

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

RUSH ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Texas

(State or other jurisdiction of
incorporation or organization)

74-1733016

(I.R.S. Employer
Identification No.)

555 IH 35 South

New Braunfels, Texas

(Address of Principal Executive Offices)

78130

(Zip Code)

Rush Enterprises, Inc. Long-Term Incentive Plan

2004 Employee Stock Purchase Plan

Certain Non-Plan Options

(Full title of the plan)

MARTIN A. NAEGELIN, JR.

SENIOR VICE PRESIDENT AND CHIEF FINANCIAL OFFICER

Rush Enterprises, Inc.

555 IH 35 South

New Braunfels, Texas 78130

(Name and address of agent for service)

(830) 626-5230

(Telephone number, including area code, of agent for service)

With Copies to:

Phillip M. Renfro

Derrek Weaver

Fulbright & Jaworski L.L.P.

300 Convent Street, Suite 2200

San Antonio, Texas 78205

(210) 224-5575

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share ⁽³⁾	Proposed maximum aggregate offering price ⁽³⁾	Amount of registration fee
Class A Common Stock, \$.01 par value	600,000 shares ⁽¹⁾	\$14.90	\$8,940,000	\$1,052.24
Class A Common Stock, \$.01 par value	60,000 shares ⁽²⁾	\$2.0625	\$123,750	\$14.57
Class B Common Stock, \$.01 par value	60,000 shares ⁽²⁾	\$2.0625	\$123,750	\$14.57
TOTAL	720,000 shares		\$9,187,500	\$1,081.38

(1) Represents shares issuable under the Registrant's 2004 Employee Stock Purchase Plan.

(2) Represents shares issuable upon exercise of non-plan options held by Ronald J. Krause, John D. Rock and Harold D. Marshall.

(3) Estimated in accordance with Rule 457 solely for the purpose of calculating the registration fee. The fee with respect to the 600,000 shares of Class A common Stock is based on the average of the high and the low sales price of a share of Class A Common Stock on the Nasdaq National Market System on December 13, 2004. The fees with respect to the 60,000 shares of Class A Common Stock and 60,000 shares of Class B Common Stock issuable upon exercise of non-plan options are based on \$2.0625, the price per share at which these options may be exercised.



INTRODUCTORY NOTE

The Registrant has prepared this Registration Statement in accordance with the requirements of Form S-8 under the Securities Act of 1933, as amended (the "Securities Act"), to register (i) 600,000 shares of class A common stock that may be issued under the Registrant's 2004 Employee Stock Purchase Plan, (ii) 60,000 shares of class A common stock issuable upon exercise of options granted outside of any plan, and (iii) 60,000 shares of class B common stock issuable upon exercise of options granted outside of any plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

ITEM 1. PLAN INFORMATION.

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

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.

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

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents are incorporated herein by reference:

- a) The Annual Report on Form 10-K, as amended, filed by Rush Enterprises, Inc. (the "Company") for the year ended December 31, 2003 (Commission File No. 000-20797);
- b) The Quarterly Report on Form 10-Q filed by the Company for the quarterly period ended March 31, 2004 (Commission File No. 000-20797);
- c) The Quarterly Report on Form 10-Q filed by the Company for the quarterly period ended June 30, 2004 (Commission File No. 000-20797);
- d) The Quarterly Report on Form 10-Q filed by the Company for the quarterly period ended September 30, 2004 (Commission File No. 000-20797);
- e) The specimen of certificate representing the Company's Old Common Stock (now Class B Common Stock), \$.01 par value, filed by the Company as Exhibit 4.1 to the Company's Registration Statement on Form S-1 filed by the Company with the Commission on April 10, 1996 (Commission File No. 333-03346);
- f) The specimen of certificate representing the Company's Class A Common Stock, \$.01 par value, filed by the Company as Exhibit 4.4 to the Company's Registration Statement on Form 8-A filed by the Company with the Commission on July 9, 2002 (Commission File No. 000-20797);
- g) The Company's Proxy Statement on Schedule 14A filed with the Commission on April 12, 2004 (Commission File No. 000-20797);
- h) All other reports filed by the Company with the Commission pursuant to Sections 13 or 15(d) of the Exchange Act after December 31, 2003; and
- i) All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all such

securities then remaining to be sold (excluding, however, any portion of such documents not deemed to be "filed" with the Commission pursuant to the rules of the Commission).

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Article 2.02-1 of the Texas Business Corporation Act provides that any director or officer of a Texas corporation may be indemnified against judgments, penalties, fines, settlements and reasonable expenses actually incurred by him in connection with or in defending any action, suit or proceeding in which he is a party by reason of his position. With respect to any proceeding arising from actions taken in his official capacity, as a director or officer, he may be indemnified so long as it shall be determined that he conducted himself in good faith and that he reasonably believed that such conduct was in the corporation's best interests. In cases not concerning conduct in his official capacity as a director or officer, a director may be indemnified as long as he reasonably believed that his conduct was not opposed to the corporation's best interests. In the case of any criminal proceeding, a director or officer may be indemnified if he had no reasonable cause to believe his conduct was unlawful. If a director or officer is wholly successful, on the merits or otherwise, in connection with such a proceeding, such indemnification is mandatory.

The Company's Amended and Restated Articles of Incorporation and Bylaws provide for indemnification of its present and former directors and officers. The Company's Bylaws further provide for indemnification of officers and directors against reasonable expenses actually incurred in connection with the defense of any such action, suit or proceeding in advance of the final disposition of the proceeding.

