

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**AMENDMENT NO. 2
TO
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Tempur-Pedic International Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

2510
(Primary Standard Industrial
Classification Code Number)
1713 Jaggie Fox Way
Lexington, Kentucky 40511
800-878-8889

33-1022198
(I.R.S. Employer
Identification Number)

(Address, including zip code, and telephone number, including area code, of the registrant's principal executive offices)

Robert B. Trussell, Jr., President and Chief Executive Officer

Tempur World, Inc.
1713 Jaggie Fox Way
Lexington, Kentucky 40511
800-878-8889

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

John R. Utzschneider, Esq.
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110
617-951-8000

Rod Miller, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
212-310-8000

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

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

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

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

If delivery of the Prospectus is expected to be made pursuant to Rule 434, please check the following box.

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered | Amount to be Registered (1) | Proposed Maximum Aggregate Offering Price Per Share (2) | Proposed Maximum Aggregate Offering Price (2) | Amount of Registration Fee |
|---|--------------------------------|---|---|-------------------------------|
| Common Stock, par value \$0.01 per share | 11,500,000 | \$ 16.26 | \$ 186,990,000 | \$ 23,692(3) |

- (1) Includes 1,500,000 shares of common stock that the underwriters have the option to purchase from the selling stockholders solely to cover over-allotments, if any.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended, based on the average of the high and low sales prices of the common stock as reported on the New York Stock Exchange on October 29, 2004.
- (3) Previously paid.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933, AS AMENDED, OR UNTIL THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

EXPLANATORY NOTE

This Amendment No. 2 to this Registration Statement is being filed solely to amend Part II to include Exhibits 1.1, 5.1 and 23.3.

PART II INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 13. *Other Expenses of Issuance and Distribution*

Expenses of the Registrant in connection with the issuance and distribution of the securities being registered, other than the underwriting discount and commissions, are estimated as follows:

| | |
|-------------------------------------|------------|
| SEC Registration Fee | \$ 23,692 |
| NASD Fees | \$ 19,199 |
| Printing and Engraving Expenses | \$ 250,000 |
| Legal Fees and Expenses | \$ 243,000 |
| Accountant's Fees and Expenses | \$ 140,000 |
| Transfer Agent and Registrar's Fees | \$ 25,000 |
| Travel Expenses | \$ 110,000 |
| Miscellaneous Costs | \$ 39,109 |
| Total | \$ 850,000 |

Item 14. *Indemnification of Directors and Officers*

Tempur-Pedic International is incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify any persons who were, are or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

Section 145 of the Delaware General Corporation Law further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145 of the Delaware Corporation Law.

Tempur-Pedic International's certificate of incorporation, as amended, eliminates the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liabilities arising (a) from any breach of the director's duty of loyalty to the corporation or its stockholders; (b) from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) under Section 174 of the Delaware General Corporation Law; or (d) from any transaction from which the director derived an improper personal benefit. In addition, the bylaws of Tempur-Pedic International provides for indemnification of directors, officers, employees and agents to the fullest extent permitted by Delaware law and authorizes the company to purchase and maintain insurance to protect itself and any director, officer, employee or agent of the company or another business entity against any expense, liability, or loss, regardless of whether the company would have the power to indemnify such person under the company's bylaws or Delaware law.

Item 15. Recent Sales of Unregistered Securities

Tempur-Pedic International was incorporated on September 17, 2002. Since that date, we have issued unregistered securities to a limited number of persons, as described below. None of these transactions involved any underwriters, except as set forth below with respect to the senior subordinated notes due 2010, or any public offerings, and we believe that each of these transactions was exempt from registration requirements pursuant to Section 4(2) of the Securities Act of 1933, as amended, Regulation D promulgated thereunder, or Rule 701 of the Securities Act pursuant to compensatory benefit plans and contracts related to compensation as provided under Rule 701. The recipients of the securities in these transactions represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in these transactions.

In November 2002, pursuant to a Contribution Agreement among us and certain holders of our capital stock, we issued:

- 146,463.65 shares of our Series A preferred stock to certain investors for cash in an aggregate amount of \$146,463,653.33;
- 13,831.00 shares of our Class A common stock to certain former stockholders of Tempur World, Inc. in exchange for their then-outstanding shares of Tempur World, Inc. having an aggregate value of \$13,830,981.18; and
- 878.64 shares of our Class B-1 common stock to certain members of management in exchange for promissory notes (which have since been either forgiven and cancelled or repaid and cancelled).

These securities were issued in reliance on the exemption from registration pursuant to Section 4(2) of the Securities Act and Regulation D promulgated thereunder.

In November 2002, pursuant to a Stock Purchase Agreement between us and a certain investor, we issued 175.00 shares of our Class A common stock in exchange for cash in the amount of \$175,000. These securities were issued in reliance on the exemption from registration pursuant to Section 4(2) of the Securities Act and Regulation D promulgated thereunder.

In November 2002, pursuant to a Warrant Agreement between us and certain mezzanine lenders, we issued warrants to purchase an aggregate of 8,492.01 shares of our Class B common stock at an exercise price of \$0.01 per share. Pursuant to the Warrant Agreement, an aggregate of \$603,179.68 was allocated to the purchase price of the warrants. Although the mezzanine facility has been repaid in full, the warrants remain outstanding. These securities were issued in reliance on the exemption from registration pursuant to Section 4(2) of the Securities Act and Regulation D promulgated thereunder.

Between November 2002 and September 2003, we granted to certain of our employees and a member of our board of directors, stock options to purchase an aggregate of 8,817,732 shares of our Class B-1 common stock at exercise prices ranging from \$800 per share to \$1,500 per share. These options were granted in reliance on the exemption from registration pursuant to Rule 701 of the Securities Act.

In July 2003, an officer purchased 354.00 shares of our Class B-1 common stock for cash in the amount of \$283,200 pursuant to a stock option exercise. These securities were issued in reliance on the exemption from registration pursuant to Section 4(2) of the Securities Act.

In August 2003, in connection with stock option exercises and pursuant to Stock Repurchase Agreements between us and each exercising optionee, certain of our employees and a member of our board of directors purchased an aggregate of 3,170.50 shares of our Class B-1 common stock for cash in the aggregate amount of \$2,753,656. These securities were issued in reliance on the exemption from registration pursuant to Rule 701 of the Securities Act.

In August 2003, pursuant to the terms of an indenture, Tempur-Pedic, Inc. and Tempur Production USA, Inc., our indirect, wholly-owned subsidiaries, issued and sold to a group of underwriters 10^{1/4}% senior subordinated notes due 2010 (the “Notes”) in an aggregate principal amount of \$150,000,000. The Notes were guaranteed by Tempur-Pedic International, and certain of its other subsidiaries. These securities were issued in reliance on the exemptions from registration pursuant to Section 4(2) of the Securities Act. The underwriters subsequently resold these Notes to qualified institutional buyers, non-U.S. persons and certain institutional accredited investors pursuant to Rule 144A, Regulation S and Rule 501(a)(1), (2), (3) and (7) under the Securities Act. In January 23, 2004, pursuant to the terms of such indenture, Tempur-Pedic, Inc. and Tempur Production USA, Inc. redeemed 35% of the Notes, in an aggregate principal amount of \$52.5 million.

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits

- 1.1 Form of Underwriting Agreement.
- 2.1 Agreement and Plan of Merger dated as of October 4, 2002, among Fagerdala Holding B.V., Fagerdala Industri A.B., Chesterfield Properties Limited, Viking Investments S.a.r.l., Robert B. Trussell, Jr., David C. Fogg, Jeffrey P. Heath, H. Thomas Bryant, Tempur-Pedic International Inc., TWI Acquisition Corp. and Tempur World, Inc.⁽¹⁾
- 2.2 Contribution Agreement dated as of October 4, 2002, among TA IX, L.P., TA/Advent VIII L.P., TA/Atlantic and Pacific IV, L.P., TA Strategic Partners Fund A L.P., TA Strategic Partners Fund B L.P., TA Investors LLC, Friedman Fleischer & Lowe Capital Partners, LP, FFL Executive Partners, LP, Robert B. Trussell, Jr., David C. Fogg, H. Thomas Bryant, Jeffrey P. Heath, Mrs. R.B. Trussell, Jr. and Tempur-Pedic International Inc.⁽¹⁾
- 3.1 Amended and Restated Certificate of Incorporation of Tempur-Pedic International Inc.⁽²⁾
- 3.2 Amended and Restated By-laws of Tempur-Pedic International Inc.⁽²⁾
- 4.1 Specimen certificate for shares of common stock.⁽²⁾
- 5.1 Opinion of Bingham McCutchen LLP.
- 10.1 Third Amended and Restated Credited Agreement dated as of August 26, 2004, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Dan-Foam ApS, certain Credit Parties as defined therein, General Electric Capital Corporation, Lehman Commercial Paper Inc., Nordea Bank Danmark A/S, GE European Leveraged Finance Limited, HSBC Bank PLC, the Lenders as defined therein, Lehman Brothers Inc. and GECC Capital Markets Group, Inc.⁽³⁾
- 10.2 Second Amended and Restated Credit Agreement dated as of August 15, 2003, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur World Holding Company ApS, Dan-Foam ApS, certain Credit Parties as defined therein, General Electric Capital Corporation, Lehman Commercial Paper Inc., Nordea Bank Danmark A/S, GE European Leveraged Finance Limited, HSBC Bank PLC, the Lenders as defined therein, Lehman Brothers Inc. and GECC Capital Markets Group, Inc.⁽¹⁾
- 10.2.1 Amendment No. 1 and Limited Waiver to Second Amended and Restated Credit Agreement dated as of November 26, 2003, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur World Holding Company ApS, Dan-Foam ApS, certain Credit Parties as defined therein, General Electric Capital Corporation, Lehman Commercial Paper Inc., Nordea Bank Danmark A/S, GE European Leveraged Finance Limited, HSBC Bank PLC, the Lenders as defined therein, Lehman Brothers Inc. and GECC Capital Markets Group, Inc.⁽⁴⁾
- 10.2.2 Amendment No. 2 and Limited Waiver to Second Amended and Restated Credit Agreement dated as of January 22, 2004, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur World Holding Company ApS, San-Foam ApS, certain Credit Parties as defined therein, General Electric Capital Corporation, Lehman Commercial Paper Inc., Nordea Bank Danmark A/S, GE European Leveraged Finance Limited, HSBC Bank PLC, the Lenders as defined therein, Lehman Brothers Inc. and GECC Capital Markets Group, Inc.⁽⁴⁾

