiration of this Security Agreement in any manner, including but not limited to termination upon occurrence of the Maturity Date.

26. ***Notices.*** Any notice required or permitted hereunder shall be given (a) with respect to the Borrower, at the Borrower's address indicated on *Schedule 9.02* of the Credit Agreement and (b) with respect to the Lender, at the Lender's address indicated on *Schedule 9.02* of the Credit Agreement. All such addresses may be modified, and all such notices shall be given and shall be effective, as provided in *Section 9.02* of the Credit Agreement for the giving and effectiveness of notices and modifications of addresses thereunder.

27. ***Rules of Interpretation.*** The rules of interpretation contained in *Sections 1.02* through *1.05* of the Credit Agreement shall be applicable to this Security Agreement and are hereby incorporated by reference. All representations and warranties contained herein shall survive the delivery of documents and any extension of credit referred to herein or secured hereby.

28. ***Governing Law; Arbitration; Waiver of Jury Trial.***

(a) THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NORTH CAROLINA APPLICABLE TO CONTRACTS EXECUTED AND TO BE FULLY PERFORMED IN SUCH STATE; *PROVIDED THAT* (i) WITH RESPECT TO THOSE INSTANCES IN WHICH THE APPLICABLE CHOICE OF LAWS RULES OF SUCH STATE, INCLUDING SECTION 9-103 OF THE UCC, REQUIRE THAT THE MANNER OF CREATION OF A SECURITY INTEREST IN SPECIFIC COLLATERAL OR THE MANNER OR EFFECT OF PERFECTION OR NONPERFECTION OR THE RULES GOVERNING PRIORITY OF SECURITY INTERESTS ARE TO BE GOVERNED BY THE LAWS OF ANOTHER JURISDICTION, THEN THE LAWS OF SUCH OTHER JURISDICTION SHALL GOVERN SUCH MATTERS AND (ii) IN THOSE INSTANCES IN WHICH THE LAWS OF THE JURISDICTION IN WHICH COLLATERAL IS LOCATED GOVERN MATTERS PERTAINING TO THE METHODS AND EFFECT OF REALIZING ON COLLATERAL, SUCH LAWS SHALL BE GIVEN EFFECT WITH RESPECT TO SUCH MATTERS.

(b) THIS SECTION CONCERNS THE RESOLUTION OF ANY CONTROVERSIES OR CLAIMS BETWEEN THE GRANTOR AND THE LENDER, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE, INCLUDING BUT NOT LIMITED TO CONTROVERSIES OR CLAIMS THAT ARISE OUT OF OR RELATE TO: (i) THIS SECURITY AGREEMENT (INCLUDING ANY RENEWALS, EXTENSIONS OR MODIFICATIONS); OR (ii) ANY DOCUMENT RELATED TO THIS AGREEMENT (COLLECTIVELY, A " *CLAIM* ").

(c) AT THE REQUEST OF THE GRANTOR OR THE LENDER, ANY CLAIM SHALL BE RESOLVED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (TITLE 9, U.S. CODE) (THE " *ACT* "). THE ACT WILL APPLY EVEN THOUGH THIS AGREEMENT PROVIDES THAT IT IS GOVERNED BY THE LAW OF A SPECIFIED STATE.

(d) ARBITRATION PROCEEDINGS WILL BE DETERMINED IN ACCORDANCE WITH THE ACT, THE APPLICABLE RULES AND PROCEDURES FOR THE ARBITRATION OF DISPUTES OF JAMS OR ANY SUCCESSOR THEREOF (" *JAMS* ") AND THE TERMS OF THIS SECTION. IN THE EVENT OF ANY INCONSISTENCY, THE TERMS OF THIS SECTION SHALL CONTROL.

(e) THE ARBITRATION SHALL BE ADMINISTERED BY JAMS AND CONDUCTED IN THE STATE OF NORTH CAROLINA. ALL CLAIMS SHALL BE DETERMINED BY ONE ARBITRATOR; HOWEVER, IF CLAIMS EXCEED $5,000,000, UPON THE REQUEST OF ANY PARTY, THE CLAIMS SHALL BE DECIDED BY THREE ARBITRATORS. ALL ARBITRATION HEARINGS SHALL COMMENCE WITHIN 90 DAYS OF THE DEMAND FOR ARBITRATION AND CLOSE WITHIN 90 DAYS OF COMMENCEMENT AND THE AWARD OF THE ARBITRATOR(S) SHALL BE ISSUED WITHIN 30 DAYS OF THE CLOSE OF THE HEARING. HOWEVER, THE ARBITRATOR(S), UPON A SHOWING OF GOOD CAUSE, MAY EXTEND THE COMMENCEMENT OF THE HEARING FOR UP TO AN ADDITIONAL 60 DAYS. THE ARBITRATOR(S) SHALL PROVIDE A CONCISE WRITTEN STATEMENT OF REASONS FOR THE AWARD. THE ARBITRATION AWARD MAY BE SUBMITTED TO ANY COURT HAVING JURISDICTION TO BE CONFIRMED AND ENFORCED.

(f) THE ARBITRATOR(S) WILL HAVE THE AUTHORITY TO DECIDE WHETHER ANY CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS AND, IF SO, TO DISMISS THE ARBITRATION ON THAT BASIS. FOR PURPOSES OF THE APPLICATION OF THE STATUTE OF LIMITATIONS, THE SERVICE ON JAMS UNDER APPLICABLE JAMS RULES OF A NOTICE OF CLAIM IS THE EQUIVALENT OF THE FILING OF A LAWSUIT. ANY DISPUTE

CONCERNING THIS ARBITRATION PROVISION OR WHETHER A CLAIM IS ARBITRABLE SHALL BE DETERMINED BY THE ARBITRATOR(S). THE ARBITRATOR(S) SHALL HAVE THE POWER TO AWARD LEGAL FEES PURSUANT TO THE TERMS OF THIS AGREEMENT.

(g) THIS SECTION DOES NOT LIMIT THE RIGHT OF THE GRANTOR OR THE LENDER TO: (i) EXERCISE SELF-HELP REMEDIES, SUCH AS BUT NOT LIMITED TO, SETOFF; (ii) INITIATE JUDICIAL OR NONJUDICIAL FORECLOSURE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL; (iii) EXERCISE ANY JUDICIAL OR POWER OF SALE RIGHTS, OR (iv) ACT IN A COURT OF LAW TO OBTAIN AN INTERIM REMEDY, SUCH AS BUT NOT LIMITED TO, INJUNCTIVE RELIEF, WRIT OF POSSESSION OR APPOINTMENT OF A RECEIVER, OR ADDITIONAL OR SUPPLEMENTARY REMEDIES.

(h) BY AGREEING TO BINDING ARBITRATION, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM. FURTHERMORE, WITHOUT INTENDING IN ANY WAY TO LIMIT THIS AGREEMENT TO ARBITRATE, TO THE EXTENT ANY CLAIM IS NOT ARBITRATED, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF SUCH CLAIM. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF , the parties have duly executed this Security Agreement on the day and year first written above.

GRANTOR:

CROCS, INC.

By: /s/ RONALD SNYDER

Name: Ronald Snyder
Title: Chief Executive Officer and President

LENDER:

BANK OF AMERICA, N.A.

By: /s/ CHARLES R. DICKERSON

Name: Charles R. Dickerson
Title: Senior Vice President

QuickLinks

Exhibit 10.18

SECURITY AGREEMENT
W I T N E S S E T H

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.19

[*****] = Certain confidential information contained in this document, marked with brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment made pursuant to Rule 406 under the Securities Act of 1933, as amended.

CONFIDENTIAL

DISTRIBUTION AGREEMENT

This agreement ("Agreement"), which shall go into effect on April 1, 2005 ("Effective Date"), through July 1, 2015 unless extended or terminated as herein provided is between Crocs, Inc. (hereafter "Crocs"), a Colorado Company, with its principal place of business at 6273 Monarch Park Place, Niwot, CO 80503 U.S.A. and Crocodile Distribution, a Colorado LLC, with its principal place of business at 1919 14 th Street, Suite 600, Boulder, Colorado 80302, ("Distributor").

1. DEFINITIONS

1.1 "Products" shall mean all of the products and related accessories manufactured or sold by Crocs, Inc. If Manufacturer or any Affiliate now or hereafter manufactures or proposes to manufacture any new product, Manufacturer shall immediately notify, or cause such Affiliate to notify, Distributor of that fact and of all details concerning that product. Upon release for general distribution in the United States, such new product shall become subject to the terms of this Agreement and shall qualify as a "Product" hereunder.

1.2 "Territory" shall mean the geographical region(s) stated in **Exhibit B** to this Agreement.

1.3 "Distribution Channels" shall mean all channels.

1.4 "Trademark" or "Trademarks" shall mean any trademarks, tradenames, logos, designs, slogans or other names or marks used by Crocs, whether registered or otherwise.

2. GRANT OF EXCLUSIVE DISTRIBUTOR RIGHTS

2.1 License. Subject to the terms and conditions in this Agreement, Crocs hereby grants to Distributor an exclusive right to distribute and sell (subject to Section 2.2 and 4.1) the Products through the Distribution Channels and within the Territory. Distributor shall also have the right to use the Trademarks and their associated goodwill, within the Territory, on Products and on marketing materials relating to Products provided Crocs approves such use.

2.2 House Accounts. In some instances the Territory and/or Distribution Channels may include retailers who have been engaged by Crocs as international "in house accounts ("House Accounts"). As of the Effective Date Crocs is not shipping to any House Accounts within the Territory. Accounts that originate in the Territory shall not qualify as House Accounts. In the event a House Account requests shipments be sent into the Territory, Crocs agrees to notify Distributor within thirty (30) days of its first such shipment. For such accounts, Crocs agrees to pay Distributor a seven percent (7%) commission of gross sales on all orders shipped into the territory by Crocs. Crocs shall supply Distributor with a quarterly accounting of any shipments made into the Territory by Crocs pursuant to a House Account. Such commission shall also apply to orders shipped into the Territory by the House Account customer, provided such orders can be quantified by Crocs using commercially reasonable efforts and inquiries. Commissions on House Accounts shall be paid to Distributor on a quarterly basis.

2.3 Referrals. If Manufacturer or any Affiliate is contacted by any party inquiring about the purchase of Products in the Territory, Manufacturer shall, or shall cause that Affiliate, to refer such party to Distributor.

2.4 Internet Sales. Crocs and Distributor will work in good faith to establish linked websites that facilitate the sales of the Product over the internet in the approved Territories. Crocs shall license its name and trademark to Distributor at no charge for use on such websites subject to content approval by Crocs. Crocs shall forward all orders with "Ship To" addresses in the Territory to Distributor for fulfillment and shipping. Distributor shall forward all orders with "Ship To" addresses outside the Territory to Crocs for fulfillment and shipping. Any and all benefits occurring as a consequence of such forwarding shall follow the respective party.