The Amended and Restated Articles of Incorporation of the Company contain a provision that limits the liability of the Company's directors as permitted under Texas law. The provision eliminates the liability of a director to the Company or its shareholders for monetary damages for an act or omission in the director's capacity as a director. The provision does not affect the liability of a director for the following: (i) breach of the director's duty of loyalty to the Company or its shareholders; (ii) an act or omission not in good faith that constitutes a breach of duty of the director to the Company, or that involves intentional misconduct or a knowing violation of law; (iii) a transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or (iv) an act or omission for which the liability of a director is expressly provided by an applicable statute. In addition, the limitation of liability of directors applies only to claims against a director arising out of his or her role as a director and not, if he or she is also an officer, his or her role as an officer and does not limit a director's liability under any other law, such as federal securities law.

The Company has entered into Indemnification Agreements with all of its directors and may in the future enter into such indemnification agreements with its directors, officers, employees and agents. Such indemnification agreements are intended to provide a contractual right to indemnification, to the extent permitted by law, for expenses (including attorneys' fees), judgments, penalties and fines and amounts paid in settlement actually and reasonably incurred by the person to be indemnified in connection with any proceeding (including, to the extent permitted by law, any derivative action) to which any of such individuals are, or are threatened to be made, a party by reason of their status in such position. Such indemnification agreements do not change the basic legal standards for indemnification set forth in the Texas Business Corporation Act or the Amended and Restated Articles of Incorporation of the Company. Such provisions are intended to be in furtherance, and not in limitation of, the general right to the indemnification provided in the Amended and Restated Articles of Incorporation and Bylaws of the Company.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

- *4.1 The Rush Enterprises, Inc. 2004 Employee Stock Purchase Plan, as amended through December 15, 2004
- *4.2 Form of Non-Qualified Stock Option Agreement between Rush Enterprises, Inc. and Ronald J. Krause, John D. Rock and Harold D. Marshall
- *5.1 Opinion of Fulbright & Jaworski L.L.P. as to the legality of the securities being registered
- *23.1 Consent of Fulbright & Jaworski L.L.P. (included in exhibit 5.1)
- *23.2 Consent of Ernst & Young LLP
- *24.1 Powers of Attorney from the members of the Board of Directors of the Registrant (contained on signature page hereof)

* Filed herewith

ITEM 9. UNDERTAKINGS

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and

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

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

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

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

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

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

INDEX TO EXHIBITS

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**RUSH ENTERPRISES INC.
2004 EMPLOYEE STOCK PURCHASE PLAN**

1. *Purpose of Plan.*

The purpose of the Rush Enterprises Inc. Employee Stock Purchase Plan (the "Plan") is to advance the interests of Rush Enterprises Inc., a Texas corporation (the "Company"), and its shareholders by providing employees of the Company and its subsidiaries with an opportunity to acquire an ownership interest in the Company through the purchase of common stock of the Company on favorable terms through payroll deductions. It is the intention of the Company that the Plan qualify as an "employee stock purchase plan" under Section 423 of the Internal Revenue Code of 1986, as amended (the "Code"), and provisions of the Plan shall be construed consistent with such intention.

2. *Definitions.*

The following terms will have the meanings set forth below, unless the context clearly otherwise requires:

2.1 "*Agent*" means the party or parties designated by the Company to provide Share Accounts and certain administrative services in connection with the Plan.

2.2 "*Board*" means the Board of Directors of the Company or any committee thereof to which the Board of Directors has delegated authority with respect to the Plan.

2.3 "*Common Stock*" means the Class A common stock, par value \$.01 per share, of the Company, or the number and kind of shares of stock or other securities into which such common stock may be changed in accordance with Section 11 of the Plan.

2.4 "*Committee*" means the Compensation Committee of the Board, or such successor committee that meets the criteria specified in Section 3.

2.5 "*Contribution Account*" means an account established for each Participant to which payroll deductions under the Plan are credited in accordance with Section 7.

2.6 "*Employee*" means any person, including an officer, who is employed on a full-time or part-time basis by the Company or any of its Subsidiaries.

2.7 "*Ending Date*" means the last day of each Offering Period.

2.8 "*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

2.9 "*Fair Market Value*" means, with respect to the Common Stock, as of any date:

(a) if the Common Stock is listed on the NASDAQ, the closing price per share of the Common Stock, at the end of the regular trading session, which as of the effective date of this Plan is 4:00 p.m., New York City time, as reported on the NASDAQ Composite Tape on that date (or, if no shares were traded on such day, as of the first day prior thereto on which there was such a trade); or

(b) if the Common Stock is not so listed, such price as is determined in the manner specified by the Committee in its sole discretion, such manner to be acceptable under Section 423 of the Code.

2.10 "*Grant Date*" means the first day of each Offering Period.

2.11 "*Insider*" means any Employee who is subject to Section 16 of the Exchange Act.

2.12 "*Offering Period*" means each six-month period beginning on January 1 and ending on June 30, or beginning on July 1 and ending on December 31.

2.13 "*Participant*" means an eligible Employee who elects to participate in the Plan in accordance with Section 6.

2.14 "*Share Account*" means the brokerage account established by the Agent for each Participant to which shares of Common Stock purchased under the Plan are credited in accordance with Section 9. The Share Account will be established pursuant to a separate agreement between each Participant and the Agent.