- 10.2.3 Amendment No. 3 and Limited Waiver to Second Amended and Restated Credit Agreement dated as of February 20, 2004, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur World Holding Company ApS, Dan-Foam ApS, certain Credit Parties as defined therein, General Electric Capital Corporation, Lehman Commercial paper Inc., Nordea Bank Danmark A/S, GE European Leveraged Finance Limited, HSBC Bank PLC, the Lenders as defined therein, Lehman Brothers Inc. and GECC Capital Markets Group, Inc.⁽⁴⁾
- 10.3 Indenture dated as of August 15, 2003, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc., Tempur World, Inc., Tempur World Holdings, Inc., Tempur-Pedic, Direct Response, Inc., Tempur-Medical, Inc. and Wells Fargo Bank Minnesota, National Association, as Trustee.⁽¹⁾
- 10.3.1 Supplemental Indenture dated as of February 19, 2004, among Dawn Sleep Technologies, Inc., Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc., Tempur World, LLC, Tempur World Holdings, LLC, Tempur-Pedic, Direct Response, Inc., Tempur-Pedic Medical, Inc. and Wells Fargo Bank, N.A., as Trustee.⁽⁵⁾
- 10.3.2 Supplemental Indenture dated as of April 5, 2004, among Tempur-Pedic Retail, Inc., Tempur-Pedic Professional, Inc., Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc., Tempur World, LLC, Tempur World Holdings, LLC, Tempur-Pedic, Direct Response, Inc., Tempur-Pedic Medical, Inc., Dawn Sleep Technologies, Inc. and Wells Fargo Bank, N.A., as Trustee.⁽⁶⁾
- 10.4 Form of 10¹/₄% Senior Subordinated Notes Due 2010 (included in Exhibit 10.3).⁽¹⁾
- 10.5 Registration Rights Agreement dated as of August 15, 2003, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc., Tempur World, Inc., Tempur World Holdings, Inc., Tempur-Pedic, Direct Response, Inc., Tempur-Medical, Inc., Lehman Brothers Inc, UBS Securities LLC and Credit Suisse First Boston LLC.⁽¹⁾
- 10.6 Registration Rights Agreement dated as of November 1, 2002, among Tempur-Pedic International Inc., Friedman Fleischer & Lowe Capital Partners, LP, FFL Executive Partners, LP, TA IX, L.P., TA/Atlantic and Pacific IV, L.P., TA Strategic Partners Fund A L.P., TA Strategic Partners Fund B L.P., TA/Advent VIII L.P., TA Investors LLC, TA Subordinated Debt Fund, L.P., Gleacher Mezzanine Fund I, L.P., Gleacher Mezzanine Fund P, L.P. and the investors listed on Schedule I thereto.⁽¹⁾
- 10.7 Stockholder Agreement dated as of November 1, 2002, among Tempur-Pedic International Inc., Friedman Fleischer & Lowe Capital Partners, LP, FFL Executive Partners, LP, TA IX, L.P., TA/Atlantic and Pacific IV, L.P., TA Strategic Partners Fund A L.P., TA Strategic Partners Fund B L.P., TA/Advent VIII L.P., TA Investors LLC, TA Subordinated Debt Fund, L.P., Gleacher Mezzanine Fund I, L.P., Gleacher Mezzanine Fund P, L.P. and the investors listed on Schedule I thereto.⁽¹⁾
- 10.8 Series A Preferred Stock Stockholder Agreement dated as of November 1, 2002, among Tempur-Pedic International Inc., Friedman Fleischer & Lowe Capital Partners, LP, FFL Executive Partners, LP, TA IX, L.P., TA/Atlantic and Pacific IV, L.P., TA Strategic Partners Fund A L.P., TA Strategic Partners Fund B L.P., TA/Advent VIII L.P. and TA Investors LLC.⁽¹⁾
- 10.9 Tempur-Pedic International Inc. 2002 Stock Option Plan.⁽¹⁾
- 10.10 Amended and Restated Employment and Noncompetition Agreement effective as of November 1, 2002, between Tempur World, Inc. and Robert B. Trussell, Jr.⁽¹⁾
- 10.11 Amended and Restated Employment and Noncompetition Agreement effective as of November 1, 2002, between Tempur World, Inc. and David C. Fogg.⁽¹⁾
- 10.12 Amended and Restated Employment and Noncompetition Agreement effective as of November 1, 2002, between Tempur World, Inc. and H. Thomas Bryant.⁽¹⁾
- 10.13 Amended and Restated Employment and Noncompetition Agreement effective as of November 1, 2002, between Tempur World, Inc. and Jeffrey P. Heath.⁽¹⁾

- 10.14 Separation Agreement dated as of July 3, 2003, among Tempur-Pedic International Inc., Tempur World, Inc. and Jeffrey P. Heath.⁽¹⁾
- 10.15 Consultant's Agreement effective as of July 12, 2003, among Tempur-Pedic, Inc., Tempur World, Inc. and Jeffrey P. Heath.⁽¹⁾
- 10.16 Employment and Noncompetition Agreement dated as of July 11, 2003, between Tempur World, Inc. and Dale E. Williams.⁽¹⁾
- 10.17 Employment Agreement dated September 12, 2003, between Tempur International Limited and David Montgomery.⁽⁷⁾
- 10.18 Tempur-Pedic International Inc. 2003 Equity Incentive Plan.⁽²⁾
- 10.19 Tempur-Pedic International Inc. 2003 Employee Stock Purchase Plan.⁽²⁾
- 10.20 Letter Agreement dated October 20, 2003 from Tempur-Pedic International Inc. and Tempur World, Inc. to Mikael Magnusson and Dag Landvik, as Seller Representatives under the Merger Agreement, and their affiliates.⁽⁸⁾
- 10.21 Option Agreement dated as of July 13, 2004 between Tempur-Pedic International Inc. and Sir Paul Judge.⁽⁹⁾
- 10.22 Option Agreement dated as of March 12, 2004 between Tempur-Pedic International Inc. and Nancy F. Koehn.⁽¹⁰⁾
- 10.23 Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and Robert B. Trussell, Jr.⁽¹¹⁾
- 10.24 Option Agreement dated as of February 24, 2003 between Tempur-Pedic International Inc. and David Montgomery.⁽¹¹⁾
- 10.25 Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and David C. Fogg.⁽¹¹⁾
- 10.26 Option Agreement dated as of July 7, 2003 between Tempur-Pedic International Inc. and Dale E. Williams.⁽¹¹⁾
- 10.27 Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and Jeffrey B. Johnson.⁽¹¹⁾
- 10.28 Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and Jeffrey B. Johnson.⁽¹¹⁾
- 10.29 Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and H. Thomas Bryant.⁽¹¹⁾
- 10.30 Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and Jeffrey B. Johnson.⁽¹¹⁾
- 10.31 Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and Jeffrey P. Heath.⁽¹¹⁾
- 10.32 Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and H. Thomas Bryant.⁽¹¹⁾
- 10.33 Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and Robert B. Trussell, Jr.⁽¹¹⁾
- 10.34 Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and David C. Fogg.⁽¹¹⁾

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| 10.35 | Option Agreement dated as of March 26, 2003 between Tempur-Pedic International Inc. and Francis A. Doyle. ⁽¹¹⁾ |
| 10.36 | Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and Francis A. Doyle. ⁽¹¹⁾ |
| 10.37 | Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and David Montgomery. ⁽¹¹⁾ |
| 21.1 | Subsidiaries of Tempur-Pedic International Inc. ⁽¹¹⁾ |
| 23.1 | Consent of Ernst & Young LLP. ⁽¹¹⁾ |
| 23.2 | Notice regarding consent of Arthur Andersen LLP. ⁽⁴⁾ |
| 23.3 | Consent of Bingham McCutchen LLP (included in Exhibit 5.1). |
| 24.1 | Power of Attorney of Tempur-Pedic International Inc. ⁽¹¹⁾ |

- ⁽¹⁾ Incorporated by reference from the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on September 23, 2003.
- ⁽²⁾ Incorporated by reference from Amendment No. 3 to the Registrant's registration statement on Form S-1 (File No. 333-109798) filed with the Commission on December 12, 2003.
- ⁽³⁾ Incorporated by reference from the Registrant's Current Report on Form 8-K (File No. 001-31922) filed with the Commission on August 31, 2004.
- ⁽⁴⁾ Incorporated by reference from the Registrant's Annual Report on Form 10-K (File No. 001-31922) filed with the Commission on March 30, 2004.
- ⁽⁵⁾ Incorporated by reference from Amendment No. 3 to the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on February 27, 2004.
- ⁽⁶⁾ Incorporated by reference from Amendment No. 4 to the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on April 5, 2004.
- ⁽⁷⁾ Incorporated by reference from Amendment No. 1 to the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on October 30, 2003.
- ⁽⁸⁾ Incorporated by reference from Amendment No. 2 to the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on November 25, 2003.
- ⁽⁹⁾ Incorporated by reference from the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 2, 2004.
- ⁽¹⁰⁾ Incorporated by reference from the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 17, 2004.
- ⁽¹¹⁾ Previously filed.

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the Registrant pursuant to the foregoing provisions described in Item 14 above, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the 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.

The undersigned registrant hereby undertakes:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(3) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

[10,000,000] Shares

TEMPUR-PEDIC INTERNATIONAL INC.

Common Stock

UNDERWRITING AGREEMENT

November , 2004

LEHMAN BROTHERS INC.
GOLDMAN, SACHS & CO.
UBS SECURITIES LLC
PIPER JAFFRAY & CO.
ADAMS HARKNESS, INC.
c/o Lehman Brothers Inc.
745 Seventh Avenue, 19th Floor
New York, New York 10019

Ladies and Gentlemen:

Certain stockholders of Tempur-Pedic International Inc., a Delaware corporation (the "**Company**"), named in Schedule 2 hereto (the "**Selling Stockholders**"), propose to sell an aggregate of [10,000,000] shares (the "**Firm Stock**") of the Company's common stock par value \$0.01 per share (the "**Common Stock**"). In addition, the Selling Stockholders propose to grant to the Underwriters named in Schedule 1 hereto (the "**Underwriters**") an option to purchase up to an aggregate of [1,500,000] additional shares of the Common Stock on the terms and for the purposes set forth in Section 3 (the "**Option Stock**"). The Firm Stock and the Option Stock, if purchased, are hereinafter collectively called the "**Stock**." This is to confirm the agreement concerning the purchase of the Stock from the Selling Stockholders by the Underwriters.

1. *Representations, Warranties and Agreements of the Company.* The Company represents, warrants and agrees that:

(a) A registration statement on Form S-1, and amendments thereto, with respect to the Stock have (i) been prepared by the Company in conformity with the requirements of the Securities Act of 1933, as amended (the "**Securities Act**") and the rules and regulations (the "**Rules and Regulations**") of the Securities and Exchange Commission (the "**Commission**") thereunder, (ii) been filed with the Commission under the Securities Act and (iii) become effective under the Securities Act. Copies of such registration statement and each of the amendments thereto have been delivered by the Company to you as the representatives (the "**Representatives**") of the Underwriters. As used in this Underwriting Agreement (this "**Agreement**"), "**Effective Time**" means the date and the

time as of which such registration statement, or the most recent post-effective amendment thereto, if any, was declared effective by the Commission; “**Effective Date**” means the date of the Effective Time; “**Preliminary Prospectus**” means each prospectus included in such registration statement, or amendments thereof, before it became effective under the Securities Act and any prospectus filed with the Commission by the Company with the consent of the Representatives pursuant to Rule 424(a) of the Rules and Regulations; “**Registration Statement**” means such registration statement, as amended at the Effective Time, including all information contained in the final prospectus filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations and deemed to be a part of the registration statement as of the Effective Time pursuant to paragraph (b) of Rule 430A of the Rules and Regulations, and including any registration registering additional shares of Common Stock filed with the Commission pursuant to Rule 462(b) of the Rules and Regulations; and “**Prospectus**” means such final prospectus, as first filed with the Commission pursuant to paragraph (1) or (4) of Rule 424(b) of the Rules and Regulations. The Commission has not issued any order preventing or suspending the use of any Preliminary Prospectus.

(b) The Registration Statement conforms, and the Prospectus and any further amendments or supplements to the Registration Statement or the Prospectus will, when they become effective or are filed with the Commission, as the case may be, conform in all material respects to the requirements of the Securities Act and the Rules and Regulations and do not and will not, as of the applicable effective date (as to the Registration Statement and any amendment thereto) and as of the applicable filing date (as to the Prospectus and any amendment or supplement thereto) contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Registration Statement or the Prospectus in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein.

(c) The Company and each of its subsidiaries (as defined in Section 17) have been duly organized, are validly existing and are in good standing under the laws of their respective jurisdictions of organization and are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, except where the failure to be so organized, existing in good standing or duly qualified would not reasonably be expected to have a material adverse effect on the general affairs, management, consolidated financial position,

stockholders' equity, results of operations or business of the Company and its subsidiaries taken as a whole (a "**Material Adverse Effect**"). The Company and each of its subsidiaries have all corporate power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged. The subsidiaries of the Company listed on Schedule 3 hereto are the only subsidiaries of the Company.