3. OWNERSHIP AND USE OF TRADEMARKS

3.1 Ownership of Trademarks. Distributor acknowledges that Crocs is the sole and exclusive owner of, and shall retain all right, title and interest in and to, the Trademarks and their associated goodwill, and all use of the Trademarks shall inure to the benefit of Crocs. Requested use of the Trademarks must be submitted to Crocs for approval prior to use. Distributor is expressly prohibited from using the name "Crocs" or any word or phrase containing the name "Crocs" in any business name, registration, dba, fka, domain name or for any other non-advertising purpose without the prior written consent of Crocs, and such consent shall not be unreasonably withheld.

3.2 Crocs shall grant to Distributor at no cost the license to use the Crocs brand name solely for use in the marketing and sale of the Products within the Territory.

3.3 Trademark Identification. In addition to any Trademark, which may be supplied by Distributor, all Products sold by Distributor will be identified with the Trademarks. Distributor's use of the Trademarks shall conform to Crocs' Trademark Standards, which may be modified from time-to-time by Crocs as deemed necessary.

4. SALES TARGETS

4.1 Order Targets. The first two years of this Agreement shall be the "First Term." If the sales in the Territory meet or exceed [*****] for the final year of the First Term, Distributor shall be entitled to a three-year "Second Term" at its option. If sales for the Territory average at least [*****] for every year during the Second Term and meet or exceed [*****] in the final year of the Second Term, Distributor shall be entitled to a two-year "Third Term" at its option. All sales made as House accounts shall count toward these quotas. If the annual requirements stated above are reached, the exclusivity portion of this Agreement shall terminate automatically at the conclusion of the Third Term. In the event the annual requirements stated herein are not reached, the exclusivity portion of this Distribution Agreement may be terminated at Crocs' option. Crocs agrees not to solicit orders from previously established accounts at any time during the term of this Agreement. Upon termination of exclusivity for any reason stated herein, Distributor shall maintain the right to distribute Product on a non-exclusive basis subject to the terms of conditions of this Agreement, which shall remain in full force and effect for all other purposes. For the purpose of this Section 4.1, a "sale" shall mean the transfer of title from Crocs to Distributor and delivery of the corresponding payment.

4.2 Time Frame. **Each one-year period shall begin on July 1 and end on June 30 of the applicable year.**

5. TERM AND RENEWAL.

5.1 Unless terminated in accordance herewith, this Agreement shall remain in force until July 1, 2015. Distributor shall have the right to renew this Agreement for one additional five-year period on a non-exclusive basis, but such renewal must be exercised 60 days prior to the expiration of this Agreement.

5.2 Termination for Breach. Either party may terminate this Agreement for Breach in the event any term of this Agreement is materially breached by the other party and such breach is not remedied within thirty (30) days of written notice to the breaching party.

5.3 Termination for Bankruptcy. Crocs may terminate this Agreement immediately, without notice, in the event that proceedings for reorganization, liquidation, bankruptcy or receivership are filed or instituted against or by Distributor.

5.4 Effect of Termination. Upon termination of this Agreement for any reason, the rights referenced in Section 2.1 above shall automatically terminate and Distributor shall immediately cease any and all use of the Trademarks, any associated goodwill, and any other intellectual property owned, reserved or protected by Crocs. Distributor also agrees to cease any and all marketing, sale or distribution of the Products upon termination of this Agreement. In addition, Distributor agrees to pay any amounts due and owing to Crocs and to immediately return any unsold Products to Crocs upon such termination. The purchase price paid by Distributor for the returned Products shall be returned to Distributor upon receipt of the returned Products and any amounts due and owing. Crocs shall have no other obligations in connection with the termination of this Agreement.

6. INDEMNIFICATION

6.1 Indemnification. Distributor shall defend, indemnify and save harmless Crocs, its subsidiaries and affiliates, and their respective successors and assigns, from all losses, costs, liabilities, damages, claims, and expenses of every kind and description, including reasonable attorney's fees, arising out of or resulting from any breach of this Agreement or any of its representations or warranties by Distributor or any act or omission of Distributor or any sub-Distributor relating to the distribution, or marketing of any of the Products, including but not limited to unfair or fraudulent advertising claims. Manufacturer agrees to defend, indemnify and save harmless Distributor from any loss or claim arising out of inherent defects in any of Manufacturer's Products existing at the time such product is sold by Manufacturer to Distributor, provided that Distributor gives Manufacturer immediate notice of any such loss or claim and cooperates fully with Manufacturer in the handling thereof.

6.2 Insurance. Distributor shall maintain at its own expense in full force and effect at all times during which Products are sold, insurance, including liability insurance, in an amount sufficient to cover Distributor's liabilities.

7. CONFIDENTIALITY

7.1 Confidential Information. During the term of this Agreement, Distributor may learn confidential information with respect to Crocs' finances, pricing, costs, inventory, market plans, customer lists, vendor sources, marketing plans, or other trade secret information. Accordingly, Distributor shall keep such information in confidence and not disclose to third parties or otherwise make unauthorized use of such information during or after the term of this Agreement, except as required by applicable law.

8. TERMS

8.1 Distributor shall be offered Products at distribution pricing as outlined in Exhibit A to this Agreement. Distribution pricing is subject to change based on changes in wholesale pricing.

8.2 Distributor agrees to expend its own monies to properly market the Products within the Licensed Channels in the Licensed Territory.

8.3 Payment terms are net 30 days from date of invoice.

8.4 Distributor agrees not to sell, distribute or ship, directly or indirectly, any Products to any third party outside the Territory.

9. MISCELLANEOUS PROVISIONS

9.1 Notices. All communications required to be given or that may be given hereunder, shall be sufficient in all respects if given in writing and delivered personally, or by registered or certified mail, postage prepaid to Distributor or Crocs at the address set forth in the first paragraph of this Agreement.

9.2 Severability. The parties acknowledge and agree that, should any provision of this Agreement be determined to violate or contravene any law, such provision shall be severed or modified to the minimum extent necessary to comply with the applicable law, and such modified provision and the remainder of the provisions hereof shall continue in full force and effect.

9.3 Choice of Law, Jurisdiction, Venue and Governing Law. Except as specifically set forth in this Agreement, any disputes between the parties relating to or arising out of the interpretation or performance of this Agreement shall be finally settled in Boulder, Colorado, by arbitration under the rules then in effect of the American Arbitration Association. The award of the arbitrator shall be in writing, shall be final and binding upon the Distributor and Crocs, and shall not be appealed from or contested in any court. The arbitrator shall have the authority to award any remedy or relief that a court of Colorado could grant or order. This Agreement shall be interpreted in accordance with the laws of and Distributor submits itself to personal jurisdiction in the state of Colorado.

9.4 Survival. The provisions of Sections 3.1, 5.4, 6.1, 7.1, 9.1, 9.2 and 9.3 shall survive the termination of this Agreement.

9.5 Status of the Parties. Nothing in this Agreement shall be construed as creating a joint venture or partnership between Distributor and Crocs. Distributor and Crocs shall be independent contractors with respect to one another and neither shall hold itself out as having authority to act on behalf of the other.

9.6 Modification. This Agreement shall only be modified by written agreement of both Crocs and Distributor.

9.7 Assignment. Distributor may assign this Agreement at its discretion to any third party without the prior approval of Crocs. Crocs may assign this Agreement at its discretion without prior approval, provided such assignment is to an affiliated entity or to facilitate a change of control or change in corporate structure.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE DULY EXECUTED, IN DUPLICATE, AS OF THE EFFECTIVE DATE.

Crocs, Inc.

BY: /s/ LYNDON V. HANSON III

NAME: Lyndon V. Hanson III

(Print)

TITLE: V.P. Manufacturing DATE: 6/3/05

Crocodile Distribution, LLC (Distributor)

BY: /s/ CARL J. VERTUCA, JR.

NAME: Carl J. Vertuca, Jr.

(Print)

TITLE: Member/Manager DATE: 6/3/05

EXHIBIT A

.Terms of Sale.

1. *Purchase Price.* All sales of Manufacturer's Products to Distributor shall be made pursuant to this Agreement at [*****] off the then current United States wholesale price as set by Crocs.

2. Crocs shall use commercially reasonable efforts to fill Distributor's orders with products that are produced in Mexico. All prices are EX WORKS (Incoterms 2000) Manufacturer's plant, distribution center, or designated contract manufacturer. Manufacturer agrees that Products can be picked up directly by Distributor from Manufacturer's plant to avoid shipping costs altogether. In the event Distributor wishes to pick up Products directly, it shall give Manufacturer notice of such intent at least 48 hours prior to the scheduled shipment. Upon receipt of such notice, Manufacturer shall advise Distributor of its window for pick up of the applicable shipment(s). Distributor agrees to pick up such shipments within in the window provided by Manufacturer. Manufacturer agrees to properly pack all items for shipment. Risk of loss due to damage or destruction of Manufacturer's Products shall be borne by Distributor upon transfer of possession to the carrier for shipment. Manufacturer will make commercially reasonable efforts to fill Distributor's orders from the manufacturing facility closest to the Distributor. All orders are subject to acceptance by Manufacturer. Except as otherwise expressly agreed by Manufacturer in advance, this Agreement shall control all aspects of the dealings between Manufacturer and Distributor with respect to the Manufacturer's Products and any additional or different terms in any Distributor order are hereby rejected.

3. *Order Procedure.* Each order for Products issued by Distributor to Manufacturer under this Agreement shall identify that it is an order and shall further set forth the delivery date or dates and the description and quantity of Products which are to be delivered on each of such dates. The individual contracts for the sale of Products formed by Distributor's submission of orders to Manufacturer pursuant to the terms and conditions hereof shall automatically incorporate, to the extent applicable, the terms and conditions hereof, shall be subject only to those terms and conditions (together with all terms in orders which are contemplated by this Agreement) and shall not be subject to any conflicting or additional terms included in any documents exchanged in connection therewith. Notwithstanding anything in this Section, Manufacturer and Distributor may, by written agreement, modify the terms and conditions of this Agreement.

3. *Cancellation of Orders.* All cancellation of orders by Distributor shall be in writing, or if not initially in writing, shall be confirmed in writing. Orders are non-cancelable once transferred to Distributor or it's carrier.

4. *Packing.* Manufacturer shall, at its expense, pack all Products in accordance with Manufacturer's standard packing procedure, which shall be suitable to permit shipment of the Products to provided, however, that if Distributor requests a modification of those procedures, Manufacturer shall make the requested modification and Distributor shall bear any reasonable expenses incurred by Manufacturer in complying with such modified procedures which are in excess of the expenses which Manufacturer would have incurred in following its standard procedures.

5. *Delivery: Title and Risk of Loss.* All deliveries of Products sold by Manufacturer to Distributor pursuant to this Agreement shall be made EX WORKS Manufacturer's designated shipping location (the "Delivery Point"), and title to and risk of loss of Products shall pass from Manufacturer to Distributor at the Delivery Point. Manufacturer shall be responsible for arranging all transportation of Products, but if requested by Manufacturer, Distributor shall, at Manufacturer's expense, assist Manufacturer in making such arrangements. Distributor shall be responsible for all taxes, duties, import charges or other expenses related to the shipment of the Products to Distributor.