2.15 "*Subsidiary*" means any subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

3. *Administration.*

The Plan shall be administered by the Committee (or any successor thereto appointed by the Board consisting of not less than three members, all of whom must be members of the Board who are "Non-Employee Directors" as defined in Rule 16b-3 under the Exchange Act). Members of the Committee shall be appointed from time to time by the Board, shall serve at the pleasure of the Board, and may resign at any time upon written notice to the Board. A majority of the members of the Committee shall constitute a quorum. The Committee shall act by majority approval of the members, but action may be taken by the Committee without a meeting if unanimous written consent is given. In accordance with and subject to the provisions of the Plan, the Committee shall have authority to interpret the Plan, to make, amend and rescind rules and regulations regarding the Plan (including rules and regulations intended to insure that operation of the Plan complies with Section 16 of the Exchange Act), and to make all other determinations necessary or advisable in administering the Plan, all of which determinations shall be final and binding upon all persons. No member of the Committee shall be liable for any action or determination made in good faith with respect to the Plan or any option granted under it. To the extent consistent with corporate law, the Committee may delegate to any directors or officers of the Company the duties, power and authority of the Committee under the Plan pursuant to such conditions or limitations as the Committee may establish; provided, however, that only the Committee may exercise such duties, power and authority with respect to Insiders. The Committee may request advice or assistance or retain the services of such other persons as are necessary for the proper administration of the Plan.

4. *Eligibility.*

Any person who is (a) an Employee on the last day of the calendar month immediately preceding a Grant Date, (b) is not on long-term disability or unpaid leave status at that time, and (c) has reached the age of majority in the state or province in which he or she resides shall be eligible to participate in the Plan for the Offering Period beginning on such Grant Date, subject to the limitations imposed by Section 423(b) of the Code.

5. *Offering Periods.*

Options to purchase shares of Common Stock shall be granted to Participants under the Plan through a series of consecutive Offering Periods. The first Offering Period under the Plan shall have a Grant Date of July 1, 2004 and an Ending Date of December 31, 2004. Offering Periods under the Plan shall continue until either (a) the Committee decides, in its sole discretion, to cancel future Offering Periods because the Common Stock remaining available under the Plan is insufficient to grant options to all eligible Employees, or (b) the Plan is terminated in accordance with Section 17 below. Notwithstanding the foregoing, and without limiting the authority of the Committee under Section 3, 11.2 and 17 of the Plan, the Committee, in its sole discretion, may (a) accelerate the Ending Date of the then current Offering Period and provide for the exercise of Options thereunder by Participants in accordance with Section 9 of the Plan, or (b) accelerate the Ending Date of the then current Offering Period and provide that all payroll deductions credited to the accounts of Participants will be paid to Participants as soon as practicable after such Ending Date and that all Options for such Offering Period will automatically be canceled and will no longer be exercisable.

6. *Participation.*

Participation in the Plan is voluntary. An eligible Employee may become a Participant in the Plan by completing an enrollment form provided by the Company authorizing payroll deductions and the establishment of a Share Account, and filing the enrollment form with the Company's Human Resources Department not later than the last business day of the month immediately preceding the Grant Date of the first Offering Period in which the Participant wishes to participate.

7. *Payroll Deductions.*

7.1 Each Employee electing to participate in the Plan shall designate on the enrollment form the amount of money which he or she wishes to have deducted from his or her paycheck each pay day to purchase Common Stock pursuant to the Plan. The aggregate amount of such payroll deductions shall not be less than \$25.00 per month, and shall not be more than \$10,625.00 (85% of \$12,500.00) per Offering Period, pro-rated equally over the number of pay days applicable to a Participant during each such Offering Period. Deductions for Plan purposes will not be withheld from compensation amounts, such as annual bonus or gain sharing payments, that are not part of a Participant's normal and recurring compensation each payday.

7.2 Payroll deductions for a Participant shall commence on the first pay day on or after the Grant Date of the applicable Offering Period and shall continue until the termination date of the Plan, unless participation in the

Plan is sooner terminated as provided in Section 10, the deduction amount is increased or decreased by the Participant as provided in Section 7.4, deductions are suspended as provided in Section 7.4 or the Offering Period is adjusted by the Committee as provided in Section 5. Except for a Participant's rights to change the amount of, suspend or discontinue deductions pursuant to Sections 7.4 and 10, the same deduction amount shall be utilized for each pay day during subsequent Offering Periods, whether or not the Participant's compensation level increases or decreases. If the pay period of any Participant changes, such as from weekly to semi-monthly, an appropriate adjustment shall be made to the deduction amount for each pay day corresponding to the new pay period, if necessary, so as to ensure the deduction of the proper amount as specified by the Participant in his or her enrollment form for that Offering Period.

7.3 All payroll deductions authorized by a Participant shall be credited to the Participant's Contribution Account. A Participant may not make any separate cash payment or contribution to such Contribution Account. Contribution Accounts shall be solely for bookkeeping purposes, and no separate fund or trust shall be established for payroll deductions. Until utilized to purchase shares of Common Stock, funds from payroll deductions shall be held as part of the Employers' general assets, and the Employers shall not be obligated to segregate such funds. No interest shall accrue on a Participant's payroll deductions under the Plan.

7.4 No increases or decreases in the amount of payroll deductions for a Participant may be made during an Offering Period. A Participant may increase or decrease the amount of his or her payroll deductions under the Plan, or may suspend such payroll deductions, for subsequent Offering Periods by completing a change form and filing it with the Company's Human Resources Department not later than the last business day of the month immediately preceding the Grant Date for the Offering Period as of which such increase, decrease or suspension is to be effective.

