SUPREME INDUSTRIES INC
Form SC 14D9
August 22, 2017
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14D-9
(Rule 14d-101)
Solicitation/Recommendation Statement
Under Section 14(d)(4) of the Securities Exchange Act of 1934

SUPREME INDUSTRIES, INC.
(Name of Subject Company)

SUPREME INDUSTRIES, INC.
(Name of Person Filing Statement)

Class A Common Stock, $0.10 par value per share
Class B Common Stock, $0.10 par value per share
(Title of Class of Securities)

Class A Common Stock 868607102
Class B Common Stock 868607300
(CUSIP Number of Class of Securities)

John Dorbin
General Counsel
Supreme Industries, Inc.
P.O. Box 237
2581 E. Kercher Road
Goshen, Indiana 46528
(574) 642-3070
(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications on Behalf of the Person Filing Statement)

With copies to:

Bruce Newsome, Esq.
Haynes and Boone, LLP
2323 Victory Ave., Suite 700
Dallas, Texas 75219
Ph: (214) 651-5000

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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Item 1.
Subject Company Information.

(a)
Name and Address.

The name of the subject company to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits and annexes attached hereto, this "Schedule 14D-9") relates is Supreme Industries, Inc., a Delaware corporation ("Supreme" or the "Company"). The address of the principal executive offices of Supreme is 2581 E. Kercher Rd., Goshen, Indiana 46528 and its telephone number is (574) 642-3070. In this Schedule 14D-9, "we," "us," "our," "Company" and "Supreme" refer to Supreme Industries, Inc.

(b)
Securities.

The title of the class of equity securities to which this Schedule 14D-9 relates is the Class A common stock of Supreme, par value $0.10 per share (the "Class A Common Stock"), and the Class B common stock of Supreme, par value $0.10 per share (the "Class B Common Stock" and collectively with the Class A Common Stock, the "Shares"). As of August 22, 2017, there were (i) 15,503,763 shares of Class A Common Stock issued and outstanding (including 191,713 Restricted Shares (as defined below)) and (ii) 1,656,467 shares of Class B Common Stock issued and outstanding which are convertible into Class A Common Stock on a one for one basis.

Item 2.
Identity and Background of Filing Person.

(a)
Name and Address.

The name, address and telephone number of Supreme, which is both the person filing this Schedule 14D-9 and the subject company, are set forth in "Item 1. Subject Company Information — Name and Address" above. Supreme's website is www.supremecorp.com. The website and the information on or available through the website are not a part of this Schedule 14D-9, are not incorporated herein by reference and should not be considered a part of this Schedule 14D-9.

(b)
Tender Offer.

This Schedule 14D-9 relates to the tender offer by Redhawk Acquisition Corporation, a Delaware corporation ("Purchaser") and a wholly owned subsidiary of Wabash National Corporation, a Delaware corporation ("Parent"), to purchase all of the Shares at a purchase price of $21.00 per Share (the "Offer Price"), in cash, without interest and less any applicable withholding taxes or other taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated August 22, 2017 (as it may be amended or supplemented from time to time, the "Offer to Purchase"), and the related Letter of Transmittal (as it may be amended or supplemented from time to time, the "Letter of Transmittal" and together with the Offer to Purchase, the "Offer"). The Offer to Purchase and the Letter of Transmittal are being mailed to Supreme's stockholders together with this Schedule 14D-9 and filed as Exhibits (a)(1) and (a)(2) hereto, respectively, and are incorporated herein by reference. The Offer is described in a Tender Offer Statement on Schedule TO filed with the United States Securities and Exchange Commission (the "SEC") on August 22, 2017 by Purchaser and Parent (together with any amendments and supplements thereto, the "Schedule TO").

The Offer is being made pursuant to an Agreement and Plan of Merger, dated as of August 8, 2017 (as it may be amended, modified or supplemented from time to time, the "Merger Agreement"), among Parent, Purchaser, and Supreme. Parent's address is 1000 Sagamore Parkway S., Lafayette, IN 47905-4727.

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The Offer will initially expire at 12:01 a.m. (New York City time) on September 27, 2017. Under certain circumstances, Purchaser may, in its sole discretion, or may be required to extend the Offer on one or more occasions in accordance with the terms set forth in the Merger Agreement and the applicable rules and regulations of the SEC. Purchaser will not be required to extend the Offer beyond the earlier of the valid termination of the Merger Agreement in accordance with its terms and November 6, 2017 (the "End Date"), subject to extension to December 6, 2017 if all conditions to the Offer have been satisfied or waived (other than those conditions that by their nature can only be satisfied at the expiration of the Offer, provided that such conditions are reasonably capable of being satisfied) other than the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") having expired or been terminated.