6. *Refunds of merchandise.* Refunds of merchandise for items not received can be made by exchange or cash payment.

7. *Inspection and Acceptance.* Promptly upon the receipt of a shipment of Products, Distributor shall examine the shipment to determine whether any item or items included in the shipment are in short supply, defective or damaged. Within 7 days of receipt of the shipment, Distributor shall notify Manufacturer in writing of any shortages, defects or damage, which Distributor claims existed at the time of delivery. Within 7 days after the receipt of such notice, Manufacturer will investigate the claim of shortages, defects or damage, inform Distributor of its findings, and deliver to Distributor Products to replace any which Distributor determines, were in short supply, defective or damaged at the time of delivery. Unless notice is given as provided in this Section, Distributor shall be deemed to have accepted such Products and to have waived all claims for shortages, defect or damage.

8. *Payment.* Upon delivery and acceptance of Products, Manufacturer may submit to Distributor their invoice for those Products. Distributor shall pay each such proper invoice within 30 days after Distributor's receipt of that invoice. Payment shall be made in United States dollars to a bank account to be notified in writing by Manufacturer to Distributor.

EXHIBIT B

Licensed Territory:

Mexico
Dominican Republic
Costa Rica
Cuba

Addendum to Exhibit B

The parties to this Agreement understand that U.S. law severely restricts the degree to which U.S. parties may, directly or indirectly, do business or have other contacts with Cuba and Cuban nationals and agree to undertake any such activities only if and to the extent that they determine, on the basis of advice of counsel, that it is lawful to do so.

QuickLinks

Exhibit 10.19

Addendum to Exhibit B

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.20

KIOSK AGREEMENT

THIS AGREEMENT (the " **Agreement** ") is entered into on July 1, 2005 (the " **Effective Date** ") by and between Crocs, Inc., a Colorado Corporation (" **Crocs** "), and Crocodile Kiosk, LLC ("Crocodile"). For good and valuable consideration and in exchange of the promises and covenants contained herein, the parties agree as follows:

1. DEFINITIONS.

"Crocs Marks" means all trademarks, service marks, trade names, logos or other words or symbols identifying or associated with the Products or the business of Crocs.

"Customer" means entities and individuals that intend to use the Products for their own internal purposes and not for further distribution.

"Kiosk" means a free standing kiosk located in an airport terminal which is intended to be used to sell Crocs brand goods.

"Products" mean all of the products manufactured or distributed by Crocs, as more specifically described in Addendum A.

"Licensee/Franchisee" means third parties who have contracted with Crocodile and who are granted the rights by Crocodile to sell Products under the Crocs Marks.

"Licensee/Franchisee Agreement" means a written agreement between Crocodile and third parties granting Licensee/Franchisee the right to sell Products in Kiosks under the Crocs Marks in the Territory and which contains terms and conditions at least as protective of Crocs and Crocs' rights as those contained herein. Such agreements shall have a term of ten (10) years with termination provisions if performance goals are not met. Said agreements shall allow for five (5) year renewal periods if certain performance obligations are met. All performance obligations shall be determined by Crocodile on a case by case basis.

"Territory" means airport locations worldwide.

2. APPOINTMENT AND RIGHT TO LICENSE/FRANCHISE.

2.1 Subject to the terms and conditions of this Agreement, Crocs hereby grants to Crocodile during the Term (as defined in Section 5) an exclusive right to license and or franchise Licensee/Franchisees to sell Products in Kiosks under the Crocs Marks in the Territory. In addition, Crocs grants Crocodile the non-exclusive right to sell Products to other approved venues in the Territory.

2.2 Subject to the terms and conditions of this Agreement, Crocs hereby grants Crocodile during the Term a non-exclusive, non-sublicensable, non-transferable right to use Crocs Marks in accordance with the usage guidelines for the Crocs Marks established by Crocs from time to time for the sole purpose of exercising the rights set forth in this Agreement.

2.3 Subject to the terms and conditions of this Agreement, Crocs hereby grants Crocodile a non-exclusive, non-sublicensable, non-transferable right to license and or franchise third parties pursuant to a License/Franchise Agreement to use Crocs Marks in accordance with the usage guidelines established by Crocs for the Crocs Marks from time to time for the sole purpose of marketing and selling the Products to Customers from Kiosks under the Crocs Marks within the Territory. Crocs shall retain sole control over Crocodile's and Licensee/Franchisee's use of the Crocs Marks. Crocodile acknowledges and shall ensure all Licensee/Franchisees acknowledge that the goodwill with respect to

the Crocs Marks belongs solely to Crocs and that the goodwill associated with use of the Crocs Marks by Crocodile Licensee/Franchisee will inure solely to the benefit of Crocs.

2.4 Subject to the terms and conditions of this Agreement, Crocs hereby grants Crocodile a non-exclusive, non-sublicensable, non-tranferable right to allow its Licenee/Franchisee's to use the name "Crocs Kiosk" as the name of the Kiosks, provided however, such right shall only be granted in the event such Licensee/Franchisee's agree to sell only Crocs Products on their respective Kiosks. Crocs may approve limited items that are not branded by Crocs on a case by case basis. Such products must be approved by Crocs prior to being sold or displayed in any Kiosk. Subject to approval by Crocs, which shall not be unreasonably withheld, Crocodile may authorize its Licensee/Franchisee's to sell products from a Kiosk bearing a name that does not include the name "Crocs." Such Kiosks shall be permitted to use the phrase "Featuring Crocs" in connection with their approved name. Such Kiosks shall be permitted to carry products that do not compete with or diminish the marketing, appearance or value of the Products or the Crocs brand. Crocs, at its discretion, may require Crocodile to have any products that Crocs deems to be competitive or non-complementary to the Products or the Crocs brand removed from any and all Kiosks and restricted from further sale. Crocodile agrees to include terms in all Licensee/Franchisee Agreements that grant Crocodile the right to require the removal and prohibit the sale of any product which Crocs deems competitive or non-complementary.

2.5 Crocodile agrees to assign any and all business names, domain names, trademarks or any other registrations or protected rights containing the name "Crocs" or any derivative thereof.

2.6 All rights not expressly granted to Crocodile herein are reserved by Crocs. All approval rights retained by Crocs are for the purpose of controlling the use and quality of the Crocs Marks and not to govern Crocodile's or Licensee/Franchisees' day to day operations.

2.7 Crocodile may use the Crocs Marks solely in the performance of its rights and obligations under this Agreement. Crocodile must and must obligate all Licensee/Franchisees to use only signage and point of sale displays purchased from Crocs and to display the Crocs Marks in connection with the marketing, sale or support of Products with an appropriate trademark or other notice (such as ® or ™) or other notice of proprietary rights in the Crocs Marks as instructed by Crocs. Crocodile must not and must obligate Licensee/Franchisees to not attach any additional trademarks or trade names to any Products and must not remove or alter any Crocs Marks or other trademark or notice affixed by Crocs to Products. Crocodile must and must obligate all Licensee/Franchisees to obtain Crocs' express prior written approval for each use of the Crocs Marks in advertising or other materials, and must not deviate from any approved uses without obtaining further written approval from Crocs, which shall not be unreasonably withheld. Crocs will notify Crocodile of its approval or rejection within 10 days of submission to Crocs. Crocodile must and must obligate all Licensee/Franchisees to immediately change or discontinue any use of any Crocs Marks as may be reasonably requested by Crocs.

2.8 Crocodile must ensure that all advertising, promotional or other uses of the Crocs Marks by Crocodile or Licensee/Franchisees must at all times (i) conform to the quality standards specified by Crocs from time to time, and (ii) be in full compliance with all applicable laws and regulations in the Territory. Crocs has the right, at all reasonable times, to inspect the manner in which Crocodile and Licensee/Franchisees use the Crocs Marks. Such inspection may, at the election of Crocs, be by personal visit to Crocodile or Licensee/Franchisees facilities or by written request for information or samples. Crocodile must and must obligate all Licensee/Franchisees to cooperate with such inspections. For Kiosks using the "Crocs Kiosk" name, all advertising artwork shall be supplied by Crocs and shall be submitted to Crocodile within ten days of any advertising or advertising changes so requested.

2.9 Crocodile acknowledges and agrees and shall obligate each Licensee/Franchisee to acknowledge and agree that Crocs is the sole and exclusive owner of the Crocs Marks (whether or not such Crocs Marks are registered), and Crocodile must not and must obligate each Licensee/Franchisee to not take or encourage any action, during or after the Term, that will in any way impair the rights of

Crocs in and to the Crocs Marks or the goodwill inherent therein. At Crocs' expense, Crocodile must sign any lawful documents, make any lawful declaration or provide any lawful declarations reasonably requested by Crocs in connection with any trademark application or registration for the Crocs Marks, and Crocodile shall obligate Licensee/Franchisees to do the same.

3. CROCODILE RESPONSIBILITIES.

3.1 Crocodile will use its best efforts to promote the sale of the Products from Kiosks under the Crocs Marks in the Territory. Crocodile shall obligate each Licensee/Franchisee to do the same.

3.2 Crocodile shall not and shall obligate all Licensee/Franchisees to not make any reference or claim about Crocs or the Products other than presenting current information that has been published by Crocs or approved by Crocs in writing.

3.3 Crocodile shall not and shall obligate all Licensee/Franchisees to not use deceptive, misleading, illegal or unethical practices in marketing and selling the Products to Customers from Kiosks within the Territory. Further, Crocodile shall not and shall obligate all Licensee/Franchisees to not advertise, promote or take other action or use any medium of advertising or promotion with respect to the Products that is not directed primarily to Customers at airports located in the Territory.

3.4 Crocodile shall and shall obligate all Licensee/Franchisees to comply with all applicable laws and regulations in performing its duties under this Agreement, including, without limitation, all state and federal laws related to or governing the offer of sale and sale of franchises. As between Crocodile and Crocs, Crocodile shall be solely responsible for preparing and filing all legal documents and making all registrations necessary to comply with such laws and regulations. The parties hereby acknowledge and agree that the relationship contemplated herein does not create a franchisor-franchisee relationship as between Crocs and Crocodile or Crocs and any third party.

3.5 If Crocodile fails to meet the performance requirements set forth in Addendum A, Crocs may, in its sole discretion and upon written notice to Crocodile, terminate the portion of this Agreement covering exclusivity in the Territory. In such an event, Crocodile would be allowed to continue to enter into License/Franchise Agreements on a non-exclusive basis in accordance with this Agreement, the remaining terms of which shall remain in full force and effect.

3.6 Crocodile shall keep Crocs informed as to any problems encountered with the Products and any resolutions arrived at for those problems, and to communicate promptly to Crocs any and all modifications, design changes or improvements of the Products suggested by any customer, employee or agent. Crocodile shall obligate each Licensee/Franchisee to do the same.

3.7 Crocodile shall ensure that all of the obligations and restrictions with regard to Crocodile set forth in this Agreement (including without limitation those in Sections 2 and 3) are included in each Licensee/Franchisee Agreement and that all Licensee/Franchisees are bound to such terms and conditions.