(d) The Company has an authorized capitalization as set forth in the Prospectus; all of the issued shares of capital stock of the Company and its subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable; and all of the issued shares of capital stock of each subsidiary of the Company are owned directly or indirectly by the Company (other than the directors' qualifying shares for foreign subsidiaries), free and clear of all liens, encumbrances, equities or claims, other than liens, encumbrances, equities or claims contemplated under the Third Amended and Restated Credit Agreement, dated as of August 24, 2004, entered into by and among Tempur-Pedic, Inc., Tempur Production USA, Inc. and Dan-Foam ApS, as the borrowers, the guarantors named therein and the agents and lenders party thereto, or such as are otherwise described in the Prospectus, and none of such shares of capital stock were issued in violation in any material respect of preemptive or other similar rights arising by operation of law, under the charter and bylaws of the Company and each of its subsidiaries or under any agreement to which the Company and each of its subsidiaries is a party or otherwise.

(e) The shares of the Stock to be sold by the Selling Stockholders to the Underwriters hereunder have been duly and validly authorized and are or, when issued upon the exercise or conversion of the exercise of options held by such Selling Stockholders will be validly issued and fully paid and non-assessable; and the Stock conforms to the description thereof contained in the Prospectus.

(f) The Company has all requisite corporate power and authority to execute, deliver and perform its respective obligations under this Agreement.

(g) This Agreement has been duly and validly authorized, executed and delivered by the Company.

(h) The execution, delivery and performance of this Agreement by the Company, and the consummation of the transactions contemplated hereby will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company and its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or

other agreement, license or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or bylaws of the Company or any of its subsidiaries or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries, or (iii) assuming the accuracy of the Underwriters' representations herein and compliance by the Underwriters with their obligations hereunder, result in any violation of any of their properties or assets; and, except for filings under the Securities Act and applicable state or foreign securities laws in connection with the purchase and sale of the Stock by the Underwriters, no consent, approval, authorization or order of, or filing or registration with, any such court or governmental agency or body is required for the execution, delivery and performance of this Agreement by the Company and the consummation of the transactions contemplated hereby.

(i) The historical financial statements (including the related notes) included in the Prospectus comply as to form in all material respects with the requirements of Regulation S-X under the Securities Act and present fairly the financial condition, results of operations and cash flows of the entities purported to be shown thereby, at the dates and for the periods indicated, and have been prepared in conformity with accounting principles generally accepted in the United States applied on a consistent basis throughout the periods involved. The other financial data, pro forma financial information, operating data and statistical information and data included in the Prospectus is presented fairly and has been prepared on a basis consistent in all material respects (except for, with respect to the pro forma financial information, the pro forma adjustments described in the Prospectus) with such financial statements and the books and records of the Company and its subsidiaries.

(j) Except as set forth in the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject which, if determined adversely to the Company or any such subsidiary would reasonably be expected to have a Material Adverse Effect, and to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

(k) Except as set forth in the Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the

Company owned or to be owned by such person or to require the Company to include such securities in the securities to be registered pursuant to the Registration Statement or in any securities registered or to be registered pursuant to any other registration statement filed by or required to be filed by the Company under the Securities Act.

(l) Except as disclosed in the Prospectus, since the date of the latest audited consolidated financial statements of the Company and its subsidiaries included in the Prospectus, none of the Company nor any of its subsidiaries has incurred any liability or obligation, direct or contingent, or entered into any transaction, in each case not in the ordinary course of business, that is material to the Company and each of its subsidiaries taken as a whole, and there has not occurred, to the knowledge of the Company, any development or event involving or reasonably likely to result in a Material Adverse Effect and, except as disclosed in or contemplated by the Prospectus, there has been no (i) dividend or distribution of any kind declared, paid or made by the Company or its affiliates on any class of their respective capital stock, (ii) issuance of securities by the Company or its affiliates (other than pursuant to an issuance by the Company or its affiliates of options to purchase the capital stock of the Company or its affiliates or exercise of any such options) or (iii) material increase in short-term or long-term debt of the Company.

(m) The Company and its subsidiaries (i) make and keep accurate books and records and (ii) maintain a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's authorization, (B) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (C) access to the Company's assets is permitted only in accordance with management's authorization and (D) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(n) (i) Each of the Company and its subsidiaries has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")); (ii) such disclosure controls and procedures are designed to ensure that information required to be disclosed by the Company and each of its subsidiaries in the reports they file or submit under the Exchange Act is (i) recorded, processed, summarized and reported, within the time periods specified in the Rules and Regulations and forms and (ii) accumulated and communicated to the

management of the Company and each of its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure; and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

(o) Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by Ernst & Young LLP and the audit committee of the board of directors of the Company (or persons fulfilling the equivalent function), the Company has not been advised of (i) any significant deficiencies in the design or operation of internal controls which could adversely affect the ability of the Company and each of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries.

(p) Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by Ernst & Young LLP, there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

(q) Ernst & Young LLP, who have certified certain financial statements of the Company and its consolidated subsidiaries, whose report appears in the Prospectus and who have delivered the initial letter referred to in Section 9(h) hereof, are independent public accountants as required by the Securities Act and the rules and regulations promulgated thereunder.

(r) The statistical and market-related data included in the Prospectus are based on or derived from sources which the Company believes to be reliable and accurate in all material respects.

(s) Each of the Company and its subsidiaries has such permits, licenses, patents, franchises, certificates of need and other approvals or authorizations of governmental or regulatory authorities (“**Permits**”) as are necessary under applicable law to own its properties and to conduct its businesses in the manner described in the Prospectus and except as disclosed in or specifically contemplated by the Prospectus and except for any of the foregoing that would not reasonably be expected to have a Material Adverse Effect; each of the Company and its subsidiaries has fulfilled and performed in all material respects, all of its material obligations with respect to the Permits, and no event has occurred which

allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other material impairment of the rights of the holder of any such Permits, except as disclosed in the Prospectus; except for any of the foregoing that would not reasonably be expected to have a Material Adverse Effect.

(t) The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is, in the judgment of the Company, adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries; all policies of insurance insuring the Company and each of its subsidiaries or their respective businesses, assets, employees, officers and directors are in full force and effect in all material respects.

(u) The Company and each of its subsidiaries own or possess adequate rights to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights and licenses necessary for the conduct of their respective businesses, except where the failure to own or have rights to use would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and have not received any notice of any claim of conflict with, any such rights of others, and the Company is not aware of any pending or threatened claim to the contrary or any pending or threatened challenge by any other person to the rights of the Company and its subsidiaries with respect to the foregoing which, if determined adversely to any of the Company or its subsidiaries would have a Material Adverse Effect.

(v) There are no contracts which are required to be described in the Prospectus or filed as exhibits to the Registration Statement that have not been described in the Prospectus or filed as exhibits to the Registration Statement.

(w) No relationship, direct or indirect, exists between or among the Company on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company on the other hand, that is required by the Rules and Regulations to be described in the Prospectus that is not so described in the Prospectus.

(x) No labor disturbance by the employees of the Company or its subsidiaries exists or, to the knowledge of the Company, is imminent, that would reasonably be expected to have a Material Adverse Effect.

(y) Each of the Company and its subsidiaries is in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (“ERISA”), except for such instances of non-compliance that would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect; no “reportable event” (as defined in ERISA) has occurred with respect to any “pension plan” (as defined in ERISA) for which the Company or any of its subsidiaries would have any liability; the Company and its subsidiaries have not incurred and do not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “pension plan” or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the “Code”); each “pension plan” for which the Company and each of its subsidiaries would have any liability that is intended to be qualified under Section 401(a) of the Code is to the Company’s knowledge so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; and the Company and each of its subsidiaries have not incurred any unpaid liability to the Pension Benefit Guaranty Corporation (other than for payment of premiums in the ordinary course of business).

(z) The Company and each of its subsidiaries have filed all foreign, federal, state and local income and franchise tax returns required to be filed through the date hereof, subject to any permitted extensions (except where failure to file such returns would not be expected to result in a Material Adverse Effect), and paid all taxes shown as due thereon, and (x) no tax deficiency has been determined adversely to the Company or any of its subsidiaries, nor (y) does the Company have any knowledge of any tax deficiency, which, in case of (x) or (y), if determined adversely to the Company or any of its subsidiaries would reasonably be expected to have a Material Adverse Effect.

(aa) Neither the Company nor any of its subsidiaries (i) is in violation of its charter and bylaws (or similar organizational documents), (ii) is in default, and no event has occurred which, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, except for any of the foregoing in this clause (ii) that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (iii) is in violation of any law, ordinance, governmental rule, regulation or court decree to which it or its property or assets may be subject or has failed to obtain any material

license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except for any of the foregoing in this clause (iii) that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(bb) Neither the Company nor any of its subsidiaries, nor any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(cc) The Company and each of its subsidiaries are (i) in compliance with any and all applicable foreign, federal, state and local laws, regulations, ordinance, rule, order, judgment, decree, permit or other legal requirement relating to the protection of human health and safety, the environment, natural resources or hazardous or toxic substances or wastes, pollutants or contaminants ("**Environmental Laws**"), which compliance includes obtaining, maintaining and complying with all permits and authorizations and approvals required by Environmental Laws to conduct their respective businesses and (ii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except in the case of clause (i) or (ii) where such non-compliance with or liability under Environmental Laws would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and neither the Company nor any of its subsidiaries has been named as a "potentially responsible party" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, except with respect to any matters that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(dd) The Company and each of its subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case, free and clear of all liens, encumbrances and defects except for "Permitted Liens" (as defined in the Indenture dated August 15, 2003, relating to the 10¹/₄% Senior Subordinated Notes due 2010 issued by certain subsidiaries of the Company) and such as do not materially affect the value of the property and do not materially interfere with the use made and proposed to be made of such property by the Company and each of its subsidiaries taken as a

whole and all assets held under lease by the Company and each of its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as are not material and do not interfere in any material respect with the use made and proposed to be made of such assets by the Company and each of its subsidiaries.

(ee) Neither the Company nor any subsidiary is, or, as of any Delivery Date (as defined in Section 5) after giving effect to the offer and sale of the Stock and the application of the proceeds as described herein, will be, an “investment company” within the meaning of such term under the Investment Company Act of 1940, as amended (the “**Investment Company Act**”).

(ff) The Company has not distributed or, prior to the later to occur of any Delivery Date and completion of the distribution of the Stock, will distribute any offering material in connection with the offering and sale of the Stock other than the Preliminary Prospectus and the Prospectus.

(gg) The Company has not taken and will not take, directly or indirectly, any action designed to or which has constituted or which might reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the shares of the Stock.

(hh) The Stock is listed on the New York Stock Exchange.

(ii) The Company understands that the Underwriters and, for purposes of the opinions to be delivered to the Underwriters pursuant to Section 9 hereof, counsel to the Company and counsel to the Underwriters will rely upon the accuracy and truth of the foregoing representations and hereby consents to such reliance.

2. *Representations, Warranties and Agreements of the Selling Stockholders.* Each Selling Stockholder severally and not jointly represents, warrants and agrees that:

(a) The Selling Stockholder has good and valid title to the shares of the Stock to be sold by the Selling Stockholder hereunder or good and valid title to the options pursuant to which the shares of Stock to be sold by the Selling Stockholder hereunder will be issued, and immediately prior to the applicable Delivery Date the Selling Stockholder will have, good and valid title to the shares of Stock to be sold by the Selling Stockholder hereunder on such date, free and clear of all liens, encumbrances, equities or claims, except for any liens, encumbrances, equities or claims arising under the Custody Agreement (as hereinafter

defined); and upon delivery of such shares and payment therefor pursuant hereto, good and valid title to such shares, free and clear of all liens, encumbrances, equities or claims, will pass to the several Underwriters.

(b) The Selling Stockholder has placed in custody under a custody agreement (the “**Custody Agreement**”) with the other Selling Stockholders and EquiServe LLC, as custodian (the “**Custodian**”) and Messrs. Trussell, Williams and Johnson, as Attorneys-in-Fact (the “**Attorneys-in-Fact**”), for delivery under this Agreement, (i) certificates in negotiable form (with signature guaranteed by a commercial bank or trust company having an office or correspondent in the United States or a member firm of the New York Stock Exchange) representing the shares of Stock to be sold by the Selling Stockholder hereunder, and (ii) if such Selling Stockholder is selling shares of Stock issuable upon exercise of stock options, an option exercise form and a check for the option exercise price.