7.5 Payroll deductions which are authorized by Participants who are paid other than in U.S. currency shall be withheld in Contribution Accounts in the country in which such Participant is employed until exercise of an option granted hereunder. Upon exercise of the option granted to such Participant, the amount so withheld shall be converted into U.S. dollars on the basis of the rate of exchange published in the *Wall Street Journal* for such currency into U.S. dollars as of the business day immediately preceding the Ending Date for such Offering Period. The purchase price shall thereupon be paid to the Company in U.S. dollars following such conversion, the extent to which the Participant may exercise an option therefore being dependent, in part, upon the applicable rate of currency exchange. If, as a result of fluctuations in the exchange rate between the U.S. dollar and a foreign currency during an Offering Period, a Participant who is paid in such foreign currency has less than the minimum permitted amount deducted during an Offering Period, the amount deducted will, nevertheless, be used to purchase Common Stock in accordance with the Plan.

8. *Grant of Option.*

8.1 Subject to Section 8.2, on each Grant Date, each eligible Employee who is then a Participant shall be granted (by operation of the Plan) an option to purchase the number of whole and fractional shares (computed to the fourth decimal place) of Common Stock equal to the lesser of (a) the amount determined by dividing the amount of payroll deductions credited to his or her Contribution Account during the Offering Period beginning on such Grant Date by the Purchase Price specified in the following sentence, or (b) the amount determined by dividing \$12,500.00 by the Fair Market Value of one share of Common Stock on the applicable Grant Date. The purchase price per share of such shares (the "Purchase Price") shall be the lesser of (i) 85% of the Fair Market Value of one share of Common Stock on the applicable Grant Date, or (ii) 85% of the Fair Market Value of one share of Common Stock on the applicable Ending Date.

8.2 Despite any provisions of the Plan that may provide or suggest otherwise:

- (a) no Employee shall be granted an option under the Plan to the extent that immediately after the grant, such Employee (or any other person whose stock ownership would be attributed to such Employee pursuant to Section 424(d) of the Code) would own shares of Common Stock and/or hold outstanding options to purchase shares of Common Stock that would in the aggregate represent 5% or more of the total combined voting power or value of all classes of shares of the Company or of any Subsidiary;
- (b) no Employee shall be granted an option under the Plan to the extent that the Employee's rights to purchase shares of Common Stock under all "employee stock purchase plans" (within the meaning of Section 423 of the Code) of the Company and its Subsidiaries would accrue (i.e., become exercisable) at a rate that exceeds \$25,000 of Fair Market Value of such shares of Common Stock (determined at the

time such option is granted, which is the Grant Date) for each calendar year in which such option is outstanding at any time; or

(c) no Participant may purchase more than 10,000 shares of Common Stock under the Plan in any given Offering Period.

9. *Exercise of Option.*

9.1 Unless a Participant withdraws from the Plan pursuant to Section 10, his or her option for the purchase of shares of Common Stock granted for an Offering Period will be exercised automatically and in full at the applicable Purchase Price as soon as practicable following the Ending Date of such Offering Period. If the full amount credited to a Participant's Contribution Account during an Offering Period is not required to exercise such Participant's option for that Offering Period in full (due to the applicability of clause (b) of Section 8.1 and/or fluctuations in the exchange rate between the U.S. dollar and the foreign currency in which such Participant is paid), the amount not required to exercise such option shall promptly be refunded to the Participant following the Ending Date of such Offering Period.

9.2 No Participant (or any person claiming through such Participant) shall have any interest in any Common Stock subject to an option under the Plan until such option has been exercised and the shares of Common Stock purchased, at which point such Participant shall have all of the rights and privileges of a shareholder of the Company with respect to shares purchased under the Plan. During his or her lifetime, a Participant's option to purchase shares of Common Stock under the Plan is exercisable only by the Participant.

9.3 Shares of Common Stock purchased pursuant to the exercise of options hereunder shall be held in Share Accounts maintained for and in the name of each Participant by the Agent, such Agent or its nominee to be the record holder of such shares for the benefit of the Participant. The Agent shall provide each Participant with a quarterly statement of his or her Share Account.

9.4 Dividends paid with respect to shares credited to each Share Account will be themselves credited to such Account and, if paid in cash, will automatically be reinvested in whole and fractional shares of Common Stock.

9.5 A Participant may request that the Agent cause a stock certificate representing some or all of the number of whole shares of Common Stock credited to the Participant's Share Account be issued in the name of the Participant. The Agent shall cause such certificate to be issued as soon as practicable after its receipt of such request and the payment by the Participant of any applicable issuance fees. From and after the date of the issuance of any such certificate, the number of shares credited to the Participant's Share Account shall be reduced by the number of shares represented by such certificate, and the Participant shall thereafter be the record holder of the shares represented by such certificate.

10. *Withdrawal; Termination of Employment.*

10.1 A Participant may terminate his or her participation in the Plan and withdraw all, but not less than all, of the payroll deductions credited to his or her Contribution Account under the Plan at any time on or before the last business day of an Offering Period by giving written notice to the Company. Such notice shall (a) state that the Participant wishes to terminate participation in the Plan, (b) specify the withdrawal date, and (c) request the withdrawal of all of the Participant's payroll deductions held under the Plan. All of the Participant's payroll deductions credited to his or her Contribution Account will be paid to the Participant as soon as practicable after the withdrawal date specified in the notice of withdrawal (or, if no such date is specified, as soon as practicable after receipt of the notice of withdrawal), the Participant's option for such Offering Period will be automatically canceled, and no further payroll deductions for the purchase of shares of Common Stock will be made for such Offering Period or for any subsequent Offering Period, except pursuant to a re-enrollment in the Plan as provided in Section 10.2.