4. ORDERS AND CREDIT.

4.1 For orders that will be shipped directly to Licensee/Franchisee's by Crocs, Crocodile shall obligate each Licensee/Franchisee in writing to order and purchase such Products pursuant to Crocs then-current order and payment policies and procedures. Crocodile shall obligate each Licensee/Franchisee in writing to use signage and point of sale displays purchased from Crocs. Sales to Licensee/Franchisee's in the following countries shall be placed with Crocodile Distribution, a Crocs distributor: Mexico, Dominican Republic, Costa Rica and Cuba.

4.2 At least five (5) days prior to executing any Licensee/Franchisee Agreement with any prospective Licensee/Fanchisee, Crocodile shall notify Crocs in writing of such prospective Licensee/

Franchisee and provide Crocs with such party's name and address. Upon Crocs' request, Licensee shall provide Crocs with any requested information regarding a prospective Licensee/Franchisee necessary to allow Crocs to check such prospective Licensee/Franchisee's credit and payment history. In the event a prospective Licensee/Franchisee does not meet Crocs' credit criteria, Crocs may refuse payment terms and/or require adequate security (in Crocs' discretion) prior to issuing credit. Crocs reserves the right to revoke credit terms, hold shipments or place any Licensee/Franchisee on credit hold for failure to pay invoices in a timely manner. This Section 4.2 shall not apply to Licensee/Franchisee's located in the following countries: Mexico, Dominican Republic, Costa Rica and Cuba.

5. TERM. Unless terminated earlier in accordance with the terms herein, the right to enter into License/Franchise Agreements with third parties pursuant to this Agreement, including the right of exclusivity in the Territory shall commence on the Effective Date and continue for a period of ten (10) years (the "Initial **Term** "). These rights shall automatically terminate upon the expiration of the Initial Term. The rights hereunder which are necessary to maintain, service and comply with Licensee/Franchisee Agreements that exist at the conclusion of the Initial Term shall remain in effect and shall not terminate until the earliest of the following occurs: (i) all Licensee/Franchisee Agreements have been concluded or Terminated; (ii) Crocodile ceases service and maintenance to any of the Licensee/Franchisees during the term of their respective Licensee/Franchisee Agreement; or (iii) fifteen years from the effective date of the last Licensee/Franchisee Agreement entered into prior to the conclusion of the Initial Term.

6. CONFIDENTIAL INFORMATION. " **Confidential Information** " means (a) any business or technical nonpublic information of Crocodile or Crocs, including but not limited to any information relating to either party's products, services, prices, marketing plans, business opportunities, or personnel, (b) any other information of Crocodile or Crocs that is specifically designated by the disclosing party as confidential or proprietary, and (c) the terms and conditions of this Agreement. Confidential Information shall not include information that (i) is in or enters the public domain without breach of this Agreement through no fault of the receiving party, (ii) the receiving party was demonstrably in possession of prior to first receiving it from the disclosing party, (iii) the receiving party can demonstrate was developed by the receiving party independently and without use of or reference to the disclosing party's Confidential Information, or (iv) the receiving party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Each party shall maintain the Confidential Information of the other party in strict confidence during the Term and until such information enters one of the categories set forth in (i)—(iv) above. Each party shall exercise no less than reasonable care with respect to the handling and protection of such Confidential Information. Each party shall use the Confidential Information of the other party only during the term of this Agreement and as expressly permitted herein, and shall disclose such Confidential Information only to its employees and independent contractors as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein). Notwithstanding the above, the receiving party may disclose Confidential Information of the disclosing party pursuant to a valid order or requirement of a court or government agency, provided that the receiving party first gives reasonable notice to the disclosing party to contest such order or requirement. Any such disclosure by the receiving party of the Confidential Information of the disclosing party, shall, in no way, be deemed to change, affect or diminish the confidential status of such Confidential Information.

7. WARRANTY AND DISCLAIMER.

7.1 Mutual Warranty. The parties have the power and the authority to execute and perform this Agreement.

7.2 EXCEPT AS EXPRESSLY SET FORTH ABOVE, CROCS MAKES NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY

WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL CROCS BE LIABLE FOR INJURIES TO PERSONS OR PROPERTY FOR INCIDENTAL, CONTINGENT, SPECIAL OR CONSEQUENTIAL DAMAGES FOR WHICH LIABILITY MAY BE DISCLAIMED UNDER APPLICABLE LAW.

8. INDEMNIDICATION.

8.1 By Crocodile. Crocodile shall indemnify and defend Crocs from and against all third party claims arising out of or related to this Agreement, any Licensee/Franchisee Agreement or any Licensee/Franchisee's use of the Products.

8.2 By Crocs . Crocs agrees to indemnify, hold harmless and defend Crocodile against all third party claims arising from any loss or claim arising out of inherent defects in any of Crocs' Products existing at the time such product is sold by Crocs.

8.3 Indemnification Procedure. The indemnifying party's indemnification obligations under this Section 8 are conditioned upon the indemnified party (a) giving prompt notice of the claim to the indemnifying party; (b) granting sole control of the defense or settlement of the claim or action to the indemnifying party; and (c) providing reasonable cooperation to the indemnifying party and, at the indemnifying party's request and expense, assistance in the defense or settlement of the claim.

9. LIMITATION OF LIABILITY. EXCEPT FOR BREACHES OF OBLIGATIONS IN SECTIONS 2, 6 AND 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE PRODUCTS.

10. TERMINATION. This Agreement may be terminated by either party with thirty (30) days prior written notice to the other party upon the material breach by the other party of any of its obligations under the Agreement, which breach has not been cured within thirty (30) days after the breaching party has received notice thereof. This Agreement will terminate automatically if all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or the other party is adjudged bankrupt. Crocs may terminate the portion of this Agreement covering exclusivity in the Territory upon written notice to Crocodile if Crocodile fails to meet the performance requirements as described in Addendum A. Upon termination of this Agreement by either party or naturally at the end of the term all rights and licenses of Crocodile and obligations of and restrictions on Crocs hereunder shall terminate, except that Crocodile will return all Confidential Information, catalogues and literature in its possession, custody or control in whichever form held (including all copies or embodiments thereof), Crocodile will cease using Crocs Marks, and the provisions of Sections 5 through 11 of this Agreement shall remain in effect.

11. GENERAL TERMS.

11.1 Force Majeure. If the performance of any obligation under this Agreement, except the making of payments, is prevented or interfered with by a Force Majeure (any act or condition whatsoever beyond the reasonable control of and not occasioned by the fault or negligence of the affected party), the party so affected shall be excused from such performance to the extent of such prevention or interference.

11.2 Dispute Resolution. Any unresolved disputes between the parties relating to or arising from this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") before a single neutral and competent arbitrator selected in accordance with the AAA Rules. Such arbitration shall be held in Boulder, Colorado and conducted in the English language. The cost and expense of arbitration shall be shared equally by the parties to the arbitration, regardless of which party or parties prevail. The arbitration shall be conducted in accordance with the following time schedule unless otherwise mutually agreed to in writing by the parties: (i) no later than thirty (30) days after the appointment of the arbitrator, the arbitrator shall schedule a hearing on the dispute and (ii) within thirty (30) business days after the date of the hearing referenced in clause (i), the arbitrator shall render a decision. The decision or award of the arbitrator shall be final and binding upon the parties, and to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and shall be enforceable under the Federal Arbitration Act. However, the parties agree that any breach of a party's confidentiality obligations and the license grant and restrictions set forth in this Agreement will result in irreparable injury to the other party for which there is no adequate remedy at law. Therefore, in the event of any breach or threatened breach of such obligations, the non-breaching party will be entitled to seek equitable relief in addition to its other available legal remedies without submitting such matter to arbitration. Each party hereby irrevocably submits to the exclusive jurisdiction and venue of the state and federal courts located in Denver, Colorado for any action seeking injunctive relief hereunder.

11.3 Miscellaneous. The parties are independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture or employment relationship or franchise relationship between the parties. This Agreement and the Addenda, which are incorporated herein by reference, sets forth the entire agreement between the parties and supersedes any and all prior proposals, agreements or communications, written or oral, of the parties with respect to the subject matter hereof. This Agreement may not be modified, altered or amended, except by written instrument duly executed by both parties. In the event there are conflicting terms in the body of this Agreement and the Addendum, the terms in the body of this Agreement shall control. No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof. Crocodile may not assign, sublease or transfer this Agreement to any third party without the express written consent of Crocs. For the purposes of this Agreement, any dissolution, merger, consolidation or other reorganization of Crocodile, or sale or other transfer of a controlling percentage of the ownership interest or assets shall be considered an Assignment. Crocs agrees to not unreasonably withhold its consent. Crocs shall have a right of first refusal prior to any sale of all or substantially all of the assets or ownership interests of Crocodile. Crocs shall have thirty days to evaluate whether to match any such offer in connection with its first right of refusal. This Agreement will be binding on the parties, their successors and permitted assigns. This Agreement will be construed under the laws of the State of Colorado, without regard to its conflicts of law principles. The English language version of this Agreement shall be controlling in the interpretation or application of the terms of this Agreement. If any provision of this Agreement is found invalid or unenforceable by an arbitrator or a court of competent jurisdiction, the remaining portions shall remain in full force and effect. All notices required under this Agreement shall be (a) in writing, and (b) deemed to have been duly made and received when (i) personally served, (ii) delivered by commercially established courier service, or (iii) ten (10) days after deposit in mail via certified mail, return receipt requested, to the addresses specified on the first page of this Agreement or at such other address as the parties shall designate in writing from time to time. Each person executing this Agreement and the Addendum on behalf of any entity hereby represents and warrants that he or she is duly authorized and has full authority to execute and deliver this Agreement and the Addendum. This Agreement may be executed simultaneously in two or more counterparts, each or which will be considered an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF , the parties hereto have executed this Agreement as of the Effective Date above.

CROCS, INC.:	**CROCODILE, LLC:**
By: /s/ LYNDON V. HANSON III	By: /s/ CARL J. VERTUCA, JR.
(Authorized Signature)	(Authorized Signature)
Lyndon V. Hanson III	Carl J. Vertuca, Jr.
Printed Name	Printed Name
V.P. Manufacturing	Member/Manager
Title	Title

ADDENDUM A

I. Products

All Crocs Products that have been released for sale to the network of retail outlets carrying Crocs products in the United States.

II. Territory

The entirety of all airports Worldwide

III. Performance Requirements

In order to maintain the exclusivity of the licenses granted to Crocodile by Crocs as set forth in Section 2.1 of this Agreement, Crocodile must:

- have six Kiosks open and operating from which a Licensee/Franchisee is actively and continuously selling the Products upon the two (2) year anniversary of the Effective Date ("Anniversary")
- have added at least three (3) Kiosks in each twelve (12) month period following the second anniversary of the Effective Date.