(c) Pursuant to the Custody Agreement, the Selling Stockholder has duly and irrevocably executed and delivered a power of attorney appointing the Attorneys-in-Fact with full power of substitution, and with full authority to execute and deliver this Agreement and to take such other action as may be necessary or desirable to carry out the provisions hereof on behalf of the Selling Stockholder.

(d) The Selling Stockholder has full right, power and authority to enter into this Agreement and the Custody Agreement; the execution, delivery and performance of this Agreement and the Custody Agreement by the Selling Stockholder and the consummation by the Selling Stockholder of the transactions contemplated hereby will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Selling Stockholder is a party or by which the Selling Stockholder is bound or to which any of the property or assets of the Selling Stockholder is subject, nor will such actions result in any violation of the provisions of the constituent documents of the Selling Stockholder (with respect to any Selling Stockholder that is not a natural person) or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Selling Stockholder or the property or assets of the Selling Stockholder; and, except for the registration of the Stock under the Securities Act and such consents, approvals, authorizations, registrations or qualifications as will have been obtained prior to the date hereof as may be required under the Exchange Act and applicable state or foreign securities laws in connection with the purchase and distribution of the Stock by the Underwriters, no consent, approval, authorization or order of, or filing or registration with, any such court or governmental

agency or body is required for the execution, delivery and performance of this Agreement or the Custody Agreement by the Selling Stockholder and the consummation by the Selling Stockholder of the transactions contemplated hereby.

(e) The Registration Statement and the Prospectus and any further amendments or supplements to the Registration Statement or the Prospectus, when they become effective or are filed with the Commission, as the case may be, do not and will not, as of the applicable effective date (as to the Registration Statement and any amendment thereto) and as of the applicable filing date (as to the Prospectus and any amendment or supplement thereto) contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Registration Statement or the Prospectus in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, and *provided further* that this paragraph (e) shall apply to each Selling Stockholder only to the extent that the statements or omissions from the Registration Statement or the Prospectus were made in reliance upon and in conformity with written information relating to such Selling Stockholder provided by such Selling Stockholder specifically for inclusion therein, it being understood and agreed that for purposes of this Section 2 and the indemnification obligations in Section 10, the only information provided by such Selling Stockholder consists of information relating to such Selling Stockholder under the caption "Principal and Selling Stockholders" in the Prospectus.

(f) Except as provided in this Agreement and in the Lock-Up Agreement (as hereinafter defined), the Selling Stockholder has not taken and will not take, directly or indirectly, any action designed to or which has constituted or which might reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the shares of the Stock.

3. *Purchase of the Stock by the Underwriters.* On the basis of the representations and warranties contained in, and subject to the terms and conditions of, this Agreement, each Selling Stockholder hereby agrees to sell the number of shares of the Firm Stock set opposite such Selling Stockholder's name in Schedule 2 hereto, severally and not jointly, to the several Underwriters and each of the Underwriters, severally and not jointly, agrees to purchase the number of shares of the Firm Stock set opposite that Underwriter's name in Schedule 1 hereto. Each Underwriter shall be obligated to purchase from each Selling Stockholder, that number of shares of the Firm Stock which represents the same proportion of the number of shares of the Firm Stock to be sold by the Company and by each Selling Stockholder, as the number of shares of the

Firm Stock set forth opposite the name of such Underwriter in Schedule 1 represents of the total number of shares of the Firm Stock to be purchased by all of the Underwriters pursuant to this Agreement. The respective purchase obligations of the Underwriters with respect to the Firm Stock shall be rounded among the Underwriters to avoid fractional shares, as the Representatives may determine.

In addition, each Selling Stockholder identified on Schedule 2 grants to the Underwriters an option to purchase up to the number of shares of Option Stock set opposite such Selling Stockholder's name in Schedule 2 hereto, severally and not jointly, to the several Underwriters. Such option is exercisable as provided in Section 5 hereof. Shares of Option Stock shall be purchased severally for the account of the Underwriters in proportion to the number of shares of Firm Stock set opposite the name of such Underwriters in Schedule 1 hereto. The respective purchase obligations of each Underwriter with respect to the Option Stock shall be adjusted by the Representatives so that no Underwriter shall be obligated to purchase Option Stock other than in 100 share amounts. If less than all the shares of Option Stock are purchased by the Underwriters pursuant to this Section 3, the shares of Option Stock so purchased shall be sold by the Selling Stockholders identified on Schedule 2 on a pro rata basis.

The price of both the Firm Stock and any Option Stock shall be \$ _____ per share.

The Selling Stockholders shall not be obligated to deliver any of the Stock to be delivered on any Delivery Date (as hereinafter defined), as the case may be, except upon payment for all the Stock to be purchased on such Delivery Date as provided herein.

4. *Offering of Stock by the Underwriters.* Upon authorization by the Representatives of the release of the Firm Stock, the several Underwriters propose to offer the Firm Stock for sale upon the terms and conditions set forth in the Prospectus.

5. *Delivery of and Payment for the Stock.* Delivery of and payment for the Firm Stock shall be made at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, at 10:00 A.M., New York City time, on the fourth full business day following the date of this Agreement or at such other date or place as shall be determined by agreement between the Representatives and the Selling Stockholders. This date and time are sometimes referred to as the "**First Delivery Date.**" The Selling Stockholders shall cause the Custodian to deliver or cause to be delivered, on the First Delivery Date, the Firm Stock to the Representatives for the account of each Underwriter against payment to or upon the order of the Custodian of the purchase price by wire transfer in immediately available funds. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. Upon delivery, the Firm Stock shall be registered in such names and in such denominations as the Representatives shall request in writing not less than two full business days prior to the First Delivery Date. For the purpose of expediting the checking and packaging of the certificates for the Firm Stock, the Selling Stockholders shall make the certificates representing the Firm Stock available for inspection by the Representatives in New York, New York, not later than 2:00 P.M., New York City time, on the business day prior to the First Delivery Date.

The option granted in Section 3 will expire 30 days after the date of this Agreement and may be exercised in whole or in part from time to time by written notice being given to the Company, the Selling Stockholders and the Custodian by the Representatives. Such notice shall set forth the aggregate number of shares of Option Stock as to which the option is being exercised, the names in which the shares of Option Stock are to be registered, the denominations in which the shares of Option Stock are to be issued and the date and time, as determined by the Representatives, when the shares of Option Stock are to be delivered; *provided, however*, that this date and time shall not be earlier than the First Delivery Date nor earlier than the second business day after the date on which the option shall have been exercised nor later than the fifth business day after the date on which the option shall have been exercised. The date and time the shares of Option Stock are delivered are sometimes referred to as a “**Second Delivery Date**” and the First Delivery Date and any Second Delivery Date are sometimes each referred to as a “**Delivery Date**”).

Delivery of and payment for the Option Stock shall be made at the place specified in the first sentence of the first paragraph of this Section 5 (or at such other place as shall be determined by agreement between the Representatives and the Custodian) at 10:00 A.M., New York City time, on such Second Delivery Date. The Selling Stockholders shall cause the Custodian to deliver or cause to be delivered, on such Second Delivery Date, the Option Stock to the Representatives for the account of each Underwriter against payment to or upon the order of the Custodian of the purchase price by wire transfer in immediately available funds. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. Upon delivery, the Option Stock shall be registered in such names and in such denominations as the Representatives shall request in the aforesaid written notice. For the purpose of expediting the checking and packaging of the certificates for the Option Stock, the Custodian shall make the certificates representing the Option Stock available for inspection by the Representatives in New York, New York, not later than 2:00 P.M., New York City time, on the business day prior to such Second Delivery Date.

6. *Further Agreements of the Company.* The Company agrees:

(a) To prepare the Prospectus in a form approved by the Representatives and to file such Prospectus pursuant to Rule 424(b) under the Securities Act not later than Commission’s close of business on the second business day following the execution and delivery of this Agreement or, if applicable, such earlier time as may be required by Rule 430A(a)(3) under the Securities Act; to make no further amendment or any supplement to the Registration Statement or to the Prospectus except as permitted herein; to advise the Representatives, promptly after it receives notice thereof, of the time when any amendment to the

Registration Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed and to furnish the Representatives with copies thereof; to advise the Representatives, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, of the suspension of the qualification of the Stock for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification, to use promptly its commercially reasonable best efforts to obtain its withdrawal;

(b) To furnish promptly to each of the Representatives and to counsel for the Representatives a signed copy of the Registration Statement as originally filed with the Commission, and each amendment thereto filed with the Commission, including all consents and exhibits filed therewith;

(c) To deliver promptly to the Representatives such number of the following documents as the Representatives shall reasonably request: (i) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits other than this Agreement), and (ii) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus; and, if the delivery of a prospectus is required at any time after the Effective Time in connection with the offering or sale of the Stock and if at such time any events shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary to amend or supplement the Prospectus in order to comply with the Securities Act, to notify the Representatives and, upon their request, to prepare and furnish without charge to each Underwriter and to any dealer in securities as many copies as the Representatives may from time to time reasonably request of an amended or supplemented Prospectus which will correct such statement or omission or effect such compliance;

(d) To file promptly with the Commission any amendment to the Registration Statement or the Prospectus or any supplement to the Prospectus that may, in the judgment of the Company or the Representatives, be required by the Securities Act or requested by the Commission;

(e) Prior to filing with the Commission any amendment to the Registration Statement or supplement to the Prospectus or any Prospectus pursuant to Rule 424 of the Rules and Regulations, to furnish a copy thereof to the Representatives and counsel for the Underwriters and obtain the consent of the Representatives to the filing, which consent may not be unreasonably withheld or delayed;

(f) As soon as practicable after the Effective Date, to make generally available to the Company's security holders and to deliver to the Representatives an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Securities Act and the Rules and Regulations (including, at the option of the Company, Rule 158) (it being understood that such delivery requirements shall be deemed met by the Company's reporting requirements pursuant to the Exchange Act and the rules and regulations thereunder);

(g) For a period of five years following the Effective Date, to furnish to the Representatives copies of all materials furnished by the Company to its shareholders and all public reports and all reports and financial statements furnished by the Company to the principal national securities exchange upon which the Common Stock may be listed pursuant to requirements of or agreements with such exchange or to the Commission pursuant to the Exchange Act or any rule or regulation of the Commission thereunder;

(h) Promptly from time to time to take such action as the Representatives may reasonably request to qualify the Stock for offering and sale under the securities laws of such jurisdictions as the Representatives may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Stock; *provided* that in connection therewith the Company shall not be required to qualify as a foreign corporation in any jurisdiction in which it is not now so qualified or to take any action that would subject it to general consent to service of process or taxation in any jurisdiction in which it is not now so subject;

(i) For a period of 90 days from the date of the Prospectus (the "**initial Lock-Up Period**"), not to, directly or indirectly, (1) (A) offer for sale, sell, pledge or otherwise dispose of (or enter into any transaction or device which is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of

Common Stock or securities convertible into or exchangeable for Common Stock (other than the Stock and shares issued (a) pursuant to employee benefit plans, stock option plans or other employee compensation plans and employee stock purchase plans existing on the date hereof, (b) pursuant to currently outstanding options, warrants or rights or (c) in connection with acquisitions where the acquirer of such shares agrees to be bound by the restrictions contained in this paragraph (i); *provided*, that any shares issued pursuant to this clause (c) shall not exceed 10% of the Company's total outstanding Common Stock), or (B) sell or grant options, rights or warrants with respect to any shares of Common Stock or securities convertible into or exchangeable for Common Stock (other than the grant of options pursuant to option plans existing on the date hereof or subsequently adopted by the Board of Directors of the Company), or (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, in each case without the prior written consent of Lehman Brothers Inc. and Goldman, Sachs & Co., on behalf of the Underwriters; *provided, however*, that if (a) during the last 17 days of the initial Lock-Up Period the Company issues an earnings release or material news or a material event relating to the Company occurs or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the initial Lock-Up Period, then in each case the initial Lock-Up Period shall be automatically extended and the restrictions imposed by this Section 6(i) shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless Lehman Brothers Inc. and Goldman, Sachs & Co. waive, in writing, such extension; and to provide Lehman Brothers Inc. and Goldman, Sachs & Co. with prior notice of any such announcement that gives rise to an extension of the initial Lock-up Period, and Lehman Brothers Inc. and Goldman, Sachs & Co. hereby agree to keep such information confidential; and to provide each stockholder subject to the Lock-Up Period pursuant to the Lock-Up Agreement (defined herein) with notice within two business days of any such announcement that gives rise to an extension of the initial Lock-up Period; and to cause each executive officer and director of the Company to furnish to the Representatives, prior to the First Delivery Date, a letter or letters, substantially in the form of Exhibit A hereto (the "**Lock-Up Agreement**"); and

(j) To take such steps as shall be necessary to ensure that neither the Company nor any of its subsidiaries shall become an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended.