The obligation of Purchaser to purchase Shares tendered in the Offer is subject to the satisfaction or waiver of a number of conditions set forth in the Merger Agreement, including that the number of Shares validly tendered in the Offer and not properly withdrawn prior to the expiration of the Offer, together with the number of Shares, if any, then owned by Parent, Purchaser and any subsidiary or affiliate of Parent or Purchaser, taken as a whole (but excluding Shares tendered pursuant to guaranteed delivery procedures that have not yet been "received" as defined in Section 251(h) of the Delaware Generation Corporation Law (the "DGCL") by the depositary for the Offer pursuant to such procedures), constitutes at least one Share more than one-half (1/2) of all Shares outstanding as of the consummation of the Offer (the "Minimum Tender Condition"). The Offer is subject to other customary conditions, including, among others, the Minimum Tender Condition, expiration or termination of the applicable waiting period under the HSR Act, the completion of a marketing period for Parent's financing, the absence of a Company Material Adverse Effect (as defined in the Merger Agreement) or governmental order delaying or preventing the acceptance of the Shares or otherwise prohibiting the transaction, performance by Supreme of its covenants and the continued accuracy of representations and warranties, subject to certain materiality standards. Consummation of the Offer and Merger are not subject to a financing condition.

As soon as practicable following the completion of the Offer and subject to the satisfaction or waiver of certain conditions set forth in the Merger Agreement, Purchaser will merge with and into Supreme (the "Merger"), with Supreme surviving as a wholly-owned subsidiary of Parent. Purchaser will affect the Merger after consummation of the Offer pursuant to Section 251(h) of the Delaware General Corporation Law without a vote of Supreme stockholders. At the effective time of the Merger (the "Effective Time"), the Shares not purchased pursuant to the Offer (other than Shares held by Parent, Supreme, Purchaser or any of their respective wholly owned subsidiaries or by stockholders of Supreme who have perfected their statutory rights of appraisal under Delaware law) will each be converted into the right to receive an amount in cash equal to the Offer Price, without interest, subject to any required withholding of taxes.

The foregoing summary of the Offer, the Merger and the Merger Agreement is qualified in its entirety by the description contained in Section 13 — "The Merger Agreement; Other Agreements" of the Offer to Purchase, which is filed as Exhibit (a)(1)(A) to the Schedule TO, and is incorporated herein by reference.

For the reasons described below, Supreme's board of directors (the "Supreme Board") unanimously supports the Offer, the Merger and the transactions contemplated by the Merger Agreement and recommends that Supreme's stockholders tender the Shares to Purchaser pursuant to the Offer.

Item 3.

Past Contacts, Transactions, Negotiations and Agreements.

Except as set forth or incorporated by reference in this Schedule 14D-9, or otherwise incorporated herein by reference, to our knowledge, as of the date of this Schedule 14D-9, there are no material agreements, arrangements or understandings, nor any actual or potential conflicts of interest between (i) Supreme or any of its affiliates, on the one hand and (ii)(x) any of its executive officers, directors or affiliates, or (y) Parent, Purchaser or any of their respective executive officers, directors or affiliates, on the other hand.

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(a)

Arrangements between Supreme and its Executive Officers, Directors and Affiliates

In considering the recommendation of the Supreme Board to tender Shares in the Offer, stockholders should be aware that our executive officers and members of the Supreme Board and affiliates may be deemed to have interests in the execution and delivery of the Merger Agreement and all of the transactions contemplated thereby, including the Offer and the Merger, that may be different from or in addition to those of our stockholders, generally. These interests may create potential conflicts of interest. The Supreme Board was aware of these interests and considered them, among other matters, in reaching its decision to approve the Merger Agreement and the transactions contemplated thereby. As described in more detail below, these interests include:

- although the terms of the agreements of Restricted Shares (the "Restricted Shares Agreements") provide for automatic acceleration of vesting upon a Change in Control, in order to make the acceleration of vesting occur immediately prior to the Purchaser acquiring Shares in the Offer (the "Acceptance Date"), in connection with approving the Merger Agreement, the Supreme Board approved the full vesting acceleration of the outstanding awards of restricted Shares (the "Restricted Shares") held by an individual who, as of the Acceptance Time, is an active employee of Supreme, with such vesting acceleration effective as of immediately prior to the Acceptance Date with such vested Restricted Shares having the right to receive in the Offer a cash payment equal to the product obtained by multiplying (i) the total number of Restricted Shares immediately prior to the Acceptance Date by (ii) the Offer Price;

- the receipt of payments by Messrs. Barrett and Gardner due to their termination of employment effective at the closing of the Merger pursuant to Amendment Number Two to Employment Contract of each of Messrs. Barrett and Gardner dated August 8, 2017;

- the potential receipt of severance payments by Messrs. Weber and Long pursuant to their Amended and Restated Employment Agreements, effective as of May 6, 2016, as a result of the completion of the Offer and the Merger due to (i) a material diminution in such executive's title, duties, responsibility or authority, including without limitation, in the case of Mr. Weber, any failure to elect or re-elect him to the Supreme Board, (ii) the failure of such executive to be retained in his same capacity following the completion of the Offer and the Merger other than such changes as are reasonably expected due to Supreme no longer being a public company following the completion of the Offer and the Merger or (iii) relocation of the executive's office, without the executive's consent, to an office located fifty (50) miles outside Supreme's current headquarters.