QuickLinks

Exhibit 10.20

KIOSK AGREEMENT
ADDENDUM A

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.21

[*****] = Certain confidential information contained in this document, marked with brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment made pursuant to Rule 406 under the Securities Act of 1933, as amended.

AMENDED AND RESTATED AGREEMENT FOR SUPPLY (the " **Agreement** "),

between

Finproject S.p.A. (hereinafter " **FINPROJECT** "), a company incorporated existing and organized under the laws of Italy, with registered office at Contrada Campomaggio snc, 62010 Morrovalle, Macerata (Italy), corporate capital Euro 4.648.500,00 (fully p.i.), filed with the Registrar of Companies of Macerata and Italian tax no. 03699921007 represented by its legal representative Mr. Euro Vecchiola

And

CROCS Inc. (hereinafter " **CROCS** "), a company incorporated existing and organized under the laws of the State of Colorado (USA), with registered office at 6273 Monarch Park Place, Niwot, Colorado (USA), represented by its legal representative Mr. Ron Snyder.

(hereinafter referred to collectively as " **Parties** " and singularly as " **Party** " without distinction)

WHEREAS

- CROCS, Inc. (formerly known as Western Brands, LLC) has changed its name and corporate structure as stated herein;
- FINPROJECT and CROCS entered into that certain Agreement for Supply, dated as of June 29, 2004 (hereinafter the " **Original Agreement** ");
- FINPROJECT manufactures and sells a wide range of footwear components and high tech materials intended for the use in a number of market sectors, including the footwear manufacturing sector;
- FINPROJECT manufactures materials called [*****] in accordance with, but not limited to, recipes (set forth in **Annexe 1)** , as well as any other materials having similar composition and characteristics (hereinafter the " **Material** ");
- CROCS is interested in securing supplies of the Material for the manufacture of Goods and FINPROJECT is willing to supply the Material in accordance with the recipes for the manufacture of the Goods to CROCS on the terms set forth herein;
- CROCS manufactures and sells goods including, but not limited to, footwear using the name brand "Crocs" (hereinafter the " **Goods** ");
- FINPROJECT manufactures one or more models of shoe products for CROCS and desires assurance of near term order volume for the Finished Shoes;
- CROCS desires a supply of shoe products; and
- FINPROJECT and CROCS now desire to amend and restate the Original Agreement in its entirety under the terms and conditions set forth herein.

NOW THEREFORE, recitals and Annexes hereto being part and parcel of this Agreement, in consideration of the foregoing, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. ***Subject matter***

1.1 *Agreement as to the Material.* Subject to the terms set forth in Sections 2 through 18 of this Agreement, FINPROJECT shall supply to CROCS or a company designated by the same under its own responsibility, and CROCS (or the company designated by the same under its own responsibility) shall buy the Material for the manufacture of the Goods.

1.2 *Agreement as to the Finished Shoes.* Subject to the terms set forth in Sections 9, 10, 13-19 of this Agreement, FINPROJECT shall supply to CROCS or a company designated by the same under its own responsibility, and CROCS (or the company designated by the same under its own responsibility) shall buy the Finished Shoes.

2. ***Exclusivity and pre-emption right specific to the Material***

2.1 On the condition that CROCS purchases the minimum quantities provided by art. 3 below, FINPROJECT shall not sell any Material or product based on the Material to any third party subject to the following exceptions:

a. FINPROJECT may provide midsoles for shoe products to its current and future customers.

b. [*****]

2.2 CROCS shall consider FINPROJECT a preferred supplier for the life of this Agreement.

3. ***Minimum Quantity specific to the Material***

3.1 The following minimum quantities (hereinafter "Minimum Quantities") of the Material shall be purchased in any given contractual year in order to maintain exclusivity:

(i) 1 st July, 2004 -30 th June, 2005 (first contractual year): [*****],

(ii) 1 st July, 2005 -30 th June, 2006 (second contractual year): [*****],

(iii) 1 st July, 2006 -30 th June, 2007 (third contractual year): [*****],

(iv) 1 st July, 2007 -30 th June, 2008 (fourth contractual year): [*****].

(v) Contractual years after 30 th June, 2008: [*****].

3.2 In addition to the above the Parties hereto agree that only the Minimum Quantities of Material for the first two contractual years are binding upon CROCS who shall therefore purchase from FINPROJECT a quantity of Material of at least [*****] in the first contractual year and of at least [*****] in the second contractual year.

3.3 Without compromise to paragraph 3.2 above, no later than July 1 st of each contractual year, CROCS shall forward to FINPROJECT a schedule of the quantities of Material it actually intends to purchase in the upcoming contractual period (hereinafter the " **Forecast** ").

3.3.1 If, by 31 December of each contractual year (first six-months), the quantity of Material actually ordered is less than 20% of that called for by the Forecast, CROCS shall,

within 10 (ten) days confirm to FINPROJECT in writing its intention to purchase the Minimum Quantity guaranteed for the period. Failing this, FINPROJECT shall forthwith be released from the exclusivity obligation.

3.3.2 The Parties hereto agree that should the guaranteed minimum volume be confirmed as per paragraph 3.3.1. above, while at the end of the annual period CROCS has ordered an amount of Material inferior to the Minimum Quantity of Material, CROCS shall pay to FINPROJECT a non reducible penalty corresponding to 10% of the value of the Material not ordered.

3.4. Without compromise to the provisions of paragraph 3.3 above relating to the Forecast, the actual quantities of Materials to be supplied from time to time for each applicable year, shall be covered by one or more specific orders (" **Specific Order/s** ") forwarded by CROCS to FINPROJECT. The Specific Orders shall be passed and accepted as per Article 5 below and a "rolling forecast" shall be submitted to FINPROJECT with orders covering the quarter.

3.5. Without compromise to paragraph 3.2 above, FINPROJECT hereby expressly agrees and acknowledges that as from the third contractual year, if CROCS purchases the Minimum Quantity of Material for the year in question, the right to exclusivity shall automatically renew.

3.6. In the event CROCS falls short of meeting the Minimum Quantity of Material for any contract year, it may elect to cure such shortfall in the following upon notice to FINPROJECT without losing its right to exclusivity. Upon such notice, FINPROJECT shall apply all Specific Orders placed within the first 60 days of the next contract year to the contract year in which the shortfall took place. If CROCS meets the Minimum Quantity for the previous contract year by applying these purchases, it shall maintain it's right to exclusivity. If purchases are applied to a previous contract year in order to cure a shortfall, such purchases shall not count towards the Minimum Quantity for the current year (no double counting).

4. ***Purchase Price of the Material and payment thereof***

4.1. Parties agree that the purchase price of the Material for the Minimum Quantities shall be the one listed in the price list in Euro attached hereto as **Annex 2)** .

4.2. It is agreed between the Parties that the pricing for the Material shall be reviewed each quarter, and may be changed for the following reasons:

(i) changes in the cost of raw materials described by **Annexe 1** affecting the manufacturing cost of the Material by 5% or more in either direction. The material [*****] and relevant versions shall be used as reference: [*****].

(ii) exchange rate variations for purchases made outside of Europe and/or in USD, considering the current exchange rate of USD 1,20 for 1 Euro,

(iii) order volumes, if these exceed the Minimum Quantity in accordance with Section 3.1 of this Agreement.

4.3. Payment must be made by CROCS, unless otherwise agreed upon between the Parties, in EURO within 30 days month end from the date of invoice, by SWIFT transfer in favour of [*****]. Payment is deemed to be made when the respective sum is at FINPROJECT's disposal at its bank in Italy.

5. ***Specific Orders and Delivery of the Material***

5.1. The Specific Orders of the Material along with the quantities and the relevant delivery dates shall be sent by CROCS to FINPROJECT to fax nr. +39.0736.814259 marked for the attention of Mr. Americo Malaccari.

Within 5 (five) days from receipt of the Specific Orders, FINPROJECT undertakes to communicate the acceptance of order placed, by forwarding the Specific Order signed for acceptance to fax number +1-418-687-4420, marked for the attention of Mr. Andrew Reddyhoff.

5.2. Any suggested changes to the delivery dated shown on a single Specific Order should be advised immediately by FINPROJECT to CROCS in writing to number +1-418-687-4420, for the attention of Andrew Reddyhoff, and will be intended as received upon issue of the report confirming transmission.

5.2.1. Upon receipt of the preceding communication, should CROCS decide to accept the different delivery date suggested by FINPROJECT as per the preceding paragraph, CROCS shall forward to FINPROJECT to fax no. +39.0736.814259, marked to the attention of Mr. Americo Malaccari, a new Specific Order for the same quantity and indicating the different delivery date proposed by FINPROJECT. In the latter case, the Specific Order is intended as automatically accepted by FINPROJECT without further confirmation.

5.2.2. The Parties hereto agree that if the different delivery date proposed by FINPROJECT as per paragraph 5.2 can not be accepted, CROCS shall have the right to cancel the Specific Order.

5.3. The Parties expressly accept and agree that the quantity of each Specific Order shall not be under 11.000-12.000Kg., with a specified minimum of 1.000Kg per colour, and shall not be superior to the contents of a full container corresponding to approximately 24.000Kg.

Unless otherwise indicated by the single Specific Orders, partial deliveries are allowed.

5.4. FINPROJECT shall deliver or arrange delivery of the Materials to CROCS, on an EXWORKS (Incoterms 2000) dock of FINPROJECT basis, at a location or locations designated by CROCS, to a reliable shipping agent.

Before making any delivery, CROCS shall forward the import permits or other shipping documents required to FINPROJECT.

5.5. Upon delivery of the Material, CROCS takes over all the risks for any losses or damages to Materials delivered as above.

5.6. If FINPROJECT expects that it will be unable to deliver the Material at the date agreed for delivery, for reasons not attributable to the same, FINPROJECT shall inform CROCS without delay, in writing, of such occurrence, stating, as far as possible, the estimated date of delivery.

5.7 In case of delay in delivery for which FINPROJECT is responsible, CROCS may claim, after having served written notice on the latter, compensation for the damages actually suffered, within the maximum amount of 10% of the price of the Material the delivery of which has been delayed, except for causes of force majeure.

For purposes of the above, the parties hereto agree that FINPROJECT:

(i) is deemed to have performed, as from the notice to the selected carrier or freight agent that "goods are ready";

(ii) shall be liable for delayed delivery only after 15 (fifteen) days from the established delivery term.

5.8 Any complaints relating to packing, quantity, number or exterior features of the Material (apparent defects), must be notified to FINPROJECT, in writing, within 7 days from receipt of the Material; failing such notification CROCS's right to claim the above defects will be forfeited. Any complaints relating to defects which cannot be discovered on the basis of a careful inspection upon receipt (hidden defects) shall be notified to FINPROJECT, by registered letter with return receipt,

within 7 days from discovery of the defects and in any case no later than 3 months from delivery; failing such notification CROCS's right to claim the above defects will be forfeited. In addition to the communication as per art. 13 below, such notices shall be forwarded by fax on +39.0736.814259, marked for the attention of Mr. Americo Malaccari.