7. *Further Agreements of the Selling Stockholders.* Each Selling Stockholder agrees:

(a) To execute and deliver to the Representatives, on or prior to the date hereof, the Lock-up Agreement.

(b) To deliver to the Representatives prior to the First Delivery Date a properly completed and executed United States Treasury Department Form W-8 (if the Selling Stockholder is a non-United States person) or Form W-9 (if the Selling Stockholder is a United States person).

8. *Expenses.* The Company agrees, whether or not the transactions contemplated by this Agreement are consummated or this Agreement becomes effective or is terminated, to pay all costs, expenses, fees and taxes incident to and in connection with (a) the authorization, issuance, sale and delivery of the Stock and any stamp duties or other taxes payable in that connection; (b) the preparation, printing and filing under the Securities Act of the Registration Statement and any amendments and exhibits thereto; (c) the distribution of the Registration Statement as originally filed and each amendment thereto and any post-effective amendments thereof (including, in each case, exhibits), any Preliminary Prospectus, the Prospectus and any amendment or supplement to the Prospectus, all as provided in this Agreement; (d) any required review by the National Association of Securities Dealers, Inc. of the terms of sale of the Stock; (e) the qualification of the Stock under the securities laws of the several jurisdictions as provided in Section 6(h); (f) the preparation, printing (including, without limitation, word processing and duplication costs) and distribution of this Agreement, all Blue Sky Memoranda and all other agreements, memoranda, correspondence and other documents printed and delivered in connection herewith (excluding, however, legal fees and expenses of counsel to the Underwriters incurred in connection with any of the foregoing other than reasonable fees of such counsel plus reasonable disbursements incurred in connection with the preparation, printing and distribution of such Blue Sky Memoranda); (g) the costs and expenses relating to investor presentations on any "road show" undertaken in connection with the marketing of the Stock, including the cost of any plane chartered for this "road show" but excluding other travel expenses of the Underwriters, (h) the fees and expenses of the Custodian (and any other attorney-in-fact), (i) the fees and expenses of counsel to the Selling Stockholders to the extent required under the terms of the Registration Rights Agreement, dated November 1, 2002, among the Company and the stockholders named therein, and (j) the performance of all other obligations of the Company and the Selling Stockholders under this Agreement; *provided* that, except as provided in this Section 8 and in Section 13, the Underwriters shall pay their own costs and expenses, including the costs and expenses of their counsel, any transfer taxes on the Stock which they may sell and the expenses of advertising any offering of the Stock made by the Underwriters, and the Selling Stockholders shall pay the fees and expenses of their counsel except as provided in clause (i) above and any transfer taxes payable in connection with their respective sales of Stock to the Underwriters.

9. *Conditions of Underwriters' Obligations.* The respective obligations of the Underwriters hereunder are subject to the accuracy, when made and on each Delivery Date, of the representations and warranties of the Company and the Selling Stockholders contained herein, to the performance by the Company and the Selling Stockholders of their respective obligations hereunder, and to each of the following additional terms and conditions:

(a) The Prospectus shall have been timely filed with the Commission in accordance with Section 6(a); no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; and any request of the Commission for inclusion of additional information in the Registration Statement or the Prospectus or otherwise shall have been complied with.

(b) The Prospectus shall have been printed and copies distributed to you not later than 9:00 A.M., New York City time, on November , 2004, or at such later date and time as you may approve in writing, and no stop order suspending the qualification or exemption from qualification of the Stock in any jurisdiction shall have been issued and no proceeding for that purpose shall have been commenced or shall be pending or threatened.

(c) No Underwriter shall have discovered and disclosed to the Company on or prior to such Delivery Date that the Prospectus or any amendment or supplement thereto contains an untrue statement of a fact which, in the reasonable opinion of Weil, Gotshal & Manges LLP, counsel for the Underwriters, is material or omits to state a fact which, in the reasonable opinion of such counsel, is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) All corporate proceedings and other legal matters incident to the authorization, form and validity of this Agreement, Custody Agreements, the Powers of Attorney, the Stock, the Registration Statement and the Prospectus, and all other legal matters relating to this Agreement and the transactions contemplated hereby shall be reasonably satisfactory in all material respects to the Underwriters, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

(e) (i) Bingham McCutchen LLP shall have furnished to the Representatives its written opinion, as counsel to the Company and the "Designated Selling Stockholders" identified therein, addressed to the

Underwriters and dated such Delivery Date, substantially in the form attached hereto as Exhibit B-1; and (ii) the Company shall have requested and caused one or more special counsel for certain of the subsidiaries listed on Schedule 3 hereto, as indicated on such Schedule, to furnish to the Representatives its or their opinion, dated such Delivery Date, in form and substance reasonably satisfactory to the Underwriters and Weil Gotshal & Manges LLP, substantially in the form of Exhibit B-2.

(f) The counsel for each of the Selling Stockholders other than those referred to in paragraph (e)(i) above shall have furnished to the Representatives their written opinion, as counsel to each of the Selling Stockholders for whom they are acting as counsel, addressed to the Underwriters and dated such Delivery Date, in form and substance reasonably satisfactory to the Underwriters and Weil Gotshal & Manges LLP, substantially in the form of Exhibit C.

(g) The Representatives shall have received from Weil, Gotshal & Manges LLP, counsel for the Underwriters, such opinion or opinions, dated such Delivery Date, with respect to the issuance and sale of the Stock, the Registration Statements, each Prospectus and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters.

(h) At the time of execution of this Agreement, the Underwriters shall have received from Ernst & Young LLP, a letter, in form and substance satisfactory to the Underwriters, addressed to the Underwriters and dated the date hereof (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, (ii) stating, as of the date hereof (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus, as of a date not more than five days prior to the date hereof), the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings.

(i) With respect to the letter of Ernst & Young LLP, referred to in the preceding paragraph and delivered to the Underwriters concurrently with the execution of this Agreement (the "**initial letter**"), the Underwriters shall have received a letter (the "**bring-down letter**") of such accountants, addressed to the Underwriters and dated as of each Delivery Date (i) confirming that they are independent public accountants

within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, (ii) stating, as of the date of the bring-down letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus, as of a date not more than five days prior to the date of the bring-down letter), the conclusions and findings of such firm with respect to the financial information and other matters covered by the initial letter and (iii) confirming in all material respects the conclusions and findings set forth in the initial letter.

(j) The Company shall have furnished to the Representatives a certificate, dated such Delivery Date, executed on behalf of the Company by its Chief Executive Officer and Chief Financial Officer stating that:

(A) The representations and warranties of the Company contained herein are true and correct as if made on and as of such Delivery Date (other than to the extent any such representation or warranty is made expressly to a certain date), and the Company has performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Delivery Date;

(B) At such Delivery Date, since the date hereof or since the date of the most recent financial statements in the Prospectus, except as described in the Prospectus to the knowledge of such person after reasonable inquiry, no event or events have occurred, nor has any information become known that, individually or in the aggregate, would have a material adverse effect on the consolidated financial position, stockholders' equity, results of operations, business or prospects of the Company and each of its subsidiaries;

(C) They have carefully examined the Preliminary Prospectus and the Prospectus and, in their opinion, the Preliminary Prospectus and Prospectus, as of their respective dates, did not, and the Prospectus, as of such Delivery Date, does not, include any untrue statement of a material fact and did not omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and since the date of the Prospectus, no event has occurred which should have been set forth in a supplement to the Prospectus; and

(D) To the knowledge of such persons after due inquiry, the issuance and sale of the Stock by the Company hereunder has not been enjoined (temporarily or permanently) by any court or governmental body or agency.

(k) Each Selling Stockholder (or the Custodian or one or more attorneys-in-fact on behalf of the Selling Stockholders) shall have furnished to the Representatives on such Delivery Date a certificate, dated such Delivery Date, signed by, or on behalf of, the Selling Stockholder (or the Custodian or one or more attorneys-in-fact) stating that the representations, warranties and agreements of the Selling Stockholder contained herein are true and correct as of such Delivery Date and that the Selling Stockholder has complied with all agreements contained herein to be performed by the Selling Stockholder at or prior to such Delivery Date.

(l) The Company shall have furnished to the Representatives a certificate, dated such Delivery Date, executed on behalf of the Company by its Chief Executive Officer stating that (a) the financial statements for the Company's predecessors as of and for the year ended December 31, 2001, as well as the financial data derived therefrom, contained in the Prospectus were audited by Arthur Andersen LLP, as set forth in the reports of such accountants with respect to such periods, and (b) at all relevant times during such periods, Arthur Andersen LLP were accountants independent from the Company's predecessors within the meaning of the Securities Act and the Rules and Regulations.

(m) (i) The Company and its subsidiaries shall not have sustained since the date of the latest audited financial statements included in the Prospectus (exclusive of any amendment or supplement thereto after the date hereof) any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Prospectus and (ii) since such date there shall not have been any change in the capital stock or long-term debt of the Company and its subsidiaries or any change, or any development involving a prospective change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, otherwise than as set forth or contemplated in the Prospectus, the effect of which, in any such case described in clause (i) or (ii), is, in the judgment of Lehman Brothers Inc. and Goldman, Sachs & Co., so material and adverse as to make it impracticable or inadvisable to proceed with the offering or the delivery of the Stock being delivered on such Delivery Date on the terms and in the manner contemplated herein and in the Prospectus.

(n) Subsequent to the execution and delivery of this Agreement there shall not have occurred any of the following: (i) trading in securities generally on the New York Stock Exchange or the American Stock

Exchange or in the over-the-counter market, or trading in any securities of the Company on any exchange or in the over-the-counter market, shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or such market by the Commission, by such exchange or by any other regulatory body or governmental authority having jurisdiction, (ii) a banking moratorium shall have been declared by Federal or state authorities, (iii) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States or there shall have been a declaration of a national emergency or war by the United States or (iv) there shall have occurred such a material adverse change in general economic, political or financial conditions (or the effect of international conditions on the financial markets in the United States shall be such) or there shall have occurred any other calamity or crisis, including without limitation as a result of terrorist activities after the date hereof, as to make it, in the judgment of Lehman Brothers Inc. and Goldman, Sachs & Co., impracticable or inadvisable to proceed with the offering or delivery of the Stock being delivered on such Delivery Date on the terms and in the manner contemplated in the Prospectus.