- the receipt of payments and benefits by certain executive officers under Supreme's Amended and Restated Ownership Transition Incentive Plan dated May 2, 2016 (the "OTIP") upon completion of the Offer and the Merger;

- the payment at the target level of bonuses for the 2017 fiscal year to certain executive officers under Supreme's 2017 Cash Bonus Plan; and

- the entitlement to indemnification benefits in favor of directors and officers of Supreme.

For further information with respect to the arrangements between Supreme and its executive officers, directors and affiliates described in this Item 3, as well as other arrangements between Supreme and its executive officers, directors, and affiliates, please see the Definitive Proxy Statement on Schedule 14A filed by Supreme on April 25, 2017, including the information under the heading "Executive Compensation."

Outstanding Shares Held by Directors and Executive Officers

If the executive officers and directors of Supreme who own Shares tender their Shares for purchase pursuant to the Offer, they will receive the same cash consideration on the same terms and conditions as the other stockholders of Supreme. As of August 22, 2017, the executive officers and directors of Supreme beneficially owned, in the aggregate, 3,322,986 Shares.

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The following table sets forth (i) the number of Shares beneficially owned as of August 22, 2017 by each of our executive officers and directors and (ii) the aggregate cash consideration that would be payable for such Shares, subject to any applicable withholding taxes or other taxes.

Name	Number of Shares Beneficially Owned	Cash Value of Shares Beneficially Owned
Executive Officers		
Mark D. Weber, President, Chief Executive Officer and Director	177,072	$ 3,718,512
Matthew W. Long, Chief Financial Officer, Treasurer and Assistant Secretary	90,501	$ 1,900,521
Michael L. Oium, Vice President of Operations	29,667	$ 623,007
Herbert M. Gardner, Chairman of the Board	935,636	$ 19,648,356
William J. Barrett, Secretary and Assistant Treasurer	1,625,247	$ 34,130,187
Directors		
Peter D. Barrett, Director	36,088	$ 757,848
Edward L. Flynn, Director	323,399	$ 6,791,379
Arthur J. Gajarsa, Director	36,179	$ 759,759
Thomas B. Hogan, Jr., Director	14,460	$ 303,660
Michael L. Klofas, Director	2,100	$ 44,100
Mark C. Neilson, Director	46,830	$ 983,430
Wayne A. Whitener, Director	5,807	$ 121,947
All of our current directors and executive officers as a group (12 persons)	3,322,986	$ 69,782,706

Outstanding Restricted Stock Held by Directors and Executive Officers

Pursuant to action by the Supreme Board in connection with approving the Merger Agreement, each Restricted Share that is outstanding as of immediately prior to the Acceptance Date and held by an individual who, as of the Acceptance Date, is an active employee of Supreme will accelerate and become fully vested effective immediately prior to the Acceptance Date. Without any further action on the part of the holders thereof, Parent, Purchaser or Supreme, each holder of Restricted Shares that are outstanding will receive in the Offer cash in an amount in cash equal to the product of (i) the total number of Restricted Shares held by such individual immediately prior to the Acceptance Date (taking into account any acceleration of vesting), multiplied by (ii) the Offer Price.

The table below sets forth, for each of our executive officers holding Restricted Shares as of August 22, 2017, (i) the aggregate number of Restricted Shares and (ii) the value of cash amounts payable in respect of such Restricted Shares on a pre-tax basis at the Effective Time, calculated by multiplying the Offer Price by the number of Restricted Shares. No directors have Restricted Shares. These Restricted Shares are also reflected in the table above under “Outstanding Shares Held by Directors and Executive Officers.”

Since June 23, 2017 (the period commencing 60 days prior to the filing of this Schedule 14D-9), no Restricted Shares held by such executive officers or directors have vested.

Name	Number of Restricted Shares	Total Cash Value of Restricted Stock
Mark D. Weber	83,480	$ 1,753,080
Matthew W. Long	32,671	$ 686,091
Michael L. Oium	20,281	$ 425,901

All of our current directors and executive officers as a group (12 persons)	136,432	$ 2,865,072

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On March 9, 2017, the Compensation Committee of the Supreme Board approved the grant to Messrs. Weber, Long and Oium of 37,616, 11,976 and 7,480 Restricted Shares, respectively. The Restricted Shares are to vest in three equal installments beginning on March 9, 2018, subject to acceleration of vesting on certain conditions such as the completion of the Offer and Merger as described above under "Arrangements between Supreme and its Executive Officers, Directors and Affiliates."