10.2 If a Participant's suspension of payroll deductions under the Plan pursuant to Section 7.4 continues for four consecutive Offering Periods, such suspension shall be deemed an election by the Participant to terminate his or her participation in the Plan, and such termination shall be effective as of the Ending Date of the second consecutive Offering Period during which no payroll deductions occurred. If, for any reason, a Participant's net pay after withholding taxes and other applicable deductions not related to the Plan (such as for health and welfare benefits) each pay day becomes less than the amount the Participant has designated be deducted each pay day for contribution to the Plan, such occurrence shall be deemed an election by the Participant to terminate his or her participation in the Plan, and such termination shall be effective immediately. Following such termination, all of the Participant's payroll deductions credited to his or her Contribution Account will be paid to the Participant as

soon as practicable, the Participant's option for such Offering Period will be automatically canceled, and no further payroll deductions for the purchase of shares of Common Stock will be made for such Offering Period or for any subsequent Offering Period, except pursuant to a re-enrollment in the Plan as provided in Section 10.4.

10.3 Upon termination of a Participant's employment with the Employer for any reason, including retirement or death, his or her participation in the Plan will automatically cease and the payroll deductions accumulated in his or her Contribution Account will be returned to the Participant as soon as practicable after such employment termination or, in the case of death, to the person or persons entitled thereto under Section 12 below, and the Participant's option for the current Offering Period will be automatically canceled. For purposes of the Plan, the termination date of employment shall be the Participant's last date of actual employment and shall not include any period during which such Participant receives any severance payments.

10.4 A Participant's termination of participation in the Plan pursuant to Section 10.1 or 10.2 will not have any effect upon his or her eligibility to participate in a subsequent Offering Period by completing and filing a new enrollment form in accordance with Section 6 or in any similar plan that may hereafter be adopted by the Company.

11. *Stock Subject to the Plan.*

11.1 The maximum number of shares of Common Stock that shall be reserved for sale under the Plan shall be 600,000 shares, subject to adjustment as provided in Sections 11.2 and 11.3. The shares to be sold to Participants under the Plan may be, at the election of the Company, either treasury shares or shares authorized but unissued. If the total number of shares of Common Stock that would otherwise be subject to options granted pursuant to Section 8 on any Ending Date exceeds the number of shares then available under the Plan (after deduction of all shares for which options have been exercised or are then outstanding), the Committee shall make a pro rata allocation of the shares of Common Stock remaining available for issuance in as uniform and equitable a manner as is practicable, as determined in the Committee's sole discretion. In such event, the Company shall give written notice of such reduction of the number of shares subject to the option to each Participant affected thereby and shall return any excess funds accumulated in each Participant's Contribution Account as soon as practicable after the Ending Date of such Offering Period.

11.2 In the event of any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, divestiture or extraordinary dividend (including a spin-off) or any other similar change in the corporate structure or shares of the Company, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation) will make appropriate adjustments (which determination will be conclusive) as to the number and kind of securities or other property (including cash) available for issuance or payment under the Plan and, in order to prevent dilution or enlargement of the rights of Participants, (a) the number and kind of securities or other property (including cash) subject to each outstanding option, and (b) the Purchase Price of outstanding options.

11.3 Subject to the following provisions of this Section 11.3, if the Company is the surviving corporation in any reorganization, merger or consolidation with or involving one or more other corporations, each outstanding option under the Plan shall apply to the amount and kind of securities to which a holder of the number of shares of Common Stock subject to such option would have been entitled immediately following such reorganization, merger or consolidation, with a corresponding proportionate adjustment of the Purchase Price. If there is a (a) dissolution or liquidation of the Company, (b) merger, consolidation or reorganization of the Company with one or more other corporations in which the Company is not the surviving corporation, (c) sale of all or substantially all of the assets of the Company to another person or entity, or (d) transaction (including a merger or reorganization in which the Company is the surviving corporation) approved by the Board that results in any person or entity owning more than 50% of the combined voting power of all classes of stock of the Company, then the Plan and all options outstanding thereunder shall terminate, except as provided in the following sentence. If provision is made in writing in connection with such transaction for the continuation of the Plan and either the assumption of the options theretofore granted or the substitution for such options of new options covering the stock of a successor corporation (or a parent or subsidiary thereof), in either case with appropriate adjustments as to the number and kinds of shares and exercise prices, then the Plan shall continue in the manner and under the terms provided. If the Plan is terminated as provided in this Section 11.3, the current Offering Period shall be deemed to have ended on the last trading day prior to such termination, and the options of each Participant then outstanding shall be deemed to have been automatically exercised in accordance with Section 9.1 on such last trading day. The Committee shall cause written notice to be sent of an event that will result in such a termination

to all Participants not later than the time the Company gives notice thereof to its shareholders. Adjustments under this Section 11.3 shall be made by the Committee, whose determination in that respect shall be final, binding and conclusive.

12. *Designation of Beneficiary.*

12.1 A Participant may file a written designation of a beneficiary who is to receive a cash refund of the amount, if any, from the Participant's Contribution Account under the Plan in the event of such Participant's death at a time when cash is held for his or her account. Disposition of shares of Common Stock in a Participant's Share Account upon the Participant's death shall be in accordance with the agreement governing the Share Account.

12.2 A designation of beneficiary pursuant to Section 12.1 may be changed by the Participant at any time by written notice. In the event of the death of a Participant in the absence of a valid designation of a beneficiary who is living at the time of such Participant's death, the Company shall deliver such cash to the executor or administrator of the estate of the Participant; or, if no such executor or administrator has been appointed (to the knowledge of the Company), the Company in its discretion, may deliver such cash to the spouse or to any one or more dependents or relatives of the Participant; or, if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

13. *No Right to Employment.*

Nothing in the Plan will interfere with or limit in any way the right of the Company or any of its subsidiaries to terminate the employment of any Employee or Participant at any time, nor confer upon any Employee or Participant any right to continue in the employ of the Company or any of its subsidiaries.