All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

10. Indemnification and Contribution.

(a) The Company shall indemnify and hold harmless each Underwriter, its directors, officers and employees and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to purchases and sales of Stock), to which that Underwriter, director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained (A) in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any amendment or supplement thereto or (B) in any Blue Sky application or other document prepared or executed by the Company (or based upon any written information furnished by the Company for use therein) specifically for the purpose of qualifying any or all of the Stock under the securities laws of any state or other jurisdiction (any such application, document or information being hereinafter called a “**Blue Sky Application**”) or (C) in

any materials or information provided to investors by, or with the written approval of, the Company in connection with the marketing of the offering of the Stock (“**Marketing Materials**”), including any road show or investor presentations made to investors by the Company (whether in person or electronically), (ii) the omission or alleged omission to state in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any amendment or supplement thereto, or in any Blue Sky Application or Marketing Materials, any material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made not misleading or (iii) any act or failure to act or any alleged act or failure to act by any Underwriter in connection with, or relating in any manner to, the Stock or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon matters covered by clause (i) or (ii) above (*provided* that the Company shall not be liable under this clause (iii) to the extent that it is determined in a final judgment by a court of competent jurisdiction that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Underwriter through its gross negligence or willful misconduct), and shall reimburse each Underwriter and each such director, officer, employee or controlling person promptly upon demand for any legal or other expenses reasonably incurred by that Underwriter, director, officer, employee or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, the Registration Statement or the Prospectus, or in any such amendment or supplement, in reliance upon and in conformity with written information concerning such Underwriters furnished to the Company through the Underwriters by or on behalf of any Underwriters specifically for inclusion therein which information consists solely of the information specified in Section 10(f); and provided further that with respect to any such untrue statement or omission made in the Preliminary Prospectus, the foregoing indemnity shall not inure to the benefit of any Underwriter (or any person who controls any Underwriter or any officer or director thereof) from whom the person asserting such loss, claim, damage, liability or action purchased the Stock, to the extent that such sale was an initial resale by such Underwriter and any such loss, claim, damage, liability or action of such Underwriter is a result of the fact that both (i) to the extent required by applicable law, a copy of the Prospectus was not sent or given to such person at or prior to the written confirmation of the sale of such Stock to such person and (ii) the untrue statement or

omission in the Preliminary Prospectus was corrected in the Prospectus unless, in either case, such failure to deliver the Prospectus was a result of noncompliance by the Company with Section 6(c). The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to any Underwriter or to any director, officer, employee or controlling person of that Underwriter.

(b) Each of the Selling Stockholders, severally and not jointly in proportion to the number of shares of Stock to be sold by them hereunder, shall indemnify and hold harmless each Underwriter, its directors, officers and employees, and each person, if any, who controls any Underwriter within the meaning of the Securities Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to purchases and sales of Stock), to which that Underwriter, director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any amendment or supplement thereto or (ii) the omission or alleged omission to state in any Preliminary Prospectus, Registration Statement or the Prospectus, or in any amendment or supplement thereto, any material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse each Underwriter, its directors, officers and employees and each such controlling person for any legal or other expenses reasonably incurred by that Underwriter, its directors, officers and employees or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that each Selling Stockholder shall be liable in any such case only to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any such amendment or supplement in reliance upon and in conformity with written information concerning such Selling Stockholder furnished to the Company by such Selling Stockholder specifically for inclusion therein; *provided, further*, that with respect to any such untrue statement or omission made in the Preliminary Prospectus, the foregoing indemnity shall not inure to the benefit of the Underwriters (or any person who controls any Underwriter or any officer or director thereof) from whom the person asserting such loss, claim, damage, liability or action purchased the Stock, to the extent that such sale was an initial resale by such Underwriter and any such loss, claim, damage, liability or action of such

Underwriter is a result of the fact that both (i) to the extent required by applicable law, a copy of the Prospectus was not sent or given to such person at or prior to the written confirmation of the sale of such Stock to such person and (ii) the untrue statement or omission in the Preliminary Prospectus was corrected in the Prospectus unless, in either case, such failure to deliver the Prospectus was a result of noncompliance by the Company with Section 6(c); *provided, further*, the aggregate amount of any Selling Stockholder's indemnity and contribution obligations under this Section 10(b) and Section 10(e) shall not exceed the cash proceeds received by such Selling Stockholder from its sale of Stock. The foregoing indemnity agreement is in addition to any liability which the Selling Stockholders may otherwise have to any Underwriter or any officer, employee or controlling person of that Underwriter.

(c) Each Underwriter shall, severally and not jointly, indemnify and hold harmless the Company, each Selling Stockholder, each of their respective officers and employees, each of its directors, and each person, if any, who controls the Company or such Selling Stockholder within the meaning of the Securities Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Company, such Selling Stockholder or any such director, officer or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any amendment or supplement thereto, or in any Blue Sky Application or (ii) the omission or alleged omission to state in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any amendment or supplement thereto, or in any Blue Sky Application any material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information concerning such Underwriter furnished to the Company through Lehman Brothers Inc. by or on behalf of that Underwriter specifically for inclusion therein, and shall reimburse the Company and any such director, officer or controlling person for any legal or other expenses reasonably incurred by the Company or any such director, officer or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred. The foregoing indemnity agreement is in addition to any liability which any Underwriter may otherwise have to the Company or any such director, officer or controlling person of the Company.

(d) Promptly after receipt by an indemnified party under this Section 10 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 10, notify the indemnifying party in writing of the claim or the commencement of that action; *provided, however*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have under this Section 10, except to the extent it has been materially prejudiced by such failure and, *provided further*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under this Section 10. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 10 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that Lehman Brothers shall have the right to employ counsel to represent jointly Lehman Brothers and those other Underwriters and their respective directors, officers, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Underwriters against the Company or any Selling Stockholders under this Section 10 if, in the reasonable judgment of Lehman Brothers, it is advisable for Lehman Brothers and those Underwriters, directors, officers, employees and controlling persons to be jointly represented by separate counsel, and in that event the fees and expenses of such separate counsel shall be paid by the Company and the Selling Stockholders. No indemnifying party shall (i) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld), settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include any findings of fact or admissions of fault or culpability as to the indemnified party or (ii) be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with the consent of the indemnifying party or if there be a final judgment of the plaintiff in

any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment.

(e) If the indemnification provided for in this Section 10 shall for any reason be unavailable to or insufficient to hold harmless an indemnified party under Section 10(a), 10(b), or 10(c) in respect of any loss, claim, damage or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other from the offering of the Stock or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Selling Stockholders, on the one hand, and the Underwriters on the other with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other with respect to such offering shall be deemed to be in the same proportion as the total net proceeds from the offering of the Stock purchased under this Agreement (before deducting expenses) received by the Company and the Selling Stockholders, on the one hand, and the total discounts and commissions received by the Underwriters with respect to the shares of the Stock purchased under this Agreement, on the other hand, bear to the total gross proceeds from the offering of the shares of the Stock under this Agreement. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, the Selling Stockholders or the Underwriters, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company, the Selling Stockholders and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 10(e) were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 10(e) shall be deemed to include, for purposes of this Section 10(e), any legal or other

expenses reasonably incurred by such indemnified party in connection with investigating or defending or preparing to defend any such action or claim. Notwithstanding the provisions of this Section 10(e), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Stock underwritten by it and distributed to the public was offered to the public exceeds the amount of any damages which such Underwriter has otherwise paid or become liable to pay by reason of any untrue or alleged untrue statement or omission or alleged omission and the contribution obligations of the Selling Stockholders shall be subject to the aggregate limitation provided in Section 10(b). No person guilty of fraudulent misrepresentation (within the meaning of Section 10(e) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute as provided in this Section 10(e) are several in proportion to their respective underwriting obligations and not joint.

(f) The Underwriters severally confirm and the Company acknowledges that the statements with respect to the public offering of the Stock by the Underwriters set forth on the cover page of, and the concession and reallowance figures and the paragraph entitled "Notice to Investors in the United Kingdom" appearing under the caption "Underwriting" in, the Prospectus are correct and constitute the only information concerning such Underwriters furnished in writing to the Company by or on behalf of the Underwriters specifically for inclusion in the Registration Statement and the Prospectus.

11. *Defaulting Underwriters.* If, on any Delivery Date, any Underwriter defaults in the performance of its obligations under this Agreement, the remaining non-defaulting Underwriters shall be obligated to purchase the Firm Stock or Option Stock, as applicable, that the defaulting Underwriter agreed but failed to purchase on such Delivery Date in the respective proportions which the number of shares of the Firm Stock or Option Stock, as applicable, set forth opposite the name of each remaining non-defaulting Underwriter in Schedule 1 hereto bears to the total number of shares of the Firm Stock or Option Stock, as applicable, set forth opposite the names of all the remaining non-defaulting Underwriters in Schedule 1 hereto; *provided, however*, that the remaining non-defaulting Underwriters shall not be obligated to purchase any of the Stock on such Delivery Date if the total number of shares of the Stock which the defaulting Underwriter or Underwriters agreed but failed to purchase on such date exceeds 10% of the total number of shares of the Stock to be purchased on such Delivery Date, and any remaining non-defaulting Underwriter shall not be obligated to purchase more than 110% of the number of shares of the Stock which it agreed to purchase on such Delivery Date pursuant to the terms of Section 3. If the foregoing maximums are exceeded, the remaining non-defaulting Underwriters, or those other Underwriters satisfactory to Lehman Brothers and Goldman, Sachs & Co. who so agree, shall have the

right, but shall not be obligated, to purchase, in such proportion as may be agreed upon among them, all of the Stock to be purchased on such Delivery Date. If the remaining Underwriters or other Underwriters satisfactory to Lehman Brothers Inc. and Goldman, Sachs & Co. do not elect to purchase the Stock which the defaulting Underwriter or Underwriters agreed but failed to purchase on such Delivery Date, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company of the Selling Stockholders, except that the Company will continue to be liable to the non-defaulting Underwriters for the payment of expenses to the extent set forth in Sections 8 and 13. As used in this Agreement, the term “**Underwriter**” includes, for all purposes of this Agreement unless the context requires otherwise, any party not listed in Schedule 1 hereto who, pursuant to this Section 11, purchases Firm Stock which a defaulting Underwriter agreed but failed to purchase.

Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company and the Selling Stockholders for damages caused by its default, including liability of any defaulting Underwriter for the expenses referred to in Section 13. If other underwriters are obligated or agree to purchase the Stock of a defaulting or withdrawing Underwriter, either Lehman Brothers Inc. and Goldman, Sachs & Co. or the Company may postpone a Delivery Date for up to seven full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the Registration Statement, the Prospectus or in any other document or arrangement.

12. *Termination.* The obligations of the Underwriters hereunder may be terminated by the Representatives by notice given to and received by the Company and the Selling Stockholders prior to delivery of and payment for the Firm Stock if, prior to that time, any of the events described in Sections 9(m) or 9(n), shall have occurred or if the Underwriters shall decline to purchase the Stock for any reason permitted under this Agreement.

13. *Reimbursement of Underwriters' Expenses.* If any Selling Stockholder shall fail to tender the Stock for delivery to the Underwriters by reason of any failure, refusal or inability on the part of the Company or the Selling Stockholders to perform any agreement on its part to be performed, or because any other condition of the Underwriters' obligations hereunder required to be fulfilled by the Company or the Selling Stockholders is not fulfilled, the Company will reimburse the Underwriters for all reasonable out-of-pocket expenses (including fees and disbursements of counsel) incurred by the Underwriters in connection with this Agreement and the proposed purchase of the Stock, and upon demand the Company shall pay the full amount thereof to the Representatives. If this Agreement is terminated pursuant to Section 11 by reason of the default of one or more Underwriters, neither the Company nor any Selling Stockholder shall be obligated to reimburse any defaulting Underwriter on account of those expenses.

14. *Notices, etc.* All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Underwriters, shall be delivered or sent by mail, telex or facsimile transmission to the care of Lehman Brothers Inc., 745 Seventh Avenue, 19th Floor, New York, New York 10019, Attention: Syndicate Registration Group (Fax: (212) 526-0943), with a copy to Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Rod Miller, Esq. (Fax: 212-310-8007) and, in the case of any notice pursuant to Section 10(e), to the Director of Litigation, Office of the General Counsel, Lehman Brothers Inc., 399 Park Avenue, New York, New York (Fax: (212) 526-2648);

(b) if to the Company shall be delivered or sent by mail, telex or facsimile transmission to the Company, 1713 Jaggie Fox Way, Lexington, Kentucky 40511, Attention: Thomas Bryant (Fax: (859) 514-4422), with a copy to Bingham McCutchen LLP, 150 Federal Street, Boston, Massachusetts 02110-1726, Attention: John Utzschneider, Esq. (Fax: (617) 951-8736);

(c) if to any Selling Stockholders, shall be delivered or sent by mail, or facsimile transmission to such Selling Stockholder at the address set forth on Schedule 2 hereto;

provided, however, that any notice to an Underwriter pursuant to Section 10(d) shall be delivered or sent by mail, or facsimile transmission to such Underwriter at its address set forth in its acceptance to the Representatives, which address will be supplied to any other party hereto by the Representatives upon request. Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof. The Company and the Selling Stockholders shall be entitled to act and rely upon any request, consent, notice or agreement given or made on behalf of the Underwriters by Lehman Brothers Inc. on behalf of the Representatives and the Company and the Underwriters shall be entitled to act and rely upon any request, consent, notice or agreement given or made on behalf of the Selling Stockholders by the Custodian.