Employment Arrangements

Each of Messrs. Weber, Long, Gardner and Barrett are entitled to certain severance and change of control benefits pursuant to his employment agreement, the terms of which are described below. The completion of the Offer and Merger will constitute a change of control under these agreements.

Mark D. Weber

In 2016, Supreme entered into an amended and restated employment agreement (the "Weber Employment Agreement") with Mr. Weber. The term of the Weber Employment Agreement is from May 6, 2016, to May 5, 2019, with an automatic renewal for successive one (1) year periods unless either party provides notice of non-renewal at least 90 days prior to the end of the term then in effect. The agreement calls for Mr. Weber to receive a monthly base salary of at least $37,666.66 and a car allowance of $1,150 per month. In addition, he is entitled to participate in Supreme's bonus programs, equity awards, OTIP, and benefit plans.

If Supreme elects not to renew the Weber Employment Agreement at the end of its term, or Mr. Weber is terminated by Supreme other than for "cause," as defined below, or Mr. Weber terminates his employment for "good reason," as defined below, he will receive payment of eighteen (18) months' base salary for the year of termination, a prorated bonus for the year of termination payable at the same time as bonuses would otherwise be payable under the 2017 Cash Bonus Plan (subject to achievement of applicable performance goals), COBRA premium assistance for a period not to exceed eighteen (18) months, twelve (12) months of executive outplacement assistance, and equity vesting for all awards that would have vested within one year of the termination date had he remained an employee.

The Weber Employment Agreement contains a covenant not to compete which provides that, during Mr. Weber's employment with Supreme and during a period of eighteen (18) months following the cessation of Mr. Weber's employment with Supreme (the "Weber Restricted Period"), Mr. Weber shall not, directly or indirectly for himself or on behalf of any other person or business entity, engage in any capacity with a "competing business," as defined in the Weber Employment Agreement. This covenant not to compete is bounded by the territorial limits of the United States. The Weber Employment Agreement also contains a covenant not to solicit employees, consultants and certain actual or prospective customers, clients, suppliers, manufacturers, vendors or licensors of Supreme which runs during the Weber Restricted Period.

Matthew W. Long

Similar to Mr. Weber, Supreme also entered into an amended and restated employment agreement with Mr. Long (the "Long Employment Agreement"), having a term from May 6, 2016, to May 5, 2019, with an automatic renewal for successive one (1) year periods unless either party provides notice of non-renewal at least 90 days prior to the end of the term then in effect. The agreement calls for Mr. Long to receive a monthly base salary of at least $22,916.67 and a car allowance of $1,150 per month. In addition, he is entitled to participate in Supreme's bonus programs, equity awards, OTIP, and benefit plans.

If Supreme elects not to renew the Long Employment Agreement at the end of its term, or Mr. Long is terminated by Supreme other than for "cause," as defined below, or Mr. Long terminates his employment for "good reason," as defined below, he will receive payment of twelve (12) months' base salary for the year of termination, a prorated bonus for the year of termination payable at the same time as bonuses would otherwise be payable under the 2017 Cash Bonus Plan (subject to achievement of applicable performance goals), COBRA premium assistance for a period not to exceed twelve (12) months, twelve (12) months of executive outplacement assistance, and equity vesting for all awards that would have vested within one year of the termination date had he remained an employee.

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The Long Employment Agreement contains a covenant not to compete which provides that, during Mr. Long's employment with Supreme and during a period of twelve (12) months following the cessation of Mr. Long's employment with Supreme (the "Long Restricted Period"), Mr. Long shall not, directly or indirectly for himself or on behalf of any other person or business entity, engage in any capacity with a "competing business," as defined in the Long Employment Agreement. This covenant not to compete is bounded by the territorial limits of the United States. This covenant not to compete is bounded by the territorial limits of the United States. The Long Employment Agreement also contains a covenant not to solicit employees, consultants and certain actual or prospective customers, clients, suppliers, manufacturers, vendors or licensors of Supreme which runs during the Long Restricted Period.

Herbert M. Gardner

Effective January 1, 2005, Supreme and Mr. Gardner entered into an Amended and Restated Employment Contract, as amended effective June 29, 2012 (the "Gardner Employment Contract"). The Gardner Employment Contract is automatically extended for one additional day so that a constant three-year term is always in effect.

Under the Gardner Employment Contract, if he dies, suffers a "disability," is terminated by Supreme without "cause," terminates the Gardner Employment Contract for "good reason" or if a "change in control" occurs (as such terms are defined below), then the term of the agreement is extended to five years from the date of such event.

In consideration of services to be provided to Supreme, the Gardner Employment Contract provides for Mr. Gardner to receive: annual base compensation of $108,000; and if the pre-tax earnings of Supreme exceed $2,000,000, an incentive bonus of $36,000, plus an amount equal to 0.6% of the amount by which such pre-tax earnings exceed $2,000,000. Additionally, pursuant to the terms of his employment agreement, Mr. Gardner is entitled to fringe benefits including: the right to participate in Supreme's medical plan; the lesser of $30,000 or the actual amount of premiums owing on insurance of any kind owned by himself (and/or his wife) covering himself or "last to die" insurance covering the lives of himself and his wife, grossed up; up to $5,000 per year in expense reimbursement for family vision and dental care, the unused portion of which may be carried forward to future years; and an automobile plus insurance coverage.