6. ***Warranty of the Material***

6.1. FINPROJECT undertakes to remedy any defects, lack of quality or non-conformity of the Material for which it is liable, occurring within 3 (three) months from delivery of the Material for raw Material, and one year from the date of Manufacture for the Goods, provided such defects have been promptly notified in accordance with paragraph 5.8, above.

6.2 The parties hereto agree that the warranty provided by 6.1 shall be valid only if the materials are transported within a period of time and in such a way as to preserve the physical properties and characteristics of the Materials, as described by Annexe 1.

7. ***Duration Specific to the Material***

7.1. This Agreement is effective as of the date of execution of the Original Agreement (" **Effective Date** "), and will remain in full force and effect for a four-year period, until June 30, 2008. This Agreement shall continuously automatically renew for one-year terms provided CROCS meets the Minimum Quantity in any year after the fourth contract year, and in accordance with the terms contained herein.

7.2 Should CROCS not be willing to renew this Agreement, it shall give notice thereof in writing to FINPROJECT within ninety (90) days from the date of expiration of this Agreement or any extension term.

8. ***FINPROJECT's Notice in Connection With Actions by Regulatory Authorities specific to the Material***

8.1. The Parties undertake to notify each other promptly in writing of any threatened or pending actions by regulatory authorities in general which might reasonably affect the safety or the effectiveness of the Material or the supply commitment contained in this Agreement.

9. ***Confidentiality and Disclosure***

9.1. So long as CROCS orders the Minimum Quantities referenced in Section 3.1 herein, but in no event less than ten (10) years from the effective date of this Agreement, CROCS and FINPROJECT shall not disclose the recipes set forth in Annexe 1, and shall maintain in confidence the respective Confidential Information received or obtained from the other or owned by the other, and use such Confidential Information solely for the purposes contemplated and permitted by this Agreement. Each Party shall treat communications to the other Party as strictly confidential. Upon termination of this Agreement, the parties shall cease using the Confidential Information of the other party.

9.2. Each Party acknowledges that all confidential information exchanged or developed hereunder shall be owned by the transferor and shall continue to be owned by the transferor even following transfer. "Confidential Information" shall mean any and all confidential or proprietary information owned by FINPROJECT (or its affiliates) or by the CROCS (or its affiliates) provided to the other Party including but not limited to the Material, which includes the recipes. Confidential Information shall not be deemed to include information that:

(i) is or becomes known publicly through no fault of the receiving Party;

(ii) is learned by the receiving Party from a third party entitled to disclose same;

(iii) is developed by the receiving Party independently of information obtained from the disclosing Party as shown by the receiving Party's written records;

(iv) is already known to the receiving Party before receipt from the disclosing Party, as shown by prior written records; or

(v) is released with the prior written consent of the disclosing Party.

10. ***Permitted Disclosures***

10.1. Notwithstanding Section 9 hereof, FINPROJECT and CROCS shall, upon prior written notice to the other Party and only to the extent necessary, have the right to disclose the other Party's Confidential Information:

(i) to regulatory or government agencies for the purposes of preparing or supplementing any Regulatory Filing or Manufacturing Regulatory Documentation, as applicable, or as required by law within each country where each Party's activity is being conducted,

(ii) If is legally requested to disclose by any Authority, provided that in such a case the receiving party promptly provides the disclosing party with a written notice so that the disclosing party may seek a protective order.

11. ***Termination Specific to the Material***

11.1. Any Party shall have the right to terminate the agreement as to the Material as set forth in Sections 1.1 and 2 through 18 of this Agreement, immediately upon written notice of termination to be sent to the other Party in writing upon the occurrence of one or more of the following events:

(i) if either Party fails to perform or observe or otherwise breaches any of its obligations as set forth in Sections 1.1 and 2 through 18 of this Agreement and such failure or breach continues unremedied for a period of sixty (60) days after receipt by the breaching Party of a written notice thereof from the non-breaching Party; and

(ii) appointment of a trustee, receiver, custodian, liquidation or the like of either Party or of all or any substantial portion of their assets;

11.2. In the event of any termination the agreement as to the Material as set forth in Sections 1.1 and 2 through 18 of this Agreement, all amounts previously invoiced and unpaid or owed to FINPROJECT shall be due and payable by CROCS on the date of termination.

11.3. Regardless of the reason for termination, the obligations under Section 9 of this Agreement shall survive the termination of this Agreement, or termination any part of this Agreement.

11.4. Termination of the agreement as to the Material as set forth in Sections 1.1 and 2 through 18 of this Agreement shall not affect compliance as to the Finished Shoes as set forth in Sections 1.2, 9, 10 and 13-19 of this Agreement.

12. ***No Implied Waivers; Rights Cumulative specific to the Material***

12.1. No failure on the part of FINPROJECT or CROCS to exercise, and no delay in exercising, any right, power, remedy or privilege under this Agreement, or provided by statute or at law or in equity or otherwise, including, without limitation, the right or power to terminate this Agreement, shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach of this Agreement or as an acquiescence therein, nor shall any single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.

13. ***Notices***

13.1. All notices, requests and other communications to FINPROJECT or CROCS hereunder shall be in writing (including telecopy or similar electronic transmissions) and shall be personally delivered or sent by telecopy (fax) or other electronic facsimile transmission or by registered mail, or certified mail, return receipt requested, postage prepaid, or by other form of courier requiring receipt in each case to the respective address specified below (or to such address as may be specified in writing to the other Party hereto) and shall be effective upon receipt thereof:

FINPROJECT S.p.A.
Contrada Campomaggio snc,
62010 Morrovalle, Macerata (Italy)
Attn: Mr. Euro Vecchiola and Mr. Maurizio Vecchiola
Facsimile: +39.0733.564489

CROCS
6273 Monarch Park Place,
Niwot,
Colorado (USA)
Att.ne: Mr. Ron Snyder
Facsimile: (303) 468-4266

14. ***No Assignment***

14.1. This Agreement shall not be assigned by either Party without the prior express written consent of the other Party, other than in the case of a business transfer or change of majority ownership.

15. ***Entire Agreement***

15.1. The Original Agreement is hereby amended and superseded in its entirety and restated as set forth herein. Accordingly, this Agreement, together with its Annexes 1 and 2constitutes, on and as of the Effective Date hereof, the entire agreement of and between FINPROJECT and CROCS with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, between FINPROJECT and CROCS with respect to such subject matter are hereby superseded, as of the Effective Date.

16. ***Counterparts***

16.1. This Agreement may be executed in two or more counterparts, in English language and in Italian language. In the case of discrepancies or interpretation differences between the Italian and English versions, the Italian version shall prevail.

17. ***Governing Law***

17.1. This Agreement, including the supply of Finished Shoes as per art. 19 hereinbelow,shall be governed by the laws of Italy.

18. ***Arbitration Clause***

18.1. Any dispute, claim or other controversy arising out of or relating to this Agreement, or any alleged breach thereof, shall be settled by arbitration as per the Italian Civil Procedure Code by a panel of three arbitrators (the Arbitrators), two of which shall be appointed by each Party, and the third, who will act as president of the panel, upon mutual agreement of the first two arbitrators.

18.2. If either Party fails to appoint its arbitrator within 20 (twenty) days from receiving notice of the appointment of an arbitrator by the other Party, such arbitrator shall, at the request of the latter Party, be appointed by the President of Milan Court. The President of Miln Court shall appoint the third arbitrator in case the two arbitrators appointed by the parties cannot reach an agreement upon the third arbitrator.

18.3. Arbitration shall be conducted according to court procedures in accordance with articles 806 and ss. of the Italian Code of Civil Procedure and the award shall be made in accordance with the law. The place of arbitration shall be Milan and the language of arbitration shall be Italian.

19. *Finished Shoes*

19.1. *Rate of Orders.* CROCS shall order Finished Shoes from FINPROJECT on a purchase order basis at an initial rate of [*****] (hereinafter the "Initial Rate"). The Initial Rate may be reduced to any amount less than the Initial Rate at the exclusive and unfettered discretion of CROCS upon six months written notice by CROCS to FINPROJECT, or increased to any amount greater than the Initial Rate upon agreement of the parties. The Initial Rate is subject to FINPROJECT meeting the quality and delivery requirements of CROCS.

19.3. *Termination.* Either party may terminate the agreement as to Finished Shoes as set forth in Sections 1.2, 9, 10, 13-19 of this Agreement upon six months written notice, Termination of the agreement as to Finished Shoes shall not affect compliance with the agreement as to the Material as set forth in Sections 1.1 and 2-18 of this Agreement.

19.4. *Survival.* In any event, the obligations under Section 9 of this Agreement shall survive the termination of this Agreement, or termination any part of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorised officers as of the Effective Date.

Finproject S.p.A.

Name: Euro Vecchiola
Title: Chairman of the Board of Directors
Place and Date: July 26, 2005

Signature: /s/ EURO VECCHIOLA

CROCS, Inc.

Name: Ron Snyder
Title: President
Place and Date:

Signature: /s/ RON SNYDER

Annexe 1 MATERIALS

[*****]

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[*****]	[*****]
[*****]	
[*****]	
[*****]	
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Instructions for preserving the physical properties of the materials [*****]

The following prescriptions should be followed for the above materials:

- [*****];
- [*****];
- [*****];
- [*****];
- [*****].

ANNEXE No. 2

PRICES FOB ITALIAN PORT IN EURO FOR [*****] IN THE STANDARD COLOURS PRODUCED AND SOLD

[*****]

	€
[*****]	[*****]
[*****]	[*****]
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[*****]	[*****]

QuickLinks

Exhibit 10.21

AMENDED AND RESTATED AGREEMENT FOR SUPPLY (the " Agreement "),

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.22

SEPARATION AND RELEASE AGREEMENT

This **SEPARATION AND RELEASE AGREEMENT** (the " **Agreement** ") is made and entered into by and between Western Brands, LLC (" **Western** ") and George Boedecker (" **Mr. Boedecker** ") (collectively "parties") as of the Execution Date of this Agreement defined in paragraph 24 below.

I. RECITALS

WHEREAS , Mr. Boedecker owns 20,000 units of Class A ownership interest in Western (the " **Shares** "); and

WHEREAS, Mr. Boedecker is a board member of Western; and

WHEREAS, effective as of January 1, 2005, Mr. Boedecker tendered his resignation as Chief Executive Officer, Manager and any and all other positions he may have held with Western; and

WHEREAS, Mr. Boedecker tendered his resignation voluntarily, at his election and in his discretion; and

WHEREAS, Western has accepted the resignation tendered by Mr. Boedecker; and

WHEREAS, the parties wish to make the separation amicable but conclusive on the terms and conditions set forth herein; and

WHEREAS, Mr. Boedecker accepts the benefits of this Separation and Release Agreement with the acknowledgment that by its terms he has been fully and satisfactorily compensated.

II. COVENANTS

THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, it is hereby agreed by and between the parties hereto as follows:

1. Resignation. Mr. Boedecker has tendered and Western has accepted Mr. Boedecker's resignation as Chief Executive Officer, Manager, and any and all other positions he may have held with Western, effective as of January 1, 2005 ("Separation Date").