14. *Rights As a Shareholder.*

As a holder of an Option under the Plan, a Participant will have no rights as a shareholder unless and until such Option is exercised and the Participant becomes the holder of record of shares of Common Stock. Except as otherwise provided in the Plan, no adjustment will be made for dividends or distributions with respect to Options as to which there is a record date preceding the date the Participant becomes the holder of record of such shares, except as the Committee may determine in its sole discretion.

15. *Transferability.*

Neither payroll deductions credited to a Participant's Contribution Account nor any rights with regard to the exercise of an option or to receive shares of Common Stock under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will or the laws of descent and distribution) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect.

16. *Conditions of Sale.*

Notwithstanding any other provision of the Plan or any agreements entered into pursuant to the Plan, the Company will not be required to issue any shares of Common Stock under the Plan, and a Participant may not sell, assign, transfer or otherwise dispose of shares of Common Stock issued pursuant to Options granted under the Plan, unless (a) there is in effect with respect to such shares a registration statement under the Securities Act and any applicable state or foreign securities laws or an exemption from such registration under the Securities Act and applicable state or foreign securities laws, and (b) there has been obtained any other consent, approval or permit from any other regulatory body that the Committee, in its sole discretion, deems necessary or advisable. The Company may condition such issuance, sale or transfer upon the receipt of any representations or agreements from the parties involved, and the placement of any legends on certificates representing shares of Common Stock, as may be deemed necessary or advisable by the Company in order to comply with such securities law or other restrictions.

17. *Amendment or Termination.*

The Board may suspend or terminate the Plan or any portion thereof at any time, and may amend the Plan from time to time in such respects as the Board may deem advisable in order that Options under the Plan will conform to any change in applicable laws or regulations or in any other respect the Board may deem to be in the best interests of the Company; provided, however, that no amendments to the Plan will be effective without approval of the shareholders of the Company if shareholder approval of the amendment is then required pursuant

to Section 423 of the Code or the rules of any stock exchange or similar regulatory body. Upon termination of the Plan, the Committee, in its sole discretion, may take any of the actions described in Section 5 of the Plan.

18. *Notices.*

All notices or other communications by a Participant to the Company in connection with the Plan shall be deemed to have been duly given when received by the Senior Vice President & CFO of the Company or by any other person designated by the Company for the receipt of such notices or other communications, in the form and at the location specified by the Company.

19. *Effective Date of Plan.*

The Plan shall be effective as of February 25, 2004, the date it was adopted by the Board. The Plan was adopted subject to shareholder approval, which was obtained on May 19, 2004.

20. *Miscellaneous.*

The headings to sections of the Plan have been included for convenience of reference only. The Plan shall be interpreted and construed in accordance with the laws of the State of Texas. References in the Plan to "\$" or "dollars" shall be deemed to refer to United States dollars unless the context clearly indicates otherwise.

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[EXHIBIT 4.1](#)

NON-QUALIFIED STOCK OPTION AGREEMENT

NON-QUALIFIED STOCK OPTION AGREEMENT dated as of March 15, 2001 between RUSH ENTERPRISES, INC., a Texas corporation (the "Company"), and (the "Optionee").

The Company hereby grants to the Optionee to purchase 20,000 shares of the Company's Common Stock, \$.01 par value ("Common Stock"), at the price of \$4.13 per share, subject to adjustment as provided herein (the "Option"). This Option is granted outside of and therefore shall not be subject to the terms and provisions of the Company's Amended 1997 Non-Employer Director Stock Option Plan. This Option is a non-qualified stock option which is not intended to be governed by Section 422 of the Internal Revenue Code of 1986, as amended.

1. **Term.** This Option shall be for a term commencing on this date and ending ten years from the date of grant (such date being indicated above), unless this Option is terminated earlier by reason of the Optionee's ceasing to be a director as provided in Paragraph 4 below.
2. **Vesting.** Each Option shall be fully exercisable as of the date of grant.
3. **Restrictions on Transfer.** The Option granted hereunder shall not be assignable or transferrable by the Optionee except by will or by the laws of descent and distribution is exercisable, during the Optionee's lifetime, only by the Optionee.
4. **Termination.** Except as may be otherwise expressly provided herein, the Option, to the extent it shall not previously have been exercised, shall terminate on the earlier of the following:
 - (a) On the last day within the thirty day period commencing on the date on which the Optionee ceases to be a member of the Company's Board of Directors, for any reason other than the death or disability of the Optionee or his resignation after five years of service;
 - (b) On the last day within the one year period commencing on the date on which the Optionee ceases to be a member of the Company's Board of Directors because of permanent disability;
 - (c) On the last day within the one year period commencing on the date of the Optionee's death while serving as a member of the Company's Board of Directors, during which period the executor or administrator of the Optionee's estate or the person or persons to whom the Optionee's Option shall have been transferred by will or the laws of descent or distribution, shall be entitled to exercise the Option in respect of the number of shares that the Optionee would have been entitled to purchase had the Optionee exercised the Option on the date of his death;
 - (d) On the last day within the one year period commencing on the date the Optionee, has had at least five years of service on the Board of Directors of the Company, resigns from the Board of Directors of the Company, during which period the Optionee, or the executor or administrator of the Optionee's estate or the person or persons to whom the Option shall have been transferred by the will or the laws of descent or distribution in the event of the Optionee's death within such one year period, as the case may be, shall be entitled to exercise the Option in respect of the number of shares that the Optionee would have been entitled to purchase had the Optionee exercised the Option on the date of such resignation; and
 - (e) Ten years after the date of grant of the Option.
5. **Changes in the Company's Capital Structure.** In the event of any stock dividends, stock splits, recapitalizations, combinations, exchanges of shares, mergers, consolidation, liquidations, split-ups, split-offs, spin-offs, or other similar changes in capitalization, or any distribution to shareholders, including a rights offering, other than regular cash dividends, changes in the outstanding stock of the Company by reason of any increase or decrease in the number of issued shares of Common Stock resulting from a split-up or consolidation of shares or any similar capital adjustment or the payment of any stock dividend, any share repurchase at a price in excess of the market price of the Common Stock at the time such repurchase is announced or other increase or decrease in the number of such shares, the Company shall make appropriate adjustment in the number, price or kind of shares covered by the Option; provided, however, that no such adjustment shall increase the aggregate value of the Company.