If Mr. Gardner dies, suffers a disability, is terminated by Supreme without cause or terminates the Gardner Employment Contract for good reason, then he will be entitled to maintain his base salary and pre-tax bonus for the remainder of the term of the employment agreement (which, following the occurrence of a change in control, will be five (5) years from the date of said change in control). In addition, he will continue to receive the medical coverage, life insurance, and family vision and dental insurance fringe benefits discussed above for the remainder of the term of the employment agreement. In addition, Supreme will either sell or lease to him the automobile that Supreme is providing to him. In such case, Supreme will, not later than March 15 following the end of the calendar year in which his employment terminates, either sell him the automobile for $10 along with any insurance coverage (if assignable) or assign to him all of Supreme's interest in and to any lease. Upon termination of such lease, Supreme will purchase the leased automobile and convey ownership to him. If Supreme terminates Mr. Gardner for cause, then he will not receive any termination payments or benefits.

Under the Gardner Employment Contract, the definition of "good reason" includes a "change in control" (as defined below). Notwithstanding the foregoing, in the event payments are being made to Mr . Gardner on account of a change in control based upon a hostile takeover of Supreme, the pre-tax incentive bonus discussed above will be determined based upon the highest pre-tax earnings of Supreme in the three calendar years immediately preceding the calendar year in which termination occurs.

The Gardner Employment Contract contains a non-compete provision for three (3) years following Mr. Gardner's cessation of employment whereby he will not, individually or in any capacity, engage in any business venture or other undertaking which is directly or indirectly competitive with the business or operations of Supreme as generally conducted at or prior to Mr. Gardner's termination. The non-compete provision applies to those states in which Supreme has manufacturing facilities on the date of Mr. Gardner's termination. The Gardner Employment Contract also contains a non-solicitation (of executives) provision for three (3) years following Mr. Gardner's cessation of employment.

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In order to fix Mr. Gardner's severance for termination of his employment with Supreme upon closing of the Merger at a fully quantifiable amount upon the closing rather than an indeterminate amount based on five (5) years of future pre-tax earnings of Supreme, Supreme and Mr. Gardner, at the request of Parent, entered into Amendment Number Two to Employment Contract (the "Gardner Amendment") on August 8, 2017.

Pursuant to the Gardner Amendment, in connection with the termination of his employment, Mr. Gardner shall receive severance payments and benefits equal to $1,984,785 (the "Gardner Severance Amount") paid over five (5) years, which value shall be allocated as follows:

(i)

an amount equal to $540,000 in the aggregate (or $108,000 per annum) in the form of the continued payment of base salary;

(ii)

an amount equal to $1,004,620 in the aggregate (or $200,924 per annum) in the form of the continued payment of a pre-tax bonus; and

(iii)

an amount equal to $440,165 in the aggregate in the form of the continued provision of fringe benefits, including $29,380 in respect of medical benefits, $321,680 in respect of life insurance, $25,000 in respect of dental benefits, and $64,105 in respect of the vehicle buyout.

Receipt by Mr. Gardner of the Gardner Severance Amount shall be subject to the execution and non-revocation by him of a release of claims against Supreme, its subsidiaries and affiliates, and any and all of their respective owners, partners, board members, employees, agents and other representatives, successors, assigns, and administrators or any other fiduciaries of any employee benefit plan sponsored by Supreme or any of its subsidiaries or affiliates.

William J. Barrett

Effective January 1, 2005, Supreme and Mr. Barrett entered into an Amended and Restated Employment Contract, as amended effective June 29, 2012 (the "Barrett Employment Contract"). The terms of the Barrett Employment Contract are substantially similar to the Gardner Employment Contract.

Under the Barrett Employment Contract, if he dies, suffers a "disability," is terminated by Supreme without "cause," terminates the Barrett Employment Contract for "good reason" or if a "change in control" occurs (as such terms are defined below), then the term of the agreement is extended to five years from the date of such event.

In consideration of services to be provided to Supreme, the Barrett Employment Contract provides for Mr. Barrett to receive: annual base compensation of $108,000; and if the pre-tax earnings of Supreme exceed $2,000,000, an incentive bonus of $36,000, plus an amount equal to 0.6% of the amount by which such pre-tax earnings exceed $2,000,000. Additionally, pursuant to the terms of his employment agreement, Mr. Barrett is entitled to fringe benefits including: the right to participate in Supreme's medical plan; the lesser of $30,000 or the actual amount of premiums owing on insurance of any kind owned by himself (and/or his wife) covering himself or "last to die" insurance covering the lives of himself and his wife, grossed up; up to $5,000 per year in expense reimbursement for family vision and dental care, the unused portion of which may be carried forward to future years; and an automobile plus insurance coverage.