15. *Persons Entitled to Benefit of Agreement.* This Agreement shall inure to the benefit of and be binding upon the Underwriters, the Company, the Selling Stockholders and their respective personal representatives and successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that (a) the representations, warranties, indemnities and agreements of the Company and the Selling Stockholders contained in this Agreement shall also be deemed to be for the benefit of the directors, officers, employees of the Underwriters and each person or persons, if any, who control any Underwriter within the meaning of Section 15 of the Securities Act and (b) the indemnity agreement of the Underwriters contained in Section 10(c) of this Agreement shall be deemed to be for the benefit of directors of the Company, officers of the Company who have signed the Registration Statement and any

person controlling the Company within the meaning of Section 15 of the Securities Act and any person controlling a Selling Stockholder within the meaning of Section 15 of the Securities Act. Nothing in this Agreement is intended or shall be construed to give any person, other than the persons referred to in this Section 15, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

16. *Survival.* The respective indemnities, representations, warranties and agreements of the Company, the Selling Stockholders and the Underwriters contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall survive the delivery of and payment for the Stock and shall remain in full force and effect, regardless of any investigation made by or on behalf of any of them or any person controlling any of them.

17. *Definition of the Terms "Business Day" and "Subsidiary."* For purposes of this Agreement, (a) "**business day**" means each Monday, Tuesday, Wednesday, Thursday or Friday which is not a day on which banking institutions in New York are generally authorized or obligated by law or executive order to close and (b) "**subsidiary**" has the meaning set forth in Rule 405 of the Rules and Regulations.

18. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of New York.

19. *Counterparts.* This Agreement may be executed in multiple counterparts and, if executed in counterparts, the executed counterparts shall each be deemed to be an original but all such counterparts shall together constitute one and the same instrument.

20. *Headings.* The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

If the foregoing correctly sets forth the agreement among the Company the Selling Stockholders and the Underwriters, please indicate your acceptance in the space provided for that purpose below.

Very truly yours,

TEMPUR-PEDIC INTERNATIONAL INC.

By _____

Name:

Title:

The Selling Stockholders named in Schedule 2 to this Agreement

By _____

Attorney-in-Fact

Accepted:

LEHMAN BROTHERS INC.
GOLDMAN, SACHS & CO.
UBS SECURITIES LLC
PIPER JAFFRAY & CO.
ADAMS HARKNESS, INC.

For themselves and as Representatives
of the several Underwriters named
in Schedule 1 hereto

By LEHMAN BROTHERS INC.

By: _____
Authorized Representative

By GOLDMAN, SACHS & CO.

By: _____
(Goldman, Sachs & Co.)

SCHEDULE 1

| <u>Underwriters</u> | <u>Number of Shares</u> |
|----------------------------|------------------------------------|
| Lehman Brothers Inc. | |
| Goldman, Sachs & Co. | |
| UBS Securities LLC. | |
| Piper Jaffray & Co. | |
| Adams Harkness, Inc | |
| Total | 10,000,000 |

SCHEDULE 2

| <u>Name and address of Selling Stockholder</u> | <u>Number of Firm Stock</u> | <u>Number of Option Stock</u> |
|--|-----------------------------|-------------------------------|
| TA IX L.P. 125 High Street, Suite 2500 Boston, MA 02110 | | |
| TA/Atlantic and Pacific IV, L.P. 125 High Street, Suite 2500 Boston, MA 02110 | | |
| TA/Advent VII, L.P. 125 High Street, Suite 2500 Boston, MA 02110 | | |
| TA/Strategic Partners Fund A, L.P. 125 High Street, Suite 2500 Boston, MA 02110 | | |
| TA/Strategic Partners Fund B, L.P. 125 High Street, Suite 2500 Boston, MA 02110 | | |
| TA Investors LLC 125 High Street, Suite 2500 Boston, MA 02110 | | |
| TA Subordinated Debt Fund, L.P. 125 High Street, Suite 2500 Boston, MA 02110 | | |
| H. Thomas Bryant c/o Tempur-Pedic International Inc., 1713 Jaggie Fox Way Lexington, KY 40511 | [113,680] | [53,497] |
| David C. Fogg c/o Tempur-Pedic International Inc., 1713 Jaggie Fox Way Lexington, KY 40511 | [215,161] | [101,252] |
| Jeffrey B. Johnson c/o Tempur-Pedic International Inc., 1713 Jaggie Fox Way Lexington, KY 40511 | [14,057] | [6,615] |

| <u>Name and address of Selling Stockholder</u> | <u>Number of Firm Stock</u> | <u>Number of Option Stock</u> |
|--|-----------------------------|-------------------------------|
| Gleacher Mezzanine Fund I, LP 660 Madison Avenue, 17th Floor New York, NY 10021 | | 0 |
| Gleacher Mezzanine Fund P, LP 660 Madison Avenue, 17th Floor New York, NY 10021 | | 0 |
| Friedman Fleisher & Lowe Capital Partners, LP One Maritime Plaza, Suite 1000 San Francisco, CA 94111 | | |
| FFL Executive Partners, LP One Maritime Plaza, Suite 1000 San Francisco, CA 94111 | | |
| Robert B. and Martha O. Trussell, Tenants in Common c/o Tempur-Pedic International Inc., 1713 Jaggie Fox Way Lexington, KY 40511 | | |
| RBT Investments, LLC c/o Tempur-Pedic International Inc., 1713 Jaggie Fox Way Lexington, KY 40511 | | |
| Dale E. Williams c/o Tempur-Pedic International Inc., 1713 Jaggie Fox Way Lexington, KY 40511 | [32,799] | [15,435] |
| Total | <u>[10,000,000]</u> | <u>[1,500,000]</u> |

SCHEDULE 3

Subsidiaries

| <u>Entity</u> | <u>State or Country of Organization</u> |
|--------------------------------------|---|
| Tempur World, Inc. | Delaware |
| Tempur World Holdings, Inc. | Delaware |
| Tempur-Pedic, Inc.* | Kentucky |
| Tempur Production USA, Inc.* | Virginia |
| Tempur-Medical, Inc.* | Kentucky |
| Tempur-Pedic, Direct Response, Inc.* | Kentucky |
| Dawn Sleep Technologies, Inc. | Delaware |
| Tempur World Holdings S.L. | Spain |
| Tempur World Holding Company ApS* | Denmark |
| Tempur World Holding Sweden AB | Sweden |
| Dan-Foam ApS* | Denmark |
| Tempur UK, Ltd. | United Kingdom |
| Tempur Japan Yugen Kaisha | Japan |
| Tempur International Limited | United Kingdom |
| Tempur Danmark A/S* | Denmark |
| Tempur Suomi OY | Finland |
| Tempur Norge AS | Norway |
| Tempur Sverige AB | Sweden |
| Tempur Italia Srl | Italy |
| Tempur France SARL | France |
| Tempur Holding GmbH | Germany |
| [Sleep Center GmbH] | Germany |
| Tempur Deutschland GmbH | Germany |
| Tempur Schweiz AG | Switzerland |
| Tempur Pedic Espana SA | Spain |
| Tempur Singapore Pte Ltd. | Singapore |
| Tempur Benelux B.V. | Netherlands |
| Tempur South Africa p.t.y. | South Africa |
| Tempur-Pedic Retail, Inc. | Delaware |
| Tempur-Pedic Professional, Inc. | Delaware |

* Local counsel opinion to be provided.

LOCK-UP AGREEMENT

Lehman Brothers Inc.
Goldman, Sachs & Co.
UBS Securities LLC
Piper Jaffray & Co.
Adams Harkness, Inc.
As Representatives of the several
Underwriters,
c/o Lehman Brothers Inc.
790 Seventh Avenue
New York, NY 10019

Ladies and Gentlemen:

The undersigned understands that you and certain other firms propose to enter into an Underwriting Agreement (the “**Underwriting Agreement**”) providing for the purchase by you and such other firms (the “**Underwriters**”) of shares (the “**Shares**”) of Common Stock, par value \$.01 per share (the “**Common Stock**”), of Tempur-Pedic International Inc., a Delaware corporation (the “**Company**”), and that the Underwriters propose to re-offer the Shares to the public (the “**Offering**”).

In consideration of the execution of the Underwriting Agreement by the Underwriters, and for other good and valuable consideration, the undersigned hereby irrevocably agrees that, without the prior written consent of Lehman Brothers Inc. and Goldman, Sachs & Co., on behalf of the Underwriters, the undersigned will not, directly or indirectly, (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock (including, without limitation, shares of Common Stock that may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and shares of Common Stock that may be issued upon exercise of any option or warrant) or securities convertible into or exchangeable for Common Stock (other than the Shares) owned by the undersigned on the date of execution of this Lock-Up Agreement or on the date of the completion of the Offering, or (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, for a period of 90 days after the date of the final Prospectus relating to the Offering (the “**initial Lock-Up Period**”); *provided, however*, that if (a) during the last 17 days of the Lock-Up Period the Company issues an earnings release or material news or a material event relating to the

Company occurs or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the initial Lock-Up Period, then in each case the initial Lock-Up Period shall be automatically extended and the restrictions imposed by this Lock-Up Agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless Lehman Brothers Inc. and Goldman, Sachs & Co. waive, in writing, such extension (the initial Lock-Up Period as may be extended, referred to herein as the “**Lock-Up Period**”). Notwithstanding the foregoing, nothing in this Lock-Up Agreement is intended to, or shall prevent, the undersigned from (i) transferring any shares, options or warrants to any family members or affiliates or for estate planning purposes, provided that (A) the transferee agrees in writing to be bound by the terms of this Lock-Up Agreement, and (B) such transfer does not require the transferee to make a filing under Section 16 of the Securities Exchange Act of 1934 reflecting such transfer with the Securities and Exchange Commission during the Lock-Up Period, (ii) putting in place a so-called “10b-5-1 plan” or setting up a brokerage account, provided no sales shall be made thereunder prior to the end of the Lock-Up Period, or (iii) exercising any options or warrants held by the undersigned, provided that any shares so issued shall be subject to this Lock-Up Agreement.

The undersigned hereby acknowledges that the Company has agreed in the Underwriting Agreement to provide written notice of any event that would result in an extension of the initial Lock-Up Period pursuant to the previous paragraph to the undersigned (in accordance with Section 6(i) of the Underwriting Agreement) and agrees that any such notice properly delivered will be deemed to have given to, and received by, the undersigned. The undersigned hereby further agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this Lock-Up Agreement during the period from the date of this Lock-Up Agreement to and including the 34th day following the expiration of the initial Lock-Up Period, unless the Company has provided written notice to the undersigned that the Lock-Up Period has expired (after giving effect to any extension as provided above), it will give notice thereof to the Company and will not consummate such transaction or take any such action unless it has received written confirmation from the Company that the Lock-Up Period (as such may have been extended pursuant to the previous paragraph) has expired.

In furtherance of the foregoing, the Company and its Transfer Agent are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Agreement.

It is understood that, if the Company notifies you that it does not intend to proceed with the Offering, if the Underwriting Agreement does not become effective on or before December 15, 2004, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Shares, we will be released from our obligations under this Lock-Up Agreement.

The undersigned understands that the Company and the Underwriters will proceed with the Offering in reliance on this Lock-Up Agreement.