In the event of any adjustment in the number of shares covered by any Option, any fractional shares resulting from such adjustment shall be disregarded and each such Option shall cover only the number of full shares resulting from such adjustment.

6. **Exercise of Options.** Payment of the purchase price of the shares of Common Stock subject to this Option may be made (i) in any combination of cash or whole shares of Common Stock already owned by the Optionee or (ii) in shares of Common Stock withheld by the Company from the shares of Common Stock otherwise issuable to the Optionee as a result of the exercise of this Option ("cashless exercise"). Subject to the terms and conditions of this Agreement, this Option may be exercised by written notice to the Company at its principal office, attention of the Secretary. Such notice shall (a) state the election to exercise this Option, the number of shares in respect of which it is being exercised and the manner of payment for such shares and (b) be signed by the person or persons so exercising this Option and, in the event such Option is being exercised pursuant to Paragraph 4 by any person or persons other than the Optionee, accompanied by appropriate proof of the right of such person or persons to exercise this Option. Such notice shall either (i) elect cashless exercise or be accompanied by payment of the full purchase price of such shares, in which event the Company shall issue and deliver a certificate or certificates representing such shares as soon as practicable after the notice is received, or (ii) fix a date (not more than 10 business days from the date of such notice) for the payment of the full purchase price of such shares at the Company's principal office, against delivery of a certificate or certificates representing such shares. Cash payments of such purchase price shall, in case of clause (i) or (ii) above, be made by cash or check payable to the order of the Company. Common Stock payments (valued at fair market value on the date of exercise, as determined by the Board of Directors of the Company), shall be made by delivery of stock certificates in negotiable form. All cash and Common Stock payments shall, in either case, be delivered to the Company at its principal office, attention of the Secretary. Shares of Common Stock withheld pursuant to a cashless exercise election shall be valued at the fair market value on the date of exercise, as determined by the Board of Directors of the Company. If certificates representing Common Stock are used to pay all or part of the purchase price of this Option, a replacement certificate shall be delivered by the Company representing the number of shares delivered but not so used, and an additional certificate shall be delivered representing the additional shares to which the holder of this Option is entitled as a result of the exercise of this Option. The certificate or certificates for the shares as to which this Option shall have been so exercised shall be registered in the name of the person or persons so exercising this Option and shall be delivered as aforesaid to or upon the written order of the person or persons exercising this Option. All shares issued as provided herein will be fully paid and nonassessable.

For purposes of this Paragraph 6, the "fair market value" of a share of stock as of any particular date shall mean the closing sale price of a share of Common Stock on that date as reported by the principal national securities exchange on which the Common Stock is listed if the Common Stock is then listed on a national securities exchange, or if the Common Stock is not so listed, the average of the bid and asked price of a share of Common Stock on that date and reported in the National Association of Securities Dealers Automated Quotation system; provided that if no such closing price or quotes are so reported on that date or if in the discretion of the Committee another means of determining the fair market value of a share of stock at such date shall be necessary or advisable, the Board of Directors of the Company may provide for another means for determining such fair market value.

7. **Administration.** The Board of Directors of the Company shall have the power to interpret this Agreement. All actions taken and all interpretations and determinations made by the Board of Directors of the Company shall be final and binding upon the Optionee, the Company and all other interested persons.

8. **Reserves, Etc.** Shares of Common Stock delivered upon the exercise of this Option shall, in the discretion of the Board, be either shares of Common Stock heretofore or hereafter authorized and then unissued, or previously issued shares of Common Stock heretofore or hereafter acquired through purchase in the open market or otherwise, or some of each. The Company shall be under no obligation to reserve or to retain in its treasury any particular number of shares of Common Stock at any time, and no particular shares, whether unissued or held as treasury shares, shall be identified as those covered by this Option.

9. **General Restrictions.**

- (a) The Company shall not be required to sell or issue any shares under this Option if the issuance of such shares shall constitute a violation by the Optionee or the Company of any provisions of any law or regulation of any governmental authority. This Option granted hereunder shall be subject to the requirement that, if at any time the Board shall determine that (i) the listing, registration or qualification of the shares of Common Stock subject or related thereto upon any securities exchange or under any state or federal law, or (ii) the consent or approval of any governmental regulatory body, or (iii) an agreement by the Optionee with respect to the disposition of shares of Common Stock is necessary or desirable (in connection with any requirement or interpretation of any federal or state securities law, rule

or regulation) as a condition of, or in connection with, the granting of this Option or the issuance, purchase or delivery of shares of Common Stock thereunder, this Option may not be exercised in whole or in part unless such listing, registration, qualification, consent, approval or agreement shall have been effected or obtained free of any conditions not acceptable to the Board.