2. Payments, Agreements and Rights. Although Western has no policy or procedure requiring payment of any severance benefits, Western agrees to the following as part of this Agreement. Mr. Boedecker acknowledges and agrees that he is solely responsible to inform Western in writing of his new address should he change his residence and that failure to do so may result in his not receiving benefits under this Agreement.

(a) **Payment.** Western agrees to pay Mr. Boedecker Six Hundred Thousand Dollars ($600,000.00), less all legally required deductions and withholdings ("Payment"). The Payment shall be made in sixteen equal installments of Thirty-Seven Thousand Five Hundred Dollars ($37,500.00) payable at the beginning of each calendar quarter (January 1, April 1, July 1, October 1) for a four year period beginning on the Separation Date. The first installment shall be paid within seven (7) business days of the Separation Date. The remaining installment payments shall be made on or before the first day of each calendar quarter beginning with April 1, 2004 and ending with October 1, 2008. Each Payment installment shall be made by check, and shall be delivered by mail, overnight delivery service or hand delivery, at the sole option of Western. Mr. Boedecker acknowledges and agrees that 50% of the Payment is solely in consideration for his executing and not revoking the ADEA Waiver and Release set forth in paragraph 15 of this Agreement. The obligation imposed on Western under this paragraph 2(a) to pay that portion of

the Payment attributable to the ADEA Waiver and Release shall forever expire should Mr. Boedecker revoke the ADEA Waiver and Release.

(b) **Insurance.** Mr. Boedecker shall be entitled to participate in Western's standard medical benefits package for a period of 4 years from the Separation Date, or until such time Mr. Boedecker owns or becomes employed by a company that offers medical benefits to its employees. In the event federal law or the terms of Western's insurance policies prohibit Mr. Boedecker from participating in Western's medical benefits plan, Western shall reimburse Mr. Boedecker for the cost of purchasing a comparable plan during such period. In addition, Western will attempt to facilitate ongoing medical insurance (either through Western's plan or another plan) for Mr. Boedecker at his cost following the 4 year coverage period.

(c) **Distribution Agreement.** Western and Mr. Boedecker will enter into a mutually acceptable exclusive distribution agreement (the " **Distribution Agreement** ") covering the following countries: Mexico, Dominican Republic, Cuba, and Costa Rica (the " **Territory** "). The effective date of the Distribution Agreement shall be July 1, 2005. The term of the Distribution Agreement shall be two (2) years (the " **First Term** "), with a three (3) year renewal (the " **Second Term** ") at Mr. Boedecker's option if sales in the Territory meet or exceed 250,000 units for the final year of the First Term. The Distribution Agreement may be renewed for an additional two (2) year term (the " **Third Term** ") at Mr. Boedecker's option if: i) the Second Term option has been exercised and ii) sales in the Territory meet or exceed 500,000 units for the final year of the Second Term. Sales for the Territory must total at least 250,000 units for every year during the Second Term and 500,000 units for every year of the Third Term in order for Mr. Boedecker to maintain exclusive distribution rights in the Territory. In the event the annual requirements stated above are not achieved, the exclusivity portion of the Distribution Agreement may be terminated at Western's option. Pricing under the Distribution Agreement shall be set at 22% off the then current wholesale pricing, as set by Western.

(d) **Kiosk License/Franchise Rights.** Western will enter into an agreement (the " **Rights Agreement** ") with Mr. Boedecker which shall grant Mr. Boedecker the right to license and/or franchise airport kiosks for the purpose of selling Western products. The effective date of the Rights Agreement shall be July 1, 2005. The term of the Rights Agreement shall be ten (10) years, *provided however* , Western shall have the right to terminate the exclusivity portion of such agreement without penalty in the event six (6) kiosks have not been opened by Mr. Boedecker during the first two (2) years of the Rights Agreement. Additionally, Western shall have the right to terminate the Rights Agreement if three (3) new kiosks are not been opened by Mr. Boedecker during any ensuing year. In the event the exclusivity portion of the Rights Agreement is terminated prior to the end of its term, Mr. Boedecker shall be entitled to receive compensation from the license and/or franchise agreements entered into prior to the termination through the remainder of the original term. Mr. Boedecker would also be entitled to continue to operate under the rights granted in the Rights Agreement on a non-exclusive basis. Western will sell to Kiosk owners/licensees at wholesale prices as determined by Western. Western shall retain control over the design and signage used by the kiosks as well as the types of product sold.

3. Business Expense Reimbursement. Western agrees to reimburse Mr. Boedecker for those reasonable business expenses he necessarily incurred in his capacity as a Western employee as of the Separation Date consistent with Western's policies in this regard. Mr. Boedecker acknowledges and agrees that Western will not reimburse him for any expenses he incurred after the Separation Date. Mr. Boedecker must submit the necessary documentation establishing the amount, date and reason for expenses he incurred and for which he seeks reimbursement no later than 15 days after the Execution Date of this Agreement.

4. Other Compensation. Except as expressly provided herein, Mr. Boedecker acknowledges and agrees that he will not receive (nor is he entitled to receive) any additional consideration, payments, reimbursements, incentive payments, stock, equity interests or benefits of any kind. Mr. Boedecker further acknowledges and agrees that on or before the first regular payday after the Separation Date Western paid to him in full any and all wages, salary, accrued but unused vacation, accrued but unused sick leave, personal time off, commissions, bonuses, stock options, incentive payments and compensation due and owing, if any, as of the Separation Date.

5. Board Membership. Mr. Boedecker shall retain his position on Western's Board of Directors subject to the terms of Western's Operating Agreement or Articles of Incorporation and Bylaws in the event Western changes its corporate structure.

6. Voting Agreement. Mr. Boedecker agrees to enter into a voting agreement whereby he shall be contractually obligated to allow Michael Marks to vote the Shares in all shareholder votes for eighteen (18) months or until such time as Western's shares become subject to a public offering, whichever occurs first.

7. Location of Office. Mr. Boedecker agrees to establish a private office separate from any office owned or leased by Western and to pay all costs and expenses associated therewith.

8. Other Considerations. In the event Western is invited to a ceremonial opening of a stock exchange in connection with a public offering, Mr. Boedecker shall be invited to attend the event and shall be offered the opportunity to participate in the ceremony of "ringing the bell."

9. Treatment of Class A Units. The Shares owned by Mr. Boedecker shall be converted to Class B Units/shares without preferences upon conversion of the corporate structure of Western to a C- Corporation.

10. Intellectual Property. Mr. Boedecker agrees to assign any ownership interest in intellectual property rights being used or claimed by Western, including but not limited to patents, licenses, trademarks, tradenames, copyrights or any other intellectual property rights. Mr. Boedecker agrees to execute any documents necessary to effectuate such transfer upon Western's request.

11. Denial of Liability. The parties acknowledge that any payment by Western and any release by Mr. Boedecker pursuant to this Agreement are made in compromise of disputed claims, that in making any such payment or release, Western and Mr. Boedecker in no way admit any liability to each other and that the parties expressly deny any such liability.

12. Nondisparagement. Mr. Boedecker and Western agree that neither party will at any time disparage the other to third parties in any manner likely to be harmful to the other party, their business reputation, or the personal or business reputation of its directors, shareholders and/or employees. Notwithstanding the prohibition in the preceding sentence, each party shall respond accurately and fully to any question, inquiry, or request for information when required by legal process.

13. Confidentiality. The provisions of this Agreement shall be held in strictest confidence by Mr. Boedecker and Western and shall not be publicized or disclosed in any manner whatsoever. Notwithstanding the prohibition in the preceding sentence: (a) the parties may disclose this Agreement in confidence to their respective attorneys, accountants, auditors, tax preparers, and financial advisors; (b) Western may disclose this Agreement as necessary to fulfill standard or legally required corporate reporting or disclosure requirements; (c) Western may disclose this Agreement upon request from any government entity; and (d) the parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law.

14. Release of Claims by Mr. Boedecker. In consideration for the consideration set forth in this Agreement and the mutual covenants of Western and Mr. Boedecker, Mr. Boedecker hereby releases, acquits and forever discharges Western, its affiliated corporations and entities, its and their officers,

directors, agents, representatives, servants, attorneys, employees, shareholders, successors and assigns of and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, indemnities and obligations of every kind and nature, in law, equity, or otherwise, known or unknown, suspected and unsuspected, disclosed and undisclosed, liquidated or contingent, arising out of or in any way related to agreements, events, acts or conduct at any time prior to and including the Execution Date, including but not limited to: any and all such claims and demands directly or indirectly arising out of or in any way connected with Mr. Boedecker's employment with Western or the conclusion of that employment; claims or demands related to salary, bonuses, commissions, incentive payments, stock, stock options, or any ownership or equity interests in Western, vacation pay, personal time off, fringe benefits, expense reimbursements, sabbatical benefits, severance benefits, or any other form of compensation; claims pursuant to any federal, any state or any local law, statute, common law or cause of action including, but not limited to, the federal Age Discrimination in Employment Act of 1967, as amended ("ADEA") under the terms set forth in paragraph 15 below, the federal Civil Rights Act of 1964, as amended; the federal Americans with Disabilities Act of 1990; the Family and Medical Leave Act; the Employee Retirement Income Security Act; the Colorado Wage Claim Act; Colorado anti-discrimination act; Colorado equal pay laws; Colorado Revised Statutes section 8-2-104; any other employment discrimination statutes; tort law; contract law; wrongful discharge; discrimination; harassment; fraud; defamation; libel; emotional distress; and breach of the implied covenant of good faith and fair dealing.

15. ADEA Waiver and Release by Mr. Boedecker. Mr. Boedecker acknowledges that he is knowingly and voluntarily waiving and releasing any rights he may have under the federal Age Discrimination in Employment Act of 1967, as amended ("ADEA Waiver and Release"). Mr. Boedecker acknowledges that the consideration given for this ADEA Waiver and Release, provided for in paragraph 2(a) above, is in addition to anything of value to which he was already entitled. The parties agree and acknowledge that Mr. Boedecker has been advised by this writing, as required by the ADEA that: (a) this ADEA Waiver and Release does not apply to any claims under ADEA that may arise after the date that Mr. Boedecker signs this Agreement; (b) Mr. Boedecker has the right to and is advised to consult with an attorney prior to executing this Agreement; (c) Mr. Boedecker has twenty-one days within which to consider this ADEA Waiver and Release (although Mr. Boedecker may choose to voluntarily execute this ADEA Waiver and Release earlier); and (d) Mr. Boedecker has seven days following the execution of this Agreement to revoke his ADEA Waiver and Release by sending, via certified United States mail, written notice of revocation to the attention of Ronald Snyder, President of Western. *The parties acknowledge and agree that revocation by* Mr. Boedecker *of the ADEA Waiver and Release is not effective to revoke* Mr. Boedecker *'s waiver or release of any other claims pursuant to this Agreement. The parties further agree that revocation by* Mr. Boedecker *of the ADEA Waiver and Release shall entitle Western to recover any and all payments made by Western in consideration for her executing and not revoking the ADEA Waiver and Release, and to recover the costs, expenses and attorney's fees incurred in attempting to recover such payments.*

16. Tax Consequences. Mr. Boedecker agrees to indemnify Western and hold Western harmless from any and all claims or penalties asserted against Western for any failure to pay taxes due on any consideration provided by Western pursuant to this Agreement. Mr. Boedecker expressly acknowledges that Western has not made, nor herein makes, any representation about the tax consequences of any consideration provided by Western to Mr. Boedecker pursuant to this Agreement.