If Mr. Barrett dies, suffers a disability, is terminated by Supreme without cause or terminates the Barrett Employment Contract for good reason, then he will be entitled to maintain his base salary and pre-tax bonus for the remainder of the term of the employment agreement (which, following the occurrence of a change in control, will be five (5) years from the date of said change in control). In addition, he will continue to receive the medical coverage, life insurance, and family vision and dental insurance fringe benefits discussed above for the remainder of the terms of the employment agreement.. In addition, Supreme will either sell or lease to him the automobile that Supreme is providing to him. In such case, Supreme will, not later than March 15 following the end of the calendar year in which his employment terminates, either sell him the automobile for $10 along with any insurance coverage (if assignable) or assign to him all of Supreme's interest in and to any lease. Upon termination of such lease, Supreme will purchase the leased automobile and convey ownership to him. If Supreme terminates Mr. Barrett for cause, then he will not

receive any termination payments or benefits.

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Under the Barrett Employment Contract, the definition of "good reason" includes a "change in control" (as defined below). Notwithstanding the foregoing, in the event payments are being made to Mr. Barrett on account of a change in control based upon a hostile takeover of Supreme, the pre-tax incentive bonus discussed above will be determined based upon the highest pre-tax earnings of Supreme in the three calendar years immediately preceding the calendar year in which termination occurs.

The Barrett Employment Contract contains a non-compete provision for three (3) years following Mr. Barrett's cessation of employment whereby he will not, individually or in any capacity, engage in any business venture or other undertaking which is directly or indirectly competitive with the business or operations of Supreme as generally conducted at or prior to Mr. Barrett's termination. The non-compete provision applies to those states in which Supreme has manufacturing facilities on the date of Mr. Barrett's termination. The Barrett Employment Contract also contains a non-solicitation provision (of executives) for three (3) years following Mr. Barrett's cessation of employment.

In order to fix Mr. Barrett's severance for termination of his employment with Supreme upon closing of the Merger at a fully quantifiable amount upon the closing rather than an indeterminate amount based on five (5) years of future pre-tax earnings of Supreme, Supreme and Mr. Barrett, at the request of Parent, entered into Amendment Number Two to Employment Contract (the "Barrett Amendment") on August 8, 2017.

Pursuant to the Barrett Amendment, in connection with the termination of his employment, Mr. Barrett shall receive severance payments and benefits equal to $1,936,915 (the "Barrett Severance Amount") paid over five (5) years, which value shall be allocated as follows:

(i)
an amount equal to $540,000 in the aggregate (or $108,000 per annum) in the form of the continued payment of base salary;

(ii)
an amount equal to $1,004,620 in the aggregate (or $200,924 per annum) in the form of the continued payment of a pre-tax bonus; and

(iii)
an amount equal to $392,295 in the aggregate in the form of the continued provision of fringe benefits, including $33,236 in respect of medical benefits, $280,112 in respect of life insurance, $25,000 in respect of dental benefits, and $53,947 in respect of the vehicle buyout.

Receipt by Mr. Barrett of the Barrett Severance Amount shall be subject to the execution and non-revocation by him of a release of claims against Supreme, its subsidiaries and affiliates, and any and all of their respective owners, partners, board members, employees, agents and other representatives, successors, assigns, and administrators or any other fiduciaries of any employee benefit plan sponsored by Supreme or any of its subsidiaries or affiliates.

For purposes of the Weber Employment Agreement and the Long Employment Agreement, the following terms have the meaning set forth below:

"Cause" means termination because of: (i) an act or acts of theft, embezzlement, fraud, or dishonesty; (ii) a willful or material misrepresentation by the executive that relates to Supreme or has an impact on Supreme; (iii) any willful misconduct by the executive with regard to Supreme; (iv) any violation by the executive of any fiduciary duties owed by him to Supreme; (v) the executive's conviction of, or pleading nolo contendere or guilty to, a felony (other than a traffic infraction) or misdemeanor that may cause damage to Supreme or Supreme's reputation; (vi) a material violation of Supreme's written policies, standards or guidelines, which the executive failed to cure within thirty (30) days after receiving written notice from the Supreme Board specifying the alleged violation; (vii) the executive's willful failure or refusal to satisfactorily perform the duties and responsibilities required to be performed by the executive under the terms of the employment agreement or necessary to carry out the executive's job duties, which the executive failed to cure within thirty (30) days after receiving written notice from the Supreme Board specifying the alleged willful failure or refusal; and (viii) a material breach by the executive of the employment agreement or any other agreement to which the executive and Supreme are parties that is not cured by the executive within twenty (20) days after receipt by the executive of a written notice from Supreme of such breach specifying the details thereof.