- (b) The Optionee hereby (i) represents and warrants that any shares of Common Stock issued, transferred or delivered to, or acquired by, the Optionee pursuant to this Agreement shall be acquired solely for the Optionee's own account for investment, and not with a view to any distribution thereof that would violate the Securities Act of 1933 (the "Securities Act") or the applicable securities laws of any state, (ii) agrees that he will not distribute any such shares of Common Stock in violation of the Securities Act or the applicable securities laws of any state, and (iii) acknowledges that, unless notified to the contrary by the Company, such shares of Common Stock will not have been registered under the Securities Act or the securities laws of any state and must be held indefinitely unless subsequently registered under the Securities Act and any applicable state securities laws or unless an exemption from such registration becomes or is available.
- (c) In the event the shares issuable on exercise of this Option are not registered under the Securities Act of 1933, the Company may imprint on the certificate for such shares the following legend or any other legend which counsel for the Company considers necessary or advisable to comply with the Securities Act of 1933:

"The shares of stock represented by this certificate have not been registered under the Securities Act of 1933 or under the securities laws of any state and may not be sold or transferred except upon such registration or upon receipt by the Corporation of an opinion of counsel satisfactory, in form and substance to the Corporation, that registration is not required for such sale or transfer."

The Company may, but shall in no event be obligated to, register any securities covered hereby pursuant to the Securities Act of 1933 (as now in effect or as hereafter amended) and, in the event any shares are so registered, the Company may remove any legend on certificates representing such shares. The Company shall not be obligated to take any other affirmative action in order to cause the exercise of this Option or the issuance of shares pursuant thereto to comply with any law or regulation of any governmental authority.

10. **No Rights as Stockholder.** The Optionee shall have no rights as a stockholder with respect to shares covered by the Option until the date of issuance of a stock certificate for such shares; and, except as otherwise provided in Section 5 hereof, no adjustment for dividends or otherwise shall be made if the record date therefor is prior to the date of issuance of such certificate.

11. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Any term or provision of this Agreement may be waived at any time by the party which is entitled to the benefits thereof, except that any waiver of any term or condition of this Agreement must be in writing.

12. **Governing Law.** The laws of the State of Texas shall govern the interpretation, validity and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflict of laws.

13. **Successors.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns and heirs of the respective parties.

14. **Notices.** All notices or other communications made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by registered or certified mail,

return receipt requested, to those listed below at their following respective addresses or at such other address as each may specify by notice to the others:

To the Optionee:

To the Company:

Street Address:

Rush Enterprises, Inc.
555 IH-35 South, Suite 500
New Braunfels, Texas 78130
Attn: Secretary

Mailing Address:

Rush Enterprises, Inc.
P. O. Box 34630
San Antonio, Texas 78265
Attention: Secretary

15. **Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

16. **Construction.** Titles are provided herein for convenience only and are not to serve as a basis for interpretation on construction of this Agreement. The singular form shall include the plural, when the context so indicates.

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed by its officer thereunto duly authorized, and the Optionee has hereunto set his signature, all as of the date first above written.

RUSH ENTERPRISES, INC.

By:

W. Marvin Rush
Chairman of the Board and
Chief Executive Officer

OPTIONEE

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[EXHIBIT 4.2](#)

December 15, 2004

Rush Enterprises, Inc.
555 IH 35 South
New Braunfels, Texas 78130

Gentlemen:

We have acted as counsel for Rush Enterprises, Inc., a Texas corporation (the "Company"), in connection with the authorization of 600,000 shares of the Company's Class A Common Stock, \$.01 par value, issuable under the Company's 2004 Employee Stock Purchase Plan and 60,000 shares of Class A Common Stock and 60,000 shares of Class B Common Stock, \$.01 par value, issuable upon exercise of certain non-plan options.

In connection therewith, we have examined, among other things: the Company's 2004 Employee Stock Purchase Plan; the non-plan options held by Ronald J. Krause, John D. Rock and Harold D. Marshall; the Articles of Incorporation and Bylaws of the Company; the corporate proceedings with respect to the issuance of the non-plan options and the creation of the 2004 Employee Stock Purchase Plan and such other corporate documents as we have deemed appropriate.

Based on the foregoing, and having due regard for such legal considerations as we have deemed relevant, we are of the opinion that the shares Class A Common Stock and Class B Common Stock to be issued by the Company pursuant to the terms of the Company's 2004 Employee Stock Purchase Plan and the non-plan options held by Ronald J. Krause, John D. Rock and Harold D. Marshall have been duly authorized by all requisite corporate action and, when issued in accordance with the terms thereof, will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name in the Registration Statement.

The opinions expressed herein are limited exclusively to the Texas Business Corporations Act and the federal securities law of the United States of America.

The opinions expressed herein are for your sole benefit and may be relied upon only by you.

Very truly yours,

/s/ Fulbright & Jaworski L.L.P.

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[EXHIBIT 5.1](#)

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-00000) pertaining to the Rush Enterprises, Inc. 2004 Employee Stock Purchase Plan and certain non-plan options of Rush Enterprises, Inc. of our report dated February 20, 2004, with respect to the consolidated financial statements of Rush Enterprises, Inc. included in the Annual Report (Form 10-K) for the year ended December 31, 2003.

/s/ Ernst & Young LLP

San Antonio, Texas
December 15, 2004

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[EXHIBIT 23.2](#)