Whether or not the Offering actually occurs depends on a number of factors, including market conditions. Any Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement and that, upon request, the undersigned will execute any additional documents necessary in connection with the enforcement hereof. Any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Very truly yours,

By: _____

Name:

Title:

Dated: _____

Form of Bingham McCutchen LLP Opinion

(1) The Company is a corporation validly existing and in good standing under the laws of the State of Delaware, and has the corporate power and authority to own its property and to conduct the business as described in the Prospectus, and to execute, deliver and perform the Underwriting Agreement.

(2) Each of the Delaware Subsidiaries is validly existing and in good standing under the laws of its jurisdiction of organization, and has the corporate or other power and authority to own its property and to conduct its business as described in the Prospectus.

(3) The Company has the requisite corporate power and authority to execute, deliver and perform the Underwriting Agreement.

(4) The Underwriting Agreement has been duly authorized, executed and delivered by the Company.

(5) The authorized capital stock of the Company consists of 300,000,000 shares of Common Stock and 10,000,000 shares of Preferred Stock, par value \$.01 per share ("New Preferred Stock"). There are _____ shares of Common Stock outstanding of record and no shares of Preferred Stock issued and outstanding. All of such outstanding shares of Common Stock are duly authorized and have been validly issued and are fully paid and non-assessable.

(6) No consent, approval, authorization or order of, or filing with, any governmental agency, public body or any court of the State of New York or of the United States of America is required under New York Law or Federal Law for the execution, delivery or performance of the Underwriting Agreement by the Company, except (A) such as may be required under state securities laws, (B) for the filing of the Registration Statement with the Commission and the receipt of the order of the Commission declaring such Registration Statement effective (as noted in paragraph 13 below, we have been informed orally by the Commission that it has declared the Registration Statement effective, or (C) any consent, approval, authorization, filing, notification or other action that has been obtained or made or which, if not obtained or made, would not individually or in the aggregate be reasonably likely to have a Material Adverse Effect.

(7) To our knowledge and except as disclosed in the Prospectus, but without having investigated any governmental records or court dockets, and without having made any other independent investigation, there is no action, suit or proceeding pending or overtly threatened in writing against the Company before any court or arbitrator or any governmental body, agency or official, which if determined adversely to the Company, would be reasonably likely to have a Material Adverse Effect, or would materially and adversely affect the ability of the Company to perform its obligations under the Underwriting Agreement.

(8) The execution, delivery and performance by the Company of the Underwriting Agreement and compliance by the Company with the provisions thereof will not (i) to our knowledge result in a breach or default (or give rise to any right of termination, cancellation or acceleration) under any material agreement or instrument to which the Company is a party, and (ii) will not violate any of the provisions of the Governing Documents of the Company or any Federal Law or New York Law, or, to our knowledge, any judgment, order, writ, injunction or decree of any court or other tribunal located in the State of New York of which we are aware and that is applicable to the Company.

(9) The Company is not and, immediately after giving effect to the offering and sale of the Stock and the application of the proceeds thereof as described in the Prospectus, will not be, an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(10) The Registration Statement, as of its effective date, and the Prospectus, as of its date (other than the financial statements, the notes thereto and the related schedules and other financial and accounting information included therein or omitted therefrom, as to which we express no opinion) complied as to form in all material respects with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder.

(11) The statements in the Prospectus under the caption “Material U.S. Federal Income Tax Considerations for Non-U.S. Holders of our Common Stock”, insofar as such statements constitute a summary of the United States federal income tax laws referred to therein, are accurate summaries in all material respects of the United States federal income tax laws referred to therein.

(12) We have been informed that the Registration Statement was declared effective under the Securities Act as of ___ p.m. on _____, 2004, the Prospectus was filed with the Commission pursuant to subparagraph (1) of Rule 424(b) under the Securities Act, on _____, 2004 and to our knowledge no stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose is pending or threatened by the Commission.

(13) The statements in the Prospectus under the captions “Description of Capital Stock,” “Business—Legal Proceedings,” “Certain Relationships and Related Party Transactions” and “Underwriting,” insofar as such statements constitute summaries of the legal matters or documents referred to therein, are accurate descriptions or summaries in all material respects.

(14) The Underwriting Agreement has been duly authorized, executed and delivered by or on behalf of the FFL Funds.

(15) The use of facsimile signatures affixed in the name and on behalf of EquiServe Trust Company, N.A. as transfer agent and registrar, as applicable, on the certificates evidencing the shares of Common Stock to be issued and sold by the Company pursuant to the Underwriting Agreement and to be sold by the Selling Stockholders is permitted under the DGCL. Such use of facsimile signatures is not inconsistent with any provision of the Amended and Restated Certificate of Incorporation or the Amended and Restated By-Laws.

(16) The Custody Agreement constitutes the valid and legally binding obligation of the Designated Selling Stockholders enforceable against each Designated Selling Stockholder in accordance with its terms.

(17) Each Selling Stockholder is the owner of record of the securities of the Company listed on Annex A.

(18) Our opinions in this paragraph 18 are limited to Article 8 of the New York UCC. Upon (i) receipt, in the State of New York, by DTC or a nominee (other than a securities intermediary) acting on its behalf, of each of the stock certificates representing the Stock, indorsed in blank by an effective indorsement of the Designated Selling Stockholder or together with properly completed and effective stock powers endorsing the Stock and duly executed by the Designated Selling Stockholder in blank, (ii) the crediting by DTC of such Stock to "securities accounts" (as that term is defined in Section 8-501(a) of the New York UCC) of each of the Underwriters by making appropriate book entries with respect to the account of each Underwriter, and (iii) payment for the Stock by each of the Underwriters pursuant to the Underwriting Agreement, and assuming that (x) neither DTC nor any of the Underwriters, at any relevant time, has notice (within the meaning of Section 8-105 of the New York UCC) of any "adverse claim" (within the meaning of Section 8-102(a)(1) of the New York UCC) to the Stock and (y) DTC is a "clearing corporation" (as that term is defined in Section 8-102 of the New York UCC), then (A) DTC will be a "protected purchaser" of such Stock (as that term is defined in Section 8-303 of the New York UCC), (B) each Underwriter will acquire a valid "security entitlement" (within the meaning of subsection (b) of Section 8-501 of the New York UCC) in respect of such Stock credited to its securities account, except as otherwise provided in (and subject to the provisions of) subsections (d) and (e) of Section 8-501 of the New York UCC, and (C) no action based on an adverse claim (within the meaning of Section 8-102(a)(1) of the New York UCC) to a share of Stock credited to its account may be asserted against such Underwriter with respect to such securities entitlement.

In addition, we have participated in conferences with officers and representatives of the Company and with representatives of its independent accountants at which conferences the contents of the Registration Statement and the Prospectus and any amendment and supplement thereto and related matters were discussed and, although we are not passing upon and do not assume any responsibility for, nor have we

independently verified, the accuracy, completeness or fairness of the Registration Statement, the Prospectus and any amendment or supplement thereto (except as expressly provided above in paragraphs 10, 11 and 13), on the basis of the foregoing we hereby confirm that no facts have come to our attention that have caused us to believe that the Registration Statement, at the time of its effective date, including the information, if any, deemed pursuant to Rule 430A to be part of the Registration Statement at the time of effectiveness (except with respect to the financial statements, the notes thereto and the related schedules and other financial and accounting information included therein or omitted therefrom, as to which we express no belief), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus (except with respect to the financial statements, the notes thereto and the related schedules and other financial and accounting information included therein or omitted therefrom, as to which we express no belief) as of its date and as of the Closing Date contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Form of Local Counsel Opinion

1. [Subsidiary] is validly existing and in good standing under the laws of its jurisdiction of organization[, and has the corporate or other power and authority to own its property and to conduct its business as described in the Prospectus.]¹
2. All outstanding shares of [Subsidiary's] stock are duly authorized, validly issued, fully paid and nonassessable, and are of record by _____ and are beneficially owned, directly or indirectly, by the Company.²
3. To our knowledge and except as disclosed in the Prospectus, but without having investigated any governmental records or court dockets, and without having made any other independent investigation, there is no action, suit or proceeding pending or overtly threatened in writing against [Subsidiary] before any court or arbitrator or any governmental body, agency or official located in the State of New York, which if determined adversely to [Subsidiary], would be reasonably likely to have a Material Adverse Effect.³

¹ Opinion to be delivered with respect to Virginia and Kentucky subsidiaries only.

² Opinion to be delivered with respect to Virginia and Kentucky subsidiaries only.

³ Opinion to be delivered with respect to Virginia and Kentucky subsidiaries only.

Form of Selling Stockholder Opinion

1. The Underwriting Agreement has been duly authorized, executed and delivered by or on behalf of such Selling Stockholder;
2. The Power-of-Attorney and a Custody Agreement have been duly authorized, executed and delivered by the Selling Stockholder and constitute valid and binding obligations of the Selling Stockholder, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;
3. The Selling Stockholder is the record owner of the shares of Stock to be sold by such Selling Stockholder under the Underwriting Agreement; and
4. Assuming that each Underwriter acquires the shares of Stock it has purchased from any of the Selling Stockholders without notice of any adverse claim (within the meaning of Section 8-105 of the Uniform Commercial Code), each Underwriter that has purchased such Stock delivered on the date hereof to such Underwriter by making payment therefor as provided in the Underwriting Agreement will have acquired control (within the meaning of Section 8-106 of the Uniform Commercial Code) of such Stock free of any adverse claim (within the meaning of Section 8-102 of the Uniform Commercial Code).

November 12, 2004

Tempur-Pedic International Inc.
1713 Jaggie Fox Way
Lexington, Kentucky 40511

Re: Registration Statement on Form S-1 Under the Securities Act of 1933, As
Amended (File No. 333-120151)

Ladies and Gentlemen:

We have acted as counsel to Tempur-Pedic International Inc., a Delaware corporation (the "Company"), in connection with the registration under the Securities Act, of 1933, as amended (the "Act"), of 10,000,000 shares and up to an additional 1,500,000 shares which may be offered by the Selling Stockholders in order to cover over-allotments, if any, of common stock, par value \$0.01 per share of the Company (the "Shares"), pursuant to a Registration Statement on Form S-1 (as amended, the "Registration Statement"), initially filed with the Securities and Exchange Commission on November 2, 2004.

We have reviewed the corporate proceedings of the Company with respect to the authorization of the issuance of the Shares. We have also examined and relied upon originals or copies, certified or otherwise identified or authenticated to our satisfaction, of such corporate records, instruments, agreements or other documents of the Company, and certificates of officers of the Company as to certain factual matters, and have made such investigation of law and have discussed with officers and representatives of the Company such questions of fact, as we have deemed necessary or appropriate as a basis for the opinions hereinafter expressed. In our examination, we have assumed the genuineness of all signatures, the conformity to the originals of all documents reviewed by us as copies, the authenticity and completeness of all original documents reviewed by us in original or copy form and the legal competence of each individual executing any document.

We have also assumed that an Underwriting Agreement substantially in the form of Exhibit 1.1 to the Registration Statement, by and among the Company and the underwriters named therein (the "Underwriting Agreement"), will have been duly executed and delivered pursuant to the authorizing resolutions of the Board of Directors of the Company and that the Shares will be sold and transferred only upon the payment therefore as provided in the Underwriting Agreement. We have further assumed that the

registration requirements of the Act and all applicable requirements of state laws regulating the sale of securities will have been duly satisfied.

This opinion is limited solely to the Delaware General Corporation Law, the applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting those laws.

Based upon and subject to the foregoing, we are of the opinion that the Shares have been duly authorized, and, in the case of those shares to be issued upon exercise of outstanding stock options, when such Shares are issued and paid for in accordance with the terms of the option agreements, will be validly issued, fully paid, and non-assessable, and all other Shares have been validly issued and are fully paid and non-assessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to this firm under the heading "Legal Matters" in the Registration Statement.

Very truly yours,

/s/ BINGHAM MCCUTCHEN LLP

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