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"Good Reason" means (i) a material reduction in the executive's base salary (unless such material reduction is in proportion to a salary reduction applied to the entire group of senior executives of Supreme); (ii) a material diminution in the executive's title, duties, responsibility or authority, including without limitation, with respect to Mr. Weber, any failure to elect or re-elect Mr. Weber to the Supreme Board; (iii) in the event of a "change of control" (as defined in Supreme's 2016 Long-Term Incentive Plan), the failure of Supreme to retain the executive in the same capacity following the change of control (i.e., no material reduction in duties, authority, or material change in position), other than such changes as are reasonably expected in the event Supreme is no longer a publicly-held corporation following the change of control; (iv) relocation of the executive's office, without the executive's consent, to an office located fifty (50) miles outside Supreme's current headquarters; or (v) a material breach by Supreme of the employment agreement, or any other agreement to which the executive and Supreme are parties. Any event described in (i) through (v) shall not constitute Good Reason unless the executive delivers to Supreme a written notice of termination for Good Reason specifying the alleged Good Reason within ninety (90) days after the executive first learns of the existence of the circumstances giving rise to Good Reason, within thirty (30) days following delivery of such notice, Supreme has failed to cure the circumstances giving rise to Good Reason, and the executive resigns within sixty (60) days after the end of the cure period. For purposes of the employment agreement, an action (or failure to act) shall be considered "willful" only if done without a good faith belief that such action (or failure to act) was in, or not opposed to, the best interests of Supreme, and no action (or failure to act) done in good faith reliance upon the advice of Supreme's inside or outside legal counsel shall be considered willful.

Under Supreme's 2016 Long-Term Incentive Plan, "Change in Control" means any of the following, except as otherwise provided herein: (i) any consolidation, merger or share exchange of Supreme in which Supreme is not the continuing or surviving corporation or pursuant to which Shares would be converted into cash, securities or other property, other than a consolidation, merger or share exchange of Supreme in which the holders of Shares immediately prior to such transaction have the same proportionate ownership of common stock of the surviving corporation immediately after such transaction; (ii) any sale, lease, exchange or other transfer (excluding transfer by way of pledge or hypothecation) in one transaction or a series of related transactions, of all or substantially all of the assets of Supreme; (iii) the stockholders of Supreme approve any plan or proposal for the liquidation or dissolution of Supreme; (iv) the cessation of control (by virtue of their not constituting a majority of directors) of the Supreme Board by the individuals (the "Continuing Directors") who (x) at the date of the long-term incentive plan were directors or (y) become directors after the date of the long-term incentive plan and whose election or nomination for election by Supreme's stockholders was approved by a vote of at least two-thirds (2/3rds) of the directors then in office who were directors at the date of the long-term incentive plan or whose election or nomination for election was previously so approved; (v) the acquisition of beneficial ownership (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of an aggregate of fifty percent (50%) or more of the voting power of Supreme's outstanding voting securities by any person or group (as such term is used in Rule 13d-5 under the Exchange Act) who beneficially owned less than fifty percent (50%) of the voting power of Supreme's outstanding voting securities on the date of the long-term incentive plan; provided, however, that notwithstanding the foregoing, an acquisition shall not constitute a Change in Control if the acquirer is (x) a trustee or other fiduciary holding securities under an employee benefit plan of Supreme and acting in such capacity, (y) a subsidiary of Supreme or a corporation owned, directly or indirectly, by the stockholders of Supreme in substantially the same proportions as their ownership of voting securities of Supreme or (z) any other person whose acquisition of shares of voting securities is approved in advance by a majority of the Continuing Directors; or (vi) in a Title 11 bankruptcy proceeding, the appointment of a trustee or the conversion of a case involving Supreme to a case under Chapter 7.

Notwithstanding the foregoing, in the event an award issued under the long-term incentive plan is subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), then, in lieu of the foregoing definition and to the extent necessary to comply with the requirements of Section 409A of the Code, the definition of "Change in Control" for purposes of such award shall be the definition provided for under Section 409A of the Code and the treasury regulations or other guidance issued thereunder.

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For the purposes of the Gardner Employment Contract and the Barrett Employment Contract, the following terms have the meaning set forth below.

“Cause” means the willful engagement by executive in gross misconduct materially injurious to Supreme which shall have been determined by the final award of an arbitrator. For purposes of this definition, any act or failure to act on executive’s part shall not be considered willful unless done or omitted to be done in bad faith and without reasonable belief that his action or omission was in the best interest of Supreme.

“Good Reason” means (i) a Change in Control of Supreme; (ii) any assignment to executive by Supreme of any significant undesirable or demeaning duties (other than as set forth in the agreement as duties of executive); (iii) any failure of Supreme to comply with the compensation set forth in the employment agreement; or (iv) the failure of Supreme to obtain from any successor of Supreme an agreement to assume all of Supreme’s liabilities and obligations created by or arising from the employment agreement.