17. No Third Party Rights. The parties agree that by making this Agreement they do not intend to confer any benefits privileges or rights to others. The Agreement is strictly between the parties hereto, subject to the terms of paragraph 18 below, and that it shall not be construed to vest in any other the status of third-party beneficiary.

18. Voluntary and Knowingly. Mr. Boedecker acknowledges that in executing this Agreement, he has reviewed it and understands its terms and had had an opportunity and was advised to seek

guidance from counsel of his own choosing, and was fully advised of his rights under law, and acted knowingly and voluntarily

19. Duty to Effectuate. The parties agree to perform any lawful additional acts, including the execution of additional agreements, as are reasonably necessary to effectuate the purpose of this Agreement.

20. Entire Agreement. This Agreement constitutes the complete, final and exclusive embodiment of the entire agreement between Mr. Boedecker and Western with regard to the subject matter hereof. This Agreement is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein. It may not be modified except in a writing signed by Mr. Boedecker and the President of Western.

21. Successors and Assigns. This Agreement shall bind the heirs, personal representatives, successors, assigns, executors and administrators of each party, and insure to the benefit of each party, its heirs, successors and assigns.

22. Applicable Law. This Agreement was entered into in the State of Colorado, and the parties agree and intend that it be construed and enforced in accordance with the laws of the State of Colorado.

23. Forum. Any controversy arising out of or relating to this Agreement or the breach thereof, or any claim or action to enforce this Agreement or portion thereof, or any controversy or claim requiring interpretation of this Agreement must be brought in a forum located within the State of Colorado. No such action may be brought in any forum outside the State of Colorado. Any action brought in contravention of this paragraph by one party is subject to dismissal at any time and at any stage of the proceedings by the other, and no action taken by the other in defending, counter claiming or appealing shall be construed as a waiver of this right to immediate dismissal. A party bringing an action in contravention of this paragraph shall be liable to the other party for the costs, expenses and attorney's fees incurred in successfully dismissing the action or successfully transferring the action to a forum located within the State of Colorado. The Parties hereby waive any and all rights to a jury trial and agree to have any actions brought in connection with this Agreement heard and decided by a court of competent jurisdiction as described in this Section 23.

24. Severable. If any provision of this Agreement is determined to be invalid, void or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement, and the provision in question shall be modified so as to be rendered enforceable.

25. Enforce According To Terms. The parties intend this Agreement and Exhibit A to be enforced according to their terms.

26. Execution Date. This Agreement is effective on the later of the dates that each party signed this Agreement ("Execution Date").

27. Section Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have duly authorized and caused this Agreement to be executed as follows:

George Boedecker An individual	**Western Brands LLC** A Limited Liability Company
/s/ GEORGE BOEDECKER	By: /s/ RONALD SNYDER
George Boedecker	Its: President
Date: 1/1/05	Date: 1/1/05

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Exhibit 10.22

SEPARATION AND RELEASE AGREEMENT

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Exhibit 10.23

[LOGO]

Crocs Footwear
6273 Monarch Park Pl.
Niwot, CO 80503
303-468-4260 mail
303-468-4266 fax
www.crocs.com

October 18, 2004

Dear Caryn Ellison:

We are pleased to offer you the position of Chief Financial Officer at Western Brands d.b.a. Crocs Footwear. We feel that your skills and background will be valuable assets to our team.

Per our discussion, your starting salary is $16,000 per month and is paid on a bi-monthly basis. Additional compensation is as follows:

- Bonus—0% to 50% based on company profitability and performance
- Car Allowance—$700/month
- Medical and dental plan-premium paid by Crocs
- Crocs shares—1500 units (vesting over the next three years
- 4 weeks vacation per year (carries over per company policy—still TBD)
- 6 months severance if employment is terminated by employer

Please indicate you accept this offer by signing below.

I look forward to welcoming you to Crocs Footwear.

Sincerely,

Ron Snyder
President
Western Brands d.b.a. Crocs Footwear

Accepted by: /s/ CARYN ELLISON Date: 10/18/04

Caryn Ellison

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Exhibit 10.23

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Exhibit 10.24

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT, made effective this 1st day of October, 2003, is by and between WESTERN BRANDS, LLC, a Colorado Limited Liability Company (hereinafter referred to as "Western Brands"), and RONALD SNYDER (hereinafter referred to as "Snyder").

WHEREAS, Western Brands is a Colorado Limited Liability Company engaged in part in the business of manufacturing and marketing CROCS footwear; and

WHEREAS, Snyder is in the business of performing consulting services; and

WHEREAS, Western Brands desires to utilize Snyder's services, and Snyder is willing to provide such services;

NOW THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

1. Snyder will provide consulting services on behalf of Western Brands on the terms and conditions set forth herein.

2. Western Brands shall determine the scope of Snyder's services, but Snyder may perform such services at such times and at such locations as Snyder determines, provided service can be performed in a timely and competent manner.

3. Snyder's obligations under this agreement shall commence October 1, 2003. Snyder shall be compensated in the form of Class B membership interests issued to Snyder as set forth in paragraph 4 below.

4. Snyder shall keep a record of hours spent in furtherance of his obligations under this Agreement and provide Western Brands with a detail of hours worked for any month in which his hours exceed fifty (50). At such time as Snyder has provided one hundred sixty-six and two-thirds ($166\ ^{2}/_{3}$) hours of consulting services in furtherance of this agreement or six-months have elapsed since the effective date of this Agreement, whichever occurs first, Western Brands shall issue to Snyder Class B membership interests equal to one-half ($^{1}/_{2}$) of one percent (1%) of all outstanding membership interests. For each additional 166.67 hours of service or expiration of additional six-month periods, whichever occur first, Snyder will be issued an additional one-half percent ($^{1}/_{2}$%) membership interest until such time as Snyder has provided six hundred and sixty-six and two-thirds ($666\ ^{2}/_{3}$) hours of service, or two years have elapsed since the effective date of this Agreement, whichever occurs first, and Western Brands has delivered Class B membership interests equal to two percent (2%) of the outstanding membership interests. At such time neither party shall have any further obligations under this agreement unless a new agreement is entered into in writing by the parties.

The parties contemplate and understand that membership interests will be converted from percentages to units at a future date. The rate of conversion shall be 1% = 1000 units. The parties agree that upon such conversion, any membership interest held by Snyder shall be converted to units and any future grant of membership interest shall be granted in units.

5. Snyder shall have no right to demand monies from Western Brands for services rendered, and understands and acknowledges that his sole compensation will be membership units delivered pursuant to this Agreement. Membership interests may only be issued in one-half percent ($^{1}/_{2}$ %) increments.

6. This agreement may be terminated at will by either party at any time, provided however, that if Western Brands terminates this agreement, it shall issue an additional one-half percent ($^{1}/_{2}$ %) membership interest to Snyder, as if termination had occurred at the end of the then current six-month period. In addition, Western agrees to issue membership shares to Snyder in accordance with Section 7 below in the event a Change of Control (as defined in Section 7) is agreed to in principle within six (6) months of the termination date. If terminated by Snyder, Western Brands shall have no further obligations as of the termination date. This Section 6 shall survive the termination of this Agreement.

7. Prior to any change in control or ownership of all or substantially all of the assets or membership interests of Western Brands or distribution rights of Crocs brand footwear (a "Change of Control"), Western Brands shall issue to Snyder Class B ownership interests equal to 2% of all membership interests less any memberships interests that have previously been issued to Snyder in accordance with this Agreement. Such ownership interests shall be issued to Snyder regardless of the number of hours worked or time elapsed as of the date of the change of control or ownership.

8. Snyder understands that the Class B membership units are non-voting, and may be subject to future dilution, in accordance with the Western Brands Operating Agreement.

9. Snyder agrees that he will at all times faithfully, industriously, and to the best of his ability, experience, and talents, perform all of the duties that may be required of and from him pursuant to the terms of this agreement and the particular project for which he is utilized.

10. Nothing herein shall prohibit Snyder from performing consulting services on behalf of others.

11. Snyder will not disclose to others, use for personal benefit, or otherwise misappropriate any of the following information or property of Western Brands or its clients:

(a) Trade secrets and other confidential information;

(b) Customer lists or referral sources;

(c) Sales volumes and profit margins;

(d) Advertising or marketing strategy;

(e) Financing sources or techniques;

(f) Employment manuals and personnel policies;

(g) Estimating procedures and billing practices;

(h) Product development practices;

(i) Production levels;

(j) Tax information; and

(k) Computer programs or software.

In addition, Snyder will not disclose any other confidential information concerning the business and affairs of Western Brands, which would cause Western Brands or its clients to operate at a competitive disadvantage, if not otherwise disclosed.

12. **Snyder understands that he is an independent contractor, and not an employee of Western Brands. Snyder understands that he is not entitled to workers' compensation benefits or other employee benefits of Western Brands, and Snyder must pay his own income taxes on any compensation earned pursuant to this Agreement.**

13. No waiver, alteration or modification of any provision of this Agreement shall be binding unless it is in writing and signed by both parties.

14. This Agreement shall be governed by the laws of the state of Colorado.

WESTERN BRANDS, LLC

By: /s/ GEORGE BOEDECKER

George Boedecker, Manager

/s/ RONALD SNYDER

Ronald Snyder

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Exhibit 10.24

INDEPENDENT CONTRACTOR AGREEMENT

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Exhibit 21.1

List of Subsidiaries of the Registrant

Crocs Asia Pty. Ltd
Crocs Asia Pte. Ltd.
Crocs Retail, Inc.
Crocs Mexico SRL de CV
Crocs Servicios SRL de CV
Western Brands Holding Company, Inc.
4256519 Canada Inc.
Foam Creations Inc.
Crocs Europe B.V.
Les Plastiques Fintech Inc./Fintech Plastics Inc.

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List of Subsidiaries of the Registrant

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Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement on Form S-1 of our report dated August 14, 2005 relating to the consolidated financial statements of Crocs, Inc. appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to us under the heading "Experts" in such Prospectus.

DELOITTE & TOUCHE LLP

Denver, Colorado
August 14, 2005

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement on Form S-1 of our report dated August 11, 2005 relating to the financial statements of Finproject N.A Inc. appearing in the Prospectus, which is part of this Registration Statement. We also consent to the reference to us under the heading "Experts" in such Prospectus.

/s/ Samson, Bélair Deloitte & Touche s.e.n.c.r.l

Quebec, Canada
August 12, 2005

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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