“Change in Control” means as follows:

Change in the ownership of a corporation

(A) In general. A change in the ownership of a corporation occurs on the date that any one person, or more than one person acting as a group, acquires ownership of stock of the corporation that, together with stock held by such person or group, constitutes more than 50 percent of the total fair market value or total voting power of the stock of such corporation. However, if any one person, or more than one person acting as a group, is considered to own more than 50 percent of the total fair market value or total voting power of the stock of a corporation, the acquisition of additional stock by the same person or persons is not considered to cause a change in the ownership of the corporation (or to cause a change in the effective control of the corporation). An increase in the percentage of stock owned by any one person, or persons acting as a group, as a result of a transaction in which the corporation acquires its stock in exchange for property will be treated as an acquisition of stock. This applies only when there is a transfer of stock of a corporation (or issuance of stock of a corporation) and stock in such corporation remains outstanding after the transaction.

(B) Persons acting as a group. Persons will not be considered to be acting as a group solely because they purchase or own stock of the same corporation at the same time, or as a result of the same public offering. However, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase, or acquisition of stock, or similar business transaction with the corporation. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase, or acquisition of stock, or similar transaction, such stockholder is considered to be acting as a group with other stockholders in a corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

Change in the effective control of a corporation.

(A) In general. Notwithstanding that a corporation has not undergone a change in ownership, (see above), a change in the effective control of a corporation occurs only on the date that either:

(1) Any one person, or more than one person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing 35 percent or more of the total voting power of the stock of such corporation; or

(2) A majority of members of the corporation’s board of directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the corporation’s board of directors prior to the election, provided that for purposes of this paragraph the term corporation refers solely to the relevant corporation for which no other corporation is a majority stockholder for purposes of that paragraph (for example, if Corporation A is a publicly held corporation with no majority stockholder, and Corporation A is the majority stockholder of Corporation B, which is the majority stockholder of Corporation C, the term corporation for purposes of this paragraph would refer solely to Corporation A).

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(B) Multiple change in control events. A change in effective control also may occur in any transaction in which either of the two corporations involved in the transaction has a change in control event. Thus, for example, assume Corporation P transfers more than 40 percent of the total gross fair market value of its assets to Corporation O in exchange for 35 percent of O's stock. P has undergone a change in ownership of a substantial portion of its asset, and O has a change in effective control.

(C) Acquisition of additional control. If any one person, or more than one person acting as a group, is considered to effectively control a corporation, the acquisition of additional control of the corporation by the same person or persons is not considered to cause a change in the effective control of the corporation (or to cause a change in the ownership of the corporation).

(D) Persons acting as a group. Persons will not be considered to be acting as a group solely because they purchase or own stock of the same corporation at the same time, or as a result of the same public offering. However, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase, or acquisition of stock, or similar business transaction with the corporation. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase, or acquisition of stock, or similar transaction, such stockholder is considered to be acting as a group with other stockholders in a corporation only with respect to the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

Change in the ownership of a substantial portion of a corporation's assets.

(A) In general. A change in the ownership of a substantial portion of a corporation's assets occurs on the date that any one person, or more than one person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or person) assets from the corporation that have a total gross fair market value equal to or more than 40 percent of the total gross fair market value of all of the assets of the corporation immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the corporation, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

(B) Transfers to a related person.

(1) There is no change in control event when there is a transfer to an entity that is controlled by the stockholders of the transferring corporation immediately after the transfer. A transfer of assets by a corporation is not treated as a change in the ownership of such assets if the assets are transferred to —

(a) A stockholder of the corporation (immediately before the asset transfer) in exchange for or with respect to its stock;

(b) An entity, 50 percent or more of the total value or voting power of which is owned, directly or indirectly, by the corporation;

(c) A person, or more than one person acting as a group, that owns, directly or indirectly, 50 percent or more of the total value or voting power of all the outstanding stock of the corporation; or

(d) An entity, at least 50 percent of the total value or voting power of which is owned, directly or indirectly, by a person described in "(iii)" immediately preceding.

(2) A person's status is determined immediately after the transfer of the assets. For example, a transfer to a corporation in which the transferor corporation has no ownership interest before the transaction, but which is a majority-owned subsidiary of the transferor corporation after the transaction is not treated as a change in the ownership of the assets of the transferor corporation.

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(C) Persons acting as a group. Persons will not be considered to be acting as a group solely because they purchase assets of the same corporation at the same time. However, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase, or acquisition of assets, or similar business transaction with the corporation. If a person, including an entity stockholder, owns stock in both corporations that enter into a merger, consolidation, purchase, or acquisition of assets, or similar transaction, such stockholder is considered to be acting as a group with other stockholders in a corporation only to the extent of the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

“Disability” means: (i) if the executive is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months; or (ii) if the executive, is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of Supreme.

Ownership Transition Incentive Plan